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) be distributed to Cleveland State University for use in its hazardous materials education program. The remainder of the fund is to be distributed annually by the PUCO through its hazardous material training grant 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 ranging 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.

The University of Findlay has been offering hazardous material training for a number of years and has been the recipient of a number of PUCO grants to support those training opportunities. The Environmental Resource Training Center (ERTC) at the University of Findlay blends classroom lectures with hands-on experience for private industry, local, state and federal officials. The ERTC has provided such training since 1989, at the university or at the client's location. The ERTC offers more than 165 workshops and has trained in excess of 35,000 individuals.

At the time the Conrail sale was proposed, the PUCO initiated discussions with the University of Findlay aimed at augmenting its nationally recognized training programs with rail car emergency response training. As a result of these discussions, the PUCO recently awarded a grant of almost $300,000 to the University of Findlay to develop and offer emergency response rail training as a follow-up to existing response training. The grant includes funds for curriculum development in addition to the development of a flexible course schedule to accommodate volunteer fire fighters and other unpaid responders. The training will be comparable to courses offered by the Association of American Railroads at its Transportation Technology Center in Pueblo, Colorado. Initial course offerings have been developed and workshops have been scheduled.

The PUCO initiated similar discussions with Cleveland State University. As set forth above, 50% of the hazardous materials transportation fund ($400,000) is distributed to Cleveland State

University (CSU) annually. The Center for Hazmat Education at CSU is housed in the University's Division of Continuing Education, and it offers comprehensive training to both public and private emergency responders. The Center offers basic, advanced, specialized and custom designed training throughout Ohio. Since 1984, CSU has designed, developed and offered more than 40 different courses to more than 36,000 Ohio emergency responders. CSU has also expanded its offerings in response to the changing patterns of hazardous material transportation occasioned by the Conrail sale. Rail response training courses, including "Operations Response to Rail Incidents" and "Tank Car Recognition and Emergency Response" courses have recently been developed by CSU and will be offered beginning in 2000.

During the past year, the PUCO has made a concerted effort to reach out to political subdivisions that will see a significant increase in hazardous material rail traffic as a result of the Conrail sale to remind those local governments of the funds available for hazmat incident response and other training. The PUCO mailed grant information to all paid and volunteer fire departments, emergency management agencies and Local Emergency Planning Committees in areas most affected by the acquisition. The message noted the potential increase in rail traffic and encouraged those agencies to evaluate their training needs and their preparedness relative to hazardous material incident response. As a result of those efforts, 13 grants have thus far been awarded by the Commission to provide for the rail training needs of impacted areas.

While most substantive and technical regulation of hazardous materials shipments are areas of federal jurisdiction, the state agencies have undertaken efforts to address potential safety concerns posed by the Conrail merger and recommend that the legislature support and foster the progress of the agencies to date in providing engineering, inspection and emergency response training services.

The OEMA survey of the 87 Local Emergency Planning Committees which is summarized in Exhibits "C" and "D" herein confirms that more training efforts are needed. Many OEMA survey respondents cited the need for more extensive outreach efforts.

E) CONCLUSION AND RECOMMENDATIONS

The safety concerns resulting from increased train traffic include not only a potential increase in the transportation of hazardous materials, but also an increase in the number of public crossings being blocked by a train. In the event of an incident, the response unit with the jurisdiction, training and equipment to handle the situation, will be delayed at a blocked grade crossing or prevented from responding altogether. In most cases, mutual aid pacts and good communication will solve this problem. However, where there exists a disparity between the size and resources of responders on the opposite side of the crossing, mutual aid may be an inadequate assurance for the community.

The responses to the OEMA survey highlighted that much still needs to be done in terms of training and mutual aid agreements. The survey results showed that there are not always mutual aid agreements in place. Further, survey respondents noted that it was not always clear when an existing mutual aid pact should be put into action due to uncertainty as to which crossings might be blocked.

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

1) Expand current training and capability 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.

Exhibit "A"

Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • 614.644.0306 phone • 614.728.4520 fax

GRADE SEPARATION STUDY SURVEY

1. Does your community have active rail lines? If so, please identify which railroads have a presence in your community._____
_____

2. Has the rail activity increased over the past two (2) years? _____

3. Does your community anticipate future increases in rail activity? If so, please identify the factors that will contribute to this increase._____
_____
_____
_____

4. How many grade crossings are in your community?_____

5. Are there any highway/rail grade separations in your community? If so, please identify the location._____
_____

6. Do you think your community needs a highway/rail grade separation? If so, where do you think it should be located?_____
_____
_____

7. Please list your name, title, and telephone number._____
_____

Thank you for your time. Please return this completed survey in the enclosed pre-addressed envelope and submit no later than August 20, 1999.

Exhibit "B"

TOTAL GRADE SEPARATION REQUESTS

County	City	Highway Identification	Railroad	Trains Per Day	ADT
Adams	Scott Twp.	Mt. Zion Road / TR 49B	NS	6	10
	Scott Twp.	Tranquility Pike / CR 14A	NS	6	270
	Scott Twp.	Silcott Road / TR 239	NS	6	40
Allen	Bluffton	Allen-Hancock Rd./CR15	NS	2	910
	Delphos	Washington St.	CSX		
	Lima	Bellefontaine Ave./SR309/117	I&O	6	16,610
Ashtabula	Ashtabula	Columbus Avenue	CSX	50	1730
	Ashtabula	State Road / SR 84	NS	20	380
	Ashtabula	West Avenue	NS	20	8000
	Conneaut	Parrish Road	NS	20	2590
	Conneaut	Parrish Road	CSX	50	2590
	Geneva	Austin Road	CSX	50	4180
	North Kingsville	SR 193	CSX	50	2070
Athens	Lee Twp.	Sawmill Road / TR 16	NS	4	20
Auglaize	Cridersville	High Street	CSX		
	Wapakoneta		CSX		
Belmont	Powhatan Point	Taylor/Front (SR 148)/Water Streets	NS	1 or 0 or 5	2460 or 2150 or 1910
	York Township	SR 7 & SR 148	NS	0	1590
Butler	Fairfield	Muhlhauser Road	CSX	30	12,390
	Fairfield	Symmes Road	CSX	30	12,510
	Fairfield	Symmes Road	NS		
	Oxford		CSX		
	Oxford Township	High Street / Conteras Road	CSX	4	8283
	St. Clair Twp.		NS		
Clark	Springfield	Burnett Road	NS	16	14,790
Clinton	Wilmington	Rombach Avenue	CSX		
Columbiana	Columbiana	Pittsburgh Street	NS	68	2281
	Leetonia		NS		
	Washington Twp	White Culvert	NS		
Crawford	Bucyrus	Beal Ave or Southern Ave	NS	28 or 60	713 or 5516
	Chatfield Township	Crawford/Seneca Co. Line Road - CR 14	NS	28	211
Cuyahoga	Bedford	all 6 locations			
	Berea	Bagley Road	CSX	9	10,950
	Berea	Front Street	CSX	5	4930
	Berea	Front Street	NS	33	10,834
	Cleveland	London Road	NS	20	5310
	Cleveland	Nottingham/Dille Road	NS	20	15,430
	Euclid	Chardon Road	NS	20	4770
	Euclid	Dille Road	NS	20	15,430
	Garfield Heights	McCracken Road	WE	0	4120
	Lakewood	West 117th Street	NS	20	17,788
	Middleburg Heights	East Bagley Road	CSX	3	27,730
	Olmsted Falls	Columbia Road / SR 252	CSX	12	7240
	Solon (IF NEORAIL)	Harper Road	NS	0	12,270

	Solon (IF NEORAIL)	Liberty Road	NS	0	3580
	Solon (IF NEORAIL)	Solon Road	NS	0	8190
	Westlake		NS		
Darke	Union City	Division Street	CSX	45	850
	Versailles	Grand Avenue	CSX		
	Jackson Twp.		CSX		
Defiance	Defiance	SR 281	CSX		
	Defiance	SR 15 / Ottawa Avenue	CSX	50+	10,120
	Defiance	Deatrick Street	CSX	50+	4460
	Delaware Twp.	US 24	CSX	50+	8434
	Delaware Twp.	US 127	CSX	50+	3090
	Delaware Twp.	Bend Road	CSX	50+	845
Delaware	Delaware	London Road	CSX	17	7470
	Delaware	Pennsylvania Avenue	CSX	17	6680
	Delaware	West Williams Street	CSX	17	9060
	Powell	Home Road	CSX	18	2370
	Orange Twp.	East Orange Road / Powell Road	NS/CSX	12 or 28	400 or 3194
	Troy Twp.	TR 132 /Hillsmiller Rd or CR 7/Troy Rd	CSX	17 Both	630 or 900
Erie	Sandusky	US 6 (Venice Road)	NS	14	4400
	Sandusky	SR 101	NS	6	5950
	Vermilion	US 60	NS	24	7729
	Vermilion	Adams Street	NS	92	1083
	Vermilion	Sunnyside Road	NS	92	661
	Vermilion	High Bridge Road	NS		
	Vermilion	Vermilion Road	NS	92	3102
	Berlin Twp.	SR 61 @ Ceylon Road	NS	92	8530
	Huron Twp.	Rye Beach Road	NS	92	2270
	Margaretta Twp.	Bogart Road / CR 10	NS	6	3900
	Milan Twp.	Strecker Road / CR 15	NS	6	170
	Oxford Twp.	Patten Tract Road	WE	24	540
	Vermilion Twp.	Joppa Road / CR 140	NS	24	270
	Vermilion Twp.	Joppa Road	NS	92	300
	Vermilion Twp.	Coen Road	NS	92	430
	Vermilion Twp.	Coen Road / TR 147	NS	24	420
Fairfield	Violet Twp.	Diley Road @ SR 33	I&O	4	700
	Violet Twp.	CR 18 / Hill Road	I&O	4	1270
Franklin	Worthington				
	Pleasant Twp.	Harrisburg Pike @ SR 665	CSX	4	3090
Fulton	Archbold		NS		
	German Twp.	all 7 crossings	NS		
	York Twp.	TR 10	CSX	92	1245
Hamilton	Blue Ash (lt. rail)	Glendale-Milford Road	I&O		
	Glendale	Sharon Avenue	CSX	30	12,496
	Lockland	Wyoming Avenue	CSX	30	5116
	Sharonville	Crescentville Road	NS	26	6780 (18,000)
	St. Bernard	Vine @ Spring Grove			
	Sycamore Twp (lt. rail)		I&O		

	Wyoming	Wyoming Avenue	CSX	30	5116
Hancock	Findlay	East Melrose	NS	12	2340
	Findlay	East Bigelow	NS	12	6100
	Allen Twp.	TR 229	NS		
	Washington Twp.		NS		
Hardin	Ada	Main Street/SR 235	CSX	6	6310
	Dunkirk		CSX		
	Mt. Victory		CSX		
	Hale Twp.		CSX		
Huron	Bellevue	SR 269	NS	50	4132
	Greenwich	US 224	CSX	24	7894
	New London	Euclid Road/TR 193	CSX	24	
	Norwich Twp.	Section Line 30	CSX	31	890
	Richmond Twp.	Section Line 30	CSX	31	830
	Ripley Twp.	TR 52 / Old State Road	CSX	30	300
Lake	Mentor	Heisley Road	CSX	16	4990
	Mentor	Heisley Road	NS	20	6360
	Mentor	Hopkins Road	CSX	16	8850
	Painesville	Liberty Street or Chestnut	NS	20	7580
	Willoughby	Erie Road/Lost Nation Road	NS	20	8570
	Willowick				
Lawrence	South Point	all 3 crossings	NS		
Logan	Lake Twp.	SR 68	CSX	20	5230
Lorain	Amherst	Crosse Road or Cooper Road	NS	92	156
	Avon	SR 83	NS	92	10,484
	Avon Lake	Avon-Belden Road/SR 83	NS	92	10,484
	Grafton	Elm Street	CSX	50+	1050
	LaGrange	TR 166-Wheeler Rd. or Whitehead Rd.	CSX	50+ both	160 or 270
	North Ridgeville	SR 83	NS	92	9889
	North Ridgeville	Race Road	NS	92	1477
	Rochester	SR 511	CSX	9	1070
	Wellington		CSX	50+	
	Wellington Twp.	T45/Peck Wadsworth Rd or T44-Hawley Rd	CSX	50+ both	80 or 140
	Columbia Twp.		CSX	50+	
	LaGrange Twp.	CR 48 - Whitehead Road	CSX	50+	270
Lucas	Oregon	Wynn Road	NS	16	4350
	Oregon	Corduroy Road	NS	40	3514
	Oregon	Pickle Road	NS		
	Monclova Twp.	CR 95 - Monclova Road	NS	3	2943
	Swanton Twp.	SR 295 o. Mallex Ave/CR Line Rd	NS		
Madison	London		NS		
Mahoning	Campbell	Rt. 289/Wilson Avenue			
	Lowellville	Third Street	CSX	31	1376
	Struthers	SR 616	NS	16	10,640
	Struthers	State Street	NS		
Marion	Caledonia	High Street	CSX	20	1460
	Marion	SR 309 - Kenton Avenue	CSX		

	Marion	SR 162 - Marion-Williamsport Road	NS	28	1680
	Marion	CR 175 - East Fairground Street	NS	32	4555
	Marion	SR 95 - West Center Street	CSX		
	Marion Twp.	Linking SR 309 & US 23	CSX		
	New Bloomington		CSX		
Medina	Medina	West Smith Road	WE	4	6020
Meigs	Rutland Twp.	CR 3 - Leading Creek Road	NS	4	30
	Rutland Twp.	TR 41 - Parkinson Road	NS	4	30
	Rutland Twp.	CR 13 - Lasher Road	NS	4	30
Miami	Tipp City	Donn Davis Way	CSX		
Montgomery	Moraine	Sellars Road	NS	16	11,390
Muskingum	Union Twp.	TR 105 - Sundale Road	CSX	0	340
	Union Twp.	CR 436 - South Moose Eye	CSX	0	80
	Union Twp.	CR 55 - Rix Mills	CSX	0	1790
	Union Twp.	Liberty	CSX		
Ottawa	Rocky Ridge	SR 590	NS	92	670
	Clay Twp	Genoa Clay Center	NS	92	2560
	Erie Twp.	SR 163 @ Three Mile Crossing	NS	92	1940
	Salem Twp.	Portage River South Road	NS	92	280
Paulding	Payne	Rt 49-Main Street	NS	24	1810
Perry	Corning	Adams Street	NS	4	600
	Corning	SR 155 - Main Street	NS	4	1870
Pike	Seal Twp				
Portage	Paris Twp.	Rt 5/Newton Falls Road	CSX		
Preble	Jackson Twp.		NS		
Putnam	Leipsic		CSX		
	Ottawa		I&O		
	Monroe Township				
	Palmer Twp	SR 108	NS	24	2010
	Palmer Twp	SR 15	NS	24	2570
Richland	Mansfield	C424 - Illinois Avenue	NS	17	5290
	Mansfield	SR 13 - Main Street	NS	4	7720
	Mansfield	SR 430 - US 42	NS		
	Shelby	North Broadway Street	CSX	18	6450
Ross	Franklin Twp	TR 194 - Toad Hollow Road	NS	24	100
Sandusky	Clyde	CR 262 Durnwald Road or Spayd Rd	NS	55	1981
	Fremont	Hayes Avenue Miles	NS	55	4850
	Green Creek Twp	TCR 236	NS	55	1167
	Sandusky Twp.	all 5 crossings	NS		
Scioto	Porter Twp	TR 257 - Hayport Road	NS	25	930
Seneca	Fostoria	Town Street	NS	24	3154
	Fostoria	Tiffin Street	CSX	34	1952
	Fostoria	Jones Road/CR 592	CSX	33	3160
	Tiffin	East Perry Street OR	CSX	30	3249
	Tiffin	East Perry Street	SSCPA	5	4010
	Tiffin	East Market Street OR	CSX	30	3899
	Tiffin	East Market Street	SSCPA	2	4800

	Big Spring Twp	TR 96	CSX	13	82
	Big Spring Twp	TR 56	CSX	13	94
	Jackson Twp.	CR 592	NS	24	1920
	Jackson Twp.	TR 47	NS	24	699
	Loudon Twp.	TR 47	NS	24	699
	Loudon Twp.	TR 47	CSX	30	269
	Loudon Twp.	TR 108	CSX	13	140
	Venice Twp.				
Shelby	Turtle Creek Twp.	TR 131-Lindsey Road	CSX	12	180
	Turtle Creek Twp.	TR 167-Wright Road	CSX	20	30
Stark	Canton	East Tuscarawas Street	NS	22	7619
	Limaville	German Church Street	NS	18	20
	Limaville	Price Street	NS		
	Louisville	SR 44/North Chapel Street	NS	22	20,747
	Massillon	all 8 crossings			
	Lexington Twp.	access ramp onto SR 62 bypass			
Summit	Akron	Evans Avenue	CSX	31 or 2	5570 or 3564
	Hudson	Stow Road	NS	0	16,330
	Macedonia	Highland Road	NS	60	10,766
	Silver Lake	Graham Road/Rt 8	CSX	0	29,055
	Silver Lake	Front Street/Rt. 59	CSX	0	13,309
	Twinsburg		NS		
Trumbull	Lordstown	Highland Avenue	CSX		
	Hubbard Twp.	SR 304	NS	0 or 18	7220 or 2200
Warren	Carlisle	SR 123-Central Avenue	CSX	21	9760
Washington	Belpre	Pomeroy Pike	CSX	3	2720
	Marietta	SR 7-Ft. Harmar Drive	CSX	1	10,270
	Dunham Twp.	CR3A near SR 7 South	CSX		
Wayne	Baughman Twp.	Tannerville Road	NS	16	270
	Milton Twp.	T200-Blough Road	CSX	31	143
	Milton Twp.	T41-Schorle Road	CSX	21	56
Williams	Bryan	east side of town	NS		
	Edgerton	US 6	NS	92	4510
	Stryker	Horton Street	NS	92	460
	Florence Twp.		NS		
	Madison Twp.		NS		
Wood	Bloomdale	Garfield Street	CSX		
	Bradner	SR 281	CSX	33	1350
	Hoytville	where crossing was removed	CSX		
	North Baltimore	Second Street or Poe Street	CSX		
	Northwood	Wales Road-Vickers Crossing	CSX	37 or 55	2890 or 1700
	Freedom Twp	SR 6	CSX	33	6430
Wyandot	Carey				

RAIL SAFETY SURVEY
(HB 163)

1. Identify (by location) the five (5) worst rail grade crossings in your county that are of concern to public safety due to increased rail traffic causing blockages of emergency response vehicles or increased hazardous materials transportation.

2. What routes are affected at the five sites?

3. How many trains cross each of these five sites per day?

4. How many hazardous materials shipments cross each of these five sites?
   - Rail (most hazardous materials, if known)
   - Truck (most hazardous materials, if known)

5. How long are average blockages at each of the sites?

6. Are there emergency response agencies i.e., fire departments, which become isolated due to blockages at crossings? (For Example – A downtown Fire Dept. becomes isolated and cannot reach rural areas). Which of the five sites are these?

7. Are there critical facilities that become isolated from emergency response vehicles due to crossing delays/blockages (i.e., hospitals)? Which of the sites are these?

8. What type of fire department responds to each of these five sites-volunteer or paid?

9. What level of training do the responding emergency forces have (awareness, operations, technicians, etc.)?

10. Where blockages occur, is there mutual aid in place between responders on each side of the track to assist each other?

11. Are there communication systems linking the rail systems and the county/city responders?

12. Are there redundant grade crossings in the area that can be closed to assist emergency response vehicles? Where are they located?

13. What solutions to alleviating these problems have you identified? Please list all.

14. Is your community experiencing other problems with rail systems and crossings? If yes, please list them.

A survey of fourteen (14) questions was sent to all eight-eight (88) counties of Ohio and all eight-seven (87) Local Emergency Planning Committees of Ohio. The survey was to acquire information to be used in developing a report on rail safety issues in Ohio for the General Assembly. The report is in response to House Bill 163.

This is a summary of the findings from that survey. There is attached, a sheet for each county that responded to the survey (47 out of 88 counties). The entire packet submitted by each county is on file at the Ohio Emergency Management Agency should additional information be needed.

This summary will break down each of the fourteen questions and where applicable make recommendations on how to fix the issues.

Question one asked for a listing of the five (5) worst grade crossings in each county that was a concern to public safety due to trains blocking the tracks and impeding emergency response vehicles and/or dangers caused by increased rail traffic on crossing where hazardous materials are shipped. The eighty-eight county breakdown sheets list the five worst for each.

In some cases, the counties sent in the five worst for each responding city, township or fire jurisdiction. In these cases it gave us much more than five and the survey breaks it down by area. In some cases, the county sent in along with their list, flow charts, maps, diagrams, consists etc. As stated above, if this information is needed, it is on file at the Ohio Emergency Management Agency. Question two of the survey goes hand-in-hand with question one. It asks which routes were affected at the grade crossings. Routes from county roads to city streets to state & federal highways are affected. The 88 sheets list the routes and in several cases they are listed in question one.

Question three asked how many trains cross these sites per day. The responses ranged from a few to as high as hundred twenty. One site showed 8-12 per hour since it was across from a rail yard. The averages were 5-10, 20-30, or 30-50 per day per crossing.

Question four asked how many hazardous materials shipments cross each of these sites per day, by rail or truck. The answers were varied from all carry hazardous materials of some form to some carry hazardous materials and some carry extremely hazardous materials. Some counties gave specific numbers or percentages of shipments and specific chemicals/materials hauled (refer to each county sheet). The alarming part of this question and its answers was that many counties/local Emergency Planning Committees (LEPC) responded with "unknown". All counties/LEPCs have hazardous materials plans; however, the plans are required by ORC 3750 (SARA) which deals with fixed facilities. All LEPCs (counties) need to start addressing transportation hazards (for hazardous materials) for rail and highway. The tools are there and the funding sources are available to do rail/highway flow studies. Grants from USDOT and PUCO are available each year for this. LEPCs/counties also need to work with railroads in their counties and establish better communications as question 11 will also allude to.

Question five asked how long the average blockades were. The sheets will show a varied response. The average were 3-5, 5-10, 15-25, and 25-40 minutes. Isolated incidents of over an hour were also cited. Several areas ticket/fine the railroad if the blockage is over a certain amount of time. An interesting theme appeared where respondents stated they did not have time or money to do flow studies of how many hazardous materials shipments traveled those crossings; however, the number of trains per day per crossing and the length of time trains blocked the tracks were known. Most hazardous materials shipments are placarded and would have been seen when counts of how many trains crossed each crossing.

Question six asked if emergency response vehicles were impeded by these blocked crossings. A unanimous yes was the answer. Blockages impede, slow down, or stop emergency responders going to or returning from a run. This is life threatening when delayed getting to a victim and worse when stopped when a victim is in the emergency vehicle en route to a hospital. All responders are affected; fire, police, ems, etc. The blockages split response areas in half, cause long delays, require detours to get to the scene or require, at the last minute, a mutual aid call which now takes even longer to arrive on scene. As the reports show, some crossings are close enough together that with a long train, all crossings will be blocked at the same time. Some cited 4-9 crossings blocked at a time limiting any access to a scene.

Questions seven asked if critical facilities were blocked from emergency responders when tracks were blocked. Please refer to the sheets for details but in many cases the answer was yes with hospitals, nursing homes, open-heart center, schools, prisons, power plants, etc. being listed.

Questions eight asked what types of fire departments respond to accidents at these crossings/areas. There was a mixed answer from paid to volunteer. The majority of departments are volunteer. One theme came to the foreground and that was volunteers have to respond to the fire station and if trains block the tracks, volunteers cannot get to work which mean even longer delays.

Question nine asked what levels of training responders in these crossing areas have. It ranged from minimum EMT training to Technician Level. Most were Awareness and Operations Level. Additional training is required in many areas and many cited they cannot get the training, as their forces are volunteer. One recommendation is to reinstate the State Fire Marshal's Hazardous Materials Units and the Outreach training efforts. These outreach classes could be taken to the field as volunteers/paid personnel cannot always come to Reynoldsburg for training. This will help but not solve the training problems. Responding emergency response force officials must ensure/force their personnel to take the necessary training.

Question ten asked if there was mutual aid on each side of the track when blockages occurred. Almost all responding counties answered yes there was mutual aid in place; however, it was not known when it would be needed thereby causing extra delays in getting to the scene as mutual aid wasn't called immediately. Mutual Aid is also farther away than regular forces causing longer response times. One recommendation will be to enact legislation that requires mutual aid on both sides of the tracks and that it be notified immediately with other responders in case there would be a blockage. One additional recommendation to be made is to require railroads to identify responders when a crossing will be blocked and how long so that required mutual aid can be immediately called as opposed to the regular response forces, thereby cutting response time.

Question eleven asked if there are communications between railroads and emergency response forces. It was almost a unanimous answer: No, except for phones which are rarely answered or the numbers are not correct. A recommendation to be made is that railroads work with responders to establish working communication links, by phone, radio, computer or whatever means is available. This would allow railroads to alert communities of train blockages so mutual aid could be immediately enacted (see question #10). This would also allow communities and railroads to share information on types of shipments and numbers of shipments (see question #3-5).

Question twelve asked if there were redundant crossings that could be removed to assist responders. A unanimous no was given especially when one train can block several crossings at once (see question six).

Question thirteen asked for solutions to this problem. Please refer to the individual county sheets for a full list of ideas. The major solutions given were grade separations above or below, mutual aid, improved communications with railroads, penalties for blockages, electronic verbal train monitoring systems to warn of oncoming trains that will cause blockages so mutual aid can be enacted or alternate routes can be selected in case needed for responders, and better scheduling of trains per peak hours.

Question fourteen asked if communities were having other problems with railroads. Again, refer to individual county sheets, but major issues were warning lights and gates being faulty, no warning lights or gates, only cross bucks, and parked trains on sidings.

Results of this survey and a survey done by the Ohio Rail Development Authority and PUCO's information will be pulled together into a final report to the General Assembly before this year's end.

ROBERT HERRON
CITY MANAGER

Ohio's Sharpest Corner A Resort Area

City of Conneaut

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Conneaut, Ohio 44030
Telephone (440) 593-7401
Fax (440) 593-6908
E-mail: conneautcityhall@suite224.net

July 10, 2000

Ms. Beth Wilson
Ohio Rail Development Commission
50 West Broad Street
15th Floor
Columbus, OH 43215

Dear Ms. Wilson:

I am writing as a follow-up to our conversation last week concerning the impact of the acquisition of Conrail by the Norfolk and Southern and CSX Railroads.

In respect to the Norfolk and Southern, the City has experienced increased train traffic and additional train movement in the Conneaut Norfolk and Southern tracks and yard. This has caused traffic delays and complaints of noise from the neighboring residents. As I mentioned, the City has not counted the trains that pass through the City on the Norfolk and Southern line, but are relying on experienced public safety officials and neighborhood communications to confirm the additional trains and congestion. To alleviate some of these issues, the City continues to be interested in a grade separation at Parrish Road, as well as Quiet Zones.

The City has been working with the Norfolk and Southern on the required Real Time Train Monitor System to be installed in the City Dispatch Center. The company has provided a demonstration of their proposed device and have incorporated suggestions from our public safety officials for improvements to the system. The anticipated installation date is June 1, 2001.

Also as a result of the acquisition, the Norfolk and Southern has eliminated its crew changing facility and eliminated at least three clerk positions in the Conneaut yard. Not only have we been affected by increased train traffic, but this process has eliminated valuable jobs to our community.

In respect to the CSX tracks, complaints and concerns about noise and train traffic have been increased since the acquisition. Again, the City has not counted CSX trains, but is relying on experience and neighbors, some of whom have lived near the tracks for over 40 years. The City is interested in the grade separation at Parrish Road over the CSX and Norfolk and Southern Railroad tracks, as well as Quite Zones to help with the impacts associated with the CSX tracks.

EXHIBIT B

Also, please note that the City is very supportive of efforts to enable the designation of "No Blocks" crossings for public safety purposes.

Thank you for contacting me regarding the impact of this acquisition. While this is a brief synopsis, it certainly has affected Conneaut in many ways. If you need additional information, please feel free to contact me.

Sincerely,

Robert Herron
City Manager

CITY OF NORTH RIDGEVILLE

DEANNA L. HILL, MAYOR

July 10, 2000

Beth Wilson
Ohio Rail Development Commission
50 West Broad Street
15th Floor
Columbus OH 43215

Dear Ms. Wilson,

The Federal Surface Transportation Board, as part of the merger proceedings, had ordered discussions between the City of North Ridgeville and Norfolk Southern. It was our understanding that the discussions were to be in good faith in order to resolve some of the difficulties faced by our City due to five (5) at-grade crossings that literally bisect our community, negatively impact our safety services and schools and affect our economic development endeavors.

The order has been problematic, at best. Following testimony by Congressman Sherrod Brown and I at the hearing and the subsequent order, no contact was initiated by Norfolk Southern. After several telephone calls reminding various Norfolk Southern representatives of the order, including persons in Washington D.C., a few meetings were reluctantly held No conclusions were reached and no productive offers were made to alleviate the situation in our City.

We, understandably, are highly disappointed by the lack of progress. We have also certainly been surprised that Norfolk Southern has demonstrated such little respect for the order of the Federal Surface Transportation Board.

The Federal Surface Transportation Board's attempts to fairly guide the merger and to mitigate the effect on local communities are appreciated. We, hand-in-hand with the Federal Surface Transportation Board and the Ohio Rail Development Commission, are willing to continue our efforts to successfully compete with the many cities, villages and townships across Ohio for equitable resolution to this situation.

If I can be of further assistance, please do not hesitate to contact my office.

Sincerely,

Deanna L. Hill

Deanna L. Hill, Mayor

7307 AVON BELDEN ROAD NORTH RIDGEVILLE, OHIO 44039 PHONE: (440) 353-0811 FAX: (440) 327-8593

ASHTABULA FIRE DEPARTMENT

Chief Rick Balog

Station One ♦ 4326 Main Avenue ♦ Ashtabula, OH 44004 ♦ USA
Office (440) 992-7192 ♦ Fax (440) 992-2691 ♦ Chiefs (440) 992-7190 ♦ Email rickb@aimanagers.com

June 22, 2000

Beth Wilson
Ohio Rail Development Commission
50 West Broad Street
15th Floor
Columbus, Ohio 43215

RECEIVED
ORDC
00 JUN 28 PM 4:19

Dear Beth,

I am writing in response to your telephone request 6/22/00. The following has occurred concerning the N & S relations with Ashtabula, and the Ashtabula Fire Department:

1)The N&S Railroad has supplied the Ashtabula Fire Department with a copy of the ORES software; we have installed it on our laptops and made its use available throughout the area. They have trained us its use.

2)N & S is also due to demo the 'Real Time Monitoring' system to us on August 16, 2000. This system will be placed at two dispatch sites (Fire and Police). I have been working with Mike Scime of the N & S on the details of implementing this system.

I would also like to have the commission recognize the following request:

1) The City of Ashtabula is in need of a grade separation where your rail crosses at West Avenue. This is a very high priority for Ashtabula, as there are NO grade separations on the N & S rail which runs east-west through the city.

Thank you,

Rick Balog, Ashtabula Fire Chief

CITY OF BEREA

"The Grindstone City"

Joseph W. Biddlecombe
Mayor

July 7, 2000

11 Berea Commons
Berea, Ohio 44017
(440) 826-5800
Fax (440) 826-1446
website: www.bereaohio.com

WHITE HOUSE MILLENNIUM COMMUNITY

Ms. Beth Wilson
Executive Assistant to the Director
Ohio Rail Development Commission
FAX 614/728-4520

RE: Conrail Oversight Status

Dear Ms. Wilson:

Per your request, please accept this letter as an update as to the status of oversight of the acquisition of Conrail by CSX and Norfolk Southern as it effects the City of Berea, Ohio. The City is working cooperatively with the Ohio Rail Development Commission, Ohio Department of Transportation, Congressman Dennis Kucinich's office and CSX and NS to proceed with the two major underpass projects in the City of Berea, one at Bagley Road and the other at Front Street. We have been moving forward with the design work related to these two projects and have initially received funds from ORDC and the railroads that allowed us to begin work and expect to receive some additional funds in the near future from the railroads to complete final design. The City's oversight firm, Gannett-Fleming, is working cooperatively with CSX and NS engineers and others in an effort to expedite the design work so it may be started as soon as possible to provide needed mitigation consistent with the letter agreement between the railroads and the City of Berea.

Additional provisions contained in the letter agreement call for the railroads to work cooperatively with the City to provide noise mitigation at areas identified in the final EIS. While we have not reached closure on the form of noise mitigation, we are continuing to discuss how the objectives of noise mitigation will be accomplished with CSX personnel. The lines of communication remain open between the railroads and the City and with the continued cooperation of ORDC, ODOT and Congressman Kucinich's office, we are optimistic that the objective sought for noise mitigation will, ultimately, be achieved.

A third area that is slightly outside the scope of the Conrail acquisition relates to efforts to secure Quiet Zones and/or demonstration project status to achieve Quiet Zones. As you know, the City of Berea continues to work cooperatively with ORDC and Congressmen Kucinich and LaTourette and others toward achieving Quiet Zone status for the corridors affecting these areas. While this may not directly relate to the oversight of the Conrail acquisition, Quiet Zones

become significant issues as they relate to the possibility of achieving the objectives of noise mitigation ordered by the STB. In this sense, they are very relevant to the oversight of the Conrail acquisition and the cooperation of all entities is critical to achieving these objectives.

As always, thank you for your continued cooperation and assistance in these matters. Please advise should you have any questions or be in need of additional information.

Very truly yours,

CITY OF BEREA

Gregory M. Sponseller
Director of Law

GMS:lm

cc:Mayor Joseph W. Biddlecombe
Congressman Dennis Kucinich

EUCLID
THE LAKEFRONT CITY OF SUPERIOR SERVICES

585 East 222nd Street, Euclid, OH 44123-2099

Paul Oyaski, Mayor
Phone: 216/289-2700
Fax: 216/289-2766

June 29, 2000

RECEIVED
ORDC
00 JUL -3 PM 4:01

Ms. Beth Wilson
Ohio Rail Development Authority
50 West Broad Street, 15th Floor
Columbus, Ohio 43215

Re: **Euclid Experience Since CSX Takeover**

Dear Ms. Wilson,

This is in response to your request for comments on the City of Euclid's experience since CSX took over the railroad from Conrail. There are two sets of railroad tracks traversing Euclid, CSX operates the northernmost tracks and Norfolk and Southern operate the ones to the south. A railroad has been going through Euclid on the CSX right-of-way for nearly 150 years and the Norfolk right-of-way has been in use for about 100 years. There are only two grade crossings in Euclid both on the Norfolk tracks, all other crossings have railroad overpasses in use. **The City desires, at the earliest practicable point in time, grade separations on Chardon Road and also on Dille Road.** Partial funding the Dille Road crossing has been garnered through the efforts of Congressman LaTourette and preliminary discussions on the project are underway with the City of Cleveland.

CSX, at City request, has completed minor repairs to their bridges on East 200th, East 222nd, Babbitt and East 260th Streets. Gravel no longer rains on pedestrians under the East 222nd Street bridge.

CSX agreed to remove non-conforming billboards along the south side of their tracks pending review of their licensing agreements. Nothing has been accomplished to date. **The City expects removal of these unsightly signs as soon as possible.**

CSX built a fueling station near East 200th Street after filing and settling a lawsuit vs. the City regarding their exemption from local building codes. EPA approved their plans for drainage. The City remains concerned that petroleum run-off will invade the Euclid sewer system at this site despite CSX's assurances. The City also requests that property taxes due on the improvement be properly allocated.

