

STB FD-33388 (SUB 91) 7-14-00 D 199285 1 of 3

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July 14, 2000

BY HAND DELIVERY

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

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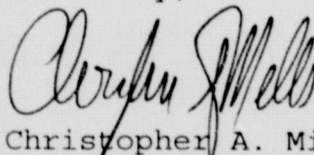
Re: Finance Docket No. 33388, CSX Corporation et al.
-- Control and Operating Leases/Agreements --
Conrail Inc. et al. (Sub-No. 91)

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and twenty-five (25) copies of the Comments and Request for Additional Conditions of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the Four City Consortium). Also enclosed are computer diskettes containing the text of the filing in WordPerfect format.

We have included an extra copy of the filing. Please indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,



Christopher A. Mills
An Attorney for the Cities of
East Chicago, Indiana; Hammond,
Indiana; Gary, Indiana; and
Whiting, Indiana (collectively,
the Four City Consortium)

Enclosures

19938

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BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
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WASHINGTON, D.C.

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)

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

COMMENTS AND REQUEST FOR ADDITIONAL CONDITIONS
OF THE CITIES OF EAST CHICAGO, INDIANA;
HAMMOND, INDIANA; GARY, INDIANA; AND WHITING, INDIANA
(COLLECTIVELY, THE FOUR CITY CONSORTIUM)

THE CITIES OF EAST CHICAGO,
INDIANA; HAMMOND, INDIANA;
GARY, INDIANA; AND WHITING,
INDIANA (COLLECTIVELY, THE
FOUR CITY CONSORTIUM)

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Dated: July 14, 2000

Attorneys for The Four City
Consortium

THE V

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

COMMENTS AND REQUEST FOR ADDITIONAL CONDITIONS
OF THE CITIES OF EAST CHICAGO, INDIANA;

PREFACE

Pursuant to the Surface Transportation Board's ("STB" or "Board") Decision No. 1 served February 9, 2000 in the above-captioned proceeding, the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium" the "Consortium" or the "Four Cities") hereby submit their Comments and Request for Additional Conditions with respect to the implementation and satisfaction of certain conditions imposed by the Board in Decision No. 89 in Finance Docket No. 33388 (served July 23, 1998), approving the Application by CSX and NS for authority to

control Conrail, as modified by Decision No. 114 served February 5, 1999.¹

These Comments consist of three parts. Part One is the joint verified statement of the Mayors of the Four Cities: Robert A. Pastrick, Mayor of the City of East Chicago, Indiana; Duane W. Dedelow, Jr., Mayor of the City of Hammond, Indiana; Scott L. King, Mayor of the City of Gary, Indiana; and Robert J. Bercik, Mayor of the City of Whiting, Indiana ("Mayors' V.S."). Part Two is the verified statement of Phillip H. Burris, a consultant with L.E. Peabody and Associates ("Burris V.S."). Part Three is the narrative explaining why the conditions previously imposed to mitigate the Conrail transaction's adverse environmental impacts on the Four City region have proven inadequate and why additional mitigation and reporting conditions are necessary.

¹As used herein, "CSX" means CSX Corporation and its rail affiliates; "NS" means Norfolk Southern Corporation and its rail affiliates; CSX and NS are collectively referred to as the "Applicants"; and "Conrail" means Conrail Inc. and its rail affiliates.

MAYORS

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)

OF

We are Robert A. Pastrick, Mayor of the City of East Chicago, Indiana; Duane W. Dedelow, Jr., Mayor of the City of Hammond, Indiana; Scott L. King, Mayor of the City of Gary, Indiana; and Robert J. Bercik, Mayor of the City of Whiting, Indiana. We are the same Mayors who submitted verified testimony on behalf of our cities (collectively the "Four City Consortium") in the Surface Transportation Board's proceeding considering the acquisition of Conrail, Inc. by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("NS") and their affiliates. Our testimony in that proceeding accompanied the October 21, 1997 Comments of the Four City Consortium.

We understand that the Surface Transportation Board has initiated this oversight proceeding to assess, and is requesting comments from interested parties on, the implementation of operations by CSX and NS over the lines they acquired from Conrail, and on the railroads' compliance with the conditions imposed on the approval of the transaction. We are pleased to share our views on these issues.

By way of brief background, our four contiguous communities, with a combined population of approximately 208,000, are located in Lake County in northwestern Indiana, directly east of Chicago, Illinois. The area is a major crossroads for regional and transcontinental rail and motor carrier freight traffic. Our region is also densely populated with industrial development and residential communities, and there is considerable local commercial and personal vehicular traffic. The strategic geographic location of our communities is such that there is a maze of hundreds of miles of rail lines traversing our cities. These lines criss-cross in every direction.

As one might expect, the enormous volume of rail traffic moving over the lines in our region creates considerable challenges for our cities from a community safety, environmental, and regional planning perspective. A majority of the rail infrastructure in our four cities is owned or controlled by CSX and NS, whose main through routes between the Chicago area and the eastern United States traverse the area. The severity of the problem is intensified because the vast majority of the railroad

lines cross local roads and highways at-grade (there are approximately 250 at-grade crossings in our four cities).

The adverse safety and environmental impacts on our communities caused by the railroads' activities are considerable. Police, emergency service, public transit, school bus, and private and commercial vehicles are constantly being detained at grade crossings. Our region has among the highest incidences of vehicle-train collisions and fatalities of anywhere in the country. Frustration amongst our residents is growing, as longer and incremental increases in train traffic traversing critical line segments since implementation of the Conrail transaction have exacerbated the safety and environmental situation.

While each of our four cities has an individual interest in developing and maintaining our own transportation infrastructure programs and in mitigating the impacts of the area's significant rail operations, we share the view that the rail traffic problems confronting us must be addressed regionally if we are to be effective in mitigating the adverse impacts of rail operations. Thus, when the Conrail acquisition proposal was announced, we banded together to collectively assess the transaction. After considerable study and coordination, we developed a program to mitigate the adverse impacts of the transaction regionally. Through cooperation and hard-work, we eventually reached a settlement agreement with CSX in the fall of 1998 concerning post-Conrail train operations. This settlement, together with the conditions imposed by the STB on CSX and NS,

and the representations made by CSX and NS about their planned operational and infrastructure improvements in the region, were designed to alleviate regional congestion-related problems caused by the Conrail transaction.

Despite our best efforts to establish a framework and accord for mitigating the regional incremental impacts of CSX and NS's post-transaction operations, our experience has been that, at least over certain critical lines, the improvements have largely been inadequate and have taken longer to implement than promised. Additionally, certain incremental increases in train traffic over critical rail lines are far beyond those originally projected by the railroads and the railroads have failed to prevent trains from stopping in positions where they block major at-grade crossings.

Quite frankly, it appears to us that the railroads underestimated the adverse incremental impacts of their operations and overestimated their ability to solve those impacts. The railroads appear to be focusing their efforts on certain operating/infrastructure improvements that are not adequately tailored at addressing our cities' unique problems. More attention needs to be paid to our cities' individual concerns. The situation is in need of immediate redress.

We are aware that in its June 1, 2000 Report to the STB on the status of the implementation of the transaction, CSX explains that the "beneficial effects" of the various capital improvements it is undertaking in the Four Cities region may not

be felt until "late 2000." Meanwhile, NS does not reference in its June 1 Report any problems with its Four Cities' operations. Contrary to the picture that NS and CSX paint, their post-transaction regional operations are causing significant problems that the carriers did not discuss pre-transaction and these problems have not been sufficiently addressed.

Under the Four Cities' Settlement Agreement and the STB's conditions imposed on CSX and NS, the railroads, among other things, were required to meet with our cities, to provide us with information on operational and capital improvements to address at-grade crossing safety and delay issues, and to provide us with periodic reports on train traffic levels on two critical line segments: (1) CSX's Baltimore and Ohio Chicago Terminal ("BOCT") line between Pine Junction, IN and Calumet Park, IL which traverses the heart of our communities and East Chicago and Hammond's central business districts (which has 20 at-grade crossings), and (2) NS's "Nickel Plate" line traversing the southern portions of Gary and Hammond (which has 49 at-grade crossings).