Norfolk was convinced not to install an insecure and unsafe propane heating system for their switching equipment east of East 260th Street adjacent to a condominium development.

A Norfolk train derailed in the industrial sector near East 222nd Street. **The City must insist that regular inspection and excellent maintenance of all tracks in Euclid be performed.**

CSX has followed through as promised with training and information provided to the Euclid Fire Department regarding potential spills of hazardous materials.

Norfolk has installed signs at grade crossings announcing increased train traffic.

The City has received a few complaints regarding noise from residents of the condominiums east of East 260th Street.

That is the situation to the best of my knowledge at this time. Contact me if further information is needed. Your assistance in addressing the matters herein would be appreciated.

Sincerely,

Mayor Paul Oyaski

PO/cmt
0629.1railroads

DEFIANCE
a great place to live

CITY of DEFIANCE
LAW DEPARTMENT
CITY BUILDING
324 PERRY STREET
DEFIANCE, OHIO 43512
PHONE 784-1072 • PHONE 784-2101

DAVID H. WILLIAMS
Law Director
•
DAVID A. LAND
Assistant Law Director

July 7, 2000

Ms. Beth Wilson
Executive Assistant
Ohio Rail Development Commission
VIA FACSIMILE: 614-728-4520

In reply to: CSX-Compliance Inquiry

Dear Ms. Wilson:

I write to confirm our telephone conversation wherein I advised you that CSX has improved the US 24 Grade Crossing and provided the required Hazardous Material Spill training to a member of our Fire Department.

Following our conversation, I was able to confirm that we have also received the promised software.

CSX has, therefore, fulfilled all of the requirements that you have inquired about.

Very truly yours,

DAVID H. WILLIAMS

CITY of FOSTORIA

213 S. Main Street
P. O. Drawer 1007
Fostoria, Ohio 44830-1007

John Davoli
Mayor
Ph: (419)435-8282
Fax: (419)435-4192
E-Mail: MayorDavoli@AOL.com

July 5, 2000

Ms. Beth Wilson, Administrative Assistant
Ohio Rail Development Commission
50 West Broad Street, 15th Floor
Columbus, Ohio 43215

RECEIVED
ORDC
00 JUL -6 A11:17

Dear Ms. Wilson:

Subject: CSX/NS Railroads: Fostoria, Ohio

We appreciate the opportunity to respond with the State of Ohio in regards to the acquisition of Conrail by CSX Transportation and Norfolk Southern Railroads to the STB (STB Finance Docket No. 33388).

As we all know its been almost a year since the STB made its Final Findings in regards to the acquisition. Said Final Findings attached conditions to the acquisition with the status of completion as follows :

Condition 31(A): With the written concurrence of the City of Fostoria, Ohio, Applicants shall provide and maintain a state-of-the-art real-time train monitoring system, such as an electronic display board at the Fostoria Emergency Response Dispatch Center. This system shall show the location of trains on rail line segments (C-070, C-075, C-206, C-228, and N-467) within 5 miles of Fostoria Tower to provide the Center's staff with information regarding train movements to aid their emergency response dispatching. **Although discussions have taken place, to date, the system has not been installed**.

Condition 31(B): Applicants shall install and maintain constant warning time circuits at all of their highway/rail at grade crossings in Fostoria that are currently equipped with active warning devices, and at those crossings where active warning devices would be added as a result of other Board conditions or voluntary actions. **We believe that this condition has been completed.**

Condition 31(C): With the written concurrence of the City of Fostoria, Ohio, CSX shall install a direct voice hotline between Fostoria's Emergency Response Dispatch Center and the CSX operator controlling train movements in the Fostoria area(Tower F operator). Alternatively, Applicants, with the written concurrence of the City, shall install and maintain closed circuit television cameras over or near the rail line, along with a corresponding video monitor at the Center. The monitoring will continuously show real-time train traffic conditions on Applicant's rights-of-way through Fostoria. **The direct voice phone line has been installed. However, its reliability during an emergency is questionable. During regular communication checks, considerable time loss occurs because no one answers the phone for five-seven rings.**

Condition(D): To the extent practicable, Applicants shall hold trains in areas to minimize trains blocking major highway/rail at-grade crossings in Fostoria. **We appreciate the efforts put forward on this condition, however, the condition itself moves the problem from within the Fostoria Corporate limits to our neighbors, the Township, which compounds Emergency Response issues for the Townships and in the case of the Iron Triangles, removes our second chance for ingress/egress. This practice also increases the blocked crossing times when the trains are moving due to the fact that the trains are not traversing the City at track speed, typically, the majority of the trains are stopped outside the City limits, only allowed to proceed when they can go through the City non-stop.**

Condition 31(E): CSX shall, with the advice and consent of the City of Fostoria, Ohio, adapt and modify the local component of its required Hazardous Materials Emergency Response Plan to account for the special needs of minority and low-income populations adjacent to or in the immediate vicinity if its rail line segment(s) in Fostoria. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision. **This condition has been satisfactorily met.**

Condition 31(F): CSX shall provide and install, including any necessary computer hardware and training, Operation Respond software at the local emergency response center serving minority and low-income populations adjacent to or in the immediate vicinity of its rail line segment(s) in Fostoria. CSX shall certify compliance with this condition within 6 months of the effective date of the Board's decision. **This condition has been satisfactorily met**.

Condition 31(G): As agreed to by CSX, CSX shall fund participation in a training session at the national training center in Pueblo, Colorado, for a representative of the emergency response provider for the City of Fostoria. **This condition has been satisfactorily meet**.

Our experience with train related mishaps has increased since the acquisition, to wit: three minor derailments (fortunately the minor damage was due to the low speed of the trains); two vehicle/train accidents; and two pedestrian/train incidents, one fatality and one child with an end result of a leg amputation.

We find that the number of trains per day, as provided during the initial comment periods, is innacurate, to wit: CSX segment C-075/C-206 post acquisition was to be 54 not 97 trains per day as we see today. The NS segment N-467 is at 30 instead of 28 and the CSX segment C-228/C-070 with a post acquisition estimate of 37.4 trains per day has not been confirmed, although we suspect it to be much higher.

Taking the above numbers as a base of 164.4 trains per day entering the community with 22 at-grade crossing, with an average blocked crossing time of 7 minutes, its becomes very clear that train movements make Fostoria, Ohio inaccessible 19 hours per day.

Now that the acquisition has been approved, we find the railroads back to business as usual, that is, non cooperative and disinterested with the community needs. Points of interest: A waterline easement from NS into the West End Iron Triangle (initiated in Feb 99 - completed in Oct 99 only with assistance from U.S. Sen. DeWine R-Ohio and State of Ohio Rep. Rex Damschroder). CSX failing to cooperate with recent resurfacing program with their own safety requirements., ie, flaggers at grade crossings and fraustrations with obtaining accurate train counts on behalf of the City for our Transportation Study.

We applaud the efforts of the State of Ohio and Governor Taft in their efforts to provide some relief, however, we must maintain that the Final Findings of the STB on the issues in Fostoria are inadequate to say the least. We believe that the STB is warranted in a full review of Fostoria's conditions and request mitigation from the Federal level. The State of Ohio and the citizens of Fostoria should not have to be burdened with the cost of mitigation for interstate commerce.

We appreciate your continued assistance and support on these important issues to the citizens of Fostoria.

Sincerely,

John Davoli
Mayor
City of Fostoria, Ohio

JD/cld

c: U.S. Sen. Michael DeWine
U.S. Sen. George V. Voinovich
U.S. Rep. Michael Oxley
U.S. Rep. Paul Gillmor
Ohio Sen. Robert E. Latta
Ohio Sen. Larry Mumper
Ohio Rep. Randall Gardner
Ohio Rep. Rex Damschroder
Gov. Robert Taft

Henry County Emergency Management

660 N. Perry St., P.O. Box 546 ● Napoleon, Ohio 43545-0546

TIM WEAVER, Director
Phone: (419) 592-4876
Fax: (419) 592-4016

Ms. Beth Wilson
Ohio Rail Development Commission
50 West Broad Street
15th Floor
Columbus, Ohio 43215

Dear Ms. Wilson:

To the best of my knowledge, CSX has met the three obligations concerning training, software, and coordination of hazmat response with the village of Holgate in Henry County, Ohio.

Sincerely,

Tim Weaver/kb

Tim Weaver, Director
Henry County Emergency Management Agency

TW:kb

Huron County Emergency Management Agency
William L. Ommert, Coordinator, 255-B Shady Lane Drive, Norwalk, Ohio 44857
E-mail: hcema@accnorwalk.com Phone: 419-663-5772 Fax: 419-668-5909

July 5, 2000

Beth Wilson
ORDC
15 W. Broad St.
Columbus, OH 43215

Dear Miss Wilson:

This letter is a follow-up to our conversation last week regarding CSX and STB requirements:

CSX has provided OREIS programs to New London, Greenwich, and Willard. They also sent a firefighter from Willard and New London to Pueblo, Colorado for TTCI Emergency Response training. CSX also conducted an exercise-hazmat training for railroad emergencies at Willard, Ohio, which was open to the fire departments of Willard, New London, and Greenwich. CSX has also provided each fire department and my office with a copy of their hazmat emergency response plan. CSX has met the minimum requirements spelled out by the STB.

The following areas that were not addressed in the STB environmental impact - that still present safety and life threatening problems for two communities and Huron County are:

1) New London, Ohio is a community that is cut completely in half by any railroad blockage at crossings with all safety forces isolated on the south side of the village. Since the merger June 1 of 1999, the north half of New London has been completely isolated without any fire, police or ambulance service - twice by trains that blocked every crossing in the village. Thank God there were no emergencies! A grade separation is absolutely a must for New London as soon as possible.

2) Greenwich, Ohio has more trains per day than almost any community in Ohio as a result of the merger. Greenwich was totally left out of any noise abatement. The only answer we can assume: Greenwich was surveyed by a deaf inspector or surveyed with a defective meter! Solutions to this problem could be a) installing quad gates at each of the three crossings thus allowing whistle free operation, and b) In the future possible elimination of the diamond by altering the old B&O right of way to the north joining up with the old Conrail line east of Huron County. This would

eliminate a large noise problem for Greenwich residents and save a lot of money for CSX as the diamond is an extremely high maintenance item.

3) State Route 250 and CSX needs a grade separation to help save lives, it is only a matter of time until someone loses their life at this treacherous crossing.

4) State Route 13 and CSX crossings also needs a grade separation - the high volume of trains and motor vehicle traffic continues to be a problem in Greenwich Township, and even though State Route 13 was designated as a no-park zone for CSX trains, the area still continues to get blocked crossings.

Hopefully we can meet and discuss plans to eliminate these problems brought about by the merger of CSX and Conrail.

Sincerely yours,

Bill Ommert

Bill Ommert
EMA, LEPC, and 911 Director of Huron County

City of Mentor

Council-manager
government since 1963

8500 Civic Center Boulevard
Mentor, Ohio 44060-2499
440-255-1100

July 7, 2000 Via: Fax and Regular Mail

Ms. Beth Wilson, Executive Assistant
Ohio Rail Development Commission
50 W. Broad Street
15th Floor
Columbus, Ohio 43215

Re: Quiet Zone And Other City Improvements

Dear Ms. Wilson:

In response to your inquiry concerning the City's interest in establishing a "Quiet Zone" in Mentor, the Mentor City Council is in support of such an action. The City, by adoption of it's year 2000 budget has included $66,000 for the year 2000 and has anticipated an additional $200,000 over the following four years if needed to support this effort.

Other items in the City's plans include:

A) Grade Separations at both the CSX and NS tracks on Heisley Road. Appropriate and continued design interaction is needed by both railroads to implement this project. FHWA is expected to issue a Finding of No Significant Impact yet this year.

B) New at grade crossings are needed at the Plaza Boulevard Extension site. This project will provide essential traffic relief with a new road interconnection between Mentor Avenue (US 20) and Tyler Boulevard. To date, the railroads have been resistant to any efforts made to discuss this important road addition. Agreements are needed between the City with both CSX and NS.

C) The City is anxious to develop agreements for RR signal interconnects to the City's traffic signal system. The most important connection would be at Hopkins Road to help prevent vehicles from becoming trapped on the tracks by heavy volume traffic. Agreements are needed with both CSX and NS for this location.

D) On a long term planning basis, the City requires contacts for future planning of grade separations on Hopkins Road. Both the CSX and NS are intersected presently at grade.

Ms. Beth Wilson
Re: Quiet Zone
Page Two
July 7, 2000

Attached you will find Pages 12, 20, 31, and 54 of the City Capital Improvement Program for the year 2000.
The above described elements of the plan are further detailed on these pages.

Thank you for any assistance you may offer on the coordination of these items.

Very truly yours,

John W. Konrad

John W. Konrad, P.E.
City Engineer

JK:pbk

Attachments

G:\APPS\WPWIN\USERS\PAMK\Quiet Zone.doc

CITY OF MENTOR, OHIO
CAPITAL IMPROVEMENT PROGRAM
FISCAL YEARS 2000 - 2004

PROJECT DETAIL

PROJECT NUMBER: R29302	PROJECT CATEGORY: ROADWAY CONSTRUCTION AND IMPROVEMENTS	PROJECT: HEISLEY ROAD IMPROVEMENTS

COST DESCRIPTION	SOURCE OF FUNDS	TOTAL ESTIMATED PROJECT COST	PRIOR YEARS EXPENDED THROUGH 1999	ESTIMATED FISCAL YEAR EXPENDITURES FY00	FY01	FY02	FY03	FY04	TOTAL FIVE YEAR EXPENSE	FUTURE ALLOCATION
PLANNING & ENGINEERING	ANNUAL OPERATING BUDGET	3,061,500	686,500	525,000	1,050,000	0	0	0	1,575,000	800,000
	FEDERAL/STATE/COUNTY AID	182,000	182,000	0	0	0	0	0	0	0
LAND/ROW	ANNUAL OPERATING BUDGET	1,498,000	298,000	20,000	930,000	0	0	0	950,000	250,000
CONSTRUCTION	ANNUAL OPERATING BUDGET	8,400,000	0	0	600,000	0	0	0	600,000	7,800,000
	FEDERAL/STATE/COUNTY AID	12,380,000	0	0	12,380,000	0	0	0	12,380,000	0
		25,521,500	1,166,500	545,000	14,960,000	0	0	0	15,505,000	8,850,000

PROJECT DESCRIPTION AND JUSTIFICATION

This project would widen the section of Heisley Road between State Route 2 and Mentor Avenue and would provide railroad grade separations, consistent with the needs of roadway traffic as determined by the City's consultant. 2000 planning and engineering costs are for the start of design for the grade separation phase. Lake County $5 tax will be requested for 50% of local costs.

SR 2 ramp modifications will be evaluated as capacity needs become apparent.

FUNDING NARRATIVE

Revenue Sources:

TEA - 21	6,250,000	CSX	800,000
ODOT	3,100,000	Norfolk Southern	800,000
Ohio Rail Commission	1,200,000		

2000 ANNUAL OPERATING BUDGET ACCOUNTS:

Planning and Engineering	110-720-8910-39302	525,000
Land/ROW	001-420-8920-3930[illegible]	20,000
		$545,000

$12,380,000 construction in 2001 includes $1,000,000 for Illuminating Company highline adjustments and $300,000 for wetland mitigation.

CITY OF MENTOR, OHIO
CAPITAL IMPROVEMENT PROGRAM
FISCAL YEARS 2000 - 2004

PROJECT DETAIL

PROJECT NUMBER: R39613	PROJECT CATEGORY: ROADWAY CONSTRUCTION AND IMPROVEMENTS	PROJECT: PLAZA BOULEVARD EXTENSION

COST DESCRIPTION	SOURCE OF FUNDS	TOTAL ESTIMATED PROJECT COST	PRIOR YEARS EXPENDED THROUGH 1999	ESTIMATED FISCAL YEAR EXPENDITURES FY00	FY01	FY02	FY03	FY04	TOTAL FIVE YEAR EXPENSE	FUTURE ALLOCATION
PLANNING & ENGINEERING	ANNUAL OPERATING BUDGET	220,100	114,000	20,000	0	0	86,100	0	106,100	0
LAND/ROW	ANNUAL OPERATING BUDGET	581,500	381,500	0	200,000	0	0	0	200,000	0
CONSTRUCTION	ANNUAL OPERATING BUDGET	1,531,368	511,368	0	0	0	1,020,000	0	1,020,000	0
		2,332,968	1,006,868	20,000	200,000	0	1,106,100	0	1,326,100	0

PROJECT DESCRIPTION AND JUSTIFICATION

This project consists of extending a connector street approximately 1,500 ft. north from Mentor Avenue to intersect with St. Clair Avenue and connect with Tyler Boulevard via Clover Avenue. The improvement, as determined by a November 1995 study, will provide full roadway improvement, drainage system and traffic signal improvements at Plaza Blvd./Mentor Avenue and Plaza Blvd./St. Clair Ave./Tyler Blvd. This improvement will provide an access roadway to Tyer Blvd., improving emergency response and through traffic on Center Street and Reynolds Road, enhance safety at interchanges of US 20/SR 306 and US 20/SR 615, and likely eliminate or delay the need for the construction of a sixth fire station. As a part of this project a cul-de-sac will be constructed at the west end of St. Clair Ave. adjacent to Tyler Blvd.

FUNDING NARRATIVE

2000 ANNUAL OPERATING BUDGET ACCOUNTS:

Planning and Engineering	001-720-6910-39613	$20,000

$1,020,000 construction in 2004 includes cost for RR crossing installations and protection.

CITY OF MENTOR, OHIO
CAPITAL IMPROVEMENT PROGRAM
FISCAL YEARS 2000 - 2004

PROJECT DETAIL

PROJECT NUMBER: R30021	PROJECT CATEGORY: ROADWAY CONSTRUCTION AND IMPROVEMENTS	PROJECT: HOPKINS ROAD RESURFACING FROM MENTOR AVE. TO SR 2 BRIDGE

COST DESCRIPTION	SOURCE OF FUNDS	TOTAL ESTIMATED PROJECT COST	PRIOR YEARS EXPENDED THROUGH 1999	ESTIMATED FISCAL YEAR EXPENDITURES FY00	FY01	FY02	FY03	FY04	TOTAL FIVE YEAR EXPENSE	FUTURE ALLOCATION
PLANNING & ENGINEERING	ANNUAL OPERATING BUDGET	93,000	0	93,000	0	0	0	0	93,000	0
LAND/ROW	ANNUAL OPERATING BUDGET	20,000	0	20,000	0	0	0	0	20,000	0
CONSTRUCTION	ANNUAL OPERATING BUDGET	580,000	0	20,000	580,000	0	0	0	580,000	0
		693,000	0	133,000	580,000	0	0	0	693,000	0

PROJECT DESCRIPTION AND JUSTIFICATION

This project to be constructed in 2001, shall provide for the resurfacing of Hopkins Road from Mentor Ave. to the SR 2 bridge, including left turn lanes at East Avenue and Tuthbrook Rd., RR activated changeable message signs, and geometric and roadside improvements as required. Culvert improvements will be included at Conrail RR and Hopkins Road. In addition, provisions for maintenance of drainage channel and future road widening between the RR tracks will be made within this project (easements required). This project to include channel easements and improvements adjoining Hopkins Road. The installation of preformed pavement markings shall also be included. This project would be constructed in conjunction with or following the City Bikeway - Phase III project for Hopkins Road.

If negotiations are successful with the railroads, this project will accelerate the interconnect of the Market/Munson, Tyler Blvd. and Jackson Street traffic signals on Hopkins Road along with the railroad track crossing gates. It will improve the coordination of the traffic signals and help to alleviate the congestion associated with the increased train traffic.

FUNDING NARRATIVE

2000 ANNUAL OPERATING BUDGET ACCOUNTS:

Planning and Engineering	001-720-5910-30021	93,000
Land/ROW	001-420-5920-30021	20,000
Construction - Improvements	001-420-5920-30021	20,000
Construction - Maintenance	XXX-420-7805-30021	0
		$133,000

CITY OF MENTOR, OHIO
CAPITAL IMPROVEMENT PROGRAM
FISCAL YEARS 2000 - 2004

PROJECT DETAIL

PROJECT NUMBER: T30036	PROJECT CATEGORY: TRAFFIC CONTROL	PROJECT: RAILROAD GRADE CROSSING ENHANCEMENTS PROGRAM

COST DESCRIPTION	SOURCE OF FUNDS	TOTAL ESTIMATED PROJECT COST	PRIOR YEARS EXPENDED THROUGH 1999	ESTIMATED FISCAL YEAR EXPENDITURES FY00	FY01	FY02	FY03	FY04	TOTAL FIVE YEAR EXPENSE	FUTURE ALLOCATION
PLANNING & ENGINEERING	ANNUAL OPERATING BUDGET	58,000	0	18,000	10,000	10,000	10,000	10,000	58,000	0
CONSTRUCTION	ANNUAL OPERATING BUDGET	208,000	0	43,000	40,000	40,000	40,000	40,000	208,000	0
		266,000	0	63,000	50,000	50,000	50,000	50,000	266,000	0

PROJECT DESCRIPTION AND JUSTIFICATION

This project would provide local assistance to the Federal Rail Administration's efforts to establish a railroad "quiet zone" in Mentor. Possible measures would also improve the safety of each crossing included in the program. Measures could include 4 quadrant gates, median barriers, long arm gates, permanent or temporary crossing closures or automated horns.

Year 2000 funds would be used for any studies or applications required from the City by the FRA. Subsequent funding in years 2001 and beyond would be the local share (if any) for equipment installed by the CSX or Norfolk-Southern. This project may, also, include changeable message signs interconnected from the railroad crossing gates to nearby traffic signals to allow the traffic to flow more efficiently during and after train crossings.

* Hopkins Rd. interconnect railroad pre-emption (00)
* Heisley Rd. interconnect railroad pre-emption (01)

FUNDING NARRATIVE

2000 ANNUAL OPERATING BUDGET ACCOUNTS:

Planning and Engineering	001-720-7110-30036	18,000
Construction	001-420-8920-30036	40,000
		$58,000

THE VILLAGE OF OAK HARBOR

146 CHURCH STREET
P.O. BOX 232
OAK HARBOR, OHIO 43449
(419) 898-5561

June 29, 2000

Beth Wilson
Ohio Rail Development Commission
50 W. Broad St., Suite 1510
Columbus, OH 43215

Dear Ms. Wilson:

I am writing to inform you of the current status concerning the Surface Transportation Board – Condition #49 (B), which was placed on Norfolk Southern in order for them to acquire Conrail's assets.

We have met once with Norfolk Southern concerning this issue, since the order was issued. Norfolk Southern was in the infant stages of developing the system and was gathering information that was crucial to its design. A meeting has been scheduled for July to demonstrate the new system.

Between the time the order was issued and the software being developed, we made a proposal to Norfolk Southern through the Ohio Rail Development Commission. In our offer we recommended substituting this system for our local share towards improving the Park Street underpass. We are still waiting for a response from Norfolk Southern as of this date.

Sincerely,

Tim Wilkins
Administrator

TLW:dmd
cc: File

FAX (419) 898-0895

June 22, 2000

Ms. Beth Wilson
Ohio Rail Commission
50 W. Broad Street
Columbus, Ohio 43215
FAX (614) 728-4520

Dear Ms. Wilson:

Your request for information regarding the five year STB oversight of the Acquisition of Conrail properties by Norfolk Southern and CSX Railroads results in the following observations.

Olmsted Falls signed a negotiated agreement with Norfolk Southern and CSX Railroads in a document signed February 24, 1998 by then Mayor Tom Jones. A separate Memorandum of Agreement regarding State Rt. 252 between Olmsted Falls and CSX offered a 10% contribution toward construction of an overpass with a cap of $890,000.

Current Mayor Bob Blomquist must sign off on the contributions of $290,000 provided by CSX for payment of $10,000 per noise impacted site. We have not taken the money previously because we were not clear that these funds could ultimately be applied on the private property of CSX Railroad. However, within the last few days Mayor Blomquist has been in contact with CSX Vice President Neal Zimmers who replaced Stephen Watson and Regional VP for State Relations. The hold-up of this letter is to clarify that originally proposed $890,000 which was not included in the final letter sent to Blomquist for signature. CSX did offer but has not sent to us a check for these sites even though the deadline is July 2000.

CSX did post the notices about increased rail traffic in a timely manner.

NS, by the agreement, agrees to participate in various capital projects including grade separation in Olmsted Falls. Olmsted Falls had designed Fitch Road (actually in Olmsted Township) as the location for an overpass to be shared jointly by Olmsted Falls and Olmsted Township for access of safety vehicles where NS has a habit of blocking rail crossings because of their inability to access the rail yards named Rockport, just east of Berea. They have used and are still using Olmsted Falls as a parking lot. However there has been no ongoing communication with NS as to a dollar commitment for this project.

Both CSX and NS did provide Hazardous Materials Safety information to our Fire Department.

Where CSX and NS agree to participate in various capital projects to enhance post-acquisition public safety and railroad operations neither railroad has done anything to stop the blockages of these crossings. I shall attach a list of the citations by our Police Department which are for offenses under the control of the railroads and not due to equipment failure. This is sheer cussed lack of planning by transportation supervisors of both railroads.

I hope this helps the State of Ohio in preparation for reporting back to the Surface Transportation Board.

And thank you for your help in arranging a connection with Linda Nelson regarding the transportation conference next week in Cleveland at the Sheraton City Centre.

Sincerely yours,

Robert Blomquist, Mayor

Beverly B. Smith, Council President

Enclosures:
Negotiated Agreement
Railroad Citations

CSX CORPORATION **NORFOLK SOUTHERN**

901 E. City Street, Richmond, VA 23219
(804) 782-1476

Three Commercial Place, Norfolk, VA 23510
(757) 629-2677

February 24, 1998

The Honorable Thomas J. Coyne, Jr.
Mayor, City of Brook Park
6161 Engle Road
Brook Park, OH 44142

The Honorable Tom Jones
Mayor, City of Olmsted Falls
9722 Columbia Road
Olmsted Falls, OH 44138

Gentlemen:

The Cities of Brook Park and Olmsted Falls, and CSX and Norfolk Southern have jointly developed this Agreement in Principle. This Agreement addresses issues raised by various parties about train operations proposed by CSX and NS through the Cities under the CSX and NS Operating Plans, including the Cloggsville alternate route, for the Conrail transaction pending before the Surface Transportation Board. Underlying this Agreement is the parties' recognition that efficient rail transportation promotes the economic development and welfare of the Cities and the parties' desire for sound rail operations that promote the quality of life in their respective communities.

The parties have reviewed various plans and options for the rerouting of train traffic, including those proposed for the construction of a flyover in Berea. The Cities are opposed to the flyover approach and the substantial construction related and permanent adverse impacts associated with this alternative. After analysis of the options, the parties believe that the CSX and NS Operating Plans present the superior approach for train movements over Conrail's Lakeshore and Short Lines and that the impacts associated with such movements can be mitigated in accordance with the principles outlined below. Accordingly, the parties adopt the following principles and the Cities hereby state their support for the CSX and NS Application and their Operating Plans.

1. Funding of Capital Projects - CSX and NS agree to participate in the funding of various capital projects designed to enhance post-acquisition public safety and ensure efficient railroad operations in the Greater Cleveland Area. These projects include certain rail-highway grade separations in the Cities of Brook Park and Olmsted Falls. Further,

the railroads and the Cities agree to work together aggressively to procure funding of these projects from state and federal sources. All such projects will be consistent with, and complementary to, the CSX-NS Operating Plans as filed with the Surface Transportation Board.

2. Capital Projects Design - CSX and NS agree that the final design for each grade separation project will be subject to the approval of the affected municipality.

3. Hazardous Materials Safety - CSX and NS agree to develop comprehensive programs in concert with the appropriate public agencies concerning hazardous materials safety. These programs will include, but are not limited to, joint training and notification and response procedures designed to minimize risks which may result from the transportation of hazardous materials.

4. Noise Mitigation - Consistent with definitions used by the Surface Transportation Board in its environmental process, CSX and NS agree to work cooperatively with the Cities to mitigate increased noise levels which may occur in certain areas because of increased train traffic. CSX and NS have retained independent consultants to conduct studies to determine the extent to which increased train traffic will impact the communities. CSX and NS will utilize their mitigation programs under their respective Noise Impact Analysis studies for noise mitigation and will consult with the Cities over the program's final design and continued maintenance.

5. City of Berea - CSX and NS, and the Cities of Brook Park and Olmsted Falls, recognize that certain capital projects which will enhance post-acquisition public safety and railroad operations in the City of Berea are the subject of ongoing discussions between Berea and the railroads.

In exchange for these commitments, the Cities will indicate their support for the transaction and mitigation measures before the Surface Transportation Board and other state and federal agencies. CSX, NS and the Cities will make a joint filing of these arrangements with the STB. Of course, these commitments are conditioned upon CSX and NS being able to secure the STB's approval of the Conrail transaction and to implement the CSX/NS Operating Plan that will move CSX trains over the Short Line and to the Collinwood terminal, and NS trains over Conrail's Lakeshore Line and the Cloggsville Route. These commitments are also conditioned upon CSX and NS reaching a mutually acceptable agreement with the City of Berea.

If this Agreement is acceptable, kindly indicate your agreement in the space provided below.

Sincerely,

Michael J. Ruehling, CSX
Vice President - State Relations

M. Patrick McCune, Norfolk Southern
Resident Vice President

Accepted and Agreed to:

The Honorable Thomas J. Coyne, Jr.
Mayor, City of Brook Park

The Honorable Tom Jones
Mayor, Olmsted Falls

ur

COLUMBIA ROAD (SR 252) OVERPASS
OLMSTED FALLS, OH
Cost Estimate by Euthenics, Inc.
April 24, 1998

Summary

Item	Cost
Roadway and Pavement	$1,445,113
Mobilization and Start-up Costs	262,000
Drainage	450,250
Sanitary Sewerage	359,625
Waterworks	292,000
Erosion Control	62,500
Landscaping	15,000
Traffic Control	6,000
Lighting	129,250
Traffic Maintenance	173,000
Bridge	1,036,800
Retaining Walls	980,200
Railroad Work	100,000
Right of Way Costs	1,814,165
Preliminary Engineering	176,000
Design Engineering	360,000
Construction Engineering	400,000
Contingencies	838,007
Total Project Cost	**$8,900,000**

MEMORANDUM OF AGREEMENT CONCERNING S.R. 252 GRADE SEPARATION IN OLMSTED FALLS

This Agreement is entered into between the City of Olmsted Falls, Ohio, hereinafter referred to as "City", and CSX Corporation and CSX Transportation, Inc., hereinafter referred to as "CSX".

1. In a proceeding before the Surface Transportation Board (STB), Finance Docket No. 3338, CSX has made application for, and has received, approval to acquire and control certain portions of Conrail Inc. and Consolidated Rail Corporation.
2. In a letter of agreement, dated February 24, 1998, the City expressed its support for CSX's application to the STB; and in return, CSX agreed to, among other things, participate in funding a rail-highway grade separation at S.R. 252 (Columbia Road) in the City. Said letter was filed with the STB and is noted in Appendix Q to STB Decision 89, Finance Docket 33388, approving the application.
3. CSX's participation in the funding of the S.R. 252 grade separation shall be the contribution of an amount equal to the lesser of 10% of the Total Project cost or $890,000.00. The maximum contribution of $890,000.00 is based on a Total Project cost estimate prepared by Euthenics, Inc. in April 1998.
4. The City agrees that CSX's contribution is conditioned upon the City procuring binding commitments from other sources to fully fund the S.R 252 grade separation project; and that CSX's contributions shall then be payable in increments mutually agreed upon by the City and CSX.
5. The City agrees to cooperate fully with CSX during all phases of the grade separation project, including consultation and coordination with CSX's Engineering Department, and execution of usual and customary agreements covering reimbursements for project related railroad force account work and liability and indemnification.
6. The City and CSX agree that if, within six (6) years of the date of this agreement, the City has not procured binding commitments to fully fund the project, and construction of the project has not begun, then CSX's commitment to participate in the funding of the S.R. 252 grade separation shall be extinguished.

The City of Olmsted Falls, Ohio and CSX Corporation and CSX Transportation, Inc. this _____day of _____, 1999, agree to this Memorandum.

CITY OF OLMSTED FALLS, OHIO

BY: _____
Tom Jones, Mayor

CSX CORPORATION & CSX TRANSPORATION, INC.