In the case of NS, the reporting has been sparse. But from the limited information provided, and based on our cities' independent review of the situation, we have confirmed that the high levels of at-grade crossing blockages experienced post-transaction on the Nickel Plate line have been caused, at least in part, by the fact that NS is presently operating approximately 14 trains/day over and above what it represented during the

Conrail control proceeding it would be operating. NS's blockages of at-grade crossings on the Nickel Plate line are particularly problematic as the line crosses our communities in a southeast to northwest direction, and thus crosses both east-west and north-south highways. As a result of the line's location, NS's train stoppages often involve two or three crossings being blocked simultaneously -- further intensifying the safety and environmental impacts.

CSX has provided us with more complete information on its operations over the BOCT line than has NS over the Nickel Plate line. In our Settlement Agreement and in its representations to the STB, CSX promised that it would upgrade the track structure to achieve train speeds averaging 40 miles an hour, take actions to instruct its train crews not to block critical at-grade crossings, and reroute traffic off the congested BOCT line to the neighboring Indiana Harbor Belt ("IHB") line and the former Conrail Porter Branch, which is largely grade-separated and is underutilized. Unfortunately, CSX is presently operating over four trains a day on the BOCT line over and above what it represented it would be operating during the Conrail control proceeding; it has not refrained from blocking critical at-grade crossings; its average train speeds on the line remain well under 10 miles an hour; and it has failed to reroute a single train off the BOCT line to the Conrail Porter Branch/IHB corridor.

In response to the heightened rail congestion problems caused by the increased post-transaction railroad traffic through our communities, and the railroads' refusal to refrain from blocking critical at-grade road crossings, our communities have taken several actions. First, because of the railroads' continuous blockages of at-grade crossings, the Cities of Hammond and East Chicago enacted ordinances prohibiting the railroads from blocking the crossings for a period of more than five minutes at any one time without allowing for vehicles and pedestrians to cross the tracks, except where required for safety or other unusual circumstances. In 1999, East Chicago issued over 1000 tickets for illegal blockage of crossings, and through June of this year has issued almost 800 tickets. This year alone, through June, Hammond has issued more than 3,900 tickets against the railroads for illegal train blockages.

The issuing of thousands of tickets to prevent the destructive community health and safety impacts of the railroads' operations is not our preferred method of addressing the situation. However, we believe this action is one of the only means available to us to force the railroads to pay closer attention to our critical community impact concerns. Unfortunately, NS recently decided to file a federal lawsuit against certain of these ordinances, claiming that it has the right to block crossings as needed, without taking into account the destructive community impacts of its actions. It is an unfortunate that NS apparently believes it should fight for its

right to block critical at-grade crossings in federal court, rather than focus its efforts on taking steps to eliminate such blockages -- especially since the elimination of such blockages inures not just to the benefit of our communities, but also to the enhancement of the railroads' operations.

Besides adopting the crossing ordinances, our cities have attempted to negotiate additional agreements with CSX and NS whereby the railroads would take additional actions to mitigate their operational impacts on our communities. We are pleased to report that our cities have been involved in productive negotiations in recent weeks with CSX and NS over railroad congestion issues. Our negotiations with CSX have been particularly productive. These negotiations with CSX and NS entail, among other things, a possible agreement by CSX to shift traffic off of the congested BOCT line to the IHB grade-separated corridor and NS's agreement not to block certain critical at-grade crossings on the Nickel Plate line.

At this time, it remains uncertain whether an agreement can be reached between the parties that would obviate the need for imposition of additional environmental mitigating conditions by the STB. Thus, we are requesting that the STB adopt certain limited additional mitigating conditions that are focused on addressing CSX and NS's operations over the BOCT and Nickel Plate lines. The details of these requested additional conditions are detailed by counsel elsewhere in the Four City Consortium filing, of which this Joint Verified Statement is a part. We would

request that these conditions be imposed should negotiations over a settlement agreement between our cities and the railroads fail prior to the Board's decision in this oversight proceeding.

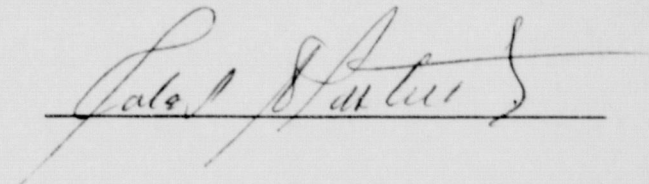
In summary, based on our experiences with the CSX and NS's operations since the Conrail transaction was consummated, we believe that, at a minimum, NS needs to take a closer look at addressing the problems its operations are causing, and CSX needs to do much more to mitigate the adverse impacts of its operations, as the operational improvements CSX references in its June 1 filing are insufficient to address the incremental impacts caused by its heavy post-transaction rail traffic density. Based on our experiences outlined above, it remains questionable whether CSX and NS will take appropriate actions to solve the operational and congestion problems in our four cities absent the imposition of additional mitigating conditions.

We appreciate this opportunity to share with the STB our views on critical safety and environmental impacts of CSX's and NS's operations on our communities, and your willingness to take appropriate actions to help alleviate the heightened and critical congestion problems we are experiencing as a result of the Conrail transaction.

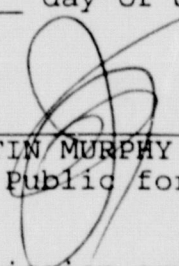
VERIFICATION

State of Indiana)
) ss:
County of Lake)

Honorable Robert A Pastrick, being duly sworn, deposes and says that he has read the foregoing Joint Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

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

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

A large, stylized handwritten signature, likely of the notary, is written over the notary's name and title.

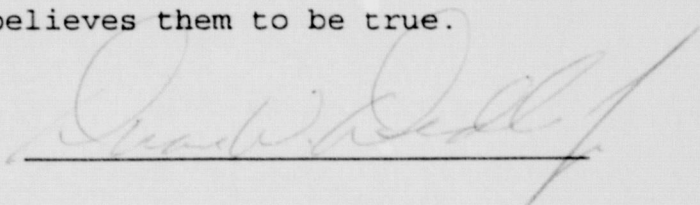
J. JUSTIN MURPHY
Notary Public for Lake County, Indiana

My commission expires: 11-13-01

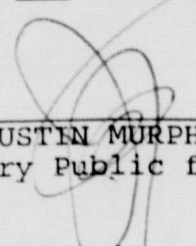
VERIFICATION

State of Indiana)
) ss:
County of Lake)

Honorable Duane W. Dedelow, Jr., being duly sworn,
deposes and says that he has read the foregoing Joint Verified
Statement, knows the contents thereof, and that the same are true
as stated except as to those statements made on information and
belief, and as to those, that he believes them to be true.



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



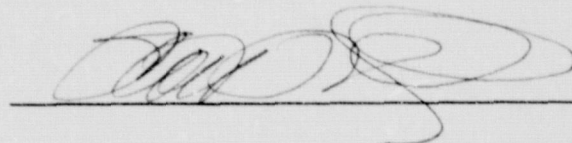
J. JUSTIN MURPHY
Notary Public for Lake County, Indiana

My commission expires: 11-13-01

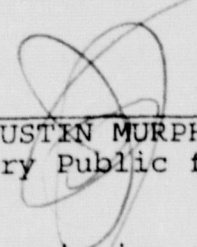
VERIFICATION

State of Indiana)
) SS:
County of Lake)

Honorable Scott L. King, being duly sworn, deposes and says that he has read the foregoing Joint Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.



Subscribed and sworn to before me
this 12th day of July, 2000.



J. JUSTIN MURPHY
Notary Public for Lake County, Indiana

My commission expires: 11-13-01

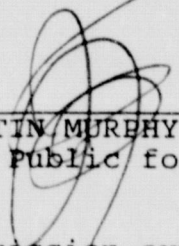
VERIFICATION

State of Indiana)
) ss:
County of Lake)

Honorable Robert J. Bercik, being duly sworn, deposes and says that he has read the foregoing Joint Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

Robert J. Bercik

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



J. JUSTIN MUREHY
Notary Public for Lake County, Indiana

My commission expires: 11-13-01

BURRIS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

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

Verified Statement
of
Philip H. Burris
Senior Vice President
L. E. Peabody & Associates, Inc.

On Behalf of the
Four City Consortium

Due Date: July 14, 2000

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LIST OF EXHIBITS

EXHIBIT NO. (1)	DESCRIPTION (2)
1	Graphical Depiction of the Rail Lines in the CSX Willow Creek to Calumet Park and the PHB/Conrail Porter Branch
2	Graphical Depiction of the Hobart to Clarke Jct. PRR Line and FCC's Proposed Alternative Routing via NS & EJE
3	Reproduction of Rooney & O'Conner Attachment 1.1
4	Calculation of Post Transaction Motor Vehicle Delay based on Actual number of trains and train speeds

I. INTRODUCTION

My name is Philip H. Burris. I am Senior Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Alexandria, Virginia 22314. I am the same Philip H. Burris who submitted verified statements in these proceedings as a part of the Four City Consortium's Comments and Request for Conditions filed October 21, 1997 and as a part of the Four Cities Comments on Draft Environmental Impact Statement filed February 2, 1998. A copy of my qualifications is attached as Exhibit PHB-1 to my verified statement filed on October 21, 1997.

The Surface Transportation Board ("STB" or "Board") by its decision served February 9, 2000 in Finance Docket 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* instituted a proceeding to implement the general oversight conditions imposed by the Board in its Decision No. 89 in this proceeding. In implementing the general oversight condition, the Board ordered CSX Corporation and CSX Transportation Inc. (collectively "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") to file progress reports on the implementation of the Conrail transaction and the related conditions after the "split date" on June 1, 2000.^{1/} The Board also invited interested parties to comment on the progress of the implementation of the Conrail transaction and the various conditions imposed.

^{1/} CSX and NS are collectively referred to as "Applicants".

I have been requested by the Cities of East Chicago, Indiana, Hammond, Indiana, Gary Indiana and Whiting, Indiana (hereinafter referred to as the "Four Cities", "Four City Consortium" or "FCC") to comment on the progress of implementation of the Conrail transaction as it affects the Four Cities region.

In preparing my comments, I have reviewed several documents and data bases that relate to motor vehicle delays at grade crossings in the Four Cities region. These documents include:

- Portions of the June 1, 2000 progress reports submitted to the Board by NS and CSX that pertain to the FCC;
- Information provided to the FCC by NS and CSX as required by Environmental Condition Nos. 21 and 51 of Decision No. 89, regarding the number of trains moving over specified rail line segments in the Four Cities region and average train speeds for those trains;
- A computerized data base of citations issued to NS and CSX for violating city ordinances against railroads from blocking highway at-grade crossing in Hammond, Indiana and East Chicago, Indiana for more than five (5) minutes; and,
- Various filings of NS, CSX and the FCC during the course of these proceedings.

My statement is organized as follows:

- II. Background
- III. Summary
- IV. Findings
- V. Conclusion

II. BACKGROUND

Each of the Four Cities named above is located in Northwest Indiana, at the southern tip of Lake Michigan. This region, which is part of the greater Chicago area, is densely populated with industrial development and residential communities. The industries (including steel mills, oil refineries, an electric generating station and a cement plant) are served by several railroads via hundreds of miles of mainline, switch, yard and industrial tracks.

The region is a major crossroads for transcontinental rail and motor carrier freight traffic. Two Class I railroads, four terminal and switching railroads, and a regional railroad operate in the area.^{2/} In addition, Amtrak provides inter-city passenger service and the Northern Indiana Commuter Transportation District ("NICTD") operates commuter passenger rail service in the region.

As stated in my October 21, 1997 and February 2, 1998 verified statements, railroad operations over this extensive network currently cause significant safety problems and disruption of motor vehicle movements throughout the entire Four City region because of the dense industrial and residential population in the area. The present disruption of vehicular traffic at rail/highway grade crossings is barely manageable especially with regard to the provision of emergency services by the local governments. In the Four Cities alone, 243 at-grade rail/highway crossings exist.

^{2/} These carriers include, NS, CSX, Indiana Harbor Belt Railroad Company ("IHB"), The Belt Railway Company of Chicago ("BRC"), the Elgin Joliet and Eastern Railway Company ("EJE"), the Baltimore, Ohio and Chicago Terminal Railroad ("BOCT"), and the Chicago South Shore & South Bend Railroad ("CSS&SB").

According to the Association of American Railroads ("AAR"), the state of Indiana has the fourth highest incidence of vehicle-train collisions and fatalities of any of the fifty states and the District of Columbia.^{3/} This statistic underscores the Four Cities' extreme concern regarding rail/highway safety.

As a result of the barely manageable railroad congestion situation, the Four Cities are deeply concerned by the impact of the Applicants' rail traffic on several rail lines in the Four Cities region. These concerns are exacerbated by the negative impact that the actual increase in rail traffic over the traffic projected by the applicants has on the Cities' respective infrastructure improvement and economic development plans, which are vital to the economic recovery of the region. The public safety, emergency services, and economic development concerns of the Four Cities were described at length in the October 21, 1997 verified statements of the City Planners from each community.^{4/}

**1. Economic Impact of Applicants'
Projected Increases in Traffic**

In my October 21, 1997 and February 2, 1998 verified statements, I discussed the pre-transaction levels of rail traffic over the key rail lines in the Four Cities, the adverse incremental impacts on safety, emergency services, traffic delays and other aspects of life in the Four Cities that would be caused by the Conrail transaction, as well as the increased economic cost to the Four Cities.

^{3/} Association of American Railroads, Overall Rail Casualty Data, preliminary 1998 FRA Data, obtained from the AAR internet web site; <http://www.aar.org/comm>.

^{4/} These include the verified statements of Daniel A. Botich, Michael L. Cervay, Kimberly L. Gordon and Donald F. Thomas included in the Four Cities' Comments of October 21, 1997 (FCC-9).

The increased costs are a result of four factors: 1) lost productivity resulting from incremental vehicle delays at rail/highway crossings; 2) additional fuel and oil consumption associated with the incremental delays; 3) the incremental emissions exhausted into the atmosphere resulting from the increased delays at rail crossings; and, 4) the increase in the number of rail/vehicle accidents, injuries and fatalities at rail crossings resulting from increased rail traffic. As fully described in my February 2, 1998 verified statement, the annual cost to the Four Cities' communities resulting from the projected increase in rail traffic equals \$3.4 million. The net present value of this annual cost for a 20 year period was shown to equal \$48.2 million.^{5/}

2. FCC Alternative Routing Plan

As described in my October 21, 1997 and February 2, 1998 verified statements, the FCC developed an Alternative Routing Plan which would permit the flow of Applicants' projected traffic through the Four Cities in a manner that maximizes use of grade separated rail lines and minimizes millions of dollars of capital investment in rail line rehabilitation and upgrades proposed by the Applicants.

The FCC alternative addressed two proposed routes included in Applicants' operating plans. First, FCC proposed that CSX reduce the traffic it projects to move on the Willow Creek to Pine Junction and Pine Junction to Calumet Park lines^{6/} by using these lines primarily for westbound traffic, and using the grade-separated IHB line for eastbound movements from Calumet Park, IL

^{5/} \$3.4 million per year, 20 years, 3.6 percent cost of capital/discount rate from the real interest rate on a 30 year Treasury Notes and Bonds.

^{6/} The Pine Junction to Calumet Park line is owned by the BOCT, which is a wholly owned subsidiary of CSX, and is hereinafter referred to as the "BOCT line".

to a new connection with the Conrail Porter Branch near Tolleston (Gary), IN, and thence via the Porter Branch back to Willow Creek. This would effectively result in paired mainline tracks, each with traffic moving primarily in a single and opposite direction. Exhibit PHB-1 attached to this verified statement is a map of the CSX Willow Creek to Calumet Park line via Pine Junction and the IHB/Conrail Porter Branch from Calumet Park to Willow Creek.

The CSX lines between Willow Creek and Calumet Park via Pine Junction have 27 at grade crossings, with 20 of these crossings located on the CSX/BOCT line between Pine Junction and Calumet Park which runs through the downtown areas of East Chicago and Hammond. By contrast, the IHB line from Calumet Park to Virginia Street has only four at grade crossings. The Conrail Porter Branch from Virginia Street to Willow Creek runs through a less developed area and has only ten at grade crossings. The combined IHB/Conrail Porter Branch route line also has fifteen grade separated crossings. As stated in the October 21, 1997 verified statement of Mr. Donald F. Thomas, City Planner for Hammond, the Federal, State and City governments have invested \$25 million in the grade separations on the IHB corridor.