BY: _____
Stephen L. Watson, Regional VP-State Relations

Case No	Last Name	Issued	Violation	Location	Court D>	Plea
-0141	NORFOLK SOUTHE>	01/30/00	GATE MALFUNCTI>	LEWIS	02/28/00	
-0201	NORFOLK SOUTHE>	02/11/00	14 MIN	ALL N.	02/28/00	
99-547	NORFOLK SOUTHE>	06/04/99	50 M	ALL NORTH	06/28/99	PNC/FG
99-553	NORFOLK SOUTHE>	06/08/99	1H 47M	LEWIS ROAD	06/28/99	PNC/FG
99-548	NORFOLK SOUTHE>	06/08/99	28 M	LEWIS ROAD	06/28/99	NC
99-556	NORFOLK SOUTHE>	06/09/99	5H 38M	N. COL & >	07/12/99	PNC/FG
99-574	NORFOLK SOUTHE>	06/11/99	25 M	N. COL & >	06/28/99	NC
99-580	NORFOLK SOUTHE>	06/17/99	5 H 17 M	LEWIS ROAD	07/26/99	W
99-594	NORFOLK SOUTHE>	06/20/99	1 H 57 M	LEW/COL (>	07/26/99	W
99-597	NORFOLK SOUTHE>	06/21/99	1H 50 M	COL/LEWIS	07/26/99	W
99-595	NORFOLK SOUTHE>	06/22/99	1H 5 M	COL/LEWIS	07/26/99	W
99-612	NORFOLK SOUTHE>	06/26/99	5h 41m	LEWIS	09/13/99	PNC/FG
99-678	NORFOLK SOUTHE>	06/28/99	19 M	LEWIS	07/26/99	W
99-632	NORFOLK SOUTHE>	07/07/99	12 M	ALL NORTH	07/26/99	W
99 645	NORFOLK SOUTHE>	07/12/99	11 M	LEWIS	09/13/99	PNC/FG
99-684	NORFOLK SOUTHE>	07/21/99	26 M	LEWIS ROAD	09/13/99	PNC/FG
99-721	NORFOLK SOUTHE>	08/19/99	25 M	LEWIS	09/27/99	PNC/FG
99-814	NORFOLK SOUTHE>	08/26/99	50 M	LEWIS	09/27/99	PNC/FG
99-837	NORFOLK SOUTHE>	08/31/99	1H 22M	LEW/COL/B>	09/27/99	PNC/FG
99-886	NORFOLK SOUTHE>	09/10/99	1H 8M	LEWIS	10/11/99	PNC/FG
99-885	NORFOLK SOUTHE>	09/13/99	27 M	ALL N.	10/11/99	PNC/FG
99-944	NORFOLK SOUTHE>	09/15/99	DISTRB PEACE	BRKSD	10/25/99	DISM
99-913	NORFOLK SOUTHE>	09/16/99	56 M	ALL NORTH	10/11/99	PNC/FG
99-916	NORFOLK SOUTHE>	09/21/99	41 M	ALL NORTH	10/11/99	PNC/FG
99-941	NORFOLK SOUTHE>	09/24/99	45 M	LEWIS	10/25/99	PNC/FG
-942	NORFOLK SOUTHE>	09/27/99	24 M	ALL NORTH	10/25/99	PNC/FG
-943	NORFOLK SOUTHE>	09/27/99	17 M	COL/LEW	10/25/99	PNC/FG
99-984	NORFOLK SOUTHE>	10/10/99	48 M	LEWIS	10/25/99	PNC/FG
99-985	NORFOLK SOUTHE>	10/11/99	1 H 30 M	LEWIS	10/25/99	PNC/FG
99-990	NORFOLK SOUTHE>	10/12/99	53 M	ALL NORTH	11/22/99	PNC/FG
99-991	NORFOLK SOUTHE>	10/13/99	14 M	ALL NORTH	11/22/99	PNC/FG
99-1016	NORFOLK SOUTHE>	10/14/99	12 M	LEWIS/N. >	11/22/99	PNC/FG
99-1010	NORFOLK SOUTHE>	10/14/99	34 MIN	ALL NORTH	11/22/99	PNC/FG
99-1009	NORFOLK SOUTHE>	10/16/99	1H 40M	ALL NORTH	11/22/99	PNC/FG
99-1011	NORFOLK SOUTHE>	10/17/99	2H 11M	LEWIS	11/22/99	PNC/FG
99-1018	NORFOLK SOUTHE>	10/19/99	2H 1M	BRKSD	11/22/99	PNC/FG
99-1012	NORFOLK SOUTHE>	10/19/99	13 MIN.	COL N.	11/22/99	PNC/FG
99-1017	NORFOLK SOUTHE>	10/19/99	1H 41M	LEWIS	11/22/99	PNC/FG
99-1020	NORFOLK SOUTHE>	10/21/99	1H 30M	N. COL/LEW	11/22/99	PNC/FG
99-1050	NORFOLK SOUTHE>	10/28/99	14 M.	ALL N.	11/22/99	PNC/FG
99-1051	NORFOLK SOUTHE>	10/28/99	54 MIN	LEWIS	11/22/99	PNC/FG
99-1052	NORFOLK SOUTHE>	10/28/99	34 MIN	N. COL	11/22/99	PNC/FG
99-1067	NORFOLK SOUTHE>	10/29/99	55 MIN	LEWIS	11/22/99	PNC/FG
99-1066	NORFOLK SOUTHE>	10/29/99	35 MIN.	ALL N.	11/22/99	PNC/FG
99-1064	NORFOLK SOUTHE>	10/30/99	50 MIN	N. COL/LEW	11/22/99	PNC/FG
99-1065	NORFOLK SOUTHE>	10/31/99	45 MIN	LEWIS	11/22/99	PNC/FG
99-1081	NORFOLK SOUTHE>	11/05/99	3HR, 3M	LEWIS	11/22/99	PNC/FG
99-1080	NORFOLK SOUTHE>	11/05/99	47 MIN	N. COL	11/22/99	PNC/FG
99-1134	NORFOLK SOUTHE>	11/15/99	1H, 6MIN	N. COL	12/27/99	PNC/FG
99-1133	NORFOLK SOUTHE>	11/16/99	48 MIN	ALL N.	12/27/99	PNC/FG
-1175	NORFOLK SOUTHE>	11/20/99	3 H, 35 M	COL/MAPLWY	12/27/99	PNC/FG
-1174	NORFOLK SOUTHE>	11/20/99	1 HR, 33 M	LEW/COL/B>	12/27/99	PNC/FG
-1161	NORFOLK SOUTHE>	11/23/99	42 M	LEWIS	12/27/99	PNC/FG

Case No	Last Name	Issued	Violation	Location	Court D>	Plea
-1160	NORFOLK SOUTHE>	11/28/99	20 M	LEWIS	12/27/99	PNC/FG
-1234	NORFOLK SOUTHE>	12/16/99	48 MIN	COL	01/10/00	DISM
99-1233	NORFOLK SOUTHE>	12/16/99	48 MIN	BRKSD	01/10/00	PNC/FG
99-1235	NORFOLK SOUTHE>	12/16/99	48 MIN	LEWIS	01/10/00	DISM
99-1236	NORFOLK SOUTHE>	12/16/99	48 MIN	MPLWY	01/10/00	DISM
99-1259	NORFOLK SOUTHE>	12/19/99	39 MIN	COL/LEW	01/10/00	PNC/FG

Case No	Last Name	Issued	Violation	Location	Court D>	Plea
-0203	CSX	02/16/00	30 MIN	S COL,SPRG	02/28/00	
-546	CSX	06/06/99	34 MIN	S. COLUMB>	09/27/99	PNC/FG
99-549	CSX	06/08/99	21 MIN	S. COLUMB>	09/27/99	PNC/FG
99-557	CSX	06/09/99	24 MIN	COL S.	09/27/99	PNC/FG
99-573	CSX	06/10/99	17 MIN	S. COLUMB>	09/27/99	PNC/FG
99-576	CSX	06/14/99	38 MIN.	WEST ROAD	09/27/99	PNC/FG
99-575	CSX	06/14/99	16 MIN.	S. COLUMB>	09/27/99	PNC/FG
99-596	CSX	06/21/99	22 MIN	S. COL	09/27/99	PNC/FG
99-611	CSX	06/25/99	27 MIN	S. COLUMB>	09/27/99	PNC/FG
99-914	CSX	09/19/99	51 MIN	S. COL	12/27/99	PNC/FG
99 1013	CSX	10/18/99	15 MIN.	COL. S.	12/27/99	PNC/FG
99-1021	CSX	10/21/99	24 MIN.	WEST	12/27/99	PNC/FG
99-1068	CSX	10/30/99	11 MIN.	S. COL	12/27/99	PNC/FG
99-1099	CSX	11/08/99	11 MIN	S. COL	12/27/99	PNC/FG

Case No	Last Name	Issued	Violation	Location	Court D>	Plea
1-414	CONRAIL		45 MIN	N. COL/LE>	05/10/99	DISM
9-0011	CONRAIL	01/06/99	BLOCKED XING 5>	WEST ROAD	03/22/99	PNC/FG
99-0081	CONRAIL	02/04/99	XING 2 HR 11 M>	WEST STRE>	03/22/99	PNC/FG
99-0149	CONRAIL	02/24/99	LEWIS RD 30 MIN	LEWIS ROAD	04/12/99	PNC
99-0177	CONRAIL	03/11/99	23 MIN	ALL NORTH>	04/26/99	NC
99-0347	CONRAIL	04/07/99	1 HR. 50 MIN	LEWIS	05/10/99	DISM
99-0373	CONRAIL	04/10/99	19 MIN	ALL NORTH	05/10/99	pg/fg
99-0384	CONRAIL	04/1?/99	COL S. 25 MIN	COLUMBIA >	05/24/99	PNC/FG
99-436	CONRAIL	05/01/99	COL N/LEWIS 27>	COL N./LE>	06/14/99	PNC/FG
99-473	CONRAIL	05/13/99	LEWIS 65 MIN	LEWIS ROAD	06/14/99	PNC/FG
99-477	CONRAIL	05/15/99	ALL N. 12 MIN	ALL NORTH	06/14/99	PNC/FG
99-482	CONRAIL	05/18/99	LEWIS 60 MIN	LEWIS ROAD	06/14/99	PNC/FG
99-520	CONRAIL	05/29/99	LEWIS 16 MIN	LEWIS	06/28/99	PNC/FG
99-519	CONRAIL	05/29/99	COL S. 20 MIN	COL S.	07/26/99	DISM
98-0681	CONRAIL	06/30/98	WEST 24 MIN	WEST	11/09/98	DISM
98-0880	CONRAIL	07/15/98	N. TRACKS 11 M>	LEWIS, N >	11/09/98	PNC/FG
98-0900	CONRAIL	08/13/98	WEST 8 MIN	WEST	11/09/98	PNC/FG
98-0899	CONRAIL	08/14/98	WEST 15 MIN	WEST STRE>	11/09/98	PNC/FG
98-0929	CONRAIL	08/23/98	LEWIS 36 MIN	LEWIS	11/09/98	NC/FG
98-0989	CONRAIL	09/06/98	LEWIS 30 MIN	LEWIS	11/09/98	DISM
98-0999	CONRAIL	09/10/98	WEST (18 MIN)	WEST	11/09/98	PNC/FG
98-1016	CONRAIL	09/12/98	LEWIS 36 MIN	LEWIS	11/09/98	PNC/FG
98-1051	CONRAIL	09/24/98	S. COL 2 HR 39>	S. COLUMB>	11/09/98	PNC/FG
98-1066	CONRAIL	09/25/98	N. COL (1HR 34>	COLUMBIA >	11/09/98	PNC/FG
98-1078	CONRAIL	09/30/98	S. COL 30 MIN	S. COLUMB>	11/09/98	PNC/FG
8-1108	CONRAIL	10/04/98	2HR 40MIN	LEWIS ROAD	11/09/98	DISM
8-1109	CONRAIL	10/04/98	28 MIN	ALL N. CR>	11/09/98	DISM
98-1110	CONRAIL	10/04/98	18 MIN	WEST STRE>	11/09/98	PNC/FG
98-1118	CONRAIL	10/06/98	S.COL (25 MIN)	S. COLUMB>	11/09/98	PNC/FG
98-1153	CONRAIL	10/10/98	ALL N. (14 MIN)	ALL N.	11/09/98	PNC/FG
98-1178	CONRAIL	10/20/98	LEWIS (36 MIN)	LEWIS	11/09/98	PNC/FG
98-1333	CONRAIL	12/10/98	BLOCKED X-ING	COL/LEWIS>	02/08/99	DISM

Case No	Last Name	Issued	Location	Violation	Court D>	Plea
00-0203	CSX	02/16/00	S COL,SPRG	30 MIN	02/28/00	PNG
00-0305	CSX	03/07/00	S. COL RO>	17 MIN	03/27/00	PNG
00-0329	CSX	03/13/00	SPRG	22 MIN	03/27/00	PNG
00-0778	CSX	06/14/00	S COL	1 H	07/10/00	

Case No	Last Name	Issued	Location	Violation	Court D>	Plea
00-0141	NORFOLK SOUTHERN	01/30/00	LEWIS	GATE MALF>	03/13/00	DISM
00-0201	NORFOLK SOUTHERN	02/11/00	ALL N.	14 MIN	03/13/00	PNC/FG
00-0212	NORFOLK SOUTHERN	02/17/00	COL, BRKS>	13 MIN.	03/13/00	PNC/FG
00-0239	NORFOLK SOUTHERN	02/19/00	ALL N.	23 MIN	03/13/00	PNC/FG
00-0230	NORFOLK SOUTHERN	02/20/00	ALL N.	1 H, 4 MI>	03/13/00	PNC/FG
00-0304	NORFOLK SOUTHERN	03/03/00	LEWIS	57 MIN	03/27/00	PNC/FG
00-0328	NORFOLK SOUTHERN	03/15/00	ALL NORTH	10 MIN	03/27/00	PNC/FG
00-0388	NORFOLK SOUTHERN, #>	03/27/00	LEWIS	44 MIN	04/24/00	PNC/FG
00-0421	NORFOLK SOUTHERN	04/03/00	LEW/COL	21 MIN	04/24/00	PNC/FG
00-0503	NORFOLK SOUTHERN	04/14/00	LEWIS, #3>	31 MIN	05/08/00	PNC/FG
00-0509	NORFOLK SOUTHERN #8>	04/17/00	LEW,BRK,C>	25 MIN	05/08/00	PNC/FG
00-0512	NORFOLK SOUTHERN #3>	04/18/00	ALL N.	26 MIN	05/08/00	PNC/FG
00-0539	NORFOLK SOUTHERN	04/22/00	LEWIS, #E>	24 MIN	05/08/00	PNC/FG
00-0645	NORFOLK SOUTHERN	05/25/00	ALL N.	56 MIN.	06/12/00	PNC/FG
00-0646	NORFOLK SOUTHERN	05/27/00	COL/LEW	15 MIN	06/12/00	PNC/FG
00-0666	NORFOLK SOUTHERN #2>	05/30/00	LEWIS.	43 MIN	06/26/00	
00-0686	NORFOLK SOUTHERN #9>	06/02/00	ALL N.	20 MIN	06/26/00	

City of Tiffin

Office of City Administrator Wayne A. Stephens
419/448-5402 Fax 419/448-5410 (office)

Municipal Building
51 E. Market Street
Tiffin, OH 44883

June 26, 2000

Ohio Rail Development Commission
Attn: Ms. Beth Wilson
50 W. Broad St., 15th Floor
Columbus, Ohio 43215

Re: CSX/Conrail Acquisition-Compliance with STB orders

Dear Ms. Wilson:

I checked and found out that CSX has held hazmat response training in Fostoria, Ohio, whichwas attended by our local Emergency Management Agency Director. CSX furnished the OREIS computer software to the EMA. A member of our fire department attended the training session in Pueblo, Colorado.

Although we have noticed a big increase in train traffic, we have not undertaken our own survey to count the number of trains passing through. We were told that the increase would be from 32 trains to 54 trains per day. It is our understanding that the increase has been estimated at 80-90 trains daily. In essence, however, I would say that CSX has complied with the STB orders.

Another issue that has come up deals with several grade crossings in Tiffin. Recently, CSX repaired a crossing on E. Perry St. (State Rout 18). The tracks had settled, causing a bumpy crossing. In 1997, the City of Tiffin purchased $57,000 worth of rubberized crossing materials. CSX agreed to install the material. About $25,000 worth of materials were put on the E. Perry St. crossing. The materials were warrented for five years and had a life expectancy of 10-20 years. In early June, CSX repaired the crossing by replacing our rubberized materials with asphalt and small strips of rubber that go on each side of the rails. When they

City of Tiffin

Office of City Administrator Wayne A. Stephens
419/448-5402 Fax 419/448-5410 (office)

Municipal Building
51 E. Market Street
Tiffin, OH 44883

removed our rubberized crossing material they damaged much of it and disposed of all of it.

We feel that they should have used rubberized materials for the crossing instead of asphalt. (Incidentally, the asphalt is already failing on E. Perry St., and there are two-30" deep holes next to one rail. CSX has failed to properly repair these holes.) In lieu of replacing our rubberized material they should at least reimburse us for the depreciated cost of the materials.

We also want to prevent CSX from destroying the rubberized crossing materials on E. Market St. (State Route 101), if they decide to make repairs to it. The E. Market St. rubberized materials were installed at approximately the same time the materials were installed on E. Perry St. They should replace rubberized crossing material with like materials instead of asphalt. At several other locations in Tiffin where they have used rubber strips next to the rail, abutted by asphalt, the asphalt is failing. I hope that some satisfactory resolution to this problem can be found.

Sincerely,

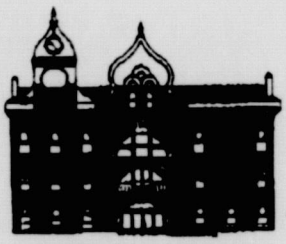
Wayne Stephens

Wayne Stephens
City Administrator

copy: file
Mayor Hohman

TRANSMIT CONFIRMATION REPORT

NO.	:	007
RECEIVER	:	202 659 4934
TRANSMITTER	:	OHIO RAIL DEV. COMM.
DATE	:	JUL 07'00 21:08
DURATION	:	12'13
MODE	:	STD
PAGES	:	25
RESULT	:	OK



Village of Wellington

119 Willard Memorial Square
Wellington, Ohio 44090-1342
Phone:440-647-4086
Fax:440-647-8220

Beth Wilson, Administrative Assistant
Ohio Rail Development Commission
50 West Broad St., 15th Floor
Columbus, OH 43215
July 13, 2000

RE: CSX Railroad Crossings in the Village of Wellington

Dear Ms. Wilson:

As Mayor of the Village of Wellington, Ohio I have been involved with the CSX merger from its conception. While the issue of noise mitigation has been addressed, I believe that this is only a small part of the overall problems that are incurred on a daily basis due to increased train traffic. First and foremost it is imperative that we find solutions that will enable our Safety Services to perform their jobs in a safe and timely manner. Southern Lorain County contains a five-township fire district that covers 125 square miles. I have appointed a Railroad Committee that is currently studying several options that could offer viable solutions to problems associated with blocked rail crossings.

Other issues that need to be addressed are pedestrian crossings, vehicular crossings, traffic congestion and school delays. This is why I beleive it is necessary for further dialogue to take place between the Village of Wellington and CSX and that consideration is given toward CSX's responsibility for funding of various alternative options.

I understand that rail transportation is vital to the economy of the northeast Ohio region, however, it is my duty as Mayor to address the problems that our community faces which have been created by the 400% increase in rail traffic. It is with sincere appreciation that I offer this letter to the Ohio Rail Development Commission and ask that your assistance in this matter be continued.

Respectfully submitted,

Barbara O'Keefe

Barbara O'Keefe, Mayor

ASHTA Chemicals Inc.
3509 Middle Rd.
P.O. Box 858
Ashtabula, Ohio 44005-0858
440-997-5221
Fax: 440-992-0151

ASHTA

July 13, 2000

Ms. Beth Wilson
Ohio Rail Development Commission
50 West Broad Street
Fifteenth Floor
Columbus, OH 43215

Dear Beth,

As you know, ASHTA Chemicals Inc participated as an interested party in the hearings held by the Surface Transportation Board (STB) prior to the split of Conrail in 1999. ASHTA's interest in being granted reciprocal switching by the STB was based on the notion that reciprocal switching would result in the discontinuation of the practice of transporting tank cars of hazardous chemicals via circuitous routes. Although ASHTA was not granted reciprocal switching, the STB made a ruling as a condition of the merger, that "Applicants must consult with ASHTA concerning the routing of its hazardous materials shipments" (Cond. 24). Furthermore, during the STB hearings, CSXT Officials clearly committed to route all shipments originating from Ashtabula, OH with destination south and west, via the Willard, OH yard (west of Ashtabula). Although westbound and southbound shipments were routed through the Willard, OH yard for a short time, this practice was abandoned and currently all shipments originating in Ashtabula, OH are being routed east through Buffalo, NY.

The CSXT June 1, 2000 Status report makes reference to Cond. 24 and the discussions that have occurred between CSXT and ASHTA. As I have indicated above, shortly after committing -both during the STB hearings and during subsequent meetings with ASHTA- to route all hazardous materials shipments with destinations west and south of Ashtabula, OH through the Willard, OH yard, the CSXT has reverted to the prior practice of routing all shipments east through Buffalo, NY. ASHTA has, on several occasions, questioned CSXT about the modifications to the routing of these westbound and southbound shipments and to date is not satisfied with the answers CSXT has provided. The CSXT sites no details and has referred to "operational experience" as the only reason for the unannounced change. The change was not discussed with ASHTA prior to the CSXT taking this action.

It is clear that there has been a great deal of communication between ASHTA and the CSXT over the past 12 months relative to service issues, operational issues, and new business opportunities. This communication, which is occurring at several levels, is necessary and represents a significant improvement from that which was experienced prior to CSX taking over a portion of the Conrail assets. It is, however, also ASHTA's position that the CSXT has not done enough to address ASHTA's concerns about the circuitous routing of hazardous chemicals originating from Ashtabula, OH. To remedy the current situation, ASHTA would suggest that, at minimum, the following be required of the CSXT:

EXHIBIT
C

- CSXT to provide ASHTA with detailed plan for modifying the routings to allow for the non-circuitous routing of hazardous chemicals originating from ASHTA's plant.
- If the CSXT has deemed the routing of hazardous chemicals with destinations west and south of Ashtabula, OH through Willard, OH (or other yard(s) west of Ashtabula,OH) as operationally inefficient, then the CSXT should provide ASHTA with documentation outlining that the routing of westbound and southbound shipments through Buffalo, NY is more operationally efficient and proof that this modification results in an inherently safer routing.

Thank you for the opportunity to provide you with the above comments. If you have any questions or require any additional information, please contact me at (440) 997-6862.

Sincerely,

Bradley J. Westfall
ASHTA Chemicals Inc.

July 14, 2000

James E. Seney, Executive Director
Ohio Rail Development Commission
50 West Broad Street, 15th Floor
Columbus, Ohio 43215

Dear Mr. Seney:

The Toledo-Lucas County Port Authority is a transportation development agency which relies on rail service to accomplish its mission. When the CSX and Norfolk Southern made their appliction to acquire the assets of Conrail, one concern we had was a decrease in the number of rail carriers serving the Port of Toledo. The initial application indicated that CSX would take over the agreements held by Conrail for access to our coal and ore facilities at the Port of Toledo. We claimed that such an action would constitute a so-called "2 to 1" situation and we would be at a competitive disadvantage.

Subsequently, we were informed by Norfolk Southern that they intended to take over the Conrail access agreement and that they (NS) would, indeed, have direct access to our port facilities. In the final application, just such an arrangement was included.

Now, over a year from the initial control date (June 1, 1999), Norfolk Southern has not exercised their access rights even once, and it does not appear that they intend to. In view of this situation, the port authority would have been better off had we requested that a shortline carrier such as the Wheeling and Lake Erie Railway or the Ann Arbor Railroad be given access to these facilities. At least, with a shortline carrier, we could possibly develop new business through the port with customers on their systems.

This limitation to relying on a rail carrier who seemingly does not intend to serve restricts our competitive ability. We appreciate your hearing us out on this issue and look forward to discussing possible future alternatives.

Sincerely,

Robert E. Greenlese

Robert E. Greenlese
Director of Surface Transportation and Logistics

CC: Keith O'Brien, Rea, Cross & Auchincloss, Washington, D.C.
James H. Hartung, President, T-LCPA

EXHIBIT
1

TOLEDO-LUCAS COUNTY PORT AUTHORITY One Maritime Plaza • Toledo, Ohio 43604-1866 U.S.A. • (419) 243-8251 • FAX (419) 243-1835

199298

TROUTMAN SANDERS LLP

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David C. Reeves
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Direct Dial: 202-274-2932
Fax: 202-274-2917

July 14, 2000

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

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

Dear Secretary Williams:

Enclosed are an original and 26 copies of Comments of AES Eastern Energy, AESE-2. Also enclosed is a copy of said comments on a 3.5 inch diskette in Microsoft Word format, convertible to WordPerfect. Copies of these comments are being served on other parties of record, including counsel for NS and CSX.

Please acknowledge receipt and filing of this material by date stamping the enclosed 26th copies of this letter and of the filing and returning them to our courier for our files. If you have any questions about this matter, please contact me at (202) 274-2932.

Sincerely,

David C. Reeves

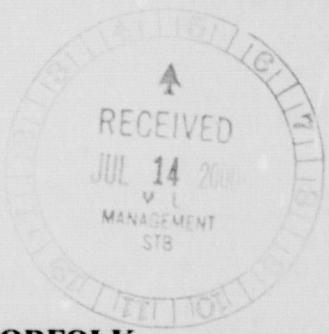
David C. Reeves

cc: Gary P. Edwards
Richard A. Allen
Dennis G. Lyons
All Parties of Record

AESE-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

(GENERAL OVERSIGHT)

COMMENTS OF AES EASTERN ENERGY

DAVID C. REEVES
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
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WASHINGTON, D.C. 20005-3314
202-274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEY FOR AES EASTERN ENERGY

July 14, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

(GENERAL OVERSIGHT)

COMMENTS OF AES EASTERN ENERGY

AES Eastern Energy (AESE") wishes to make four brief points in response to the reports submitted June 1, 2000 by Norfolk Southern Corp. and Norfolk Southern Railway Company ("NS") and CSX Corp. and CSX Transportation, Inc. ("CSX") in this matter. These points deal with one rate issue and three persistent service issues which AESE is disappointed have not been resolved in the more than twelve months since "Day One."

Rate Issue. The Surface Transportation Board ("STB" or "Board") issued a decision on July 7, 2000 concluding the first phase of the Buffalo Rate Study sub-docket of this merger proceeding.[1] In that decision, the Board concluded that NS and CSX had shown generally that rates for rail service in the Buffalo, NY area had declined somewhat in the first six months after Day One from those in effect under Conrail prior to that time. NS and CSX are due to file today

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[1] *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. 90).

with the Board information covering Buffalo area rates for the first full year of their ownership of Conrail's properties, up to and including May 31, 2000.

AESE wishes to note for the record that CSX's rates on transportation of limestone from Buffalo to AESE's Somerset, NY generating station **increased, *effective June 1*, 2000, by 51.5%**. AESE has, as a direct result of this increase, diverted its limestone shipments between Buffalo and Somerset to truck. While this rate increase likely will not be reflected in CSX's reports to the Board to be filed today, AESE urges the Board to cautiously review the carriers' filings in the Sub-No. 90 docket, bearing in mind that AESE's experience with a huge June 1, 2000 rate increase may not be atypical.

Service issues. AESE will briefly discuss three service issues.

First, AESE receives large volumes of coal in company-owned unit trains. The cycle times on these trainsets have yet to return to what they were under Conrail's operation. This is true of both carriers' performance, though it is a more pronounced problem with NS. AESE is disappointed with the carriers' failures to restore service to pre-split levels in this respect.

Second, in AESE's experience, both NS and CSX continue to be plagued by crew and power shortages that impede smooth and timely operations. AESE had expected that these problems would have been remedied during the 13 months since Day One, but they have not been. This is an issue of continuing concern.

Finally, NS's operations between Ashtabula and Buffalo continue to be slowed by congestion. AESE has suggested to NS on many occasions that NS should use the Erie Lackawanna line which NS acquired to avoid this congested section. NS has yet to heed this suggestion and, as a result, continues to suffer service delays.

CONCLUSION

AESE is concerned that now, after many months of planning the Conrail split and after more than a year's operations of the property, both NS and CSX continue to be plagued by persistent operational problems that impede effective and efficient service to customers like AESE. Though not a crisis, the fact that these problems persist after more than a year's practical experience with NS and CSX operating the Conrail properties indicates that the carriers either are not making sufficient efforts to, or are simply not able to, resolve these operational problems.

AESE suggests that the Board carefully examine the record developed in this docket to discern whether AESE's experiences with CSX and NS are indicative of a more widespread problem which may need systemic correction.

Respectfully submitted, this 14th day of July, 2000.

DAVID C. REEVES
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEY FOR AES EASTERN ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Comments of AES Eastern Energy" have been served the 14th day of July, 2000, by first class mail or more expedited form of service upon all parties of record in this proceeding.

David C. Reeves
Attorney for AES Eastern Energy

199297

~~199296~~

PAUL H. LAMBOLEY
1350 EYE STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20005-3324

TEL 202.312.8000
FAX 202.312.8100

DIRECT 202.312.8220

July 14, 2000

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-five (25) copies of the Comments of the Resources Warehousing & Consolidation Services Inc.(RWCS-1) for filing in this proceeding.

In accordance with Decision No. 1 in this proceeding, copies of the enclosed document are being served upon counsel for the Applicants.

Please return a file-stamped copy in the envelope provided. Should there be any questions about this filing, please call me at (202) 312-8220.

In addition, please accept this letter as request for waiver of the Disk-CD requirement for these Comments.

Thank you.

Very Truly Yours,

Paul H. Lamboley

Encl.

350 So. Center Street, #300
Reno, NV 89501

544 Market Street, Ste 401
San Francisco, CA 94104

199297

(RWCS-1)

UNITED STATES OF AMERICA

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

COMMENTS
OF
RESOURCES WAREHOUSING & CONSOLIDATION SERVICES INC.

Paul H. Lamboley
1350 Eye Street NW Ste 200
Washington, D.C. 20036-6105
(T) 202-312-8220
(F) 202-312-8100

Counsel for Resources Warehousing
& Consolidation Services, Inc.

A. INTEREST.

Resources Warehousing & Consolidation Services Inc. (RWCS) has offices, warehouses and terminal facilities located at 2200 Secaucus Road, North Bergen, NJ.

RWCS provides warehousing, consolidation, and intermodal services for international trade from warehouse and terminal facilities privately owned and operated by RWCS.

Located on the southern terminus of a north-south rail line owned and served by the New York Susquehanna & Western (NYSW), the RWCS facility lies between the North Bergen and Croxton Terminals within the North Jersey Shared Asset Area.

RWCS participated as a party of record (POR) in prior proceedings, generally supporting the proposed merger, but expressing concern that it might be denied equal access to intermodal service from both NS and CSX following the merger.

B. BACKGROUND

Relying upon Applicants' representations that post-meger RWCS will in fact enjoy equal access to intermodal service from both NS and CSX in the Shared Asset Area, the STB in Decision No. 89 held: "We will require applicants to hold to the representations they have made to RWCS". Decision No. 89, p. 123.

C. CURRENT CONCERN

Simply put, RWCS does not now have access to competitive intermodal service from CSX because CSX refuses to provide such service dispite the present feasibility of doing so.

Since Janurary of this year, repeated requests to CSX to meet to establish mutually satisfactory intermodal service arrangements between Chicago and the RWCS facility at North Bergen have been refused.

RWCS has been constructively engaged in efforts to obtain service opportunities or commitments for its current intermodal facility as well as its planned expansion. It has been frustrated in its effort by CSX' denial of service.

D. REQUEST FOR RELIEF

As a part of General Oversight, RWCS requests that the STB require CSX to implement its prior representation and take the necessary steps to establish intermodal service to the RWCS facility, thereby providing the opportunity for competitive rail service for RWCS' present and future facilities.

In short, RWCS requests that the Applicants' promises of equal access to both NS and CSX intermodal service become a reality for RWCS as it is for other facilities in the North Jersey Shared Assets Area.

Dated: July 14, '00

Paul H. Lamboley

Counsel for Resources Warehousing
& Consolidation Services, Inc.

CERTIFICATE OF SERVICE

I certify that on this 14th day of July 2000, copies of the foregoing Comments of Resources Warehousing and Consolidation Services, Inc. (RWCS-1) were served upon counsel for the Applicant parties in accordance with Decision No. 1 in this proceeding, via first class mail, prepaid.

Paul M. Lamboley

199296

199296

PAUL H. LAMBOLEY
1350 EYE STREET, N.W.
SUITE 200
WASHINGTON, D.C. 20005-3324

TEL 202.312.8000
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DIRECT 202.312.8220

July 14, 2000

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

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

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-five (25) copies of the Comments of the Southern Tier West Regional Planning and Development Board (STW-1) for filing in this proceeding.

In accordance with Decision No. 1 in this proceeding, copies of the enclosed document are being served upon counsel for the Applicants.

Please return a file-stamped copy in the envelope provided. Should there be any questions about this filing, please call me at (202) 312-8220.

In addition, please accept this letter as request for waiver of the Disk-CD requirement for these Comments.

Thank you.

Very Truly Yours,

Paul H. Lamboley

Encl.

350 So. Center Street, #300
Reno, NV 89501

544 Market Street, Ste 401
San Francisco, CA 94104

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 Railway Corporation (General Oversight)

COMMENTS OF THE SOUTHERN TIER WEST REGIONAL PLANNING AND DEVELOPMENT BOARD

A. INTEREST.

The Southern Tier West Regional Planning and Development Board (STW) participated in the Conrail proceeding as a party of record representing Chautauqua, Cattaraugus, Allegany and Steuben Counties in New York State. The New York State Department of Transportation (NYSDOT) also participated as a party of record. STW supported the Conrail transaction after Norfolk Southern, NYSDOT, and STW entered into a June 1998 agreement preserving service on the Southern Tier Extension, contingent upon provision of property tax abatement. Adherence to this agreement was ordered in the Surface Transportation Board's Decision No. 89 in the Conrail transaction. NYSDOT also agreed to the Southern Tier Extension elements in the Surface Transportation Board proceeding.

B. BACKGROUND

The Southern Tier Extension is a 145-mile Norfolk Southern line acquired in the Conrail split, and extends from Corry, PA to Hornell, NY. Only the fifty miles between Jamestown, NY and Olean, NY are active; the remaining 95 miles have been out of service since 1991. Conrail placed these miles out of service in what amounts to a de facto abandonment-in-place, and Norfolk Southern has continued this since acquiring these assets. As part of the former Erie Lackawanna Railroad, the Southern Tier Extension was never part of Conrail's core system, which was comprised mainly of former Penn Central routes. Yet Conrail refused to sell the Extension intact, for fear that it would be acquired by a competitor, and grant agreements with NYSDOT prevented Conrail from formally abandoning the line.

Thus, Conrail's legacy today in the Southern Tier West region is this: Fifty miles of railroad with just two active customers, and 95 miles of weed-grown, vandalized, washed-out (but not abandoned) line. The Southern Tier Extension runs like a spine across the four counties and represents many communities' last connection with the national rail network. Yet the situation discourages use of the railroad, creates a cloud of uncertainty over rail-dependent industries, and deprives the region of a valuable economic development asset.

Our June 1998 agreement with Norfolk Southern provides for property tax abatement by means of a sale/leaseback in which a state-chartered and locally-controlled public sector railroad authority acquires the line and leases it back to NS for ten years. While the authority owns the line, Norfolk Southern pays no property taxes, but makes a payment in lieu of taxes according to an agreed upon schedule, with 7 years of total tax abatement. At the end of the ten years, the property reverts to NS. The agreement specifies minimum maintenance and service requirements.

This agreement provides a low-cost operating environment intended to give Norfolk Southern maximum incentive to operate and maintain the line. The hope is that with proper marketing, traffic can be rebuilt so the Southern Tier Extension will again be profitable and contribute to the region's tax base and economic development at the end of the abatement period. In return for this, NS agreed to specific service and maintenance requirements. The agreement also provides the rail authority certain rights in the event Norfolk Southern later proposes to abandon part or all of the Southern Tier Extension.

With this agreement, STW agreed to support the Conrail transaction, and NYSDOT agreed to discharge Conrail's $2.1 million dollar obligation arising from a 1980 grant agreement funding certain improvements in the region (the so-called TCS-Wellsville agreement).

C. N.Y. STATE LEGISLATION - RAILROAD AUTHORITY

In June 2000, legislation chartering a railroad authority was passed by the New York State Legislature and signed by Governor Pataki. Thus, we finally have in place a tax-abating authority to implement the June 1998 agreement between Norfolk Southern, NYSDOT and STW. This authority is named the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority.

Now that the railroad authority is in place, we will work with NS to achieve the objectives of the agreement: (1) preserving the Southern Tier Extension line intact, (2) maintaining and improving local service, and (3) working with Norfolk Southern and/or Norfolk Southern's designated operator to re-establish mainline service.

D. CURRENT CONCERNS

1. SERVICE.

Unfortunately, the last year has demonstrated that the Conrail transaction is not working out as hoped for in New York's Southern Tier. While we give Norfolk Southern credit for maintaining service over the Olean-Jamestown segment that Conrail operated, the region's industries have been subjected to serious service disruptions. Further, while Norfolk Southern's systemwide measures may show improvement, transit times and reliability for NS-served industries in the Southern Tier continue to suffer compared to those seen before the Conrail split. In fact, Buffalo and adjoining segments of Norfolk Southern are considered a primary service problem area for NS.

In our region, Monofrax (Chautauqua County) has been unhappy with the reliability, availability, and frequency of local service, and feels that pricing has become less rather than more competitive—a disappointing result given the Conrail transaction's promise of more competitive rail service. Currently, it would appear that Norfolk Southern's focus is elsewhere and that service to the Southern Tier Extension, as a marginal branch in an operationally troubled part of the NS system, has suffered as a result.

Norfolk Southern has always been candid in telling us that the Southern Tier Extension would not be their highest priority. Unfortunately, the service problems of the last year have, if anything, pushed further into the future the day when we can expect Norfolk Southern to dedicate marketing and other management resources to this corner of its far-flung system.

2. TRACK REPAIR.

Nor has NS begun to make necessary repairs. The Southern Tier Extension continues to deteriorate, and pre-existing flood damage has been allowed to significantly worsen. River erosion at one location has now completely cut the railroad and threatens to invade an adjacent landfill, which could potentially create an environmental problem. NS attributes its failure to repair the line to the lack of a tax abatement and the lack of shipping volume justifying the repairs. However, in the case of the threatened landfill, environmental safety should be paramount, irrespective of either traffic and/or tax relief. Under the Interstate Commerce Act, Norfolk Southern's responsibilities as steward of this public franchise are not contingent on receipt of a tax abatement. NS should take immediate steps to preserve the line against further damage, or promptly move forward with implementation of the sale/leaseback so the rail authority can make repairs. Continued neglect threatens irreparable harm to the line and to its economic development value. The Surface Transportation Board should not allow this to occur.