The FCC's proposed shift of traffic from the CSX Willow Creek to Pine Junction and Pine Junction to Calumet Park lines to the IHB/Conrail Porter Branch lines would substantially reduce the number of at-grade highway crossings by the affected trains, thereby mitigating the most significant negative impacts on the Four Cities as a result of the Applicants' proposed operating plans.

The Section of Environmental Analysis ("SEA") did not recommend and the Board did not impose the FCC's Alternative Routing Plan as a condition of the Conrail transaction as it relates

to use of the IHB/Conrail line to reduce the volume of traffic moving over the BOCT line. Despite the Board's inaction, the FCC continues to believe that use of the IHB/Conrail Porter Branch lines is a viable operating alternative that would mitigate most of the negative impacts of the increase rail traffic in the Four City region that has resulted from the Conrail transaction. CSX also believes that use of the IHB/Conrail Porter Branch Pines can achieve this result as evidenced by CSX's counsel's March 5, 1998 letter to Ms. Elaine K. Kaiser, Chief of SEA, which states that the IHB elevated line as an alternative route is a viable long-term option to provide additional capacity and to reroute traffic off of the BOCT line.

The second route addressed by the FCC's Alternative Routing Plan is the portion of the former Pennsylvania Railroad ("PRR") Fort Wayne to Chicago line between Hobart and Clarke Junction via Tolleston, which was out of service at the time of the CSX and NS application to acquire Conrail. In the Conrail control application CSX proposed to rehabilitate and place this portion of the PRR line back into service. The out-of-service PRR line is 11.75 miles in length and has 23 at-grade rail/highway crossings, which were to be reactivated under the Applicants' proposal. CSX stated that it intends to reactivate the PRR line northwest of Hobart to move coal and coke to the steel mills located on the Lake Michigan waterfront and other bulk commodities into and out of the Chicago region, thus keeping this slower-moving traffic off of CSX's main line through Garrett, IN.

The FCC opposed the reactivation of the out-of-service PRR line between Hobart and Clarke Junction because such reactivation entails reopening of the 23 inactive rail/highway grade

crossings, interferes with the City of Gary's effort to develop part of the area traversed by this line for a new low-income housing development, and prevents expansion of the Gary/Chicago Airport.

To accommodate the five trains per day CSX expects to move over this line, the FCC proposed that the CSX trains destined to steel mills served by the EJE be routed from Hobart west to Van Loon over the NS's former Nickel Plate ("NKP") line via a new trackage rights agreement between CSX and NS. From Van Loon, FCC proposed that the CSX trains move north over the EJE via trackage rights to EJE's Kirk Yard to reach the same lakefront steel mills and to CSX's Curtis Yard for continued movement on CSX's lakefront line.

Further, CSX coal and coke trains destined to steel mills served by IHB could be moved from Hobart to Osborn over the NS former NKP line, where it connects to the IHB. From Osborn the traffic could move to either of the IHB-served steel mills. Exhibit PHB-2 is a map of the PRR line between Hobart and Clarke Junction and the FCC proposed alternative route.

In Decision No. 89 the Board granted CSX permission to reopen the Hobart to Clarke Junction PRR line, thus rendering moot the FCC Alternative Routing Plan as it relates to the PRR line. As of this time CSX has completed rehabilitation of the portion this line between Hobart and Tolleston.

III. SUMMARY

Based upon my review of the documents and data listed in the introduction section I have determined the following:

- The Applicants' projections of the number of trains moving through the Four Cities post transaction significantly understate the actual amount of rail traffic presently moving over several lines within the Four City region;^{2/}
- The Applicants' expectations of increased trains speeds on the BOCT and NKP lines have not been achieved and in fact the actual train speeds have significantly decreased on the BOCT line from pre-transaction levels; and,
- Because CSX and NS are moving significantly more rail volumes over the BOCT line and the NKP line than projected in their submissions in the main proceeding, and because the trains moving on the BOCT line are moving at speeds lower than pre-transaction levels, the motor vehicle delay at grade crossings has increased by 234 percent as a result of the Conrail transaction.

^{2/} CSX and NS refused to provide FCC the information it requested that would have permitted an analysis of the number of trains and average train speeds on all of the Applicants' rail lines in the Four City region.

IV. FINDINGS

A. PREVIOUS ANALYSES OF MOTOR VEHICLE DELAY TIME IN THE FOUR CITY REGION

In my October 21, 1997 and February 2, 1998 verified statements, I quantified the negative impact resulting from the projected increase in train volumes in the Four City region. In large measure the substantial increase in motor vehicle delay at rail crossings is caused by the increase in the number of trains moving through the Four Cities and the slow speeds at which the trains are moving.

In their application, CSX and NS provided both the number of trains moving pre-transaction and a projection of the number of trains that would move over each of their rail lines post-transaction. Based on this and other information, Dr. Gary M. Andrew and I reported in our October 21, 1997 verified statements, that the annual motor vehicle delays in the Four City region would increase by 143 percent.

CSX strongly disagreed with our conclusions and, through the rebuttal verified statement of Messrs. Rooney and O'Connor, attempted to demonstrate alleged errors in the FCC analysis. Rooney and O'Connor claimed that the train speeds used in our analysis were substantially understated, thereby resulting in a significant overstatement in the increase in annual delay times. Specifically, Messrs. Rooney and O'Connor objected to our use of trains speeds equal to one-half the posted timetable speed to estimate operating speeds. Messrs. Rooney and O'Connor asserted that it is more appropriate to use timetable speeds as a measure of operating speed, which they

used in their analysis. For example Rooney and O'Connor relied on a post-transaction 40 mph average train speed on both the BOCT and NKP lines and in calculating the post-transaction motor vehicle delay on these lines. Exhibit PHB-3 is a replication of Rooney and O'Connor Attachment 1.1 which is a schematic of major rail lines in the Four City region. This schematic shows the proposed post-transaction timetable speeds the Rooney and O'Connor relied on in their calculations of delay time for each of the lines.

The fact that timetable speeds are unattainable as operating speeds was demonstrated by Dr. Andrew in his February 2, 1998 verified statement at pages 13 through 16. Dr. Andrew showed using CSX statistics underlying the Application the CSX operating speeds in urban areas are equal to only 36.6 percent of timetable speed, far less than the 50 percent of timetable speed relied on in our October 21, 1997 calculations. It is clear from Dr. Andrew's testimony that Rooney and O'Connor's use of timetable speeds significantly understates the post-transaction delay hours.

In my February 2, 1998 verified statement and that of Dr. Andrew, we demonstrated based on actual observations of train speeds and data contained in the documents underlying the Application that timetable speeds bear little relationship to actual speeds, especially in urban areas. We adjusted the train speeds used in our October 21, 1997 analysis to reflect actual train speeds where available and updated information regarding adjusted timetable train speeds where actual train speeds were not available. Using the revised train speeds we estimated that the annual motor vehicle delay time would increase from 204,385 hours per year to 355,265 hours per year or an increase of 73.8 percent.

In response to our February 2, 1998 analysis, CSX on May 12, 1998 submitted to SEA a study prepared by ICF Kaiser Company entitled *Grade Crossing Delay Analysis in the Four City Consortium Area*. ("Kaiser Report"). This study contained a revision to the number trains moving over the BOCT line, the size of the trains moving over the BOCT line and a projection of train speeds on the BOCT line that were substantially different than those relied on by Messrs. Rooney and O'Connor in their rebuttal verified statement.

Not surprisingly the Kaiser Report concluded that the increase in delay that would be experienced in the Four City region would be minimal and in fact when the projected increase in trains speeds was factored into their analysis the Kaiser Report concluded that motor vehicle delays in the Four Cities would actually decrease. The FCC was prevented from commenting on the validity of the Kaiser report and its analysis as it was filed after the close of evidence in this proceeding. On May 18, 1998 the FCC moved to strike the Kaiser Report from the record. The Board denied the FCC request in Decision No. 83.

**B. CURRENT ACTUAL DATA RELATED
TO MOTOR VEHICLE DELAY TIME**

In Decision No. 114, served February 5, 1999 in this proceeding, the Board incorporated into Environmental Condition No. 51 of Appendix Q of Decision No. 89 the Settlement Agreement between CSX and the Four Cities executed on October 26, 1998. This Settlement Agreement provides that CSX will report to the FCC the daily average number of trains moving over the BOCT line and the PRR line between Hobart and Tolleston and between Tolleston and Clarke

Junction. The Agreement also provides that CSX will report the average trains speeds for trains moving over these same segments.