3. SAFETY - CROSSINGS

Another issue relates to Norfolk Southern's grade crossings in the City of Dunkirk in Chautauqua County, New York. The number of Norfolk Southern trains has increased in Dunkirk in the past year, posing a safety issue to pedestrians and automobile traffic. This also has created an automobile traffic flow problem in Dunkirk as automobiles queue at the grade crossings. Most importantly, there is the potential for disrupted emergency vehicle service. Norfolk Southern has proposed eliminating these grade crossings by truncating the City streets so that they do not cross the rail line. This poses an even greater traffic and safety problem, and does not address the issue of pedestrian safety. Thus far, Norfolk Southern has agreed to place signage at City grade crossings and has promised to hold crossing safety classes. We request that the Surface Transportation Board direct Norfolk Southern to investigate and implement a more permanent and comprehensive solution to this problem.

E. REQUESTED RELIEF - OVERSIGHT.

Although there are only a handful of current shippers on the Southern Tier Extension, we feel that several companies are interested in shipping by rail using the Southern Tier Extension. More regular and frequent service, including through-line service, could help our region by providing an alternative and economical transportation mode for freight shipment. As an economic development organization, STW is well aware that an essential element of regional economic competitiveness is the adequacy of rail transportation service. Without it, we will lose at least one significant employer, Monofrax in Chautauqua County, and we will be unable to attract investment by companies choosing amongst other locations offering competitive, high-quality rail transportation. Should the Southern Tier Extension be abandoned, mainline rail access will be lost forever.

STW wishes to cooperate with Norfolk Southern to re-build and grow the Southern Tier Extension. However, the service difficulties of the past year and the line's accelerating deterioration prompt us to request that the STB retain continuing oversight until the agreement between Norfolk Southern, NYSDOT and STW is fully implemented. Further, the Board should be aware of the role the Southern Tier Extension could play in relieving congestion in Buffalo.

Norfolk Southern should state what it intends to do with respect to implementing the agreement, providing enough information so the Surface Transportation Board and public

officials can determine whether Norfolk Southern's position with respect to future of the Southern Tier Extension fulfills the expectations we all had when Norfolk Southern originally sought the support of local, state and federal officials and the approval of the Surface Transportation Board. If Norfolk Southern is not prepared to move forward in the spirit of the agreement that secured STW's and NYSDOT's support for the Conrail transaction, they should say so on the record. If, on the other hand, Norfolk Southern has a plan to repair, reopen and rebuild business on the line, or alternatively to find another operator who will do so, we are prepared to work with them.

DATED: July 14, '00

SOUTHERN TIER WEST REGIONAL
PLANNING AND DEVELOPMENT BOARD

Donald R. Rychnowski (dhc)

DONALD R. RYCHNOWSKI
EXECUTIVE DIRECTOR

PAUL H. LAMBOLEY
1350 EYE STREET N.W. STE 200
WASHINGTON, D.C. 20005-3324
(T) 202.312.8220
(F) 202.312.8100

Counsel for SOUTHERN TIER WEST
REGIONAL PLANNING & DEVELOPMENT
BOARD

CERTIFICATE OF SERVICE

I certify that on this 14th day of July 2000, copies of the foregoing Comments of the Southern Tier West Regional Planning and Development Board (STW-1) were served upon counsel for the Applicant parties in accordance with Decision No. 1 in this proceedings, via first class mail, prepaid.

Paul H. Lamboley

199295

NLS-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

General Oversight

COMMENTS OF
NATIONAL LIME AND STONE COMPANY

Pursuant to the Surface Transportation Board's (Board) February 9, 2000 Decision initiating this General Oversight proceeding (Oversight Dec. No. 1), National Lime and Stone Company (National) hereby submits these comments to address the implementation of the Conrail Transaction and the status of Condition No. 43 to the Conrail Transaction, as issued by Decision No. 89 of the Conrail proceeding and modified by Decision No. 96. Attached hereto is the Verified Statement of Ronald W. Kruse, National's Vice Chairman.

As Mr. Kruse explains, National participated in the Conrail proceeding due to its concern that the Conrail Transaction would cause a severe drop in the quality of the rail service that National relies upon and would lead to an increase in the rates that National must pay for such service. National was particularly concerned about the quality and costs of the rail service that links National's Bucyrus quarry with National's sales yard located at Wooster, Ohio. National has invested over $12 million at these two facilities. These investments were predicated on National's ability to ship aggregates from the Bucyrus quarry to the Wooster sales yard using

Conrail single-line service. The value of these investments would be severely diminished if National were unable to ship its aggregate products to these locations by means of single-line rail service.

With the first year of post-Transaction operations complete, it is clear that the quality of service between Bucyrus and Wooster has declined significantly. Pursuant to Condition No. 43 issued in Docket No. 33388, CSX Transportation, Inc. (CSX) has the right to operate on Norfolk Southern Railway Company (NS) track near Bucyrus to move limestone aggregate from National's Bucyrus quarry to its sales yard in Wooster, which is located along track owned by CSX. For this movement, National has experienced significant delays and service-related problems for the first year of post-Transaction operations. In particular, car scheduling problems have severely limited National's ability to make timely deliveries of aggregate to its Wooster yard in the quantities needed. CSX's operational difficulties between Bucyrus and Wooster seem to be emblematic of an overall decline in service on CSX following the Conrail Transaction.

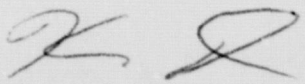
In addition, the rate National pays for service between Bucyrus and Wooster has increased substantially during the first year of post-Transaction operations. Effective June 1, 2000, CSX increased the rates on the Bucyrus to Wooster movement by 5.7 percent. This is the largest rate increase for this service since National first began this movement on Conrail in 1995. Typically, rate increases for this movement have been between 2 and 3 percent each year. CSX has offered no explanation for this large rate increase and National can only wonder whether it is being forced to pay CSX's transaction costs associated with the Conrail break up.

Given the current status of CSX's service between Bucyrus and Wooster, National is concerned that the service quality and rate problems National has experienced will get worse. One reason for this concern is the duration of Condition No. 43. In Decision No. 96, the Board

ruled that Condition No. 43, which assures continued single-line service for high-volume shipments of limestone aggregates between Bucyrus and Wooster, would automatically terminate after five years. This means that, after five years, service currently provided by CSX between Bucyrus and Wooster will be available only by obtaining joint-line service from both NS and CSX. CSX and NS have never presented evidence suggesting that this specific high-volume, single-line movement of aggregates from Bucyus to Wooster imposes an operational burden on the railroads. At the same time, it is clear, as National explained in the Conrail proceeding, and as the Board recognized, that joint-line service is inherently of lesser quality and can be offered only at higher costs than is true of single-line service. The ability of CSX to terminate single-line service after five years will make it impossible for National to continue these essential shipments of its products.

National therefore requests that the Board exercise its general oversight authority to modify Condition No. 43, so that this condition would not automatically terminate after five years. Rather, Condition No. 43 should stay in effect at least for an initial period of five years. The condition should then remain in force until CSX and NS obtain permission from the Board to abandon service to National, just as Conrail would have to have done. This is not a request for "permanent" relief; it is merely a request that Condition No. 43 remain in place until CSX and NS demonstrate that abandoning this high-volume, single-line service to National is consistent with the public interest.

Respectfully submitted,



Clark Evans Downs
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202-626-1700-fax

Counsel for
NATIONAL LIME & STONE COMPANY

July 14, 2000

Certificate of Service

I hereby certify that I have this 14th day of July served a copy of the foregoing comments by first call mail upon all parties of record in Docket No. 33388 (Sub-No. 91) and by hand delivery upon the following:

Dennis G. Lyons, Esq.
Arnold & Porter
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Washington, D.C. 20004

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, D.C. 20006

Kenneth B. Driver

July 13, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

General Oversight

VERIFIED STATEMENT OF RONALD W. KRUSE ON BEHALF OF NATIONAL LIME AND STONE COMPANY

1. My name is Ronald W. Kruse. I am Vice Chairman of National Lime and Stone Company ("National"). My responsibilities include direction and oversight of all sales and marketing efforts for National. I graduated from Ohio Wesleyan University in 1957 and joined National at that time. Since 1957, I have held a variety of positions with National in finance and sales. I was named Vice President of Marketing in 1975, joined the Board of Directors in 1993 and was named Vice Chairman in February 2000.

2. National is one of the largest suppliers of crushed limestone products in Ohio. Founded in 1903, National is headquartered in Findlay, Ohio and operates in Ohio eight quarry and processing locations (at Bucyrus, Buckland, Carey, Delaware, Findlay, Lima, Marion, Upper Sandusky and Wapakoneta), five rail distribution yards (at Wooster, Canton, Tusky Valley (Midvale), Cadiz and Akron) and two truck distribution yards (at Rimer and Gahanna, Ohio). National produces and ships more than 14 million tons of crushed limestone annually for aggregates and industrial mineral markets. Limestone products in the aggregates markets are used for road stone and construction. National's industrial mineral products, for steel, glass, environmental and agricultural markets, include limestone selected by customers for its specific chemical character and limestone processed by drying or calcining to produce dried limestone and lime products.

3. I submitted a Verified Statement, dated October 17, 1997, in Surface Transportation Board ("Board") Finance Docket No. 33388. In that Verified Statement, I described the detrimental effects that the acquisition and division of Conrail's assets by CSX Transportation ("CSX") and Norfolk Southern ("NS") would have on National. I also described the

remedy National sought to mitigate the transaction-related harm National would experience as a result of the merger.

4. In this Verified Statement, I describe the service and rate-related injury National has experienced since June 1, 1999 (the first day of post-Transaction operations by CSX and NS).

5. In my October 17, 1997 Verified Statement, I explained National's anticipation that the proposed Conrail Transaction would cause a severe drop in the quality of the rail service that National relies upon and would lead to an increase in the costs that National would incur for such service. National was particularly concerned about the quality of, and costs of, the rail service that links National's Bucyrus quarry with National's sales yard located at Wooster, Ohio. National has invested over $12 million at these two facilities. These investments were predicated on National's ability to ship aggregates from the Bucyrus quarry to the Wooster sales yard using Conrail single-line service. The value of these investments would be severely diminished if National were unable to ship its aggregate products to these locations by means of single-line rail service.

6. As National feared, the quality of service between Bucyrus and Wooster has suffered as a result of the Conrail Transaction. With the completion of the Conrail Transaction, CSX now provides service between Bucyrus and Wooster using 50-car unit trains. Pursuant to Condition No. 43 issued in Docket No. 33388, CSX has the right to operate on NS track near Bucyrus to move limestone aggregate from National's Bucyrus quarry to its sales yard in Wooster, which is located along track owned by CSX. For this movement, National has experienced significant delays and service-related problems for the first year of post-Transaction operations. In particular, car scheduling problems have severely limited National's ability to make timely deliveries of aggregate to our Wooster yard in the quantities needed. CSX's operational difficulties between Bucyrus and Wooster seem to be a part of an overall decline in service on CSX following the Conrail Transaction. For example, National has routinely experienced operational problems on shipments between National's Carey, Ohio facility and Flint, Michigan, a single-line haul provided by CSX. Once loaded, rail cars have remained on the loading platform for several days, waiting to be picked up by CSX and making it impossible to load other cars bound for other destinations. Rail cars have also been delayed, sometimes for several days, at other points in their transit to Flint, Michigan.

7. The rate National pays for service between Bucyrus and Wooster has increased substantially during the first year of post-Transaction operations. Effective June 1, 2000, CSX increased the rates on the Bucyrus to Wooster movement by 5.7 percent. This is the largest rate increase for this service since National first began this movement on Conrail in 1995. Typically, rate increases for this movement have been between 2 and 3 percent each year. CSX has offered no explanation for this large rate increase and National can only wonder whether it is being forced to pay CSX's transaction costs associated with the Conrail break up.

8. The service quality and increased costs National has experienced will get worse. In its Decision No. 96, the Board ruled that Condition No. 43, which assures continued single-line service for high-volume shipments of limestone aggregates between Bucyrus and Wooster, would terminate automatically after five years. This means that, after five years, service currently provided by CSX between Bucyrus and Wooster will be available only by obtaining joint-line service from both NS and CSX. As National explained in the Conrail proceeding, and as the Board recognized, such joint-line service is inherently of lesser quality and can be offered only at

higher costs than is true of single-line service. Thus, even if the current pace of rate increases does not make service between Bucyrus and Wooster uneconomic, the ability of CSX to terminate single-line service after five years will make it impossible for National to continue these essential shipments of its products.

VERIFICATION

I, Ronald W. Kruse, verify under penalty of perjury that I am Vice Chairman for National Lime & Stone Company, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on July 13, 2000

Ronald W. Kruse

199294

HRRC-15

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388
SUB NO. 91

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

(GENERAL OVERSIGHT)

HOUSATONIC RAILROAD COMPANY, INC.
COMMENTS AND REQUEST FOR
CLARIFICATION OR EXTENSION OF FILING SCHEDULE
FOR REQUESTS FOR RELIEF
HRRC-15

July 14, 2000

Atty. Edward J. Rodriguez
P.O. Box 687
Old Lyme, Conn. 06371
(860) 434-4301

Attorney for:
Housatonic Railroad Company, Inc.

ORIGINAL

BACKGROUND

On February 9, 2000 the STB instituted this proceeding to implement the general oversight condition imposed in CSX/NS/CR Decision No. 89 in the above-captioned railroad consolidation proceeding. In instituting this proceeding, the STB required CSX and NS to file progress reports by June 1, 2000 and to make traffic data available by June 15, 2000. The STB invited interested parties to submit comments on the progress of implementation of the Conrail transaction and the conditions imposed and set a filing due date of July 14, 2000.

Housatonic Railroad Company, Inc. was a party to the original proceeding and filed requests for protective conditions. The Housatonic Railroad's requests for conditions were addressed by the STB in Decision No. 89 and were largely denied.[1]

HOUSATONIC RAILROAD'S COMMENTS

Housatonic Railroad is uncertain as to whether the STB established its July 14, 2000, due date as the deadline for the public to file requests for additional conditions or other relief or merely as a prerequisite to the later filing of additional comments and requests relating to the general oversight condition

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[1] The STB did extend the rate protection of the NITL agreement with respect to 1 to 2 traffic movements to apply to traffic originating or terminating on Conrail connecting short lines. In addition, the STB stated that Applicants would be held to their representations regarding Housatonic Railroad made during the course of the proceeding.

and the retention of jurisdiction by STB for the imposition of additional conditions or other relief. If the STB intended the former -- a deadline for the filing of requests for additional relief to address harms caused by the Conrail transaction -- then Housatonic Railroad requests, for the reasons set forth below, that it be granted a six month extension of time, or such other extension as the Board deems appropriate, to file further comments and requests for additional conditions or other relief.

In its earlier filings, Housatonic Railroad expressed concern about a number of non-service issues including (1) movement of traffic between a CSX served Class 3 carrier and an NS customer, (2) discriminatory rate making practices, (3) access to other Class 1 and Class 2 carriers with CSX as an intermediate overhead carrier, and (4) observance by CSX of commitments made by Conrail with respect to various aspects of the class I/short line railroad relationship.

Each of these areas of concern have proved to be justified and issues have arisen with respect to each. However, CSX has generally been sensitive to Housatonic concerns and has expressed a willingness to discuss the issues and attempt to negotiate a solution. Progress has been made on some issues and discussions continue on others.

I think that it is fair to state that Applicants have found the transaction more complicated to implement than they had anticipated and have encountered various special market circumstances which they did not fully understand prior to

implementation. Under the circumstances, it is reasonable to expect that resolution of all merger related issues would take some time.

While Housatonic Railroad may find it necessary to request additional relief from the STB, it would prefer not to take such action until it is clear that resolution of issues are not likely to be resolved between itself and the Applicants. At this time, the prospects for private resolution appear good. For example, HRRC and CSX are amicably trying to fashion an interchange agreement which will address both carriers' concerns while honoring Conrail commitments. Other discussions about rate and access issues are ongoing.

Accordingly, if July 14, 2000 was intended as a filing deadline for requests for additional relief, Housatonic Railroad requests a six month extension of time, or such other extension of time as the Board deems appropriate, to file such requests.

Respectfully submitted,

Edward J. Rodriguez by JAV

Housatonic Railroad Company, Inc.
Edward J. Rodriguez
Its Attorney
P.O. Box 687
Old Lyme, Connecticut 06371
(860) 434-4301

Dated: July 14, 2000

CERTIFICATE OF SERVICE

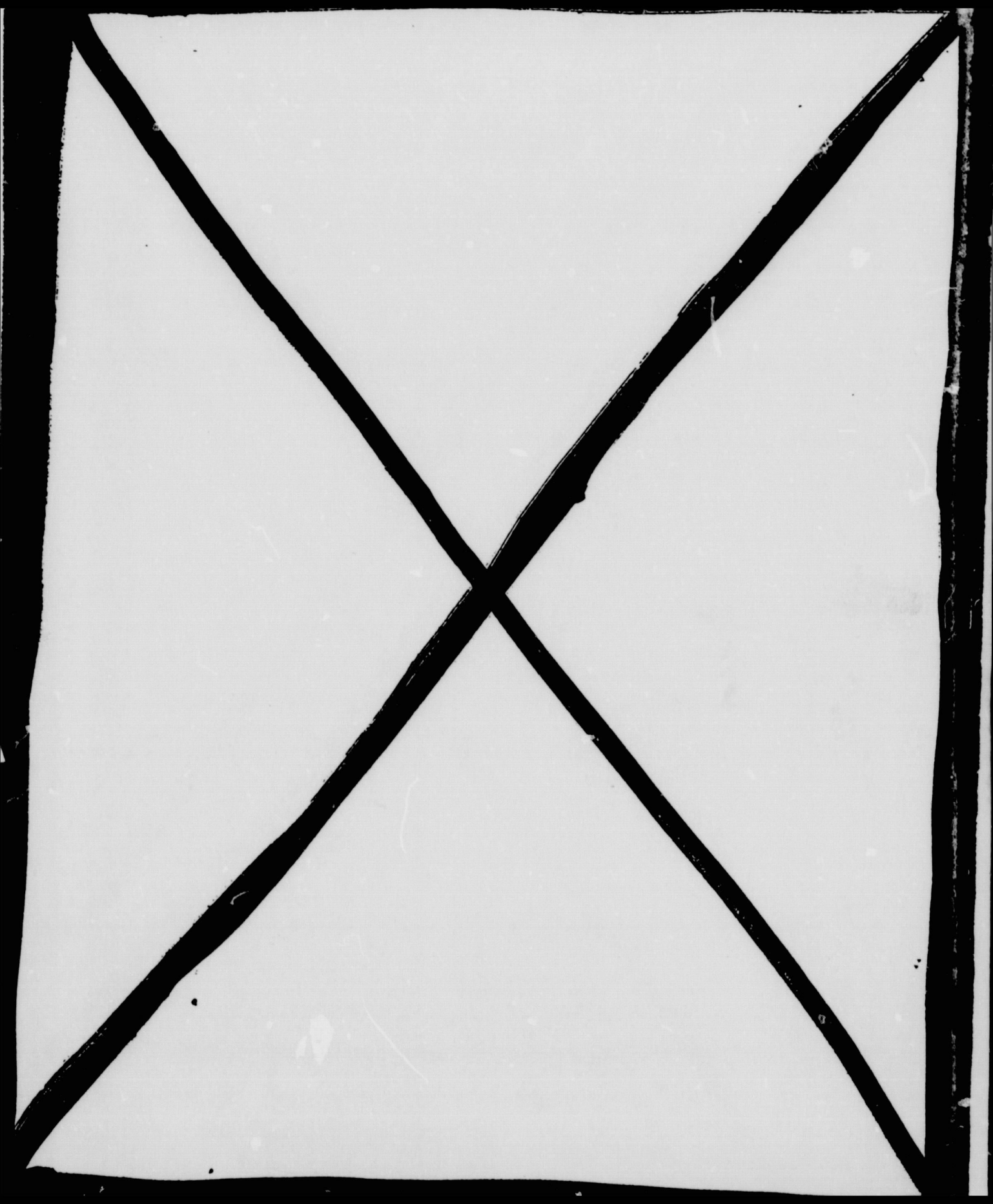
I hereby certify that I have, this 14th day of July, 2000, served copies of the foregoing by first class mail, postage prepaid, upon the following:

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

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

John D. Heffner

DATED: July 14, 2000



199293

WYANDOT - 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

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MANAGEMENT
STB

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 Timothy A. Wolfe

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

Attorney for:
Wyandot Dolomite, Inc.

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

DATED: July 14, 2000

ORIGINAL

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 Timothy A. Wolfe

My name is Timothy A. Wolfe and I am Executive Vice President of Wyandot Dolomite, Inc., ("Wyandot"). Ours is a small family owned business located near Carey, OH. We have only one quarry from which we mine limestone for the construction, concrete and steel industries. At least seventy five percent of our production is transported by rail. Without adequate rail service my company would soon be out of business.

To the extent that we have access to adequate transportation service, we are a competitive source of limestone and aggregate to construction firms and sites in Ohio and surrounding states. Our business is highly competitive and we must be able to assure our customers of efficient low cost rail service or they will look elsewhere among our many competitors for their needs.

In many cases freight costs exceed the cost of aggregate material as priced at our Carey facility. It is imperative that we work effectively with our rail carriers to assure that cost effective and efficient transportation service is readily available. We have found much to our detriment that

unresolved transportation problems result in loss of business which is likely to have taken us years to develop.

I have previously appeared before the Board to express my concern that the STB appears to be increasingly unable to protect the vital interest of small businesses such as Wyandot as large Class I rail carriers press to become even larger and fewer in number. I have also emphasized my concern that rail carriers are beginning to avoid rail dependent business such as ours. This is particularly alarming to my company. If we are not able to assure customers that they can depend upon delivery of our aggregate products in desired quantities when and as needed by means of cost efficient single line rail service, we will shortly be out of business.

Wyandot actively participated in the Conrail proceeding in an effort to persuade the Board to take steps necessary to assure that we would not lose a significant part of our business as a result of the division of Conrail lines between CSXT and NS. We were particularly concerned that the proposed division would mean that we would lose a significant part of our marketing territory and that we could no longer provide a long term customers in Alliance Ohio with efficient single line service. We urged the Board to replicate single line service which had been available by imposing conditions which would have granted NS trackage rights from Carey to Upper Sandusky Ohio pursuant to which it could provide single line service to East Ohio Stone and every other potential customer who previously

could have been reached over corridors fromerly served by Conrail.

As recognized in Decision No. 89, stone aggregates move at low transportation rates because of the nature of the commodity. Consequently, aggregates seldom move in joint line services because it is more costly to provide. The Board also recognized that truck transportation of aggregates is prohibitively expensive for distances in excess of 75 to 100 miles.

However, the relief granted by the Board was limited to requiring CSXT and NS to provide single line service for existing movements provided they are tendered in unit trains or blocks of 40 or more cars. In this regard Wyandot frequently shipped less than 40 cars to meet the specific requirement of East Ohio Stone. The Board further provided that in other circumstances including new movements for shipments moving more than 75 miles, NS and CSXT would be required to arrange run through shipment of 60 cars or more and pre-blocking arrangements of shipments of 10 to 60 cars. Subsequently despite our strong objections the Board further limited applicability of the condition to 5 years.

After the division of Conrail lines was accomplished we had only two shipments to East Ohio Stone in Alliance. That business which had accounted for more than ten percent of our volume for a number of years is now lost to us. I attribute that loss to the constraints on the condition adopted by the Board and

to ready availability of unrestricted single line service to our competitors.

In its response to the Board NS asserts that it has not received any requests from us to develop new moves for aggregate from the CSX origin at Carey. Frankly, we are not in a position to effectively market within the territory formerly served by Conrail because we are faced with competition that has readily available single line service that is not subject to uncertainty of car source and availability, required compensation of two carriers inherent in such service and volume limitations involved in any attempt to utilize the run-through provision. As a practical matter we are no longer an effective competitor along the Conrail line that was allocated to NS. Since we did not gain access to any new territory as a result of the division of Conrail lines, we are very much concerned by the loss of the Alliance business. We are even more concerned by the prospect of having to deal with an economic downturn sometime in the future with a diminished territory within which we can effectively market our products.

I am also concerned by reports from my rate paying customers that they are being approached with advice from the carriers that they will receive large rate increases unless their volume and service requirements are substantially upgraded. This certainly lends credence to the fears raised during the acquisition proceeding that rail dependent customers without

competitive alternatives would face substantial rate increases to pay for the cost of the consolidation.

We are a small shipper and we do not have the leverage of competitors who have multiple locations on the rail system. We have been harmed through loss of business and marketing territory as a result of the division of Conrail. We need the Board to restore us to the situation we were in pre division by granting the relief we originally requested. I urge the Board to take a careful look at what has happened to Wyandot and to do what is needed to correct the situation.

VERIFICATION

STATE OF OHIO)
) SS:
COUNTY OF Lawrence)

Timothy A. Wolfe, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

Timothy A. Wolfe

Subscribed and sworn to before me this 11th day of July, 2000.

Notary Public of Ohio.

Christina K Edwards

My Commission expires:

Christina K. Edwards
Notary Public - State of Ohio
My Commission Expires 6-2-05

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:

Dennis G. Lyons, Esq.
Arnold & Porter
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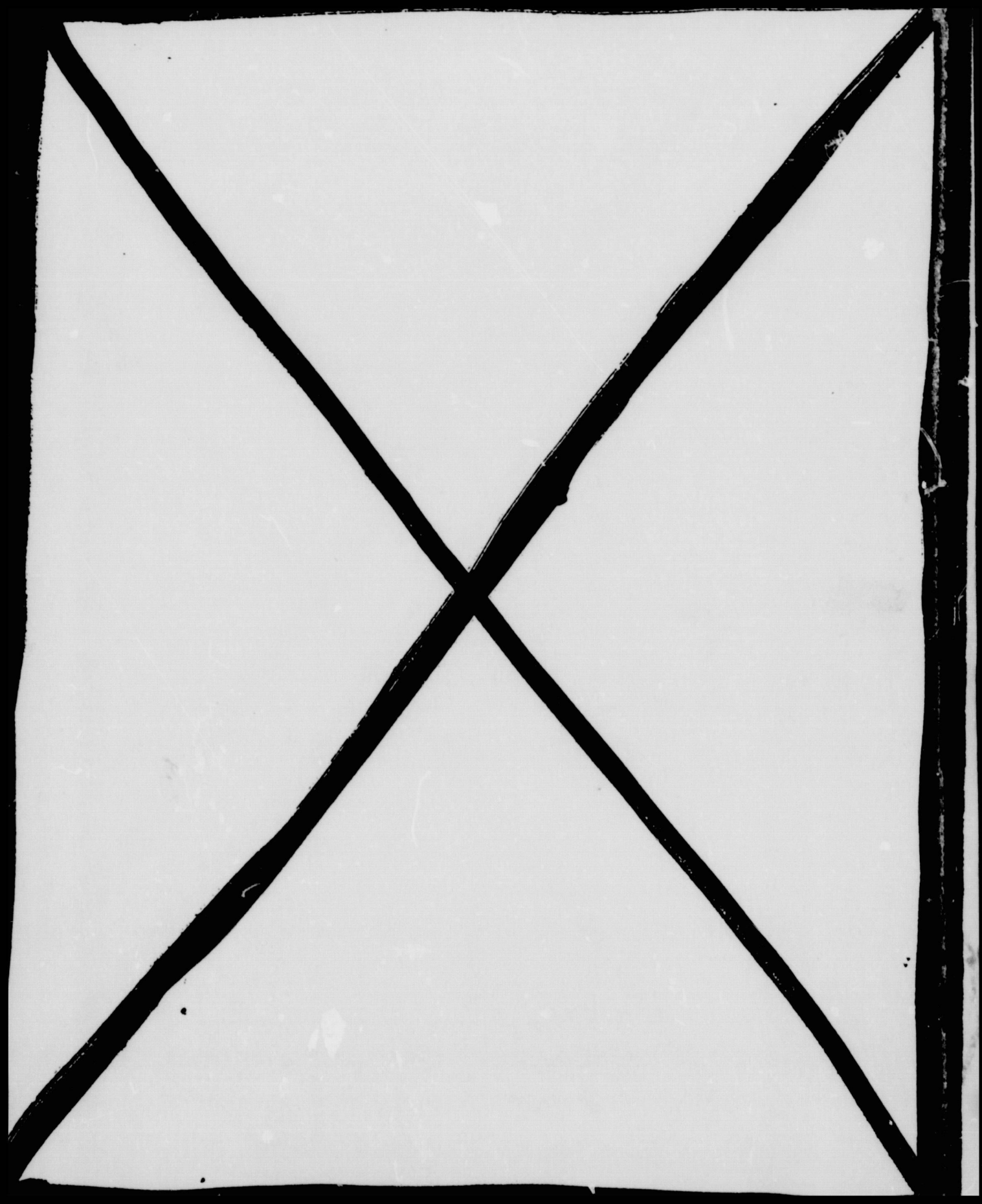
Richard A. Allen, Esq.
Zuckert, Scoutt & Rassenberger
888 17th Street, N.W.
Washington, DC 20006-3939

Keith G. O'Brien

DATED: July 14, 2000



199292

NYCH-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 W. Robert Bentley

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1707 L Street, N.W.
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(202) 785-3700

Attorney for:
New York Regional Rail
Corporation

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

DATED: July 14, 2000

ORIGINAL

VERIFIED STATEMENT OF
W. ROBERT BENTLEY

W. Robert Bentley, being duly sworn, deposes and states as follows:

1. My name is W. Robert Bentley. I am President of the New York Regional Rail Corp. and its wholly owned subsidiary New York Cross Harbor Railroad Corporation ("NYCH"). My business address is 4302 First Avenue, Brooklyn, NY 11232. I am submitting this statement both to apprise the Board of NYCH's potential for resolving post-Conrail service issues in the New York Metropolitan Area as well as to compliment both Norfolk Southern Corporation ("NS") and CSX Transportation ("CSXT") for the cooperation they are now giving my company.

2. NYCH is a class III short line railroad headquartered in Brooklyn, NY. NYCH has the unique distinction of being one of two remaining railroads, which handle overhead rail freight by means of a car float service.[1] Through this service NYCH moves rail freight between shippers and receivers located on Long Island and Brooklyn, NY, and other shippers and receivers located in the rest of North America, by ferrying traffic across New York Harbor. NYCH also provides local rail freight service handling to 10 customers located along the Brooklyn waterfront. All together, NYCH handles about 1,000 car loads of traffic per year.

3. NYCH previously participated in the Board's proceedings involving the acquisition and participation of Consolidated Rail Corporation ("Conrail") by Norfolk Southern Corporation ("NS")

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[1] The Eastern Shore Railroad connecting southern Virginia with the Delmarva Peninsula is the other carrier.

and CSX Transportation ("CSXT"). There NYCH (as well as other parties) reminded the Board that substantial overhead traffic flows used to move by the railroad car float between New England and Long Island, on the one hand, and New Jersey and points South and West, on the other hand. Those cross harbor movements allowed traffic to move directly, bypassing busy rail yards. Gradually, with the merger of the former New Haven Railroad into the Penn Central Railroad and the consolidation of other bankrupt northeastern carriers into Conrail, the use of car float services to cross New York Harbor declined precipitously in the 1960's and 1970's. But even as late as 1976, the New York Dock Railway [a NYCH predecessor] was handling 20,000 cars per year by car float.

4. While NYCH welcomed the revival of rail competition it anticipated the Conrail split up would bring, it expressed in its comments to the Board, deep concerns over certain issues. Specifically, NYCH expressed its fear that Conrail's new owners would continue to divert via the former Conrail Selkirk, NY, Gateway,[2] traffic which could move more directly and more cheaply via NYCH and the New York Harbor. Typically, this traffic consisted of freight moving to or from points on Long Island served by the Long Island Rail Road or the New York & Atlantic

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[2] That freight moved to Selkirk via Conrail's Hudson Division along the East Side of the Hudson River and then back down via Conrail's River Division to New Jersey points (or vice versa). The Hudson Division handles substantial Amtrak and commuter traffic and has very limited windows for handling freight trains. The River Division is primarily single track and experiences significant freight congestion.

Railway.[3] In some cases this traffic consisted of traffic to or from local NYCH customers which had been routed via Selkirk instead of via NYCH's direct cross harbor route. In some cases Conrail had persuaded customers to divert traffic via Selkirk while in other cases Conrail had intentionally misrouted traffic via Selkirk in violation of shipper routing instructions.

5. With the dissolution of Conrail, many of Conrail's practices have ceased. NYCH has developed a close working relationship with NS and has been fairly successful in increasing its car loads with this aggressive new class I railroad connection. Because NS' rail network is south and west of New York, there is no incentive for traffic to or from these points to be misrouted.

6. As NYCH has began to develop a positive working relationship with CSXT, it has high hopes for that relationship to develop along the lines of its NS relationship. Unlike NS, CSXT still has an incentive to maximize the Selkirk routing for traffic between New England and Long Island and the rest of North America. However, NYCH is working to persuade CSXT of the benefits of the direct cross harbor routing. NYCH has began to reap the rewards of that relationship because CSXT has started routing via NYCH New England traffic CSXT handles in conjunction with the Providence & Worcester. Despite modest volumes, NYCH is encouraged by the prospects for business growth as well as CSXT's

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[3] The New York & Atlantic Railway is a short line railroad which provides freight service previously provided by the Long Island Rail Road.

positive attitude towards working with NYCH.

7. In closing, I understand that STB Chairman Morgan has expressed great interest in the role that short line and regional railroads can play in relieving class I railroad congestion and service problems. Because NYCH is essentially a bridge carrier it has the potential to be of great service to the railroad industry in being just such a congestion reliever. It can move traffic around congested rail facilities such as Selkirk Yard near Albany and other nearby facilities in New Jersey and eastern Pennsylvania. If NYCH can even attract the volumes of overhead business handled by the New York Dock Railway, it can play a very significant role in expediting traffic. Continued cooperation by NS and CSXT along with a statement of support by the Board will go a long way to make NYCH's promise a reality.

8. I appreciate the opportunity to submit these comments.

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.

Subscribed and sworn to before me this 14 day of July, 2000.