In addition to incorporating the CSX/FCC Settlement Agreement, the Board in Decision No. 114 renumbered Environmental Condition No. 21(i) as Environmental Condition No. 21 and modified this condition to require NS to report to the FCC the average number of trains moving over the NKP line between Hobart and State Line Tower and to provide the average speed of these trains.

1. Number of Trains per Day

I have reviewed the information provided to the FCC by CSX and NS in response to Decision No. 114 and find that their projections of the post-transaction number of trains moving over these lines were substantially understated when compared to actual post-transaction train volumes.

In the Application, CSX originally predicted that an average of 33.3 trains per day would move over the BOCT line post-transaction. This number was revised in the Kaiser Report to 31.7 trains per day. The data provided by CSX pursuant to its Settlement Agreement with the FCC shows that the actual number of trains per day on the BOCT line equals 36.0 trains per day. This represents an increase from pre-transaction volumes of 6.0 trains per day rather than an increase of 1.7 trains per day as stated in the Kaiser Report. The table below shows the trains per day as contained in the Application, as revised in the Kaiser Report and the actual trains per day provided in the Settlement Agreement reports to the Four Cities.

Table 1
Number of Trains Per Day On The BOCT Line

<u>Time Frame</u> (1)	<u>Application</u> (2)	<u>Kaiser Report</u> (3)	<u>Actual Average December 1999 to May 2000</u> (4)
1. Pre-transaction	27.6	30.0	---
2. Post-transaction	33.3	31.7	36.0
3. Difference	5.7	1.7	6.0

In addition to CSX's substantial understatement of the increase in train volumes on the BOCT line, NS has substantially overstated the reduction in the number of trains it would remove from the NKP line between Hobart and State Line Tower. In the Application, NS asserted that the number of trains moving over this line segment would decrease from 26 trains per day to just 11 trains per day. The data reported to the FCC in compliance with Condition No. 21 shows that NS currently moves 25 trains per day over this line, or a reduction of only 1 train per day. The average speed of these trains equals 22.7 miles per hour, significantly below Messrs. Rooney and O'Connor's 40 miles per hour projection.

2. Train Speeds

Review of the information provided by CSX pursuant to the Settlement Agreement shows that the current average train speed on the BOCT line is 9.0 mph. This is substantially less than the actual 12.0 mph pre-transaction train speed and the 13.2 mph post-transaction train speed for the BOCT line as estimated in my February 2, 1998 verified statement. Moreover, the 9.0 mph actual

train speed for the BOCT line is far less than the CSX "expected" train speed of 19 to 25 mph proffered in the Kaiser Report (and Rooney and O'Connor's 40 miles per hour projection).

The BOCT line is crossed at-grade by another railroad ten times in the 7.2 miles between Pine Junction and Calumet Park. Because of these frequent rail crossings, which for the most part are controlled by carriers other than CSX, CSX trains on this segment must start and stop frequently which causes a significant reduction in average operating speeds from the speed that would be expected on a Class 3 rail line.

The high incidence of trains stopping on this line is confirmed by the September 1997 train delay study performed to collect data supporting our calculations of motor vehicle delays at grade crossings. During this study, which covered 230 hours in September and October 1997. There were 18 observations of trains at stopped crossings between Clark and Calumet Streets, which all cross in the Pine Junction to Calumet Park segment at grade. Expansion of these 18 observations to represent total stopped trains during a one week period yields 112 stopped trains at the observed crossing locations per week. This equates to 16 stopped trains per day or 53 percent of the trains per day moving pre-transaction on this segment.

While CSX argued that the planned improvements on this line would enable the average speed to increase, we have seen that this is not the case. According to the CSX June 1, 2000 progress report the signaling upgrades have been completed on the BOCT line and yet the average train speed has decreased from 12.0 to 9.0 mph.

CSX does not control dispatching at any of the ten at-grade railroad crossings on this line segment, and in many instances, either the other railroad's trains have priority or trains are dispatched on a first come, first served basis. As a result, even with the improvements to increase maximum train speed on this line, the dispatching train priority situation at the railroad grade crossings of this line has not changed and CSX has not achieved its "expected" trains speeds.

V. CONCLUSION

As stated previously, the Kaiser Report concluded that post-transaction motor vehicle delay at grade crossings on the BOCT line would actually decrease because of a projected minimal increase in the number of trains per day (1.7 trains) and a projected substantial increase in train speeds, i.e. 12.0 mph pre-transaction to between 19 and 25 mph post-transaction. Moreover, the Kaiser report states:

FCC also asserts, without supporting analysis, that the post-transaction operating speed on this segment will be 13.2 mph, a critical assumption that is responsible for most of the asserted increase in delay. ICF Kaiser understands that CSX expects that speeds of 19 mph to 25 mph will be achieved on this segment post-Transaction due to investments in track and signal improvements, directional routing plans, and other operational improvements made possible by the Transaction.

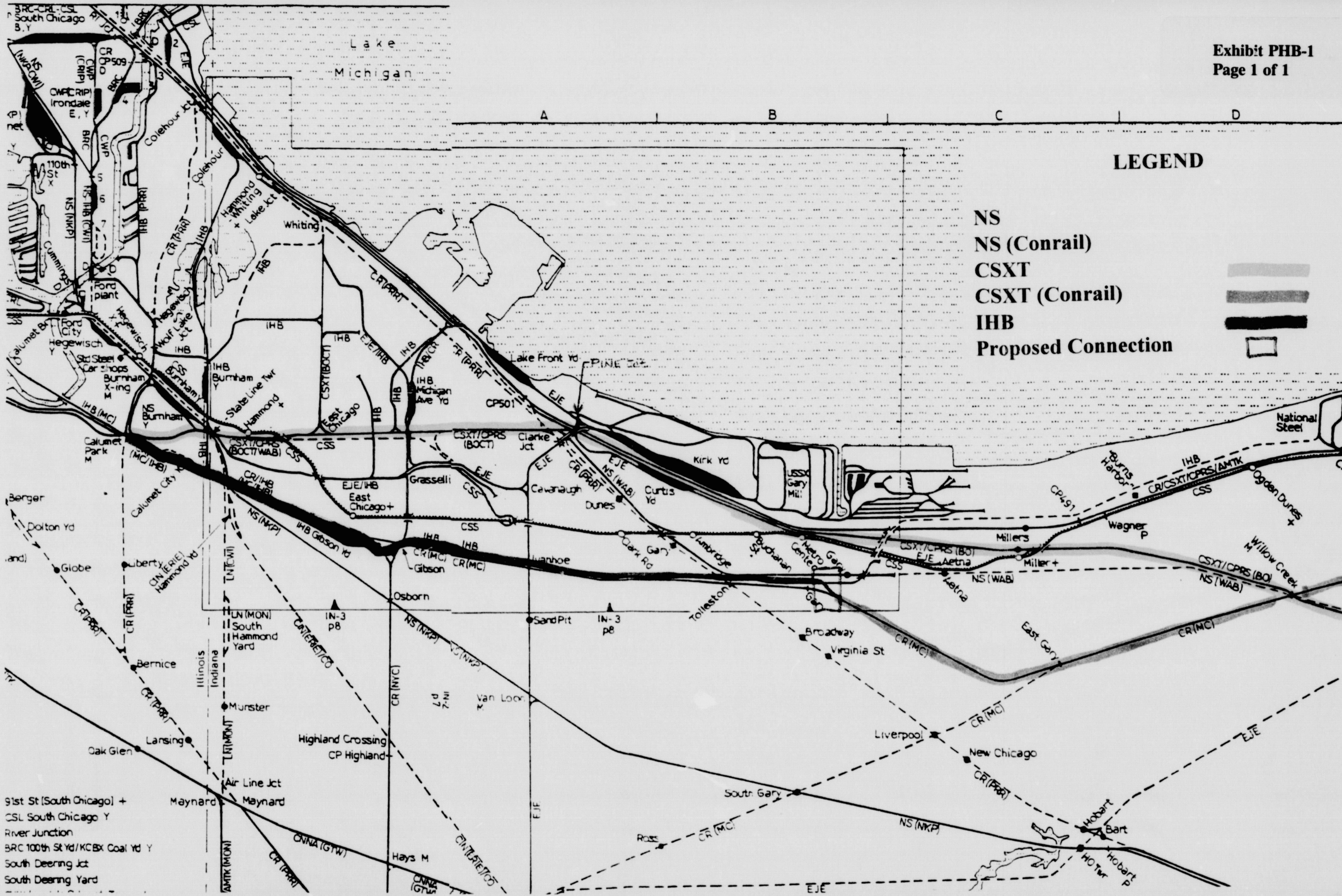
As shown in the previous section, review of the average trains speed data provided by CSX demonstrates, however, that the actual post-transaction speed on the BOCT line is only 9.0 mph, or 32 percent less than the 13.2 mph relied on in the FCC calculation of delay times in its February 2, 1998 submission and 53 to 64 percent less than the CSX "expected train speeds of 19 to 25 mph."^{8/}

Accepting the Kaiser Report's conclusion that operating speed is responsible for most of the increase in the delay forecast to be experienced by in the Four City region, one can only conclude that the actual train speed of only 9.0 mph results in a far greater delay even than calculated by

^{8/} The actual post-transaction train speed on the BOCT line of 9.0 mph is 77.5 percent less than the 40 mph timetable speed utilized by Rooney and O'Connor in CSX's rebuttal evidence.

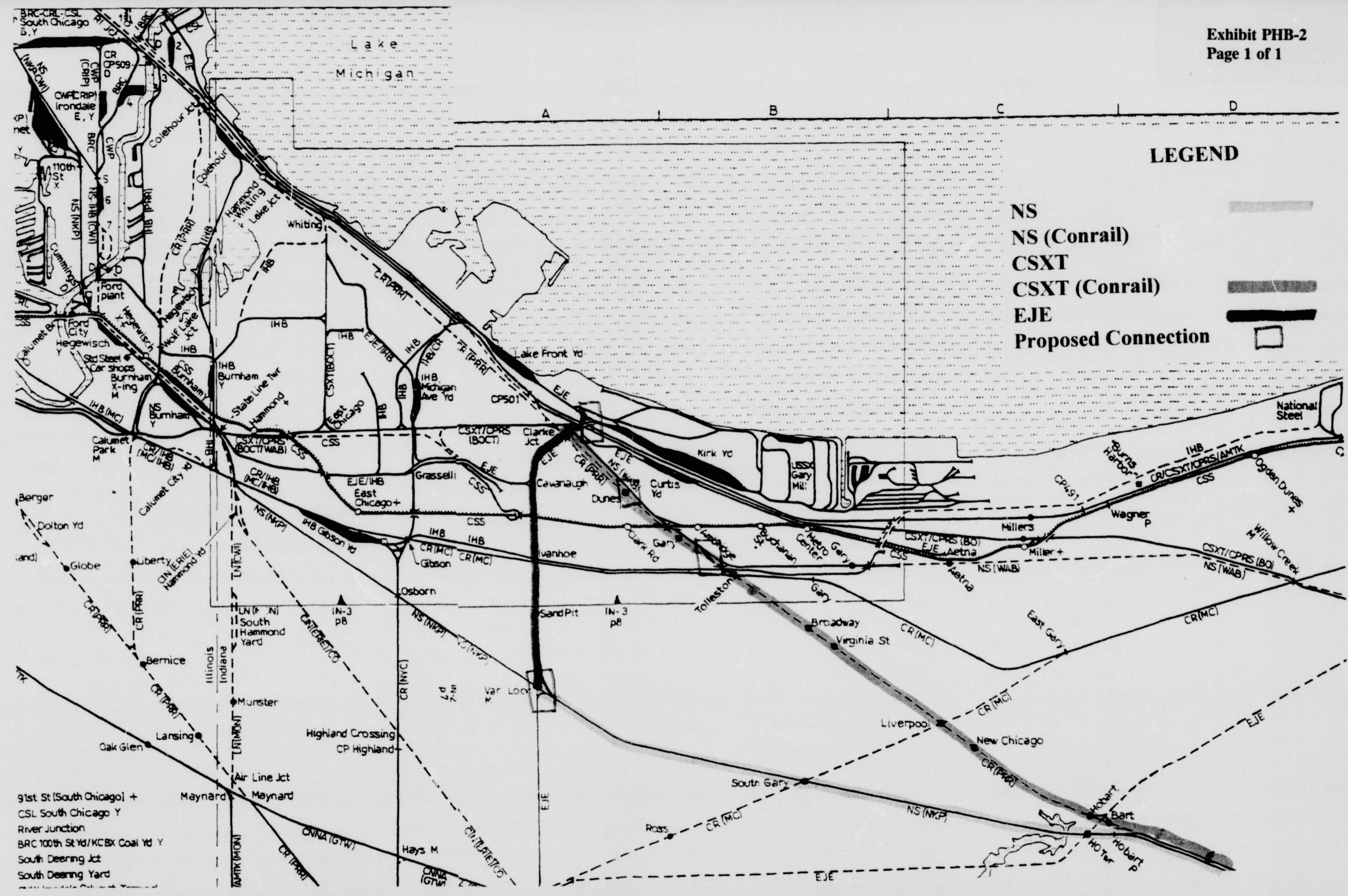
Dr. Andrew and myself in the FCC submissions in the Conrail/Control proceeding. I have estimated the motor vehicle delay time based on an increase of 6.0 trains per day on the BOCT line and a decrease of train speed from 12.0 mph to 9.0 mph and find that the annual motor vehicle delay hours in the Four Cities increases from 220,104 hours to 734,947 hours as a result of the Conrail transaction. This increase of 514,843 hours represents a 234 percent increase in delay time from pre-transaction levels.

Exhibit PHB-5 summarizes the pre-transaction and post-transaction motor vehicle delay hours for each rail line segment. These calculations incorporate the revisions to pre-transaction number of trains on the BOCT line and the post-transaction train lengths for the BOCT line as contained in the Kaiser Report. The calculation also incorporates the actual post-transaction number of trains and train speeds on the BOCT line as reported to the FCC by CSX.