Notary Public of Richmond County

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

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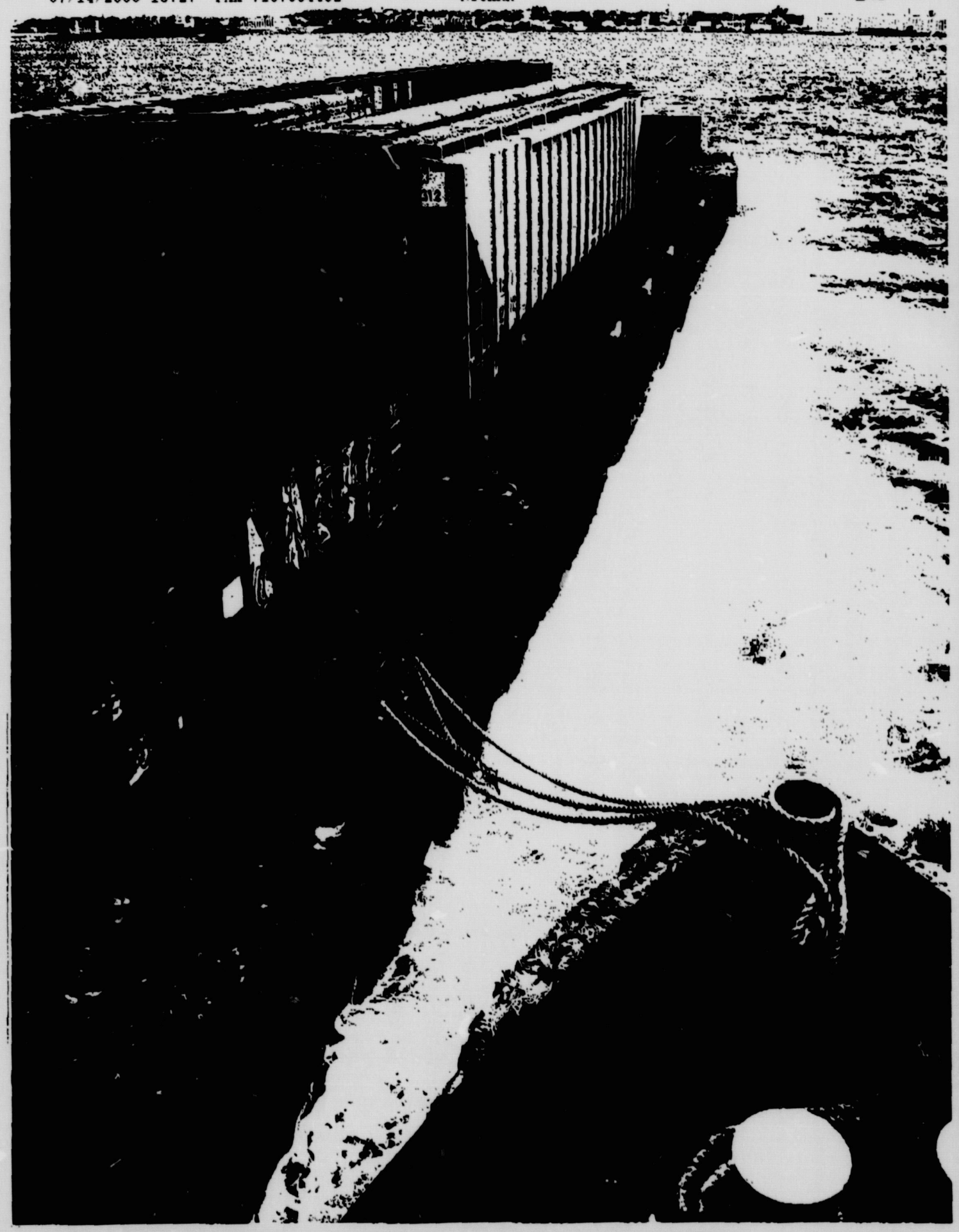
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202

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

John D. Heffner

DATED: July 14, 2000



By Joe Greenstein
Photos by the author

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 smoother 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.

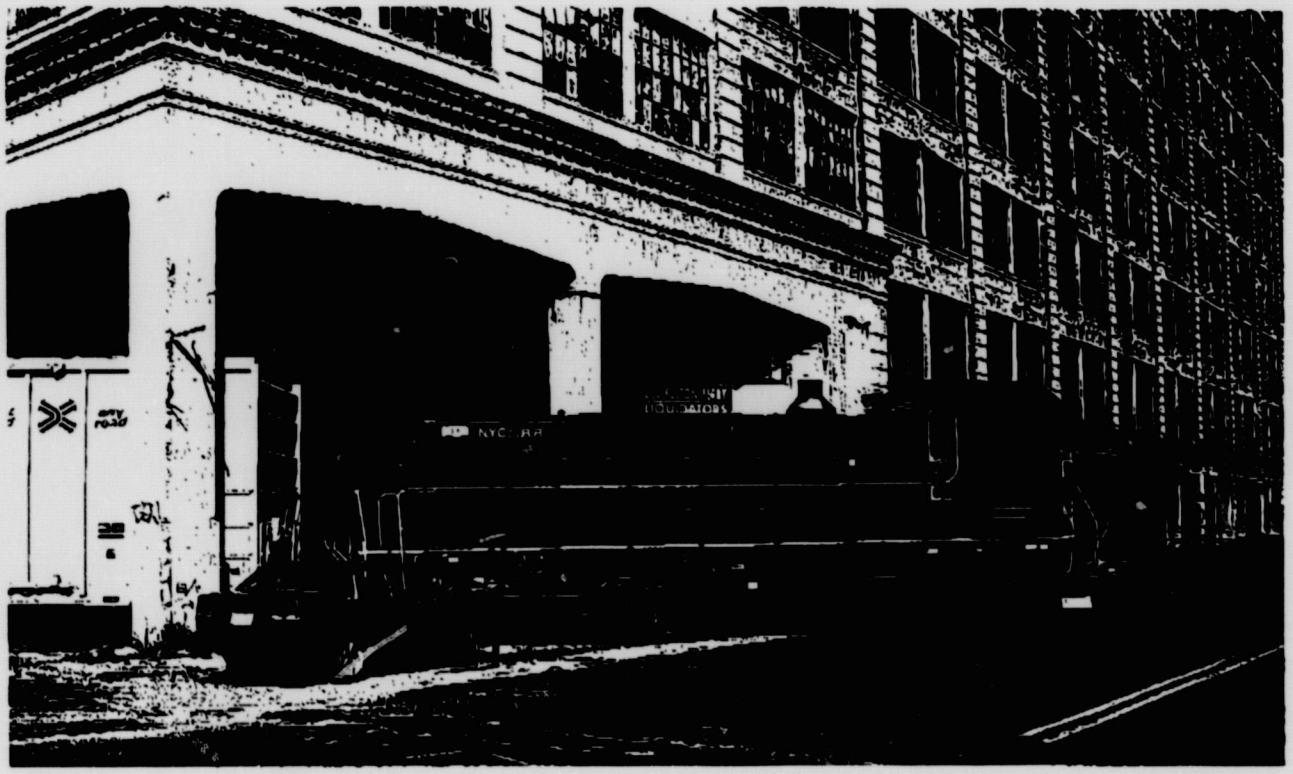
While the *Houma* navigates the "Upper Bay" (left), Alco 11 turns the corner from 41st Street to First Avenue. Brakeman trainee Jose Torres is riding the front step.

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



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.

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.

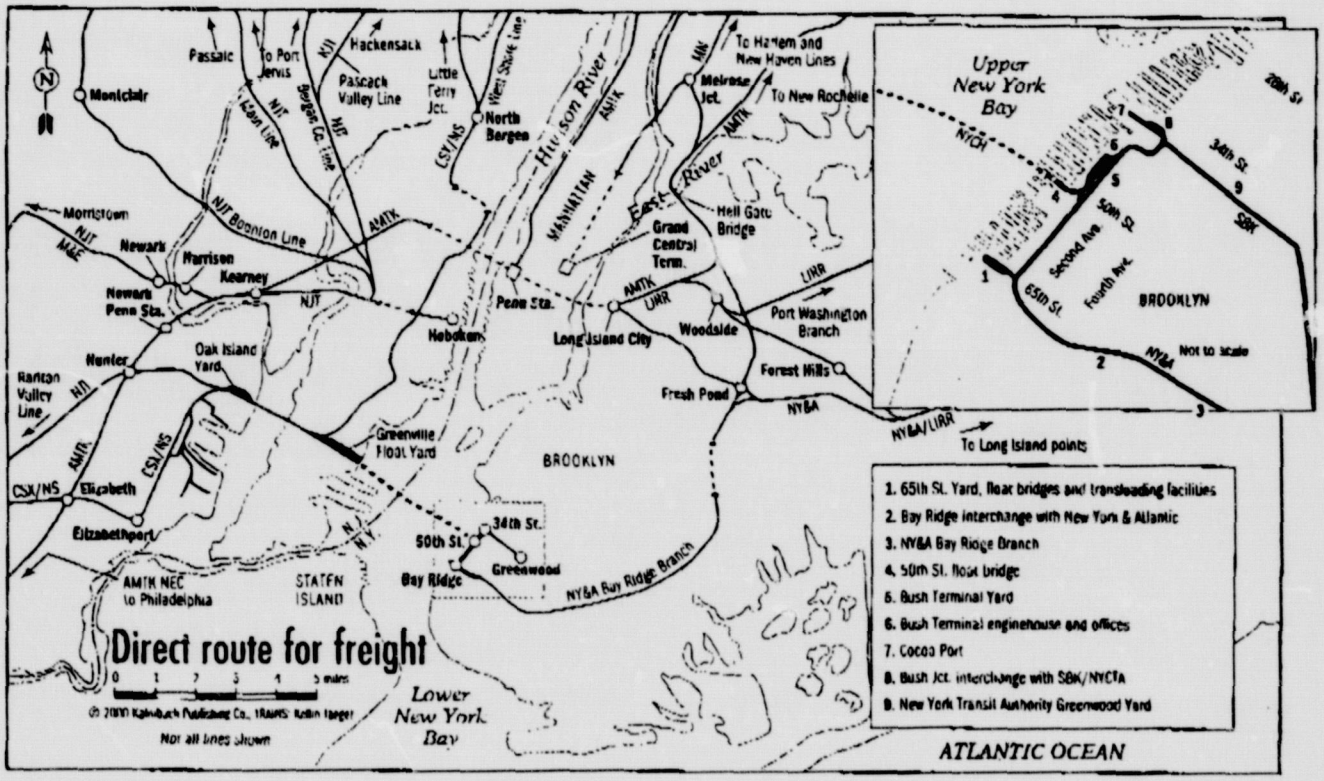
Some 650,000 freight cars crossed the bay in 1965, and it seemed that boom times would last forever, but a confluence of circumstances would alter that perception dramatically. With visions of white-collar sugar plums dancing in their heads, the city fathers allowed New York's industrial base to slip 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 cargo 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.

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

Charlie McClelland
Senior Engineer

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 1 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



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

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

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 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.

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

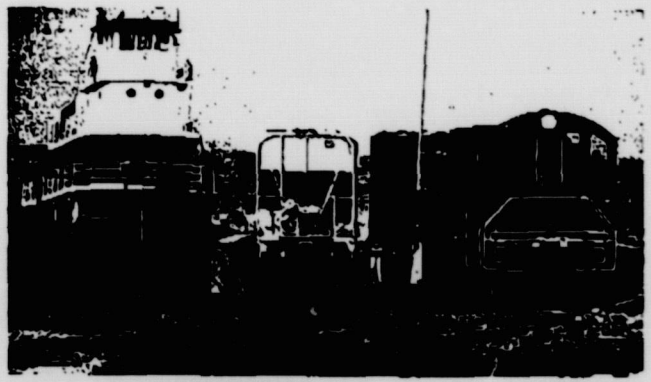
Rick Abramson
Operations Manager

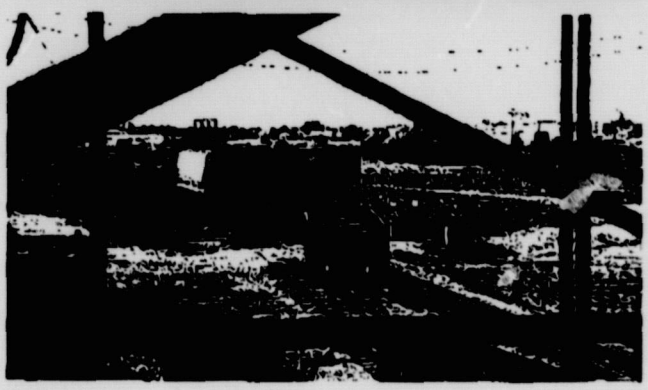
A few sparks fly when another guest claims that Cross Harbor is applying 19th-century solutions to 21st-century problems. Bentley responds emphatically, "In Europe and elsewhere, a waterway is seen as an asset. Here it's an obstacle." Touché. He also reiterates that the trans-bay routing is both cost-effective 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.

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





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*

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 I." Indeed, short lines are 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 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. ■

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.

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July 14, 2000

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX and Norfolk Southern-Control and
Operating Leases-Conrail (~~General~~ Oversight)
Comments of Reading Blue Mountain & Northern Railroad Company (RBMN-2)

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Comments of Reading Blue Mountain & Northern Railroad Company (RBMN-2), along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 7.0. Also enclosed are the original and 25 sets of the "highly confidential" Appendices to Mr. Michel's verified statement.

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

Very truly yours,

Eric M. Hocky

Enclosures
cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
All parties of record in Sub-No. 91 (without the Appendices)

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RBMN-2

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

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

(General Oversight)

COMMENTS OF READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

Reading Blue Mountain & Northern Railroad Company ("RBMN") is filing these Comments to explain how the division of Conrail has impacted its operations and customers, and to request that the Board take the actions necessary to enforce the conditions originally imposed on NS, the applicant with which it connects, and to impose additional conditions to ameliorate the harms the CSX/NS/CR transaction has caused RBMN and its customers.[1]

Procedural Background

In a decision served July 23, 1998, the Board approved the acquisition and control of Conrail by CSX and NS, and the division of Conrail's assets by and between CSX and NS. *CSX/NS/CR Dec. No. 89.* The approval was made subject to a number of conditions which were accepted by the applicants when they consummated the transaction. One of the conditions was

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[1] "Conrail" or "CR" refers to Conrail, Inc. and Consolidated Rail Corporation and their wholly owned subsidiaries. "CSX" refers to CSX Corporation and CSX Transportation, Inc. and their wholly owned subsidiaries . "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR") and their wholly owned subsidiaries.

making the transaction subject to the Board's continuing oversight. The Board explained the purpose of this condition:

> We are establishing oversight for 5 years so that we may assess the progress of implementation of the CSX/NS/Conrail transaction and the workings of the various conditions we have imposed, and *we are retaining jurisdiction to impose additional conditions if, and to the extent, we determine that additional conditions are necessary* to address unforseen harms caused by the transaction. . . .
>
> Our oversight process will be broadly based. As part of that process, *we will monitor situations involving the relationship of shortline railroads to their Class I connections and to other Class I railroads*. This will include *oversight of the conditions we have imposed* to ensure that quality interline service and connections are in place to maintain the viability of certain shortline railroads (such as AA and W&LE); *to ensure that the transaction does not result in shortline railroads (such as RBMN) suffering from the expansion of any existing blocking provisions*; and to ensure that the single-line to joint-line and reciprocal switching protections of the NITL agreement are appropriately extended to shortline railroads.

CSX/NS/CR Dec. No. 89, at 160-161 (footnotes omitted, emphasis added).

This sub-docket was established by the Board to implement the oversight condition. *Sub-No. 91, Dec. No. 1* (served February 9, 2000). In instituting the proceeding the Board again noted that it "retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to address harms caused by the Conrail transaction." *Sub-No. 91, Dec. No. 1* at 2. Specifically, the Board noted that it would be looking at the workings of the specific conditions imposed and that it would examine the impacts involving the relationship of shortlines to their Class I connections. *Id.*

RBMN is filing these comments in accordance with the procedures established in *Sub-No. 91, Dec. No. 1*, to express its views (1) about how the changes in its relationship with its major Class I connection (previously Conrail and now NS) have taken away the benefits

RBMN was to receive from its purchase of the Lehigh Line, (2) about how the specific condition imposed by the Board for RBMN's benefit is not being adhered to, and (3) to request that the Board use the jurisdiction it retained to impose additional conditions.

These comments are based on and supported by the evidence contained in the Verified Statements of Wayne A. Michel ("Michel V.S.")[2] and Andrew M. Muller, Jr. ("Muller V.S.") attached hereto.

Commenting Party

RBMN is a class III railroad operating approximately 280 miles of owned rail lines in eight counties in northeastern Pennsylvania. A map showing its lines, and those of connecting carriers, is attached hereto as Exhibit A. RBMN's offices are located at 1 Railroad Avenue, Port Clinton, PA; telephone (610) 562-2100.

Position of Commenting Party

RBMN believes that the behavior and actions of NS since the transaction was approved by the Board have repudiated the bargain struck between Conrail and RBMN when RBMN purchased the Lehigh Line, and harmed both RBMN and its customers. Further, these actions have acted to expand the scope of the blocking provisions contained in the Lehigh Line Sale Agreement (and related agreements) in contravention of the condition imposed by the Board. To ameliorate these harms, RBMN is requesting that the Board impose the conditions described below.

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[2] RBMN is also filing under seal a separate package of highly confidential appendices to the Michel V.S.

Requested Action

RBMN requests that the Board impose the following conditions on the approval of the proposed transaction:

(1) that the Purchase and Sale Agreement dated August 19, 1996 (the "Purchase Agreement"), between Conrail and RBMN for the purchase of the Lehigh Division, and the related deed, be amended to remove the additional consideration provisions imposed on RBMN for traffic interlined with carriers other than Conrail or its successors under the Purchase and Sale Agreement;[3] and

(2) that the Trackage Rights Agreement dated August 19, 1996, between RBMN and Conrail covering incidental trackage rights at Packerton Junction, be amended to eliminate the restriction that limits usage to non-revenue traffic.

Comments and Discussion

RBMN purchased the 90 mile middle portion of the Lehigh Line from Conrail in August, 1996, as a member of the new Conrail EXPRESS program. Concurrently, RBMN acquired incidental trackage rights from Conrail, and trackage rights over an intermediate carrier (C&S Railroad), that together served to connect the new Lehigh Line operations with its existing Reading Cluster operations. Significantly, as part of the transaction, Conrail imposed two types of "blocking provisions": "additional consideration" provisions that essentially required RBMN

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[3] RBMN understands that NS is now the sole beneficiary of Conrail's interests in the Purchase Agreement, although it has never seen any documentation providing for the assignment of the Purchase Agreement to NS.

to pay Conrail a fee for each car moving to, from, or over the Lehigh Line and interchanged to a carrier other than Conrail, and a "non-revenue" limitation restricting the use of the incidental trackage rights to "non-revenue traffic." RBMN agreed to purchase this low density line segment subject to these blocking provisions because of the consideration it received in return. This consideration, as described below, went well beyond any claimed reduction in the purchase price. *Cf. CSX/NS/CR Dec. No. 89*, at 77.

1. NS actions have repudiated the Conrail promises that caused RBMN to accept the blocking provisions in the Lehigh Sale agreements.

While RBMN was satisfied with the deal it negotiated with Conrail, as a result of the Board authorized division of Conrail, it is now left with a connecting carrier that has eliminated, refused or is unable to provide, many of the benefits RBMN was supposed to receive. As a result the Board should relieve RBMN of the restrictions to which it agreed in exchange for those benefits.

In general, blocking provisions were included by Conrail in order that it could be assured of continuing to receive a revenue stream from the traffic the line being sold would generate. This in turn allowed Conrail to sell lines at lower prices. However, even with blocking provisions, the middle of the Lehigh Line, because of the low density of on-line traffic and the high amount of deferred maintenance, could have carried a zero purchase price. Michel V.S. at 9. However, RBMN instead paid a substantial sum for the line. *Id.* It did so only because of the other benefits it would receive. *Id.* at 9-10; Muller V.S. at 1-3. These benefits included:

- A revenue stream from CP's overhead trackage rights of approximately $800,000 per year.

- A promise to sell RBMN the higher density northern and southern segments of the Lehigh Line.[4]
- Conrail's agreement to review allowances at least once a year, and promises to grant waivers as needed.
- Financial benefits from being a Conrail EXPRESS partner, including the ability to acquire equipment at reduced prices and to have welded rail and ballast trains moved at reduced rates, and the availability of training.

It was this package coupled with the experience of over ten years of working with Conrail that caused RBMN to pay what it did for the line and accept the blocking provisions as well.

Now NS has either repudiated or taken actions that have altered each one of these benefits. NS in its attempt to gain the direct access to New England that it did not get through the division of Conrail's assets, made a deal with CP to invest NS funds in the rehabilitation of CP's Sunbury line between Harrisburg and Scranton (Taylor Yard). As part of the deal, NS also granted CP trackage rights to allow CP to handle overhead traffic to Philadelphia through Harrisburg and Reading. Before the CSX/NS/CR transaction, CP's traffic was restricted to moving over the Lehigh Line. The result has been the loss of almost $500,000 a year in trackage rights revenue to RBMN's bottom line. In the past, Conrail had been adamant that CP (and the Delaware and Hudson ("D&H") before it was acquired by CP) not operate through Harrisburg to Philadelphia and was insistent that the Final System Plan operating rights that CP had inherited from D&H be strictly limited to their terms. Given the well-known stormy relationship between Conrail and CP, this was not likely to change. Further, Conrail would have had no incentive to

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[4] Purchase of the southern segment would have given RBMN control of the line covered by the incidental trackage rights, and the "non-revenue" restriction would have disappeared.

contribute its funds to fix up a CP line to New England since it already had several ways to get there. Thus, the diversion of revenue that RBMN has suffered was a direct result of the allocation of routes that applicants established between themselves and the NS/CP settlement that followed.

NS, although it has never formally canceled the Conrail EXPRESS program or the contracts related thereto, is not providing any of the benefits of the program. Michel V.S. at 10-11. NS has shown no interest in selling the remaining portions of the Lehigh Line to RBMN. *Id.* As Mr. Michel describes: waivers have been few and far between, and when granted are for such short periods of time that long-term contracts and long-range planning are impossible. They seem to be given only when NS is unable to handle the move.[5] *Id.* at 20-26.

Finally, although the relationship with NS personnel has been professional and courteous, the partnership relationship is no longer evident. NS has taken a number of unilateral actions in raising prices without telling RBMN that have caused problems for RBMN with its customers. RBMN has been told that NS cannot worry about 400 cars that RBMN might lose when NS is handling 100,000 cars of the same commodity. *Id.* at 27 n.33.

NS also unilaterally decided, before the Split Date, before it had handled a single car of anthracite coal, to change the long-standing policy that cars were provided for that service free of car-hire. In order to avoid the impact the change would have on its customers, RBMN (on the advice of NS) offered to purchase cars from NS. After twice being told that cars were available, and then twice being told that NS was unable to sell the cars, and after convincing NS to delay the imposition of car hire for two months, RBMN was finally able to acquire almost 300

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[5]Two customers were able to convince NS to grant waivers of longer duration. Again these were situations where NS was unable to handle the traffic. Given NS's current position not to grant or extend waivers (Michel V.S. at 22), RBMN is unsure what will happen when these waivers expire.

cars (at a cost of almost $3,000,000) from NS (and to a lesser extent CSX) for the anthracite service. *Id.* at 30-31. The transaction took approximately seven months to close from the time RBMN first offered to buy the cars. While it is true that RBMN could not have afforded the cars unless it was able to reach a car hire agreement with NS, RBMN would hardly call this a model of a cooperative effort. *Compare* NS's description at NS-1 at 16. After all, RBMN would not have had to invest in these cars if NS had not changed the car hire policy in the first place.

Despite all these actions that served to diminish or take away the consideration that RBMN bargained for, NS still insists that it should be entitled to the benefits of the blocking provisions. This should not be the case. Since NS has taken away the benefits that acted as the *quid pro quo* for the blocking provisions, the Board should restore the balance by requiring NS to give up the blocking provisions.

Of course, more is involved than providing equity between two carriers. Blocking provisions, when strictly confined to the facts at the time of their creation, have been approved by the Board. However, they are essentially anticompetitive. Removal of such provisions that are now being extended to new, unanticipated factual situations, would be procompetitive and benefit the public.

2. The impact of the blocking provisions of the Lehigh Line sale agreements have been expanded as a result of the CSX/NS/CR transaction.

In approving the Conrail division, the Board, at the request of RBMN and others, specifically ordered NS and CSX not to expand the impact of "blocking provisions":

> 39. 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.

CSX/NS/CR Dec. No. 89, at 178.[6] In its First General Oversight Report (NS-1), NS acknowledges that the effect of blocking provisions, including specifically those related to RBMN, are not to be expanded as a result of the CSX/NS/CR transaction, and claims that it is complying with the Board's order. NS-1 at 40-41. However, RBMN believes that, because of the change in the route structures that resulted from the CSX/NS/CR transaction, the effects of the "Fixed Divisions Agreement" ("FDA") entered into between NS and CP, and NS's restrictive waiver policy, the effect of the blocking provisions, in particular the additional consideration penalties, in the Lehigh Line sale agreements have been greatly expanded.

As Mr. Michel explains, Conrail developed the additional consideration language to protect against diversion of traffic in situations where Conrail was able to participate in a route that was at least as efficient as the competing route. Michel V.S. at 11-15. Conrail attempted to do this by setting the additional consideration to approximate Conrail's net contribution from the traffic that was moving over the line at the time of the sale. *Id.* at 13. See *also CSX/NS/CR (lead docket)*, CSX-NS-177 (Hartman V.S.) at 191 ("The additional consideration amount ... is designed to allow such interchange [with another carrier] where the other carrier can offer a more efficient route. The amount of the additional consideration is set to approximate Conrail's net earnings from handling the traffic, considering its own costs."). What Conrail recognized was that if the additional consideration amounts exceeded Conrail's profit, then traffic would be

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[6] RBMN originally was worried specifically that the blocking provisions would have a broader scope because of the new locations NS served. The Board acknowledged that this concern was reasonable. *CSX/NS/CR Dec. No. 89*, at 77. However, both the discussion and the ordering paragraph go further and prohibit any expansion of the effect of blocking provisions. *See CSX/NS/CR Dec. No. 89*, at 77, 178.

forced to Conrail even where more efficient routes were available, and in that situation, the provisions might not be legally defensible. Michel V.S. at 13.[7]

In this instance, Conrail designed and calculated the additional consideration amounts by looking at its contribution from traffic that it was handling to and from the line. It did not look at the revenues or contribution from traffic off of RBMN's Reading Cluster, and the amounts calculated do not reflect that traffic. Michel V.S. at 16. Diversions of Reading Cluster traffic were covered by the restricted trackage rights at Packerton Junction. *Id.* at 15 n.13, 18.

As a result of the division of Conrail, there are now a number of moves that NS can participate in where its net contribution is substantially less than the net contribution that Conrail was earning for the same type of traffic. For example, Conrail did not move any traffic from CP at Harrisburg to RBMN. Now, NS has entered into the FDA with CP under which NS has agreed to handle the traffic between CP in Harrisburg and RBMN at either Reading or Lehighton, for the gross revenue of approximately $140 (NS's net contribution is obviously even less given that the traffic must be interchanged with both CP and RBMN, and handled in train service). If there were no blocking provisions, all of the traffic covered by the FDA could alternatively move directly between RBMN and CP at Taylor Yard where RBMN and CP have a direct interchange. However, NS insists it is entitled to the full additional consideration. *Id.* at 17. Given the additional consideration amounts (all of which are many times NS's *gross revenues*, let alone its net contribution), the traffic is unable to move over the more efficient route. The direct route between RBMN and CP is always shorter and avoids operating over NS's main line and through Harrisburg (and sometimes Allentown) Yard (all of which have been

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[7] For the purposes of these Comments, RBMN will assume that the additional consideration provisions were valid when imposed by Conrail as a condition of the sale of the Lehigh Line.

heavily congested), and avoids an additional interchange. *Id.* at 16. In at least one situation, the traffic is moving an additional 300 miles so that NS can earn $140 gross revenue per car. *Id.* at 16. Forcing traffic to use such an inefficient route is clearly not in the public interest, and is contrary to Conrail's intent in calculating the penalty amounts.

Similarly, on all traffic where the Conrail portion of the move would now be split between NS and CSX (for example the fly ash traffic that moved from New England over Conrail to Reading), NS and CSX will be sharing what was the Conrail revenue and net contribution. *Id.* at 19. By applying the full additional consideration amount, NS would be receiving substantially more than its actual net contribution. Again this has the effect of precluding RBMN from moving traffic over more efficient routes.

The effect of the blocking provisions (both the additional consideration and the trackage rights restrictions) is further expanded by the difference in the waiver policies between Conrail and NS. Waivers can obviously ameliorate the anti-competitive effects of blocking provisions. As explained by Mr. Michel, Conrail's policy on waivers was that waivers would be granted if there were clearly a more efficient routing available so that neither its shortline partner nor the customer would be harmed. Michel V.S. at 18-19.

By contrast, NS's First General Oversight Report notes that NS "waived (on a temporary basis) some so-called 'paper barriers' when they might otherwise have lost some business." NS-1 at 16. However, the report does not tell the whole story. RBMN has not discovered any formal process at NS for considering or acting on waiver requests. *Id.* at 20-21. And when NS does act, NS has generally been willing only to grant RBMN waivers that have been very short in duration, and usually only where NS's operating problems prevented it from being able to handle the traffic (*i.e.*, where the traffic to be lost by the shortline was the result of

an NS operating problem). *Id.* When RBMN went looking for longer waivers, it was essentially told that there would be no more waivers or extensions of existing waivers. *Id.*

Given these changes it is clear that NS's enforcement of the blocking provisions without regard to what the alternative route would be or what NS's net contribution from the traffic would be, clearly expands the restrictive impact of the provisions in contravention of the Board's order. Further, NS has shown no inclination to ameliorate this expansion through the reasonable use of waivers.

3. The relief reasonably addresses the harms caused by the CSX/NS/CR transaction, and will not unduly burden NS.

In recent proceedings before the Board, numerous parties have criticized blocking provisions (also known as paper and steel barriers) that restrict the ability of shortlines to compete long after the selling Class I has received the full benefit of the restriction. *See generally* various comments filed in Ex Parte Nos. 575 and 582. Even if the Board does not modify its guidelines to deal with this issue, the Board, while generally leaving shortlines to their privately negotiated deals, has also said that "where conditions are warranted to protect the interests of particular shortlines, or shortlines in general, from the adverse impacts of this transaction, we will impose them as appropriate." *CSX/NS/CR Dec. No. 89*, at 76. In determining whether to impose a condition the Board will look at the following criteria:

> Conditions will generally not be imposed unless the merger produces effects harmful to the public interest that a condition will ameliorate or eliminate. The principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier of the ability to provide essential services. Essential services are those for which there is no adequate transportation alternative.
>
> A condition must be operationally feasible, and produce net public benefits. We are disinclined to impose conditions that would broadly restructure the competitive balance among railroads

> with unpredictable effects. See, e.g., SF/SP, 2 I.C.C.2d at 827, 3 I.C.C.2d at 928; and UP/MKT, 4 I.C.C.2d at 437. A condition must address an effect of the transaction, and will generally not be imposed "to ameliorate longstanding problems which were not created by the merger." Finally, a condition should also be tailored to remedy adverse effects of a transaction, and should not be designed simply to put its proponent in a better position than it occupied before the consolidation.

CSX/NS/CR Dec. No. 89, at 78 (footnotes omitted). Further in this oversight proceeding, the Board has retained jurisdiction both to impose additional conditions, and to re-examine conditions already imposed to make sure they are being satisfied. In the case of RBMN the relief it is requesting is justified on both grounds.

RBMN has demonstrated that it has been harmed by the transaction, and how NS's actions and the changes from the transaction have taken away the benefits that it was to receive when it purchased the Lehigh Line. The only way to restore the balance to the transaction is to give RBMN access to CP. For the Lehigh Line traffic this requires removal of the additional consideration provisions. For Reading Cluster traffic, the trackage rights restrictions must be removed.[8]

Without this relief the scope of the restrictions is greatly expanded. Because on many routes NS has shorter hauls (and accordingly lower revenues and net contribution), application of the current restrictions means that the restrictions are no longer acting to preserve traffic from equally efficient routes. Rather, they are now acting as penalties to preserve traffic for NS even when the NS route is clearly much less efficient.

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[8] RBMN believes that Reading Cluster traffic, even if it moves over the Lehigh Line is not subject to the additional consideration. The additional consideration amounts do not reflect the Reading Cluster traffic or Conrail's contributions from the traffic. To hold otherwise would further expand the scope of the restriction beyond what was intended.

Lifting the restrictions will not burden NS. RBMN already has a direct connection with CP, and no NS facilities are needed. Nor will the unrestricted use of 500 to 750 feet of little used track unduly burden NS.[9]

Further, lifting the restrictions on RBMN in no way restricts or prevents NS from putting together a competitive package of rates and service to compete for the traffic. There is certainly much traffic that RBMN would like to handle with NS. Michel V.S. at 23. Lifting the restrictions only means that when NS cannot put together such a package, RBMN will be free to put together the more efficient route for the customer.

Conclusion

For the foregoing reasons, RBMN requests that the Board enter the relief described herein.

Respectfully submitted,

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Dated: July 13, 2000

Attorneys for Reading Blue Mountain & Northern Railroad Company

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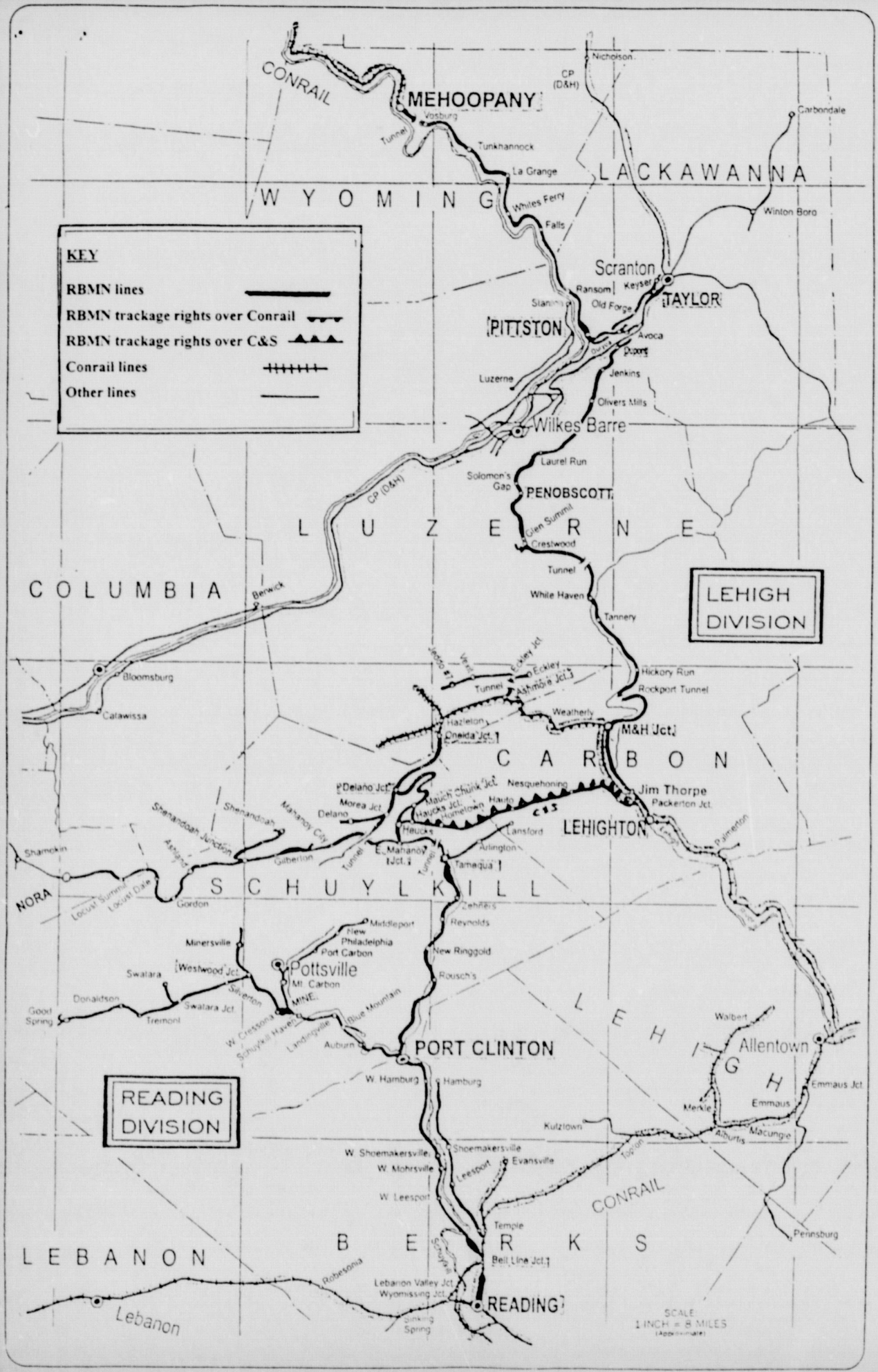
[9] The Board granted similar relief to Lavonia, Avon & Lakeville Railroad in this proceeding. *CSX/NS/CR Dec. No. 89*, at 103.