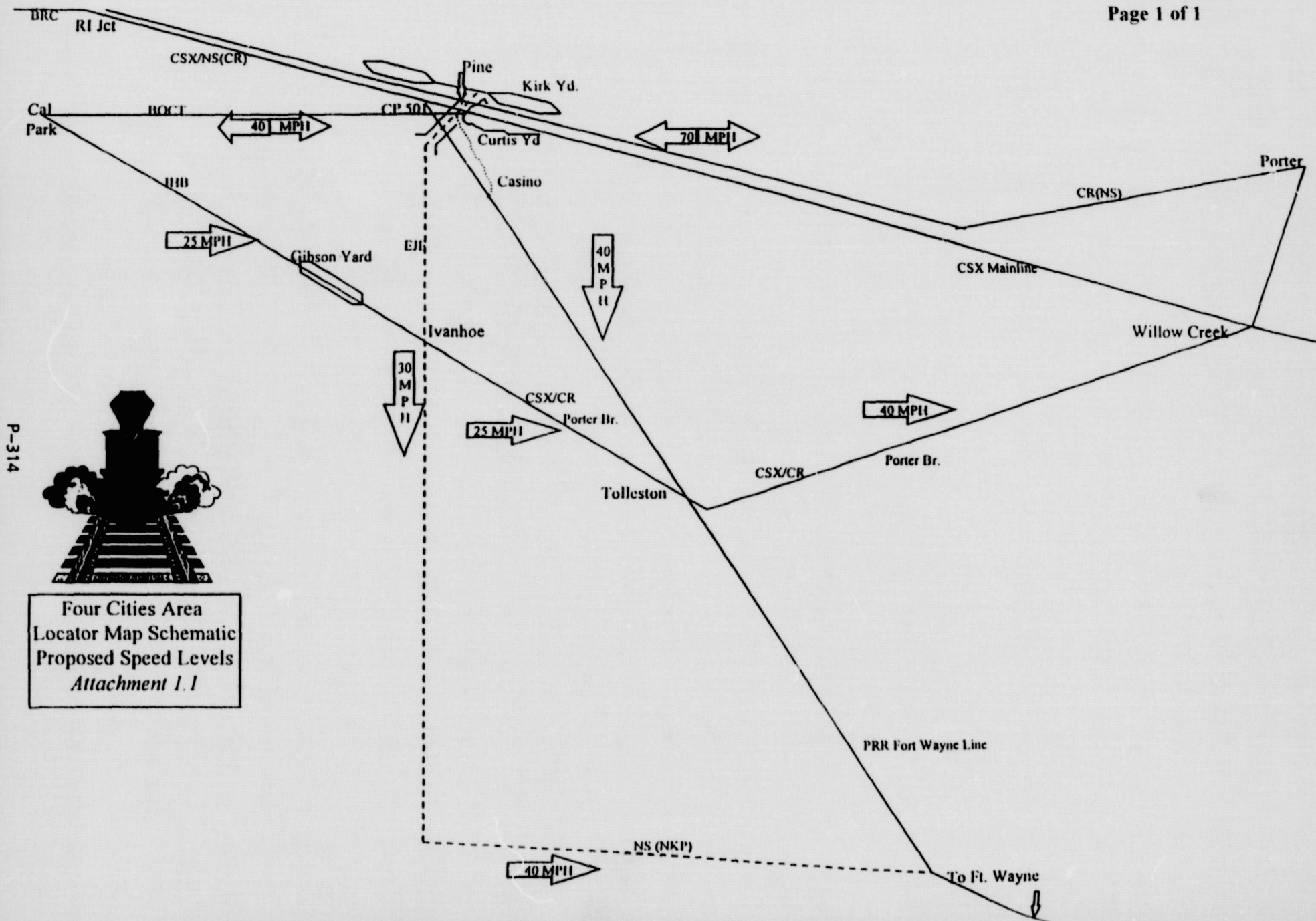


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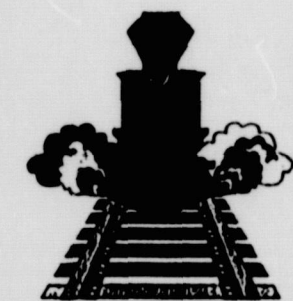
- NS
- NS (Conrail)
- CSXT
- CSXT (Conrail)
- EJE
- Proposed Connection



91st St (South Chicago) +
CSL South Chicago Y
River Junction
BRC 100th St Yd/KCBX Coal Yd Y
South Deering Jct
South Deering Yard



P-314



Four Cities Area
Locator Map Schematic
Proposed Speed Levels
Attachment 1.1

Vehicle Hours of Delay Per Year

<u>Line Segment</u> (1)	<u>Pre-Acquisition</u>					<u>Post-Acquisition</u>				
	<u>Trains</u>	<u>Realized</u>	<u>Train</u>	<u>Annual Vehicle</u>		<u>Trains</u>	<u>Realized</u>	<u>Train</u>	<u>Annual Vehicle</u>	
	<u>Per Day</u> <u>1/</u>	<u>Train Speed</u> <u>(mph)</u>	<u>Length</u> <u>(feet)</u> <u>1/</u>	<u>Delay Hours</u>	<u>1/</u>	<u>Per Day</u> <u>1/</u>	<u>Train Speed</u> <u>(mph)</u>	<u>Length</u> <u>(feet)</u> <u>1/</u>	<u>Delay Hours</u>	<u>1/</u>
	(2)	(3)	(4)	(5)		(6)	(7)	(8)	(9)	
1. Willow Creek in to Ivanhoe IN	9.6	20.0	4,910	15,147		11.4	20.0	4,554	15,842	
2. Willow Creek in to Pine Jct. IN	22.1	24.5	4,335	8,482		38.6	24.5	5,141	19,560	
3. Pine Jct. IN to Barr Yard IL (Calumet)	30.0 <u>2/</u>	12.0	4,193	196,476	<u>3/</u>	36.0 <u>4/</u>	9.0 <u>4/</u>	5,607 <u>2/</u>	677,735	<u>5/</u>
4. Warsaw (Wheeler) to Tolleston, IN	0.0	0.0	0	0		5.0	14.6	5,306	14,789	
5. Tolleston in to Clark Jct. IN	0.0	0.0	0	0		3.0	14.6	5,306	3,544	
6. Osborne IN to Michigan Ave. Yard IN	0.0	0.0	0	0		2.0	12.5	5,306	2,842	
7. Tolleston IN to IHB Connection	0.0	0.0	0	0		2.0	20.0	4,554	636	
8. Total Hours				220,104	<u>6/</u>				734,947	<u>6/</u>

1/ Andrew February 1998 V.S. except where noted

2/ CSXT as reported to the Surface Transportation Board Section of Environmental Analysis

3/ Excel file Corrected pre-acquisition.xls

4/ CSXT's Decision No. 114 Performance Measures Report for Week Ending 6/2/00

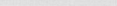
5/ Excel file Actual Delay Times.xls

6/ Sum of rows 1 to 7

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

PHILIP H. BURRIS, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.


Philip H. Burris

Sworn to and subscribed
before me this _____ day
of _____, 1998.

Witness my hand and official seal.

W England 2-

NARRATIVE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**COMMENTS AND ADDITIONAL REQUESTS FOR CONDITIONS
OF THE CITIES OF EAST CHICAGO, INDIANA;
HAMMOND, INDIANA; GARY, INDIANA; AND WHITING, INDIANA
(COLLECTIVELY, THE FOUR CITY CONSORTIUM)**

NARRATIVE AND REQUEST FOR ADDITIONAL CONDITIONS

I. INTRODUCTION

In Decision No. 1 served February 9, 2000 in this proceeding, the Board has instituted an oversight proceeding in which it is seeking from interested persons "comments on the progress of implementation of the Conrail transaction and the conditions [it] imposed" in approving the transaction. The Board has indicated that it will "impose additional conditions and/or . . . take other action if, and to the extent . . . necessary to address harms caused by the Conrail transaction" and to "ensure adherence by CSX and NS to the various representations they made

on the record during the course of the proceeding." Decision No. 1, at 2. This includes taking additional actions to ensure adherence to the environmental mitigating conditions imposed.

Id. These Comments and Request for Additional Conditions by the Four Cities are submitted in response to Decision No. 1.

The Four City Consortium was organized for the express purpose of evaluating the regional impacts of the proposed Conrail acquisition and recommending regional solutions to the adverse impacts identified. See Mayors' V.S. at 3. The Four Cities' principal interest in this proceeding is to ensure that the health, safety and welfare of the residents of northwestern Indiana are protected through the imposition of appropriate additional remedial conditions to mitigate the adverse impacts that the Conrail transaction is having on the region, and to otherwise hold the Applicants to their representations made during the course of the Conrail control proceeding as to their planned operational improvements in the region.

II. SUMMARY OF POSITION

In the Conrail control proceeding (Finance Docket No. 33388), the Four Cities presented evidence showing that, pre-transaction, the region suffered from extreme congestion at rail/highway grade crossings due to the dense population and the large number of rail lines in the area. The Four Cities also

presented evidence that the Applicants' projected post-transaction rail traffic increases on certain critical line segments would exacerbate these problems. In response, the Applicants represented that planned infrastructure and operational initiatives in the region would improve the situation, and the Board accepted these representations in imposing very modest protective conditions for the region's benefit in Decision No. 89 (as modified by Decision No. 114).

Unfortunately, the promised improvements have not been realized with respect to the principal CSX and NS lines of concern to the Four Cities (CSX's "BOCT line" between Pine Junction, IN and Calumet City, IL, and NS's "Nickel Plate" line between Hobart and State Line Tower, IN). In fact, as detailed in the Mayors' V.S. and the Burris V.S., The situation has worsened since implementation of the Conrail transaction and the environmental, safety, and socioeconomic impacts of the transaction on the Four Cities region are greater even than those documented by the Four Cities in the Conrail control proceeding.