Exhibit A

Map


KEY
RBMN lines
RBMN trackage rights over Conrail
RBMN trackage rights over C&S
Conrail lines
Other lines
CONRAIL
MEHOOPANY
Vosburg
Tunnel
Tunkhannock
La Grange
Whites Ferry
Falls
Nicholson
CP (D&H)
Carbondale
LACKAWANNA
Winton Boro
WYOMING
Scranton
Ransom
Keyser
TAYLOR
Old Forge
Avoca
PITTSTON
Duryea
Luzerne
Jenkins
Olivers Mills
Wilkes Barre
Laurel Run
Solomon's Gap
PENOBSCOTT
CP (D&H)
Glen Summit
Crestwood
Tunnel
White Haven
Tannery
LUZERNE
COLUMBIA
Berwick
LEHIGH DIVISION
Bloomsburg
Catawissa
Eckley Jct.
Eckley
Ashmble Jct.
Hickory Run
Rockport Tunnel
Weatherly
Hazleton
Oneida Jct.
M&H Jct.
CARBON
Delano Jct.
Mauch Chunk Jct.
Nesquehoning
Jim Thorpe
Packerton Jct.
Morea Jct.
Hauto
Delano
Shenandoah
Shenandoah Junction
Mahanoy City
Hauto
Hazleton
C&S
LEHIGHTON
Lansford
Shamokin
E. Mahanoy Jct.
Arlington
Tamaqua
Gilberton
Ashland
Tunnel
NORA
SCHUYLKILL
Locust Summit
Locust Gap
Gordon
Zehners
Reynolds
Middleport
New Philadelphia
Port Carbon
Minersville
New Ringgold
Pottsville
Mt. Carbon
Westwood Jct.
Swatara
Rausch's
Donaldson
Swatara Jct.
Skelton
MINE
Good Spring
Tremont
W. Cressona
Schuylkill Haven
Landingville
Blue Mountain
Auburn
PORT CLINTON
LEHIGH
Walbert
Allentown
W. Hamburg
Hamburg
Emmaus Jct.
Emmaus
Merkle
Kutztown
Alburtis
Macungie
READING DIVISION
W. Shoemakersville
Shoemakersville
W. Mohrsville
Evansville
Leesport
W. Leesport
CONRAIL
Temple
Pennsburg
BERKS
LEBANON
Robesonia
Bell Line Jct.
Lebanon Valley Jct.
Wyomissing Jct.
READING
Lebanon
Sinking Spring
SCALE
1 INCH = 8 MILES
(Approximate)

CERTIFICATE OF SERVICE

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

Dennis G. Lyons, Esq.
Arnold & Porter
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Washington, DC 20004-1202

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and on each other party of record in Sub-No. 91.

Dated: July 13, 2000

ERIC M. HOCKY

VERIFIED STATEMENT

OF

WAYNE A. MICHEL

INTRODUCTION

My name is Wayne Michel. I am testifying on behalf of the Reading, Blue Mountain & Northern Railroad Company.

Over my twenty-two year career in the railroad industry, I have served as a senior policy attorney on rail finance matters at the Interstate Commerce Commission and as a senior marketing official at Conrail. In this later capacity I was responsible for designing and implementing the line sale and shortline programs under which the RBMN purchased the Lehigh Line.

Since the June 1, 1999 "Split Date," I have been a self-employed consultant to the railroad industry specializing on shortline issues. Most recently, I have acted as the RBMN's point person on strategic and commercial issues involving NS and CP.[1] In May, I became Executive Vice President of RBMN, although I continue to act as a consultant working with other shortlines and in other industries.

SUMMARY OF STATEMENT

RBMN participated in the lead docket in this proceeding seeking relief from the additional consideration provisions in the Lehigh sale agreement and enhanced access to

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[1] For the purposes of this testimony, references to "CP" include DHRC, the subsidiary railroad to which RBMN directly connects.

other carriers based on anticipated harms. The Board largely denied its requests. The purpose of this Statement is to provide the Board with the information necessary to now reach a different decision based on the changes that have occurred since the Split Date and the NS actions as RBMN's primary connecting Class I carrier.

My background as discussed in detail below demonstrates that I am familiar with the Board's merger guidelines and with the interests they were designed to protect. Further, because of my role at Conrail, I have detailed knowledge of the Conrail line sale and shortline programs under which RBMN acquired the Lehigh Line, and the specifics of the bargain entered into between Conrail and RBMN. This Statement will demonstrate how this transaction and the subsequent actions taken by NS, including the diversion of substantial trackage rights fees away from the Lehigh Line and its handling of waiver requests, have substantially altered the economics of the bargain struck by the parties to the Lehigh Sale.

Based on these changes, I believe that the STB should exercise its power to ameliorate the adverse consequences that the NS acquisition of Conrail's interests has caused RBMN, its customers and its communities. RBMN is asking the STB to eliminate those conditions contained in the Lehigh Sale Agreement that prohibit RBMN from having direct and open access to a second line haul carrier, namely CP. The relief sought is limited in scope, will correct the problems identified, and will enhance competition and the public interest while causing minimal, if any, harm to NS.

PROFESSIONAL BACKGROUND

After graduating in 1975 from the George Washington University, I attended law school at the National Law Center of the same University. Upon graduation in 1978, I began my legal career as an attorney-advisor in the former Finance Section of the Office of Proceedings.

Shortly after joining the ICC, I was assigned as the attorney assisting an Administrative Law Judge in hearings involving the proposed purchase of the former Rock Island's Tucumcari Line by the St. Louis and Southwestern subsidiary of the former Southern Pacific Railroad. [2] When the entire Commission decided to rule on the merits of the application, the ALJ withdrew from the case, and I prepared a draft of the decision that was eventually adopted by the entire Commission. As a result of that experience I was asked to work on drafting the ICC's Rail Merger Policy Statement and to testify in support of it at public hearings before the Commission.[3]

With the passage of the Staggers Rail Act of 1980, I was assigned to draft or oversee the drafting of many of the regulations governing rail finance matters including abandonments and line sales. Over the next few years I was assigned increasingly senior management roles and ended my career as the Senior Policy Attorney in the then-Rail Section.

When the Reagan Administration decided to sell Conrail, then owned by the Federal Government, to NS, I was put in charge of an inter-disciplinary group of Commission staff people assigned to the House Subcommittee reviewing the sale proposal. Our team prepared two reports which found that the proposed sale would be anti-competitive. The sale was not made to NS, and Conrail was ultimately privatized.

Subsequent to completing my work I was offered a non-legal position by Conrail to manage its abandonment and line sale program under the provisions of the Northeast Rail Service Act of 1981 (NERSA). Under NERSA Conrail was given broad authority to rationalize its system through abandonments and sales of low density lines. I accepted the position and began my service with Conrail in December of 1985.

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[2] *St. Louis Southwestern Railway Company – Purchase (Portion) – William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, Debtor,* 363 ICC323 (1980).
[3] *Railroad Consolidation Procedures Expedited Processing,* ICC Ex Parte No. 282 (Sub-no. 3a), 3636 ICC 767 (1980).

Over the next decade I received various promotions resulting in added responsibilities. While retaining responsibility for the rationalization program, I was given responsibility for real estate development and major real estate sales and purchases. I was then assigned the responsibility of developing the rail industry's first business group dedicated to the movement of solid waste materials by rail. In 1992, I was asked to take over the Industrial and Market Development program which was responsible for locating facilities on Conrail.

In April of 1995, I was given a new assignment. I was asked to reinvent the way Conrail did business with its shortline partners. I was asked to find legal, commercial and operational means by which shortlines would act more like franchise partners. This effort received a high corporate priority because Conrail was also about to embark on a major new rationalization program that would involve selling branch lines that served significant markets. After months of internal and external discussions, we developed an entirely new way for Conrail to work with shortlines. (This program is discussed in detail below.) RBMN's purchase of the Lehigh Line in August, 1996, was part of the new program.

Shortly thereafter, beginning in the Fall of 1996 with the announcement of the proposed "Strategic Merger of Equals" between CSXT and Conrail, the shortline program was put into hiatus. Ultimately Conrail was partitioned, and I was released from Conrail on Split Date. Shortly thereafter I began to offer my services as a consultant to shortlines. RBMN hired me on a limited basis later that month. Over the next few months I took on additional responsibilities for RBMN and ultimately became its point person on all strategic and commercial matters involving Class I railroads. I became Executive Vice President of RBMN in May of this year.

DEVELOPMENT OF THE NEW CONRAIL LINE SALE AND SHORTLINE PROGRAM

In order to understand the issues involved in this pleading, the STB needs to be aware of the forces at work in 1995 when Conrail began its new line sale and shortline programs. Traditionally at Class I railroads, shortlines are accepted for the traffic they originate or terminate, but they are not brought into the fold as strategic partners. This was true at Conrail.

However in 1995 Conrail was at a crossroads and the status quo was no longer an option. Internal analysis had shown us that Conrail had inadequate capital resources to maintain our secondary mainline and branch line systems. Our limited capital dollars were required to maintain our so-called "Big X" track structure as well as to invest in equipment and facilities especially in the important Intermodal and Automotive sectors. Thus, Conrail knew it needed to embark on a new round of line sales.

Having already sold many marginal properties and low density lines under prior rationalization programs, Conrail now faced the decision whether to sell viable, major terminating markets critical to the success of our general merchandise strategy. These clusters were profitable, and they offered connection to other competing Class I railroads. Thus these sales could result in substantial traffic diversion. Conrail management assigned me the task of developing a method of selling the lines while retaining the revenue from the local traffic the lines generated.

At the same time Conrail became increasingly aware of the value of shortlines. We had concluded a customer survey that indicated that customers on lines sold by Conrail were far more satisfied with the shortline service than with the prior Conrail service. Shortlines were perceived as responsive, customer-oriented, entrepreneurs. We had also studied our general merchandise traffic trends. We discovered that while Conrail

originating and terminating traffic was flat, shortline traffic was growing by close to ten per cent annually.

Conrail concluded that we needed to get more properties in the hands of shortlines, but we needed those shortlines to look more like Conrail franchises. Shortlines had to be easy to do business with for both Conrail and our customers yet they also needed to have the operational freedom to offer customer-focused service.

After months of external and internal discussions, and assisted by a cross-functional team, a new program was developed to address the needs to sell lines as well as grow traffic. A brand new line sale agreement was written that incorporated the commercial relationship into the document. For the first time line sales were seen as the beginning of a "partnership," not the mere conveyance of rail property. This necessitated a new shortline program, which had the following elements:

-Account Executives. We created three regional positions, located at headquarters, whose responsibility was to be the liaison between shortlines and Conrail. These spots were filled with experienced, high-ranking veterans of Conrail's marketing groups who were empowered to assist shortlines in dealing with all Conrail departments;

-"Feeder-line" marketing relationship. To simplify and speed up the interline rate-making process, shortlines agreed to receive a fixed revenue factor for an extended period of time and the number of factors was limited to basically three (high, medium and low). In this manner Conrail could quickly quote through prices to customers without seeking the shortline concurrence. In addition, Conrail marketing people would know, as would customers, that prices would remain stable. This helped encourage industrial development on shortline sites, which was beneficial to Conrail since it opened more properties, allowed tailor-made service and avoided serving customers directly from high-density main lines;

-CONRAIL EXPRESS program A marketing initiative whereby elite shortlines would be invited to share the Conrail brand name in exchange for a series of benefits including the ability to get discounts from Conrail for materials and usage of Conrail power;

-Major Market Line Sales. Viable rail markets would be sold at a discount to favored shortlines in the region in a non-bid process with restrictions on diversion and requirements to operate as a Feeder line and EXPRESS partner; and

-Communication Program. In addition to the use of account executives, we began a quarterly multi-page newsletter to shortlines, annual meetings with the shortlines with attendance by Conrail senior officials, and regular meetings with the shortlines at the Operating Division level hosted by the General Manager.

These programs were rolled out between October of 1995 and April of 1996 and they had support at the highest level of the company.

I have provided detail about this program because it explains how and why Conrail came to sell the Lehigh Line to RBMN. Moreover, when NS business practices are contrasted with Conrail's, the Board will better understand how approval of this merger without the conditions sought by RBMN eradicated the bargain between RBMN and Conrail that was the crux of the sale.

THE LEHIGH SALE

From the moment I was given the shortline and line sale responsibilities it became clear to me that RBMN had to be a part of the program. RBMN had purchased the Reading Cluster from Conrail in 1990. RBMN had done a tremendous job growing business for Conrail's benefit, and it had an excellent reputation for service. RBMN's success in

getting state assistance for rail projects was well known at Conrail since we also dealt with the Commonwealth of Pennsylvania. In addition, it was known that RBMN's president and owner Andy Muller was financially secure, entrepreneurial in nature, and ready, willing and able to pursue line sales quickly. I was determined to have RBMN become a charter member of the EXPRESS program and identified it as the purchaser of choice for the Lehigh Line.

A quick glance at a map reveals that the Lehigh Line was a north-south corridor in eastern Pennsylvania that connected the Conrail's Southern Tier route with Allentown, and from there the New York and Philadelphia metropolitan areas. Conrail decided to divide the Lehigh Line into three segments. The northern segment ran from the Southern Tier south to a huge manufacturing facility at Mehoopany, PA.[4] The southern segment ran from Allentown north to Lehighton and included the important Hazleton cluster. The middle segment consisted of approximately 90 route miles of track in relatively poor condition with relatively little local business. In 1995 less than 3200 cars originated or terminated on this segment – an extremely low density of less than 35 cars per mile!

In deciding to sell the Lehigh Line, Conrail moved first on the Lehigh Middle segment. Conrail needed to sell the line because of its poor physical condition, which was causing it serious problems. CP had trackage rights over the line and was complaining about its physical condition and suggesting that Conrail was violating its obligations under CP's operating rights agreement by failing to maintain the line. Similarly, a customer[5] was complaining that Conrail failed to maintain part of the line as a clearance route for high and wide shipments despite obligations to do so when Conrail accepted state funds for its intermodal clearance project. In addition, the line served the Scranton area where two shortlines relied on Conrail for deliveries.

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[4]The facility is owned by Customer No. 1 identified in the highly confidential Appendix A to this statement. The identities of all customers referred to throughout this statement will similarly be identified only in Appendix A.

[5]Appendix A, Customer No. 2.

For all of these reasons Conrail decided to sell the middle portion of the line first. Because of its location near RBMN's existing lines, RBMN's track record of growing business, RBMN's proven ability to obtain state aid for repairs, and RBMN's ability to close quickly, Conrail choose RBMN as the buyer.

When Conrail decided to sell the line to RBMN, I was instructed to find a means to avoid both diversion of local traffic and diversion of revenues. Diversion of traffic was possible because at Scranton a direct connection with CP existed. In fact, that is where CP enters the line to use the trackage rights. Diversion of revenue was possible because a standard shortline allowance (approximately 18% of Conrail's line-haul revenue) would seem inadequate given the length of hauls, low traffic density, and track condition. Nonetheless, Conrail management wanted the line sold without diversion and without paying higher allowances to RBMN. Due to these restrictions, Conrail's internal analysis determined that a sale price of $0 was justified.

However, Conrail was able to sell the Lehigh Line to RBMN for a substantial sum of cash and other valuable consideration! RBMN agreed to that deal because of a few critical understandings between the parties. First, RBMN expected to enjoy the trackage rights revenue from CP's operations over the line. Both parties were aware that the biggest contributor to the bottom line would be the CP trackage rights revenue. Based on actual usage, it was estimated that these rights would bring in excess of $800,000 annually. Given the lack of incremental costs associated with this business, most of the money went to the bottom line. Second, RBMN was told that Conrail would soon sell it the more lucrative northern and southern segments of the Lehigh Line.[6] Third, RBMN was told that Conrail was committed to its financial success and that Conrail would therefore adjust the allowances upward and waive diversion restrictions as needed.

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[6] At the time of the announcement of the CR-CSX Merger, I had received approval from the Senior Vice President of the CORE Service Group to proceed with sale of the Lehigh North and Lehigh South segments to RBMN. Under the Conrail sale process, the relevant service group made the decision on what secondary main lines to sell or retain. Such approval was tantamount to receiving corporate approval to sell the lines.

Fourth, RBMN was able to obtain trackage rights over an intermediate carrier to connect its existing Reading Cluster with the new line.[7] The connection allowed for the sharing of equipment between the lines, and with Conrail's permission passenger excursions. Conrail also indicated that it would permit RBMN to use the incidental trackage rights for revenue moves with the consent of the relevant service groups.

In the lead docket, Applicants noted that the sale constituted a negotiated bargain between Conrail and RBMN.[8] RBMN does not disagree. However, the critical question in this proceeding is, what was the nature of the bargain? From Conrail's' perspective the bargain was that it transferred a line in need of substantial capital dollars, and it received a substantial sum of cash and other valuable consideration, assurances that local traffic would continue to flow to Conrail after the sale, and the stability of reasonable shortline allowances for a long period of time. RBMN, on the other hand, was to acquire the line, receive substantial CP trackage rights revenue, and have the opportunity to purchase the more valuable northern and southern Lehigh segments for reasonable prices. Conrail also represented during the negotiations that when circumstances dictated it would increase allowance levels and waive the diversion restrictions. (The waiver process is discussed at length below.) And, of course, RBMN would be entitled to the very real financial benefits that accrued by being an EXPRESS partner.[9]

Since the merger was consummated, NS has indicated no interest in selling the remainder of the Lehigh Line. NS has repudiated the EXPRESS program and affords none of the

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[7] The connection necessitates the use of approximately 500-750 feet of Conrail track. In connection with the sale, Conrail granted RBMN incidental trackage rights to use the tracks, but limited their use to non-revenue traffic without their consent.

[8] CSX/NS/CR (lead docket), CSX/NS-176 at 385.

[9] Although Conrail EXPRESS was in existence for only a brief period of time, RBMN made great use of the program. RBMN was able to purchase locomotives, freight cars and maintenance-of-way equipment at reduced prices without going through a bid process. In addition, Conrail moved non-revenue equipment, welded rail trains and ballast trains at rates substantially below tariff prices. Conrail staff also trained RBMN on how to manage its expanded real estate portfolio and arranged to inspect ties purchased from Koppers in Muncie, PA.

benefits of that program. And NS has been extremely difficult to deal with on the question of waiving the diversion restrictions and opening the trackage rights. Finally, NS to accomplish its desire of reaching New England, entered into an agreement with CP to spend millions of NS dollars to improve a line of CP's between Scranton and Harrisburg which has resulted in the diversion of a large percentage of the CP trackage rights traffic off of the Lehigh Line, thus depriving RBMN of its major source of bottom line income from that line.

These facts lead me to conclude that Conrail's promises to RBMN with respect to the Lehigh Sale have been ignored by NS, and that RBMN has not received the benefit of its bargain. Applicants expressed concern that the effect of RBMN's request, if granted, would be to reduce the total consideration for the Lehigh Line sale below the negotiated price.[10] As the architect of this sale I must inform the Board that they had the harm exactly backwards. Failure to grant the relief RBMN has requested, in the face of NS's actions, results in RBMN paying far more for the line than the negotiated price. The only way to restore the equality of the bargain is for the Board to relieve RBMN of the restrictions related to the diversion of traffic.

ADDITIONAL CONSIDERATION PROVISIONS

To better understand this situation I will discuss in detail the genesis of the additional consideration language and how it works. In the underlying proceeding, Conrail witness James Hartman described the reasoning behind the additional consideration provision in the Lehigh Sale Agreement.[11] I am familiar with his testimony and in fact I participated in drafting the portions dealing with this provision. The statement is accurate in stating that the additional consideration provisions were part of the economics of the bargain between Conrail and RBMN. However, the statement does little to describe how Conrail

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[10] CSX/NS/CR (lead docket), CSX/NS-176 at 385.
[11] CSX/NS/CR (lead docket), CSX/NS-177 at 189-193.

administered the provisions or how the numbers were developed for the Lehigh Sale. As the one responsible for the concept, and the person who determined the additional consideration amounts for the Lehigh Sale, I will explain the background.

As noted above, Conrail faced a dilemma in its line sale program. It needed to sell these properties, but it was unable to achieve a fair market value price in the marketplace. Fair market value for Conrail's purposes would be either the greater of net liquidation value of the assets (NLV) or the going concern value to Conrail of the market served (GCV). As we were here dealing with viable markets, Conrail would seek to recover its GCV through the purchase price, retained earnings or a combination of the two.

To determine GCV, we would ascertain the net present value of the line under continuing Conrail ownership versus the net present value of the line if sold. Net present value if retained by Conrail involved comparing the net present value of Conrail's portion of the stream of earnings from the traffic less the net present value of the capital needs of the line. Net present value if sold was easy to determine if Conrail continued to enjoy all of the off-line revenue.[12]

But if traffic was susceptible to diversion, Conrail not only lost the local revenue portion, which was paid out in the allowance, but also the long-haul revenue. Thus, for a typical move, which would generate $2000 gross revenue to Conrail, the local portion might be $360 (we used 18% of Conrail revenue as a reasonable rule of thumb), but if diverted Conrail would lose the entire $2000.

Thus, we needed to analyze the divertibility of traffic based on assumptions about alternative interchanges and routes. Conrail used a methodology similar to the merger

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[12] Conrail's goal in designing allowances was to make the shortline's allowance approximately equal to Conrail's on-branch cost savings from avoiding crews, power, fuel, taxes, maintenance of way and car hire.

analysis that was used while I was at the Commission. If traffic was local to Conrail it was assumed 0% divertible. If traffic was local to the other competing carrier it was assumed 100% divertible. And if traffic was routed via a gateway open to both carriers we assumed 50% divertible. Thus on a line like the Lehigh Middle, with a large percentage of traffic open to either CP points or neutral gateways, the potential for traffic diversion was great.

However, in our experience, no buyer would pay the price Conrail would require when a large portion of the traffic was divertible. We in fact tested this assumption by offering certain lines without restrictions figuring we would be indifferent if we got the higher purchase price. Shortlines know they generally do not get the benefit of the diversion to alternative routing. The local portion of the revenue, the shortline's allowance, usually remains basically constant. The difference is the other Class I receives the all-important long-haul revenue. Thus, shortlines were not interested in paying the higher price.

Thus, we needed to design a means of selling these lines without traffic diversion. Immediately, our attorneys raised anti-trust concerns. To withstand legal challenge, we needed to ensure that customers could still benefit if the other Class I was more efficient in its routing. The task became to find a means to discourage diversion without penalizing a more efficient routing.

Conrail was aware that other Class Is had developed various methods for minimizing the risk of diversion from lines they spun off. The answer Conrail developed was the "additional consideration" provision. This provision required the shortline to pay Conrail a sum of money for each carload of traffic off the line that the shortline interchanged to a carrier other than Conrail. Basically, we determined that as long as the shortline paid Conrail an amount equal to Conrail's lost contribution or profit on the moves in question, a more efficient routing remained theoretically possible, and the provision would be legally defensible.

Two examples will help explain the program:

Example 1. Alternate Route is more efficient.

	Conrail	Brand X
Mileage	1000	500
Class I Cost	$1000	$ 500
Conrail Profit	500	---
Shortline allowance	300	300
Conrail's Additional consideration	0	500
Total Cost to Customer	1800	1300
Profit available to Brand X	---	500

In this example, since Brand X has a much more efficient route as evidenced by reduced mileage and cost, Conrail can be paid its additional consideration amount and Brand X can earn the same profit as Conrail with an even higher revenue/cost ratio (2.0 compared to Conrail's 1.5). And, if Brand X wanted to accept a 1.5 RCR, it could offer the customer an even lower price.

However, as Brand X's routing becomes merely as efficient as Conrail's, the likelihood of diversion decreases. This result is appropriate. When we get to the point where the two Class Is have roughly the same costs, diversion becomes unlikely as shown below.

Example 2. Equal Efficiencies

	Conrail	Brand X
Mileage	1000	1000
Class I Cost	$1000	$1000
Conrail Profit	500	---
Shortline allowance	300	300
Conrail's Additional consideration	0	500
Total Cost to Customer	1800	1800
Profit available to Brand X	---	0

Under this scenario traffic will not be diverted unless the shortline is willing to take less money from Brand X than it receives from Conrail. However, the customer is not adversely affected because the alternative route is no more efficient.

Having designed a program, which was viewed as legally defensible, we next had to determine the actual additional consideration payments for the particular line whose sale was being proposed. Within Conrail that was my responsibility (as was defining the shortline allowances). Our analysis focused on the traffic on the line being sold that was susceptible to diversion and determining the average Conrail contribution from that traffic. In doing so we generally aggregated similar types of traffic and determined an overall contribution based on gross revenues less Conrail's directly variable costs.

On the Lehigh sale, I looked at the Lehigh originating or terminating traffic, which could potentially move via CP.[13] In this case, that was most of the traffic since almost none of the traffic originated or terminated on Conrail. Even Texas Gulf chemical traffic was potentially divertible to Chicago gateways due to its high profit margins.

In retrospect a number of problems exist in Conrail's provisions for additional consideration. First, by making the restriction run with the property in the deed, the restriction runs in perpetuity. Clearly this is problematic since at some point in time the Conrail has been fully compensated for the reduced sale price. At that point in time, the continued existence of the restriction becomes excessive, and the result is merely to penalize the shipping public. Interestingly, even the Applicants seemed to acknowledge the logic of a termination date by noting that the purchase has occurred, "only recently - - August 1996 - - and Conrail therefore had not had time to realize the benefits that justified the reduced up-front purchase price."[14]

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[13] It is noteworthy that at no time was Reading Cluster traffic analyzed because it was assumed not covered by this language. Conrail protected against diversion of this traffic by the "non-revenue" restrictions in the trackage rights agreement.

[14] CSX/NS/CR (lead docket), CSX/NS-176 at 385.

Second, there are no provisions for assessing the changed circumstances involving traffic routings and thus the profit levels of Conrail. Now that NS is the beneficiary of the diversion restrictions, it becomes evident that the failure to regularly reevaluate the profitability of the traffic subject to this restriction is a fatal flaw. One need only consider the movement of traffic that can move from CP over Harrisburg to RBMN under the "Fixed Divisions Agreement" (FDA) entered into between NS and CP. As RBMN understands it, under the FDA, NS is required to haul to various shortlines, on behalf of CP, non-coal traffic originating or terminating on CP points, or points on shortlines created by sales of CP lines within ten years of the FDA.[15] As it pertains to RBMN, we understand (although we are not privy to the agreement) this traffic will be hauled from Harrisburg to either Reading or Lehighton for interchange with RBMN for around $140 with car hire remaining with CP.

Since all of the CP traffic headed to RBMN first moves past Scranton, where RBMN has a direct interchange with CP, RBMN and its customers have a clear advantage to bypass the NS routing. The NS routing requires additional circuity, additional Class I train starts, an additional interchange, and use of a congested NS main line and yards at Harrisburg and sometimes Allentown.[16] Clearly this routing is contrary to the public interest given the increased costs, delay and cycle time of equipment.

Nonetheless, NS has forced RBMN and its customers to use this routing. (I discuss below our experience in requesting NS to grant RBMN waivers to permit direct interchange with CP.) Should RBMN and CP decide to meet our customers needs and

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[15] The FDA is how NS refers to that part of the NS/CP settlement agreement that provides for the handling of traffic by NS between CP and certain designated points for an agreed upon division. *See* Kramer (NS) letter dated March 25, 1999. (All correspondence between the parties referenced herein are included in highly confidential Appendix B filed with this Statement.

[16] It is my understanding that with respect to traffic going to Reading, the use of the FDA a CP road train from Scranton to Harrisburg, an NS yard switch at Harrisburg, an NS road train between Harrisburg and Reading, and an NS yard crew at Reading. With respect to traffic going to Lehighton, NS must additionally hump the cars in Allentown yard, and move the cars in a local train from Allentown to Lehighton for delivery by RBMN to the customer.

interchange at Scranton, NS has indicated that it is due the additional consideration penalties set forth in the Lehigh Sale Agreement.[17] NS would seek this penalty payment even though if the traffic moved under the FDA, NS would earn at most $140 gross revenue, and its profit, if any, would be far less.[18] Thus, if RBMN decided to handle a nepheline move for its customer (Customer No. 3 on Appendix A) located 15 miles south of Taylor Yard via that interchange with CP, NS would seek payment of the full penalty for this commodity.[19] Because of the additional consideration penalty, the traffic is now moving over CP via Scranton down to Harrisburg, through Harrisburg yard via NS to Allentown yard, and then on an NS local to Lehighton for delivery by RBMN to the customer. This move adds circuity for the customer and equipment of almost 300 miles.

Similar inefficiencies result from the application of the additional consideration penalties to traffic that had been single line to Conrail and that are now split between NS and CSX (so called 1-to-2 moves). Again, NS would seek the full penalty payment even though on those split moves it would earn only a fraction of the revenue that Conrail was earning.

If NS's net contributions on traffic that moves under the FDA or that now moves in a split NS-CSX moves had been factored in when the additional consideration provisions of the Lehigh Sale Agreement were calculated, I would have either added additional categories to reflect the lesser profits on those moves, or if aggregated with long haul business, all the penalty amounts would have been substantially less. The effect of the enforcement of the additional consideration penalties as written is to make the clearly more efficient, competitive routing commercially impossible. This is the very result the provisions were designed to avoid.

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[17] Kraemer (NS) letter dated March 25, 1999.

[18] It should be noted that for CP traffic the effect of NS's interpretation is to require RBMN and its customers to either use the circuity inherent in the FDA or pay the absurd penalty amount. Although we are seeking elimination of all diversion restrictions, at a minimum the Board should rule that for CP traffic handled via Scranton, NS is only entitled to the profit portion of the $140 Fixed Division.

[19] The Schedule of Additional Consideration, Appendix R to the Lehigh Sale Agreement is attached as highly confidential Exhibit C. The applicable category for this traffic is "All other C2."

TRACKAGE RIGHTS RESTRICTION

The Lehigh Sale also presented a relatively unique situation whereby the buyer, through the use of third party trackage rights, was able to come close to connecting its new property with its existing route structure. Obviously, Conrail was aware of the proximity between the Reading and Lehigh Lines. In fact that proximity was one of the reasons we chose RBMN as the buyer. We knew there would be economies of scale by having a regional shortline.

Conrail also knew that the Reading Cluster traffic was basically captive to Conrail. And Conrail certainly wanted to protect the profitable anthracite business. Accordingly Conrail granted RBMN restricted trackage rights to connect the two properties. To enhance RBMN's efficiency, Conrail permitted RBMN to move non-revenue equipment such as locomotives and maintenance-of-way equipment between the lines. But to protect Conrail's Reading Cluster business, Conrail did not permit revenue moves.

Nonetheless, during the negotiations it became clear that there was some existing Reading cluster business and/or potential new business that could move more efficiently if handled directly with CP over Scranton. Given the overall intent of the Conrail shortline program Conrail specifically determined that each service group would be allowed to waive the restriction on revenue traffic if circumstances dictated.

THE WAIVER PROCESS

The question of waiving diversion restrictions, whether from the additional consideration language or from physical barriers, came up in line sale negotiations where diversion was a possibility. On the one hand, shortlines wanted to purchase these properties and wanted reasonable purchase prices. On the other hand, shortlines wanted assurances that Conrail would not prevent them from connecting with another Class I railroad if Conrail could

not reasonably handle the business. So, even as Conrail was closing line sale deals, Conrail knew there was a potential conflict between the intention to create a strong shortline network and its desire to prevent traffic diversion.

As the Conrail representative dealing with shortlines, in the course of negotiations, I gave these prospective buyers the assurances they needed. I was able to explain that Conrail was making shortlines a critical part of its merchandise strategy and that actions that strengthened our shortline partners would be seen as good for Conrail. Obviously the more profitable our shortline connections were the more likely they were to invest in track maintenance, equipment, facilities, staff and systems. A strong shortline connection was Conrail's best chance of growing market share.

Moreover, it was well known that Conrail could not afford for one of its CONRAIL EXPRESS partners to fail. Under the EXPRESS program, Conrail required the Conrail name to be prominent on the locomotives, and customers and communities were made to believe that Conrail was committed to their service through the use of its shortline connection. Thus, when an EXPRESS partner purchased a line with the non-diversion language, I made it very clear that we would work with it to ensure its long-term financial success. RBMN was such an EXPRESS partner.

To handle this situation we made it clear to our shortline partners that we would grant "waivers" of restrictions on a case by case basis. We told buyers that we needed to review each fact situation but that if there were clearly a more efficient routing available we would grant a waiver so as to not harm the shortline and not alienate the customers. Conrail knew that paper barriers were unpopular, and we knew customers were increasingly upset about being captive to an ever-decreasing number of Class I railroads. Since it was not in Conrail's best interest, or that of the rail industry as a whole, to give ammunition to the forces favoring re-regulation, we made it clear we would grant specific waivers. Thus, Conrail informed buyers they could seek waivers, and we even specified

in the sale agreements that we would meet at least once a year with the buyer to discuss how the sale was working including the diversion restrictions.

NS may ask why then were no waivers granted to RBMN. The answer is simple. No waivers were granted because none were requested during the very brief period in which Conrail was free to act independently. As the Board is aware, the Lehigh Sale closed in mid-August, 1996. Soon thereafter, Conrail and CSX announced the "Strategic Merger of Equals." Once that announcement occurred, Conrail essentially shut down its waiver program as well as most other programs such as line sales and EXPRESS conversions. However, I can inform the Board that Conrail did grant a waiver to another EXPRESS partner that acquired a Midwestern property about the same time as the Lehigh sale. This waiver covered substantial tonnage for a multi-year contract. Fundamentally, it allowed the customer to have a two carrier move, as it did before the line sale, rather than forcing a three carrier move complete with an additional Class I interchange.

Let me briefly explain the waiver process at Conrail. As with all other matters involving shortlines, the initial point of contact was the Account Executive. This person would take the request and working with the shortline gather the facts. Basically Conrail wanted to know volume, commodity, O-D pair, and alternative routing. If the request seemed reasonable to the shortline group, and the alternative routing was clearly more efficient than the Conrail alternative, the Account Executive would take the request to the relevant business group. Given the high-level support the shortline program had within Conrail, the business groups knew they had a real burden to show why the waiver should not be granted. Moreover, they knew I would take the case directly to the Senior Vice President of the CORE Service Group if I was not satisfied with the answer.

Let me now contrast the NS example. Basically, the NS position has been to grant waivers only for brief periods of time when NS acknowledged it has service problems. RBMN and its customers have discovered that there is no established NS process for

making the waiver decision, and there is no likelihood that waivers will be granted for any significant period of time. NS's attitude towards shortlines and waivers is made clear in a letter to me from its shortline marketing group. "Our Shortline Marketing Group has been advised by upper Marketing Management that wavers [sic] are not to be extended beyond current authorizations."[20] I was told that this meant there would be no new waivers and no extensions of existing waivers. This letter and the attitude it represents is a direct violation of the bargains underlying the Conrail sale program, and the Lehigh Line Sale in particular.

It appears that NS is unable to acknowledge two post-Conrail realities. First, its route structure does NOT benefit as many shortlines (including RBMN) and customers in the Conrail territory as it had advertised. Second, given the existence of the Fixed Divisions Agreement with CP, NS should no longer be handling certain traffic.

Throughout the merger process NS claimed that its single-line routing would be a major merger benefit. However, I regret to report that claim is not valid with RBMN. In fact, almost no RBMN traffic originates or terminates on former NS lines. Actually, the division of the Conrail route structure between NS and CSX harmed RBMN because RBMN had many moves which Conrail handled with CSX. A fact often overlooked during the merger proceeding was that Conrail in many ways served its market like a large switch carrier. Since much of Conrail's traffic base was not local to Conrail, Conrail was free to be a neutral connection with the various carriers in the west, and with CSX and NS to the south. Since almost all of RBMN's traffic either moves over western gateways or southern gateways to/from CSX points, Conrail was the perfect partner. Now, however, RBMN must deal with NS interchanging traffic to southern points with CSX. Post-merger, NS and CSX have had serious problems getting together to agree on junction points for this traffic.

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[20] Gibson (NS) letter of February 22, 2000.

Further, on traffic to New England and Canada where Conrail provided single line service to the originating or terminating carrier, NS must either hand the traffic off to CSX (a 1-to-2 move) or handle the traffic on a more circuitous route. For example, on traffic originating on CP points, NS has stubbornly demanded the circuitous routing through Harrisburg (explained above) even though NS earns almost no money on this business.

Undoubtedly, NS will respond arguing that it has granted waivers to RBMN. Let us review the facts.

One alleged waiver grant allowed RBMN to handle traffic to a manufacturing customer at Mehoopany.[21] The traffic in question originates on CP at Thunder Bay, Ontario. This facility is north of the RBMN property line and is exclusively served by NS. In this instance, NS has been unable to meet its customer's needs using a direct CP-NS routing. NS asked RBMN to move these cars as a bridge carrier between CP at Taylor Yard and NS at Mehoopany. NS would then take the traffic and place the cars at the facility. NS offered this traffic to RBMN as a "waiver." Because NS was not willing to give us a volume commitment and a reasonable term, and because we faced significant operating costs in providing crews and power for this unusual move, RBMN originally declined the waiver. Ultimately NS agreed to contract with RBMN to provide this service giving us 60 –day contracts, with volume commitments and an increase in payment originally offered. RBMN's willingness to assist NS in its time of need, and to ensure service to an important NS rail customer, has been cited to us by NS as an example of a waiver for which we were to be grateful.

Another "waiver" which NS will likely cite is the fly ash business originating on the New England Central in Connecticut.[22] During the merger hearings, Andy Muller testified

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[21] Appendix A, Customer No. 1

[22] Appendix A, Customer No. 4.

about his concern that this critical traffic could not be handled jointly by NS and CSX and might be lost.[23] Events have proven that Muller was right.

Before the merger this business was handled via a routing of NEC-CR-Reading-RBMN that consistently provided the customer with the cycle times it required. Post-merger the customer was faced with the logistical nightmare of CSX and NS trying to cobble together a relatively short-haul low revenue route.[24] When CSX made it clear it could not make this routing work, NS agreed to a series of short-term waivers so that traffic could be routed via CP into Scranton. NS apparently made this decision due to congestion on its own system, and CSX's problems with the traffic.

Throughout this process RBMN communicated two thoughts to NS. First, our paramount concern was preserving the 1400 plus annual carloads we received from the customer. Since the customer was concerned about cycle time, RBMN wanted assurances that any move NS put together would meet the customer's needs. Second, RBMN preferred a direct NS interchange at Reading rather than the additional mileage and difficult terrain involved in handling the business over Scranton. At no time was RBMN trying to remove NS from the route. In fact, on more than one occasion we made it very clear to NS that if NS could get the business to us at Reading in a timely fashion, we would be delighted.

Although the CP routing was clearly meeting the customer's needs, and despite the fact that RBMN had communicated to NS a need to adopt a long-term operating plan to handle this business at Scranton, NS was unwilling to commit to this routing and refused to extend the short -term waiver into a long-term one. Instead NS spent months trying to find alternative ways to handle this business to the consternation of the customer which wanted continuity, and RBMN which needed to make long-term operating decisions and

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[23] CSX/NS/CR (lead docket), RBMN-5, Muller V.S. at 8-9.

[24] Even before Split Date, by letter dated May 17, 1999, the customer advised NS about its concerns with post-merger transit times.

investments. Finally, in April of this year, NS acknowledged that it could not meet the customer's needs with a CSX-NS routing. NS agreed to grant RBMN a waiver for the duration of the contract which expires June 1, 2001. Again this waiver was due to the inability of NS and its merger partner CSX to perform a service equal to that performed by Conrail prior to the merger.

I do need to acknowledge a situation whereby NS did grant a waiver at RBMN's request.[25] In an effort to expand our business, RBMN invested with a customer in a grain unloading facility in West Cressona near Reading.[26] The customer developed corn and milo business originating on CP or shortlines west of Chicago connected to CP. From the fall of 1999 through March of 2000, NS granted us a waiver so we could handle the business directly with CP at Scranton, and over the Packerton trackage rights to the customer. During this period NS was suffering service failures and its lines were congested.[27]

However, our waiver to handle this business expired at the end of March. From March 9th to May 31st, NS did not answer at least eleven separate written requests from RBMN and the customer to extend the waiver. NS apparently was trying to force the customer to rely upon the FDA entered into between NS and CP. However, the customer was reluctant to use this route for CP-originating traffic for good reason. NS was forcing the customer to move cars east from Chicago on CP into Scranton. Once at Scranton, instead of handing the cars directly to RBMN, CP would be required to move the cars west via the Sunbury connection to Harrisburg. There CP is required to interchange cars with NS at a busy serving yard. Then NS will bring the cars back east to Reading to interchange with RBMN. The result of this exercise is to add 85 miles, an additional interchange between

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[25]In addition, in December 1999, NS granted a waiver requested by a shipper (Appendix A, Customer No. 5). That waiver expires at the end of this year.

[26]Appendix A, Customer 6.

[27] During the fall of 1999, NS requested that we help it by moving NS traffic from our Reading interchange point to our Lehigh Line so that NS could avoid its congested Allentown facility. Of course, we were happy to be of service to NS as its service failures were hurting the railroad industry.

two Class Is, and an additional cost of $140 to add NS to the route. Clearly NS cannot be making much profit on this business. So, I am left to conclude that NS is merely trying to control the RBMN's access to CP, or force the traffic off of RBMN. Unfortunately, the result of this behavior was that the customer decided to route the traffic via CP to another shortline in Bethlehem where the cars would then be unloaded and trucked back into RBMN territory, i.e., the traffic would be lost to RBMN with no gain to NS.

After pleading for ten weeks for an extension of this waiver (to handle a relatively low volume of 25-75 cars a month!), NS finally gave RBMN an answer on May 31st – the answer was no.[28] NS claimed that such a waiver would allow our customer to compete with other transload sites. RBMN determined that it needed to meet its customer's needs so we took a substantial rate reduction and told the customer to use the circuitous NS route. Nevertheless, the customer has determined that such a routing is inefficient and uses it only reluctantly.

NS has taken a negative position on waiver requests despite being told by me on many occasions that its position was contrary to the intent of the parties to the line sale.[29] NS also has taken this position on waiver requests despite the fact that it claims to be a strong proponent of the Railroad Industry Agreement (RIA). The RIA was supposed to permit elimination of paper barriers when there was no harm to the Class I and a benefit existed for the shortline. The reality is that the NS has done little to implement this aspect of the RIA.[30] Having been the Conrail representative on the Class I negotiating team, I can confirm that NS was the leading proponent of the RIA. However, NS also had stated

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[28] Franklin (NS) e-mail dated May 31, 2000.

[29] Before Split Date NS arranged for me to brief its shortline group concerning the Conrail line sale and shortline programs. Even after I began working for RBMN, NS asked me to explain aspects of the program. I have offered this guidance honestly and consistently over the last three years.

[30] A review of NS' filing in the oversight hearing shows that NS trumpets its implementation of the portions of the RIA dealing with equipment and interchange service agreements. About the NS program to respond to requests to eliminate paper barriers it says, "We waived (on a temporary basis) some so-called "paper barriers" when they might otherwise have lost some business." First General Oversight Report (NS-1) at 16.

in the fall of 1999 that it would work diligently to put processes in place to make the paper barrier portion of the RIA effective. When I asked an NS representative at the American Short Line and Regional Railroad Association regional meeting in May what processes were in place at NS, the NS representative had to admit there were none. At this time there are still no guidelines as to how to submit a request, what information is needed, how long will a review take and what are the guidelines for accepting or rejecting the request. In short, the RIA is a toothless tiger as to paper barriers.

To summarize, RBMN has no mechanisms in place to get around the paper barriers established in the Lehigh Sale. NS will act when it wants and decide based on its own internal criteria whether to grant relief. The record suggests that waivers will be given reluctantly and only when NS cannot physically handle the business.

OTHER NS ACTIONS HARMING RBMN

The absence of mechanisms to get around the paper barriers would not be so important if NS had proven to be a good partner since its takeover of Conrail. Although one can argue that shortlines always benefit from multiple Class I access, the reality of the RBMN experience is what dictates the need for relief today.

Facing no competition NS has proceeded to take numerous actions that have harmed RBMN and its customers. As already noted, NS immediately made arrangements to work with CP to spend $12 million to improve a CP line that would divert a large percentage of CP's trackage rights traffic off of the Lehigh Line. In the merger proceeding, RBMN predicted it would lose close to $40,000/month in trackage rights revenue.[31] This estimate has proven to be accurate. Given that there are few additional direct costs to

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[31] CSX/NS/CR (lead docket), RBMN-5, Muller V.S. at 9-10.

handling this traffic (RBMN has already spent $6 million in state and RBMN funds to fix up the line), this revenue loss has gone almost entirely to the bottom line.[32]

Although the STB has held that reduced revenue generally is not a competitive harm that justifies the imposition of conditions, such a statement ignores shortline economics and realities. Revenue loss to a shortline, especially bottom line revenue, is critical. Without that revenue a shortline is faced with deferring maintenance, ignoring system upgrades (for example those necessary to handle the next generation of bigger and heavier cars), avoiding industrial development opportunities and ultimately raising prices on remaining movements. As prices are raised on existing customers, those customers either begin to look for alternatives such as truck, transload or other suppliers or they abandon their facilities. As volume further declines, the unit costs increase forcing another round of rate increases.[33]

Clearly, no shortline can afford to lose much revenue if it is to remain in business. Given that the Board has recognized the value of shortlines in providing service to branch line customers and communities,[34] it is unfortunate that the Board did not seek to address the revenue loss to shortlines such as RBMN.

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[32] NS may argue that this diversion could have happened even without the merger. However, this clearly was unlikely. The stormy relationship between Conrail and CP was the subject of numerous proceedings before the Board and the likelihood of cooperative actions between the two were remote. Further, Conrail would never have aided CP in rehabilitating an additional line to New England since the Conrail route structure already provide several alternative ways of getting there.

[33] In November of 1999 NS attempted to raise grain rates to a customer (Appendix A, Customer No. 7) at Cressona, PA. When Andy Muller called to express his concern, the NS marketing representative told him that because NS handled 106,000 carloads of grain annually, it could not be concerned about losing 400 carloads due to rate increases. Obviously, the loss of 400 carloads is significant to a shortline. More recently, in May of this year, NS attempted to more than double the rates for salt to a customer (Appendix A, Customer No. 8) at Pittston. After RBMN intervened NS agreed to a modest increase. Additionally, effective Split Date, NS attempted to take substantial rate increases on the anthracite business. Facing political and customer opposition, NS rolled back most of those increases although traffic terminating on CSX southern points was still impacted due to the inability of NS and CSX to agree on interchange locations and reasonable divisions

[34] *CSX/NS/CR Dec. No. 89* at 76.

Not only did NS purposely divert needed overhead revenue, it has also tried to take unilateral rate actions that will drive away existing RBMN business. Because RBMN was a Conrail feeder-line, we do not show in the route and we are not consulted when NS decides to take a rate increase. Instead, NS marketing people make a decision and communicate it directly to the customer. Thankfully, our customers have notified us when NS substantially raises its rates. At those times, RBMN immediately went to work to get NS to pull back those increases so the customer would not divert the traffic to other modes.

Perhaps the most egregious example of how NS has worked to the detriment of RBMN's customers involves RBMN's critical anthracite business. As I indicated earlier, Conrail basically decided to exit the anthracite business in 1990 when it sold the Reading Cluster to Andy Muller. Since that time, RBMN has taken extraordinary steps to not only retain that business but grow it. RBMN and its principals invested $12,000,000 in track and $8,000,000 in hopper cars to keep this market viable. In Conrail, RBMN had a great partner. Conrail appreciated the fact that it was basically receiving 8000 carloads of profitable business without the expense of switching the customers, maintaining the lines or investing in additional equipment.

Along comes NS, and even before the STB approves the merger, it notifies us that it will terminate the practice of supplying free hopper cars to the customers. Conrail had recognized that anthracite required special handling and that the business was unlike other coal business. Since RBMN did not pay car hire, its customers did not pay demurrage. Since customers did not pay demurrage, they did not object if they had to clean out a car or do light repairs.

However, NS decided that it needed to charge car hire because its internal costing systems require all cars to earn a replacement cost less depreciation value. So, even before taking control of Conrail, NS notified RBMN that NS was going to lose money on

this business because it would not earn enough to replace the cars with new equipment.[35] Thus, NS dictated that effective January 1, 2000, it would no longer supply cars car-hire free.

Facing the possible loss of our critical business, RBMN notified NS in August of 1999 that it was willing to buy the anthracite hopper fleet.[36] RBMN followed this up with a face-to-face meeting with NS in Roanoke on September 2, 1999. Based on advice from NS's Marketing Director for Industrial Coal, we made an offer for the cars and proceeded to negotiate a bilateral car-hire agreement with NS. For months we waited for NS to agree to the sale proposal. Finally, we wrote to the Vice President-Coal Marketing, J. W. Fox, Jr., seeking his assistance.[37] He responded in November telling us that NS had concluded it could not sell these cars due to restrictions in the merger agreement.[38] So, in November we are told we cannot buy the very cars NS told us to buy in September! Given the fact that NS had dictated a January 1, 2000 deadline and given that NS has just concluded it could not sell us the cars it told us to buy, Fox indicated that he would promptly have his staff work to sell us bad-ordered cars that were sitting unused. We immediately agreed to pursue those cars but were once again caught up in internal NS processes. In fact, NS notified us in December that those cars were not available either![39] With the January 1st deadline almost upon us, NS finally agreed to extend its edict imposing car hire until March 1 2000.

Finally we grew tired of waiting for NS to honor its promises. We notified NS that in order to pay for the car hire it was imposing, RBMN would take the rate increase that NS earlier indicated was consistent with its savings.[40] NS quickly responded and the parties

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[35] Robinson (NS) letter dated July 1, 1998.

[36] Hocky (RBMN counsel) letter dated August 9, 1999 (without enclosure).

[37] Muller (RBMN) letter dated October 22, 1999.

[38] Fox (NS) letter dated November 6, 1999.

[39] Padis (NS) letter dated December 15, 1999.

[40] Michel (RBMN) letter dated February 10, 2000.

reached an agreement that permitted RBMN to be reimbursed for having to pay car hire. NS also finally moved on the sale of the hoppers, and RBMN has now purchased almost 300 of them to be put into the anthracite service.[41] The bottom line is that due to NS internal costing formulas, RBMN was required to spend close to $3 million to purchase used cars for business which NS will continue to handle in long-haul service.

The Board should understand that RBMN is not crying poverty. Instead we are saying that if we have a competitive alternative we will not be at the mercy of NS decisions which we now see will be made unilaterally, and which in some instances are likely to be harmful to us and our customers.

I want the Board to know that RBMN has not sat back waiting for this opportunity to plead its case. To the contrary, RBMN has attempted for months to get NS to work with us to address these concerns. In fact Andy Muller hired me for the express purpose of working with NS to develop a good working partnership akin to RBMN's relationship with Conrail. Mr. Muller went so far as to explain this to NS in a letter dated August 19, 1999. In that letter he suggested a meeting in Roanoke or Norfolk between me and the appropriate NS staff to discuss forming a close working relationship.[42] NS never responded to the letter or the proposal for a meeting.

Given the close working relationship I had developed with John Kraemer prior to Split Date,[43] I believed I would be able to get NS to appreciate the harm it had caused RBMN and its customers by its actions. Although Mr. Kraemer was always polite and professional, my efforts failed. Even over the last four months I have made many efforts

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[41] In addition to purchasing 200 cars from NS, RBMN agreed to purchase 92 CSX cars. With those two purchases RBMN and its principal have now spent close to $8,000,000 on hopper cars to serve the anthracite business.

[42] Muller (RBMN) letter dated August 19, 1999.

[43] As noted earlier I spent many days and evenings briefing Kraemer on the CR shortline and line sale programs.

to get NS to work to resolve these problems.[44] Unfortunately, NS was not willing to change its practices. In fact over this time period, NS went ahead and denied waiver extensions and attempted to raise rates significantly with one customer without notifying us. Therefore, RBMN was left with no recourse but to file this request for relief with the Board.

CONCLUSION

My goal in preparing this verified statement was to explain to the Board how the NS acquisition of Conrail altered the bargain of the parties to the Lehigh Sale. As I have shown, line sales are not simple real estate transactions that once completed are done. In reality, a line sale is actually the beginning, not the end, of a relationship. A line sale sets the tone for a long-term interaction between two parties that are to be tied together through a series of commercial, operational, political and strategic initiatives. And, in the case of the Conrail line sales of 1995 and 1996 including the sale of the Lehigh Line to RBMN, the long-term relationship to be established was to be a close working partnership for mutual growth and benefit.

As I have explained Conrail had a unique shortline program. The Conrail program was formed out of Conrail's needs and its belief that shortlines were a critical partner for merchandise traffic growth. That need and belief gave Conrail the incentive to work closely with its shortline partners and to ensure the financial success of those partners. As a result, decisions impacting those shortlines were made with the long-term big picture in mind. If actions would strengthen the shortline, and not immediately and directly harm Conrail, the shortline-favorable approach would succeed.

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[44] I met with Kraemer and his staff on March 9th in Harrisburg, on May 4th in Pittsburgh and on the phone on June 19th to discuss these matters.

By contrast, NS in its actions and words has shown itself to view shortlines as necessary tools limited to serving those markets that the shortlines already reach. NS has no EXPRESS program. NS offers no special benefits in terms of reduced prices on NS services. Waivers will be granted only when NS cannot serve customers, and not in other situations even if commercial realities dictate that the traffic will not move otherwise.

The approval of the merger without conditions undid the deal. RBMN shared its concerns with the Board prior to approval of the merger. The Board rejected all of RBMN's arguments. Time has proven that RBMN was correct about the impact of the merger. RBMN was correct that NS would divert much of the CP trackage rights traffic and revenue. RBMN was correct that NS and CSX would be unable to handle the fly ash traffic and would thus put it at risk. And, most critically, time has proven that RBMN was correct in fearing that NS was not prepared to work with shortlines in a manner consistent with the promises made by Conrail.

What RBMN requires of the Board is an understanding that by permitting the NS acquisition of Conrail, the Board, not RBMN, altered the fundamental nature of the Lehigh Sale Agreement. RBMN was happy to work with Conrail under that Agreement. RBMN was happy to have a partner who was prepared to sell it the northern and southern portions of this line at a very reasonable price. RBMN was delighted to have a partner who asked it to be a charter member of the exclusive EXPRESS club. RBMN accepted the need to make a case for waivers with the knowledge that all reasonable requests would be quickly granted for one year or longer terms. That was the deal RBMN made and at no point did RBMN try to undo that deal.

Therefore, when the Board allowed NS to acquire those portions of Conrail connecting with the Lehigh Line, the Board in effect dissolved the partnership understanding between Conrail and RBMN.

RBMN is not crying for help in dealing with NS. RBMN is more than happy to work directly with NS and to compete directly against it as circumstances and the needs of its customers and communities dictate. However, the Board has not permitted RBMN the tools with which to fight its own battles. That tool is competitive access.

RBMN has a unique situation. We have a direct physical connection with an alternative Class I. We do not need the Board to manufacture access for us. We have in place existing trackage rights that the Board has approved including an agreed-upon trackage rights charge. These trackage rights will have no operational impediment on NS as evidenced by the fact that NS asked us to use these rights constantly during the fall to help it avoid using its congested Allentown terminal.

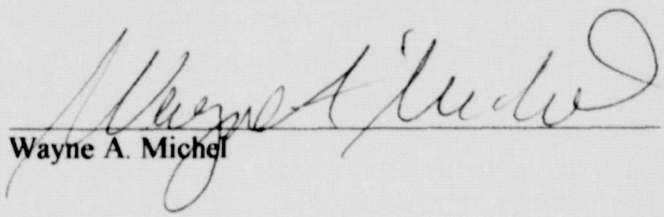
So we are faced with a situation where the line sale deal has been undone by the Board's approval of the merger and the actions of applicant NS in repudiating the intent of the Conrail line sale and shortline program. Faced with this reality, the public interest requires that the Board provide RBMN with the only remedy which will give it the opportunity to combat the many NS actions repudiating the intent of the parties to the line sale...access to CP.

Accordingly, RBMN requests that the Board remove the additional consideration restrictions in the Lehigh Sale Agreement as well as the deed and that the Board order NS to remove the restriction as to revenue moves in the trackage rights agreement. With these obstacles removed, RBMN will be able to act in the best interests of its customers and communities in seeking efficient and economical transportation alternatives.

VERIFICATION

I, Wayne A. Michel, Executive Vice President of Reading Blue Mountain and Northern Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on July 13, 2000.



Wayne A. Michel

VERIFIED STATEMENT
OF
ANDREW M. MULLER, JR.

My name is Andrew M. Muller, Jr., and I am the Chairman and President of the Reading Blue Mountain & Northern Railroad Company ("RBMN"). I previously testified in this proceeding on behalf of RBMN.

The purpose of my statement today is limited. The matter I am concerned about is NS's untenable application of routing restrictions contained in the sale agreement between Conrail and RBMN for the purchase of the Lehigh Line. I want to make the Board aware of my understanding of the bargain between Conrail and RBMN when I agreed to RBMN's purchase of the Lehigh Line from Conrail, and thus why I accepted the terms that are now being applied against RBMN by NS in circumstances never contemplated by RBMN or Conrail.

I graduated from East Stroudsburg State College in 1969, and proceeded to teach elementary school for the next four years. In 1973 I became a commodity trader and continued at that occupation exclusively for 10 years until 1983 when I acquired a rail line in the Reading, PA, area. Then in 1990 I formed RBMN and convinced Conrail to sell me its Reading Cluster and the valuable anthracite market that went with the lines. Over the next few years, I invested heavily in these properties and grew the business. I worked closely with Conrail every step of the way, and I believe we developed a relationship of mutual trust.

In 1996 Conrail asked RBMN to become a charter member of its new Conrail EXPRESS program. Although hesitant at first, I decided to join because Conrail was, after all, for all practical purposes, my partner. That program required extraordinary cooperation between two

separate companies. Our cooperation proved beneficial since later that year Conrail sold me the first of what was planned to be three Lehigh Line segments.

I have read Wayne Michel's Verified Statement on behalf of RBMN, and he accurately states the understandings of the two parties to the Conrail-RBMN negotiation. For my part, I knew this line sale was different because Conrail insisted on retaining a measure of commercial oversight on the line through the imposition of additional consideration penalties. Despite these restrictions, I agreed to do the sale. First and foremost, I realized I could make money operating this line because I had the base of the substantial CP trackage rights revenue to rely upon. Our pre-purchase analysis indicated that this business should provide RBMN with over $800,000 in annual revenues. Given the few direct costs associated with this business, I knew I could make the operation succeed. I also was confident that I would be able to get state funding to help me to restore the line to safe operating condition.

I also knew that Conrail was seriously committed to its shortline partners. Not only had Conrail created its EXPRESS program, but it also had put its money where its mouth was in providing resources for its shortline partners. Some of the best Conrail marketing people were shortline account executives. Thanks to the EXPRESS program, RBMN received substantial discounts on the price to move rail trains, non-revenue equipment, and ballast. Conrail had gone out of its way to sell RBMN locomotives and freight cars at low prices and without a bidding process. In short, Conrail was proving its commitment with its actions.

In addition, Conrail said it would allow RBMN to handle traffic directly with CP if it could not efficiently move the business. Conrail also agreed to meet regularly to adjust the commercial terms if needed to ensure the viability of the Lehigh Line. Finally, and very

importantly given the low density and overall economics of the Lehigh middle operation, Conrail said it would be selling RBMN the other two parts of the Lehigh Line in the near future.

Based on all of these assurances, I agreed to buy the Lehigh Middle with the diversion restrictions that are now being invoked by NS. Considering my long standing partnership with Conrail, I believed that it would deliver on its promises and that it would be flexible in dealing with RBMN. After all, I had over twelve years experience dealing with Conrail people.

I was, of course, concerned about the possible future sale of Conrail. However, I was aware that any sale had to be approved by the Board, and I was advised that it had the tools to prevent a purchaser from stifling competition from a small railroad. I could not envision a merger scenario where the government permitted a huge railroad to be created without ensuring that small railroads and the customers and the communities they served would be protected from the new railroad's market power.

When the NS/CSX plan to split Conrail became a reality, I was not unduly worried because I knew that the agreements I had with Conrail were for the benefit of Conrail. I knew my deals with Conrail were part of a quid pro quo whereby I agreed to certain restrictions and Conrail agreed to flexibility, EXPRESS benefits and future line sales, and I got a reliable income stream of trackage rights fees.

When it became clear to me that NS would not honor the Conrail commitments, I went to the Board for relief. I was confident that the Board would permit me open access to CP since I already connected with it. I could not conceive that the Board would allow NS to change the basic understandings of Conrail and RBMN and yet be able to enforce the letter of a contract designed for a rail structure entirely different from the one that occurred when Conrail was divided. I knew

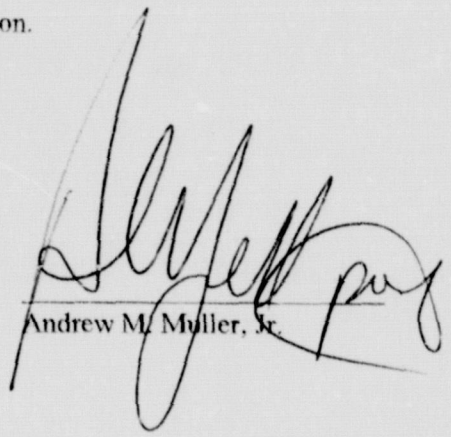
the circumstances had totally changed and that a pro-competitive response required the Board to permit my connection to CP.

Therefore, when the Board rejected all of our requests and said that our predicted revenue loss was insufficient harm to competition I was stunned. For the record, let me state I would never have signed the agreement with Conrail containing these restrictions if I knew they would be enforced by a successor which refuses to honor any of the unde standings I concurrently had with Conrail. I believe the Board should consider this reality when it reviews the matter at hand.

VERIFICATION

I, Andrew M. Muller, Jr., President of Reading Blue Mountain & Northern Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on July 13, 2000.



Andrew M. Muller, Jr.

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July 14, 2000

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

Re: **STB Finance Docket No. 33388 (Sub-No. 91)**
CSX and Norfolk Southern-Control and
Operating Leases-Conrail (General Oversight)
Comments of Buffalo & Pittsburgh Railroad, Inc.
and Rochester & Southern Railroad, Inc.

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Comments of Buffalo & Pittsburgh Railroad, Inc. and Rochester & Southern Railroad, Inc. (BPRR-2, RSR-2), along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 7.0. Also enclosed are the original and 25 copies of a "highly confidential" Appendix.

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

Very truly yours,

Eric M. Hocky

Enclosures
cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
All parties of record in Sub-No. 91 (without the Appendix)

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BPRR-2
RSR-2

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

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

(General Oversight)

COMMENTS OF BUFFALO & PITTSBURGH RAILROAD, INC. AND ROCHESTER & SOUTHERN, INC.

Buffalo & Pittsburgh Railroad, Inc. ("B&P") and Rochester & Southern Railroad, Inc. ("R&S") are filing these Comments to describe how their operations, traffic and the industries they serve have been affected by the split of Conrail's assets between NS ands CSX and to request that the Board, pursuant to its explicit reservation of authority in this proceeding, impose an additional condition upon NS, the carrier with which B&P and R&S connect, to ameliorate the harms the transaction has caused B&P, R&S and their customers.[1]

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[1] "Conrail" or "CR" refer to Conrail, Inc. and Consolidated Rail Corporation and their wholly owned subsidiaries. "CSX" refers to CSX Corporation and CSX Transportation, Inc. and their wholly owned subsidiaries . "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR") and their wholly owned subsidiaries.

Procedural Background

In a decision served July 23, 1998, the Board approved the acquisition and control of Conrail by CSX and NS, and the division of Conrail's assets by and between CSX and NS. *CSX/NS/CR Dec. No. 89.* The approval was made subject to a number of conditions which were accepted by the applicants when they consummated the transaction. One of the conditions was subjecting the consummated transaction to the Board's continuing oversight. The Board explained the purpose of this condition:

> We are establishing oversight for 5 years so that we may assess the progress of implementation of the CSX/NS/Conrail transaction and the workings of the various conditions we have imposed, and *we are retaining jurisdiction to impose additional conditions if, and to the extent, we determine that additional conditions are necessary to address unforseen harms caused by the transaction.* . . .
>
> Our oversight process will be broadly based. *As part of that process, we will monitor situations involving the relationship of shortline railroads to their Class I connections* and to other Class I railroads.

CSX/NS/CR Dec. No. 89, at 160-161 (emphasis added, footnotes omitted).

This sub-docket was established by the Board's decision implementing the oversight condition, and these Comments are filed pursuant to the procedures established in that decision. *Sub-No. 91, Dec. No. 1* (served February 9, 2000). In instituting the proceeding the Board again noted that it "retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to address harms caused by the Conrail transaction." *Sub-No. 91, Dec. No. 1* at 2. Specifically, the Board noted that it would examine the impacts involving the relationship of shortlines to their Class I connections. *Id.*

In these Comments, B&P and R&S (i) will describe the disintegration of reliable

freight service between Buffalo and Silver Springs, NY, caused by congested conditions at Buffalo and the addition of NS operations to the existing operations of CP and R&S at Silver Springs, and (ii) in order to restore reliable service, will request that the Board impose an additional condition requiring NS to grant R&S overhead trackage rights over NS's Southern Tier Line between Silver Springs and B&P's Buffalo Creek Yard. We will also describe how the foregoing congested conditions preclude the full realization of the benefits contemplated by the Board in conditioning approval of the transaction granting Livonia, Avon & Lakeville Railroad ("LAL") the right to cross Conrail's Genesee Junction Yard to reach a connection with R&S. *CSX/NS/CR Dec. No. 89*, at 171, 180 (ordering paragraph 56). These comments are based on and supported by the evidence contained in the accompanying Verified Statement of David J. Collins ("Collins V.S.") and the exhibits thereto.

Commenting Parties

B&P, a Class II rail carrier, owns and leases approximately 279 miles of track lying generally between New Castle, PA, and Buffalo. R&S is a Class III rail carrier operating approximately 66 track miles between Rochester, NY, and Silver Springs. B&P and R&S are subsidiaries of Genesee and Wyoming Inc. which includes B&P and R&S in its New York/Pennsylvania Region. R&S connects with B&P at Buffalo via a 1992 haulage contract with the Canadian Pacific Railway System ("CP"). It also uses these haulage rights to connect with CP, Canadian National ("CN") and NS in Buffalo. Since the Split date, R&S has also had a

physical connection with NS at Silver Springs, and with LAL at Genesee Junction Yard.[2] *See* the map attached as Exhibit A to Collins V.S. B&P and R&S both have corporate offices at 1200-C Scottsville Rd., Ste. 200, Rochester, NY 14624, phone no. 716-463-3300.

Position of Commenting Parties

As a direct result of the CSX/NS/CR transaction, Silver Springs has experienced a reduction in service. This reduction has affected R&S and its customers, and their ability to interchange traffic with other carriers in Buffalo including B&P, CP, CN and NS. R&S has lost a significant amount of traffic as a result. Additionally, this reduction has adversely affected the relief that the Board awarded the LAL, frustrating its ability to realize potential traffic gains. Accordingly, B&P and R&S are requesting that the Board use its retained jurisdiction to require NS to grant R&S the overhead trackage rights described below.

Requested Action

B&P and R&S request that the Board impose an additional condition upon its approval of the CSX/NS/CR transaction requiring NS to grant R&S overhead trackage rights over NS's Southern Tier Line between Silver Springs and the Buffalo Creek Yard operated by B&P at Buffalo, a distance of approximately 54 miles. B&P and R&S are submitting together with these comments a "highly confidential" Appendix containing a copy of a trackage rights

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[2] Another connection of R&S is at Caledonia, NY (southwest of Rochester), with its sister carrier, Genesee and Wyoming Railroad Company ("GNWR"), principally a carrier of rock salt. GNWR has trackage rights over R&S to interchange with CP at Silver Springs and to interchange with CSX at Rochester. As will appear, an impending substantial increase in GNWR traffic increases the urgency of the relief sought.

agreement dated as of November 12, 1997, between B&P and Conrail.[3] This agreement that was entered into between B&P and Conrail after the initial application in this proceeding was filed, and B&P believes that NS reviewed the agreement and approved its terms before it was signed by Conrail. NS has now succeeded to Conrail's interest under that agreement, and B&P today conducts operations under it. B&P and R&S suggest that the terms contained therein, including the compensation terms, would be appropriate for the trackage rights requested herein. If the request is granted, R&S will file a trackage rights notice with the Board.

Comments and Discussion

B&P and R&S believe it is clear that the benefits to shippers and carriers in the Rochester area expected by the Board in approving the CSX/NS/CR transaction have not been realized; in fact, the public in this area has experienced virtually no benefits and much detriment from the approval of the transaction. In attempting to allay the fears of the Genesee Transportation Council, the Board stated:

> If anything, the transaction will enhance rail competition and service in and around Rochester. Enhanced service will derive from, for example, the proposed expansion of Frontier Yard, which will improve classification of local and regional traffic and reduce transit times. New competition will derive from the fact that the Rochester and Southern Railroad, Inc. (R&S) now connects with NS on the Southern Tier route in competition with CSX, which inherits the bulk of Conrail's lines and operations in the Rochester area.

CSX/NS/CR Dec. No. 89 at 89. Clearly, the transaction has *not* resulted in enhanced rail

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[3] A redacted public version of the trackage rights agreement was filed with the Board in Finance Docket No. 33514, *Buffalo & Pittsburgh Railroad, Inc. -- Trackage Rights -- Consolidated Rail Corporation.*

competition in the area in and around Rochester served by R&S. Mr. Collins explains in great detail in his statement how NS congestion in Buffalo has caused a reduction in CP's haulage service to Silver Springs, and how the addition of a third carrier (NS) has strained the limited interchange tracks in Silver Springs. Collins V.S. at 1-7.

As demonstrated by the Collins V.S., the degraded service received by R&S's customers as a result of this transaction has lessened the ability of R&S to compete with CSX and other transportation modes. These conditions have seriously damaged R&S by causing a loss of rail revenues of some $800,000 owing to the loss of approximately 1,500 carloads of business during the 12 month period ended May 31, 2000, *a 25% volume reduction in the business that R&S handled in the 12 months prior to the Split Date.* Collins V.S. at 5-6. This traffic didn't evaporate; it went to R&S's competitors.

The impediments to efficient rail service more fully described below have also impaired the ability of LAL to receive the full benefits of its right to connect with R&S as ordered by the Board. *CSX/NS/CR Dec. No. 89* at 180 (ordering paragraph 56). Mr. Collins's statement shows that only 1,150 cars moved via the LAL-R&S haulage agreement during the 12 months beginning June 1, 1999 rather than the 1,500 to 2,000 cars anticipated.[4] *See* Collins V.S. at 6. *See also,* letter from LAL attached as Exhibit D to the Collins V.S. As noted above, the Board had stated that it would oversee "the conditions we have imposed to ensure that quality interline service and connections are in place to maintain the viability of certain shortline railroads...." *CSX/NS/CR Dec. No. 89*, at 161. The quality of interline service and connections

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[4] R&S also lost the haulage revenues that it would have earned from moving the additional traffic from LAL to Silver Springs.

anticipated by the Board have not occurred in the case of LAL.

This deteriorated service was not anticipated by the Board. To the contrary, Chairman Morgan commented:

> By preserving the settlements of many railroads and shippers such as coal and utility shippers, while imposing conditions to assist others such as aggregates shippers, and smaller railroads that provide important services, *our decision ensures that, overall, shippers will be better off after the merger than they were before, and that none will have less service than they had before.*
>
> In this regard, our decision recognizes the important role of smaller railroads in providing essential and competitive services in various regions affected by this transaction.

Id. at 187 (emphasis added).

Apart from the urgent need of any carrier to rectify a loss of traffic worth $800,000, the service problems for R&S will be greatly magnified if corrective measures are not soon taken because of substantial new traffic sources that in all probability will soon be available for routing over Silver Springs. Mr. Collins reports that about 5,000 new carloads of rock salt are expected to move to NS and CP via Silver Springs annually beginning early in 2001. Collins V.S. at 6. The traffic will originate at a mine on GNWR's line which had been closed because of a collapse, but GNWR has 100 years of prior experience to form the basis of this estimate of future traffic. Also, Commodity Resources, a receiver of feed grains and fertilizers is scheduled to open at Caledonia on R&S in the spring of 2001. Shipments to this customer are expected arrive in blocks of up to 75 cars. *Id.* New business should obviously be good news, but, unless prompt corrective measures are taken, it will simply be lost business because of the already limited capacity of the interchange facilities at Silver Spring.

The inadequacy of the facilities at Silver Spring, no less than the congestion at Buffalo, is plainly the result of the Conrail split-up. Whereas only R&S and CP operated at Silver Springs in the Conrail era, now NS also enters the interchange tracks there. NS handles LAL traffic to Silver Springs via a local from Corning, NY adding to the volume passing through the interchange. *Id.* at 5. With the previously smooth operation between CP and R&S, they were able to limit use of the limited interchange facilities at Silver Springs by arranging a timed meet requiring each railroad to simply change crews and power.[5]

The trackage rights now sought would be entirely consistent with the criteria employed by the Board in imposing conditions to consolidation transactions. The Board described these criteria in this proceeding as follows:

> Conditions will generally not be imposed unless the merger produces effects harmful to the public interest that a condition will ameliorate or eliminate. The principal harms for which conditions are appropriate are a significant loss of competition or the loss by another rail carrier of the ability to provide essential services. Essential services are those for which there is no adequate transportation alternative.
>
> A condition must be operationally feasible, and produce net public benefits. We are disinclined to impose conditions that would broadly restructure the competitive balance among railroads with unpredictable effects. See, e.g., SF/SP, 2 I.C.C.2d at 827, 3 I.C.C.2d at 928; and UP/MKT, 4 I.C.C.2d at 437. A condition must address an effect of the transaction, and will generally not be imposed "to ameliorate longstanding problems which were not created by the merger." Finally, a condition should also be tailored to remedy adverse effects of a transaction, and should not be designed simply to put its proponent in a better position than it occupied before the consolidation.

CSX/NS/CR Dec. No. 89, at 78 (footnotes omitted) .

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[5] This is the "headlight meet" described by Mr. Collins. *Id.* at 2-3.

The trackage rights here requested would provide a simple and fair remedy to a serious service disruption solely attributable to NS's acquisition of Conrail's assets. It would restore service levels to their pre-transaction levels without imposing any undue burden on NS. Indeed, as Mr. Collins states, the trackage rights would provide NS with sorely needed operating efficiencies. *Id.* at 7. LAL would receive the frequent efficient interchange service that will allow it to enjoy the benefits of the relief awarded it by the Board.

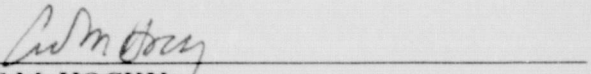
With trackage rights to Buffalo Creek Yard, R&S's traffic would not need to be interchanged at Silver Springs, eliminating a bottleneck that is sure to become worse when expected traffic materializes. Congestion at SK yard would also be reduced by the movement of the traffic to Buffalo Creek Yard. CP would eliminate its local so there would be no additional burden on the Southern Tier Line, and no additional traffic over the CP Draw at Buffalo, all as explained by Mr. Collins. *Id.* at 6-8.

All carriers moving traffic between Silver Springs and Buffalo would benefit from single carrier service by R&S through the Silver Springs interchange to Buffalo Creek Yard.

Conclusion

For the foregoing reasons, B&P and R&S ask that the Board exercise its retained jurisdiction and order NS to grant R&S the trackage rights requested herein.

Respectfully submitted,



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(610) 692-9116

Dated: July 13, 2000

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

CERTIFICATE OF SERVICE

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

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

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

and on all other parties of record in this General Oversight Proceeding (Sub-No. 91).

Dated: July 13, 2000

ERIC M. HOCKY

VERIFIED STATEMENT
OF
DAVID J. COLLINS

My name is David J. Collins. I am Senior Vice President-New York and Pennsylvania Region, of Genesee and Wyoming Inc. ("GWI"), and President of each of GWI's subsidiaries in the region including Buffalo & Pittsburgh Railroad, Inc.("B&P"), a Class II rail carrier, and Rochester & Southern Railroad, Inc. ("R&S"), a Class III rail carrier.[1] This statement is filed on behalf of B&P and R&S.

Over a period of 21 years, I have held various positions with GWI's railroads. In the course of my present duties, I have become familiar with the operations of B&P and R&S, including those relating to the movement of traffic in conjunction with Conrail, and since the Split Date of June 1, 1999, with the new NS and CSX rail systems. I am presenting this statement to describe certain problems that have arisen since the Split Date, how they have affected traffic moving between B&P in Buffalo and R&S in Silver Springs, and a simple solution that will ameliorate the problems without adversely impacting other carriers. A map attached hereto as Exhibit A shows the relationship of B&P, R&S and other carriers, and the locations in New York State discussed in the statement.

Problems with CP Haulage Service

The post-transaction problem that has received the most press to date is the chaotic condition at Buffalo which not only affects the service of NS and CSX but the railroads who

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[1] GWI is a holding company that owns or controls short line and regional freight railroads operating throughout the United States and in Canada, Mexico and Australia.

must interchange traffic with them there.[2] Almost immediately after Conrail's transfer of assets, there was a marked deterioration in the service through Buffalo which has continued to the present. The severe operating problems in the Buffalo terminal and on NS's Southern Tier Line between Buffalo and Binghamton have directly impeded traffic moving between both R&S and B&P and their connecting carriers.

R&S and its customers have been particularly harmed by the difficulty of moving cars between the Buffalo terminal and R&S at Silver Springs, NY. Canadian Pacific Railway ("CP")[3] hauls cars for R&S (the cars remain in R&S's account) between Silver Springs and Buffalo under terms of a haulage agreement dated November 20, 1992. Until Split Date, R&S used this service to connect with B&P, and through B&P for further interchange to NS and Canadian National Railway ("CN") at Buffalo.[4] Prior to June 1, 1999, the operation worked fairly well. CP operated a local train with a yard crew which made a round trip between its SK Yard in Buffalo and Silver Springs 6 nights per week (Sunday – Friday). SK is a small yard adjacent to the NS Southern Tier Line. This train would make a "headlight meet" with R&S's road train which operated between Rochester and Silver Springs on the same nights.[5] In addition to

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[2] The Board has set up separate proceedings with respect to rates in Buffalo (Sub-No. 90) and infrastructure issues there (Sub-No. 93).

[3] For the purposes of this Statement, my references to CP include the Delaware and Hudson Railway.

[4] Some traffic was interchanged directly to NS on behalf of R&S.

[5] A "headlight meet" is essentially a timed meeting between the two trains. This meeting allows the crews to exchange trains. This eliminates the need of either crew to return light, and more importantly at Silver Springs, allows the traffic to be interchanged without the need for setting off cars on either the one siding or on the main. This eliminates extra switching and reduces possibility of congestion.

handling the haulage cars, CP's train also picked up and delivered any cars that were interchanged directly between CP and R&S.

This service began to deteriorate promptly after NS took over from Conrail at Buffalo and on the Southern Tier. As a result of severe operating problems in those areas, CP service between Buffalo and Silver Springs has been sporadic at best since June 1, 1999. There are huge variations in transit times making it impossible for R&S to provide reliable service or even predict arrival and departure times. The smooth "headlight meet" operation between CP and R&S has occurred rarely since that date.[6]

As reported to us, the primary reason that CP's service has deteriorated is the impediments it continually encounters in attempting to gain access to CP's SK Yard because it is forced to use NS's congested tracks. The line drawing attached to my statement as Exhibit B shows that CP's trains must use NS's "Buffalo Runner" track to enter or leave SK Yard in order to switch cars for its train between Buffalo and Silver Springs and to switch cars for its other trains. The NS tracks are often plugged by standing trains. All of the NS congestion has in turn caused congestion in SK Yard. Relieving that congestion keeps the CP yard crew too busy to make regular runs to Silver Springs.

Shipments which arrive in Buffalo from Silver Springs on the CP local are either picked up by a B&P crew which operates out of B&P's Buffalo Creek Yard or are delivered by a CP crew to Buffalo Creek Yard. Regardless of which railroad's crew or locomotives handles this, the train linking the two yards must operate through the "CP Draw." Prior to Split Date, B&P

---

[6] Service the last two weeks has increased with CP operating more frequently. However, the headlight meets have not been consistently made. This requires additional movements of cars by R&S and additional strains on the infrastructure at Silver Springs. Further, B&P and R&S are not confident that service even at this level will continue on a consistent basis.

would pick up all haulage cars brought to Buffalo by CP with the exception of cars destined for NS. NS would pick these up directly at SK Yard as part of its CP interchange. Now, all cars that CP brings to Buffalo from Silver Springs are brought to B&P's Buffalo Creek Yard where B&P's crews classify them for interchange to NS, CN , etc. This includes cars of the Livonia, Avon & Lakeville Railroad ("LAL") coming back from Silver Springs.

Complications at Silver Springs

Silver Springs has only a single 45 car interchange track, and the connection to the R&S main is in the middle of the track. There is no room for additional tracks. As it is, many road crossings to the east of the interchange track become blocked when switching is performed or trains are held for setoffs or pickups. (See the drawing of track layout at Silver Springs which I have attached as Exhibit C to my statement.) The layout restricts the numbers of cars that can be handled at once. Further, as the number of carriers trying to interchange there goes up, the logistical problems multiply.

Prior to Split Date, Silver Springs was used only by CP and R&S. Conrail preferred to deliver traffic to and from R&S at Rochester off of the Water Level Route. While interchange was not easy, R&S and CP were able to coordinate headlight meets six days a week. The CP local and the R&S main would meet, the crews would exchange trains. Traffic was able to be delivered back to Buffalo by CP, and delivered by R&S on the same day.[7] While operations were not ideal, they were manageable.

To make matters worse, the function of Silver Springs also changed (and became more complicated) after June 1, 1999. NS now had the potential to directly interchange with R&S.

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[7] When the headlight meet is not made, traffic headed in one direction or the other sits in Silver Springs for an extra day.

Furthermore, LAL, based on the rights it was awarded by the Board to connect with R&S at Genesee Junction (ordering paragraph no. 56), had negotiated its own haulage arrangement with R&S whereby, effective June 1, 1999, R&S began hauling cars for the account of LAL between Rochester and Silver Springs so that LAL also had the potential to interchange directly with NS and CP at Silver Springs.

It became apparent very quickly that NS did not plan to provide regular interchange service at Silver Springs. However, when NS does provide service there from Corning, the inadequacy of the track structure at Silver Springs quickly becomes apparent. With three carriers (NS, CP and R&S) operating at Silver Springs, headlight meets cannot be coordinated, and switching cars between the various carriers becomes a nightmare.

After several months of discussions between NS and R&S and almost daily service crises, the following arrangement gradually evolved:

- CP continues to operate its local train between Buffalo and Silver Springs when operating conditions permit.
- CP continues to handle R&S-NS traffic to Buffalo since NS never established any regular interchange service at Silver Springs.
- NS handles LAL traffic to Silver Springs via a local which operates a couple of days a week from Corning, NY.

Shippers are justifiably and increasingly frustrated with the total lack of efficient, reliable service on traffic that must move via NS's facilities. The erratic service and costly, fragmented operation cost R&S approximately 1,500 carloads of business to and from various on line customers during the 12 month period from June 1, 1999 through May 31, 2000. This represents

over 25% of the volume that R&S had handled during the previous 12 month period, and cost R&S over $800,000 in gross revenue. Furthermore, this poor service has seriously damaged our credibility with many of our customers and has made it much more difficult to develop new business.

In addition, LAL has been unable to grow the business with CP and NS that it was granted the right by the Board to develop. LAL's efforts have been hindered by the chronic service problems along the Southern Tier and by the erratic interchange service it receives from the connecting carriers at Silver Springs. *See* letter dated July 6, 2000, from LAL to R&S attached as Exhibit D to my statement. Thus, while it was originally anticipated that approximately 1,500–2,000 carloads of LAL business would move via R&S haulage arrangement annually, only 1,150 cars were handled during the twelve months subsequent to June 1, 1999.

It is imperative that R&S find a means of recovering its lost business. Adding further urgency to the need to get this situation resolved is that R&S has genuine opportunities to handle substantial additional business in the near future. A salt mine which had collapsed and closed on R&S's sister carrier, Genesee & Wyoming Railroad Company ("GNWR"), is scheduled to reopen in early 2001 and based on historical experience,[8] is expected to generate 5,000 annual carloads that will move through Silver Springs to NS and CP. This traffic is destined for, among others, various agencies responsible for highway maintenance and a reliable supply of salt will be essential.

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[8] GNWR has handled salt traffic over this line since the railroad was founded over 100 years ago in 1899.

In addition, a new facility of Commodity Resources is due to open on the R&S at Caledonia in the spring of 2001. R&S will primarily be delivering feed grains and fertilizers to Commodity Resources, and the traffic is expected to be received in blocks of up to 75 cars.

The interchange tracks at Silver Springs have very limited capacity and cannot effectively handle the fragmented interchange traffic moving today. They certainly will not be capable of handling any substantial additional volumes given the current switching arrangements.

The Solution

R&S proposes a fairly simple solution to the transportation bottleneck I have described. We request the Board to impose an additional condition to its approval of the NS/CSX acquisition that would require NS to grant R&S approximately 54 miles of overhead trackage rights over the Southern Tier Line between Silver Springs and B&P's Buffalo Creek Yard. R&S would operate a daily train in each direction that would handle all of the traffic moving between Silver Springs and Buffalo for all carriers.[9] At Silver Springs, no interchange of R&S and LAL traffic to NS or CP would be necessary, and there would be no limitation on the size of the train that could be handled. This will be especially important when the additional traffic I have described comes on line in 2001.[10] This train would replace CP's haulage train over the Southern Tier and not add any burden to NS's facilities. (CP has indicated that it would likely be willing to discontinue its haulage train and to accept R&S and LAL traffic at Buffalo.) While R&S

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[9] GWI carriers have experience in operating over NS lines; B&P currently operates trackage rights over approximately 45 miles of NS (formerly Conrail) main line between Machias and Buffalo.

[10] It could be said that the potential burden on Silver Springs from additional traffic would have existed there independently of the NS acquisition. However, absent the transaction only CP and R&S were operating in Silver Springs, not the three carriers that are there as a result of the merger.

would use various tracks in moving through Buffalo, it would not need to use them for switching as CP currently does while breaking up the train. In moving to and from Buffalo Creek Yard, R&S can set cars off at SK Yard on the way east and pick cars up on westbound moves without increasing the volume of moves over CP Draw. Additionally, this operation would eliminate the daily CP train that operates between SK Yard and Buffalo Creek Yard. R&S and B&P would be able to break up their trains in B&P's Buffalo Creek Yard.

The R&S trackage rights would also provide operating efficiencies for NS. NS would no longer need to handle LAL traffic on its train from Buffalo to Corning, and then on an additional local train back to Silver Springs. Service between them will be quicker and more efficient and will allow NS to eliminate two moves. And it would do this without increasing the burdens on NS's Southern Tier Line or its infrastructure in Buffalo.

The trackage rights we seek would also provide efficiencies for CP. The rights would reduce the amount of switching required of CP. It would also reduce the congestion in and adjacent to SK Yard because of the movement of R&S traffic directly to Buffalo Creek Yard. Further, CP would no longer need to run a local to meet R&S's train in Silver Springs.

The trackage rights we propose would enable us to provide predictable, efficient service with more reliable connections with other carriers, and, most importantly, reliable service for our customers. It would allow for the consolidation of the fragmented pieces of business into one train, would relieve the strain on Silver Springs and would greatly improve service for all the carriers involved. It is for these reasons that we are pursuing the right to operate R&S trains over NS's Southern Tier Line.

B&P and R&S have discussed their proposal with NS, but NS has been unwilling to grant it to date. NS recently proposed that it provide haulage for R&S between Buffalo and Silver Springs. In addition to the fact that NS has not yet suggested what it would charge for the service, the proposal is inferior to ours in the following respects:

(1) It is not clear that CP will voluntarily give up its local train in favor of NS which will not give CP's traffic priority. The result would be additional trains on the Southern Tier and continued use of Silver Springs by three carriers.

(2) Continued use of "headlight meets" would be necessary. In addition to requiring predictable service (which to date NS has been unable to provide), the predicted traffic growth will make this type of transfer more difficult. Our proposed run-through would certainly be simpler and more efficient.

(3) NS has not presented a plan on how it would handle the traffic in Buffalo. We believe that instead of going directly to Buffalo Creek Yard (with a single set off to CP at SK Yard), NS is likely to drop the cars at its Bison Yard, then use a local crew to take the cars to Buffalo Creek Yard, then switch out cars to B&P for further classification and delivery to CP and CN. This would require additional moves across CP Draw, and based on current experience will add days to the moves.

Conclusion

R&S is suffering from the poor interchange service it has been receiving at Silver Springs since the Split Date. This service deterioration (and not issues related to rates), has caused significant traffic losses to R&S, and reduced the traffic LAL has been able to develop (and the haulage revenue R&S would earn from the traffic). R&S is looking for ways to bring the service levels back to at least as often and efficient as it was prior to the transaction being implemented. The solution we are suggesting, R&S trackage rights between Silver Springs and Buffalo Creek Yard, will do just that, and will not adversely impact any other carriers operations or the use of their facilities.

VERIFICATION

I, David J. Collins, President of Buffalo & Pittsburgh Railroad, Inc. and of Rochester & Southern Railroad, Inc., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on July 13, 2000.

David J. Collins

Exhibit A
Map

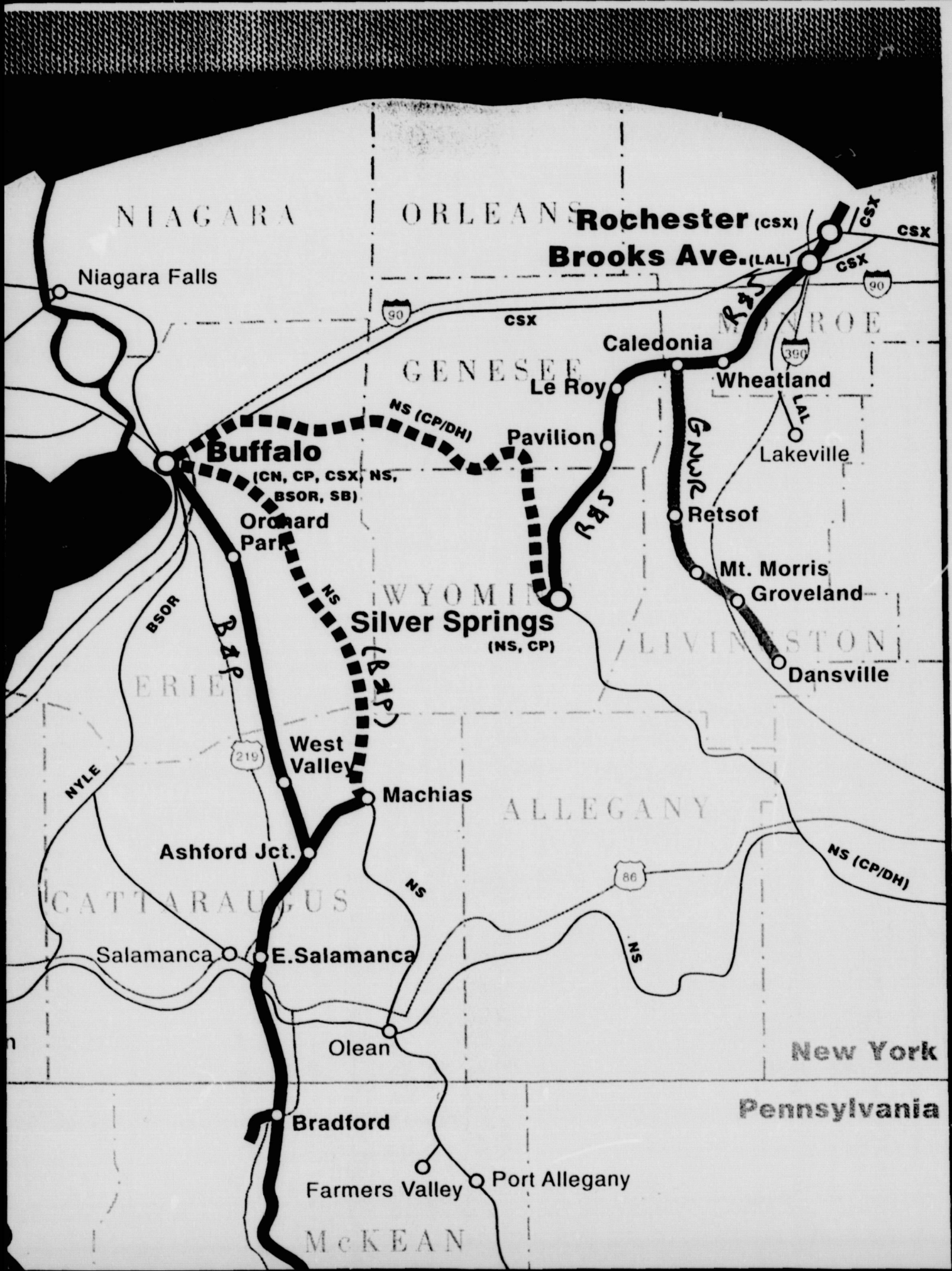
NIAGARA
ORLEANS
GENESEE
WYOMING
LIVINGSTON
ERIE
ALLEGANY
CATTARAUGUS
McKEAN
MONROE
Rochester (CSX)
Brooks Ave. (LAL)
CSX
CSX
CSX
CSX
Niagara Falls
90
90
390
Caledonia
Wheatland
Le Roy
LAL
Lakeville
NS (CP/DH)
Pavilion
Buffalo
(CN, CP, CSX, NS, BSOR, SB)
RBS
GNWR
Retsof
Orchard Park
Mt. Morris
Groveland
Dansville
NS
Silver Springs
(NS, CP)
BSOR
BAP
(BAP)
West Valley
219
NYLE
Machias
Ashford Jct.
NS
86
NS (CP/DH)
Salamanca
E.Salamanca
NS
Olean
New York
Pennsylvania
Bradford
Farmers Valley
Port Allegany

Exhibit B
Buffalo Terminal

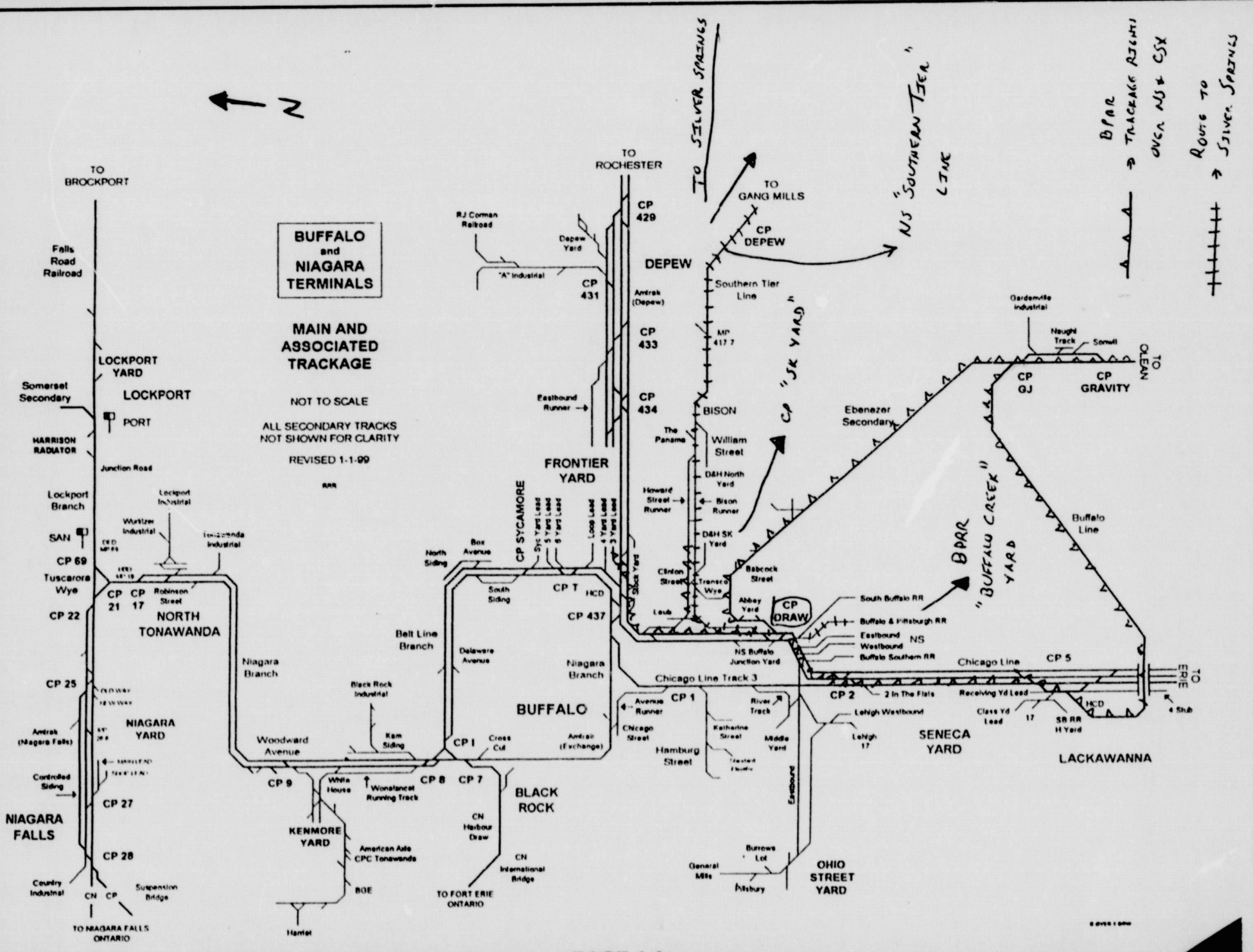
BUFFALO and NIAGARA TERMINALS
MAIN AND ASSOCIATED TRACKAGE
NOT TO SCALE
ALL SECONDARY TRACKS NOT SHOWN FOR CLARITY
REVISED 1-1-99
BBR
N
TO BROCKPORT
TO ROCHESTER
TO SILVER SPRINGS
TO GANG MILLS
NS "SOUTHERN TIER" LINE
BBR TRACKAGE RIGHTS OVER NS & CSX
ROUTE TO SILVER SPRINGS
Falls Road Railroad
LOCKPORT YARD
LOCKPORT
PORT
Somerset Secondary
HARRISON RADIATOR
Junction Road
Lockport Branch
Lockport Industrial
Wurlitzer Industrial
Tonawanda Industrial
SAN
CP 69
Tuscarora Wye
CP 22
CP 21
CP 17
Robinson Street
NORTH TONAWANDA
CP 25
NIAGARA YARD
Amtrak (Niagara Falls)
Controlled Siding
CP 27
NIAGARA FALLS
CP 28
Coundry Industrial
CN
CP
Suspension Bridge
TO NIAGARA FALLS ONTARIO
Niagara Branch
Woodward Avenue
Black Rock Industrial
Kam Siding
CP 9
White House
Wonatanet Running Track
CP 8
CP 7
KENMORE YARD
American Axle CPC Tonawanda
BGE
Hamlet
Belt Line Branch
Delaware Avenue
CP 1
Cross Cut
BUFFALO
Amtrak (Exchange)
BLACK ROCK
CN Harbour Draw
CN International Bridge
TO FORT ERIE ONTARIO
RJ Corman Railroad
"A" Industrial
Depew Yard
DEPEW
CP 429
CP 431
CP 433
CP 434
Amtrak (Depew)
Eastbound Runner
FRONTIER YARD
CP SYCAMORE
North Siding
Box Avenue
South Siding
CP T
HCD
CP 437
Sky Yard
Sy-C Yard Lead
5 Yard Lead
6 Yard Lead
Loop Lead
4 Yard Lead
3 Yard Lead
Louis
CP DEPEW
Southern Tier Line
MP 417.7
BISON
The Panama
William Street
D&H North Yard
Howard Street Runner
Bison Runner
D&H SK Yard
Clinton Street
Transfer Wye
Babcock Street
Abbey Yard
CP DRAW
CP "SK YARD"
BBR "BUFFALO CREEK" YARD
Gardenville Industrial
Naught Track
Sorrell
TO OLEAN
CP GJ
CP GRAVITY
Ebenezer Secondary
Buffalo Line
South Buffalo RR
Buffalo & Pittsburgh RR
Eastbound
Westbound
Buffalo Southern RR
NS
NS Buffalo Junction Yard
Chicago Line
CP 5
TO BRIE
Chicago Line Track 3
CP 2
2 In The Flats
Receiving Yd Lead
HCD
4 Stub
Class Yd Lead
17
SB RR H Yard
LACKAWANNA
SENECA YARD
Lehigh Westbound
Lehigh 17
Avenue Runner
Chicago Street
CP 1
River Track
Katherine Street
Middle Yard
Hamburg Street
Eastbound
Burrows Lot
General Mills
Pillsbury
OHIO STREET YARD

Exhibit C
Silver Springs

ROCHESTER & SOUTHERN RR.

Silver Springs, New York

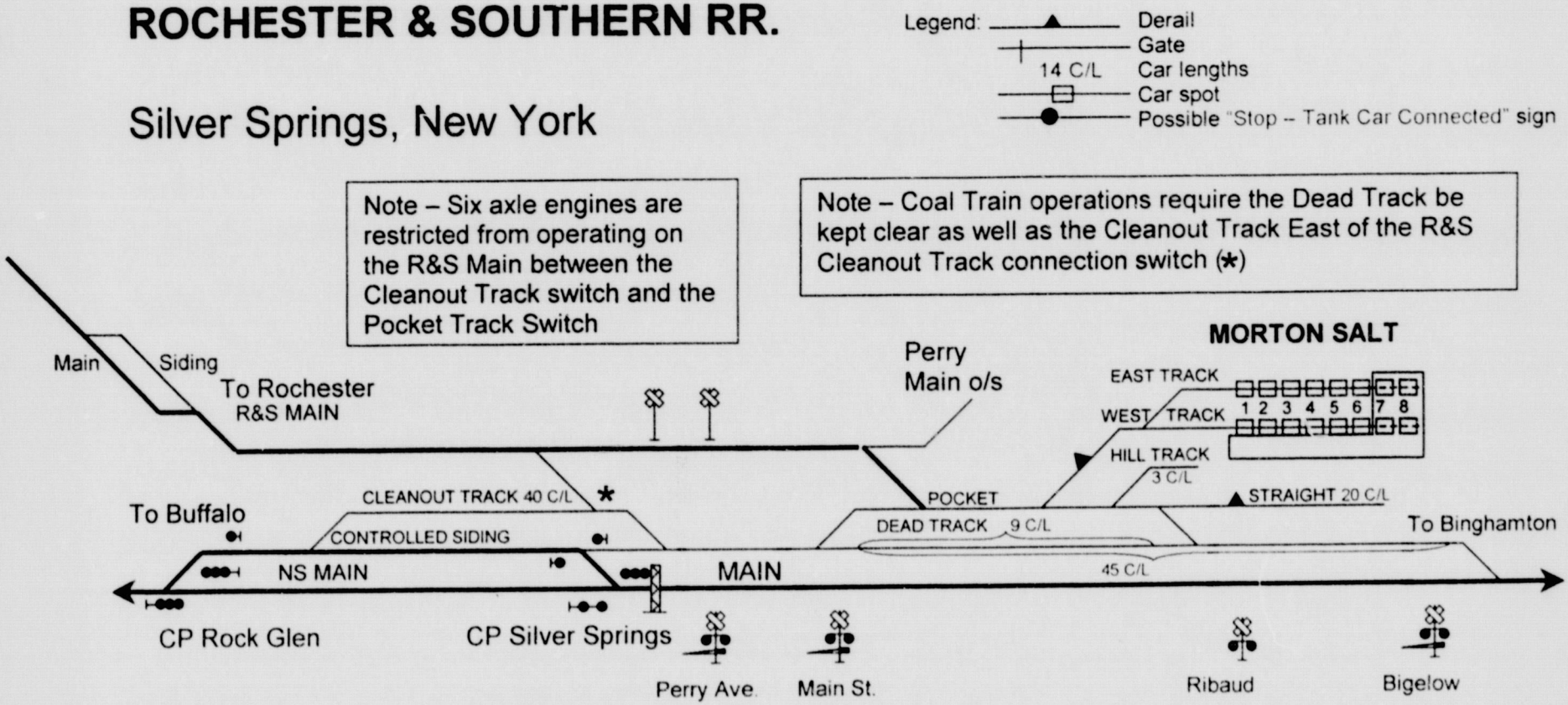

Exhibit D
LAL Letter

LIVONIA, AVON & LAKEVILLE RAILROAD
P.O. Box 190-B
5769 Sweeteners Blvd.
Lakeville, NY 14480
(716) 346-2090 PH. 346-6454 FAX
WWW.LALRR.COM

JUL 7 REC'D

July 6, 2000

David Collins
President
Rochester & Southern Railroad
1200-C Scottsville Road
Rochester, NY 14624

Dear Dave,

The Livonia, Avon & Lakeville Railroad supports the efforts of the Rochester & Southern to improve the flow of traffic through Silver Springs. Since June 1, 1999, our efforts to grow business by using our haulage arrangement with the R&S to connect with the Norfolk Southern and the Canadian Pacific have been hindered by chronic service problems along NS's Southern Tier Line and erratic interchanges at Silver Springs.

Trackage at Silver Springs is inadequate to handle anything but fairly simple and low volume interchange traffic. LAL agrees that your proposal to consolidate all traffic into a regularly scheduled R&S train operating between Buffalo and Rochester via the Southern Tier Line has merit. Consolidating R&S interchange and LAL haulage traffic for movement through Silver Springs should greatly improve the efficiency and reliability of service and once again allow us to focus on growing the business.

Please keep me apprised of developments.

Sincerely,

William D. Burt
Vice President and General Manager

WDB/