For example, daily train movements over the BOCT line, which traverses numerous busy rail/highway grade crossings in downtown East Chicago and downtown Hammond, has increased by six trains per day post-transaction compared with Applicants' projections (as modified late in the Conrail control proceeding) that daily train traffic would increase by less than two trains

per day. Average train speeds on this line have decreased from the pre-transaction level of 12.0 miles per hour to only 9.0 miles per hour (compared with Applicants' projections that post-transaction average train speeds would be close to the maximum authorized timetable speed of 40 miles per hour). Similarly, the average number of trains moving over the NS Nickel Plate line, which also traverses numerous highway grade crossings in the Four Cities has not decreased post-transaction as NS represented would be the case (and may have substantially increased), and the average train speed on this line is also below the Applicants' projections. As a result, the Four Cities have calculated that vehicle delay hours have increased from 220,104 hours to 734,947 hours as a result of the Conrail transaction -- or a 234 percent increase in delay time from pre-transaction levels.

In their Comments and Request for Conditions in the Conrail control case (FCC-9, filed October 21, 1997), the Four Cities proposed an Alternative Routing Plan under which, inter alia, some train traffic would be rerouted away from the BOCT line onto alternate rail corridors that are largely grade-separated -- in particular a combination of the elevated IHB line and the Conrail Porter Branch (now owned by CSX) between Calumet City, IL and to Willow Creek, IN. The Board did not impose the Alternative Routing Plan as a condition to its approval of the Conrail transaction (although CSX acknowledged that the Plan had

merit and should be investigated further).

Given the worsening situation that has resulted from the Applicant's actual post-transaction operations on the line segments of most concern, the Board should now revisit this issue. Specifically, the Board should impose additional limited protective conditions that encourage the Applicants (and in particular, CSX) to give more serious consideration to the Alternative Routing Plan. These additional conditions include the following:

1. With respect to CSX's BOCT line:
 - a. In accordance with its representations in the Conrail control proceeding, CSX shall re-route traffic off of the BOCT line between Calumet Park and Pine Junction in at least sufficient amounts so that no more than 31.7 trains per day on a monthly average basis traverse this line segment. To the extent possible, trains re-routed off the BOCT line shall move over the Conrail Porter Branch and the grade-separated IHB line via Ivanhoe and Tolleston;
 - b. In any month in which CSX expects to operate more than an average of 31.7 trains per day over the BOCT line between Calumet Park and Pine Junction, it shall (i) provide as much advance notice as possible to the Consortium, and (ii) conduct its train operations in a manner that will mitigate congestion (e.g., non-rush hour operations, no blockage of critical at-grade highway/rail crossings, alternative routings). In any event, CSXT shall not be permitted to operate more than 31.7 trains per day over the BOCT line until mitigation issues are resolved through a mutually acceptable agreement with the Consortium.

2. With respect to NS's Nickel Plate line:

- a. In accordance with its representations in the Conrail control proceeding, NS shall operate no more than 11.2 trains per day on a monthly average basis over its Nickel Plate line segment between Hobart, IN and State Line Tower, IN;
- b. In any month in which NS desires to operate more than an average of 11.2 trains per day on a monthly average basis on the Nickel Plate line between Hobart, IN and State Line Tower, IN it shall (i) provide as much advance notice as possible to the Consortium, and (ii) conduct its train operations in a manner that will mitigate congestion (e.g., non-rush hour operations, no blockage of critical at-grade highway/rail crossings, alternative routings). In any event, NS shall not be permitted to operate more than 11.2 trains per day over the Nickel Plate line until mitigation issues are resolved through a mutually acceptable agreement with the Consortium.

In addition, the information the Applicants agreed to provide either pursuant to the Settlement Agreement between the Four Cities and CSX or pursuant to Environmental Condition No. 21 in Decision No. 89 (as modified by Decision No. 114) in the Conrail control proceeding is insufficient to enable the Four Cities to ascertain the effects of the Conrail transaction on many of the railroad lines traversing the region. Accordingly, the Four Cities request the Board to impose the following additional reporting condition:

3. Additional Reporting Requirement:

On at least a quarterly basis during the remaining period of the Board's oversight imposed in Decision No. 89, and on at least an annual basis for a period of five years thereafter, CSX and NS shall each provide the Consortium with Reports containing the average number of daily train movements, average train speeds (or elapsed time between segment end points for each train), and average train lengths (or actual length for each train) for each of its owned and/or operated rail line segments in the Cities of East Chicago, Hammond, Gary, and Whiting, Indiana during the period in question.

Senator Richard G. Lugar, Senator Evan Bayh, and Congressman Peter J. Visclosky, the Four Cities' representatives in the United States Congress, concur with our concerns, and agree that the "growing railroad traffic congestion problems being experienced in Northwest Indiana since the approval of the [Conrail transaction]" require the Board "to take the appropriate steps necessary to ensure that the railroads are held accountable to improve the regional congestion problems." (See Congressional Letter dated July 12, 2000, attached hereto as Exhibit 1).

In the discussion below, the Four Cities will explain the problems that implementation of the Conrail transaction has caused for their region and why the additional conditions described above are necessary to alleviate these problems.

III. DISCUSSION

In Finance Docket No. 33388, the Four Cities demonstrated and the Board recognized certain significant environmental and safety-related post-acquisition railroad operational impacts on the Four Cities region. The adverse impacts likely to result from the transaction were in part the result of certain planned incremental increases in the volume of rail traffic moving over critical line segments traversing the Four Cities region. However, even where established quantitative environmental mitigation thresholds were not met, the Board ordered mitigation in the Four Cities because of the "unique circumstances" of the region, in part because of the area's strategic location as a major crossroads for local, regional, and transcontinental rail and motor vehicle traffic, the area's already difficult and fragile environmental situation, and the fact that the transaction threatened the ability of the region to accomplish planned socioeconomic improvements. See e.g. Decision 83 (Decision served May 27, 1998), at 2; Mayors' V.S. at 2-3; Burris V.S. at 3-4.

A. Board Imposed Mitigation Impacting the Four Cities

To mitigate the environmental and safety impacts of the Conrail transaction, the Board in Decision No. 89 adopted, in toto, the environmental mitigation conditions for the Four Cities

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recommended by the Section of Environmental Analysis in its Final Environmental Impact Statement reproduced as Appendix Q, Condition No. 21 of Decision No. 89, as well as certain other applicable environmental conditions. See Decision No. 89, at 173. This Decision was modified by the Board in Decision No. 114 served February 5, 1999. In Decision No. 114, the Board amended Condition Nos. 21 and 51 to reflect the Settlement Agreement entered into by the Four Cities and CSX on October 26, 1999. (See Decision No. 114, which is reproduced in Exhibit 2 attached hereto). The Settlement Agreement itself is reproduced and attached hereto as Exhibit 3.

The October 26, 1999 CSX/Four Cities Settlement Agreement, among other things, required the parties to abide by the requirements of Decision No. 89, as modified; required CSX to dedicate certain monies into community railroad safety funds; required CSX to refrain from blocking certain designated at-grade highway/rail crossings; required CSX to cooperate in moving trains off critically congested railroad lines; required CSX to cooperate with the City of East Chicago in developing and funding a grade-separated truck route over one of its critical lines; and required CSX to provide monthly reports to the Four Cities on train volumes over certain rail line segments.

The Board's Decision No. 114 also required NS to regularly attend meetings with the Four Cities, and required NS

to provide status reports on train volumes and speeds on one of its critical lines. NS was required at those meetings to report on "the progress of operational and capital improvements required by the Board to address highway/rail at-grade crossing safety and delay issues in the Four City Consortium area." Decision No. 114, at 2.

B. The Board's Requirement that the Applicants Must Adhere to All Representations Made During the Proceeding

A critical component of the Board's Decision No. 89, Condition No. 19, required the Applicants to adhere to all representations made during the proceeding as to promised operational improvements. See Decision No. 89, at 176 ("Applicants must adhere to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in this decision.") Condition No. 19 was critical for the Four Cities and the Board as an enforcement mechanism, as both carriers promised dramatic improvements for the Four Cities region, and the Board relied on many of these representations in imposing certain conditions and rejecting others proposed by the Four Cities -- as did the Four Cities in negotiating a Settlement Agreement. Id. at 153.²

²"[A]pplicants proposed voluntary mitigation options addressing environmental concerns of affected communities, which SEA considered in developing final mitigation recommendations in the Final EIS)[footnote]." The footnote (n.239 on page 153)

The Board's Section of Environmental Analysis ("SEA"), at the STB's June 8, 2000 Voting Conference, cited these voluntary capital and operating improvements as the primary reason it declined to recommend imposing the Alternative Routing Plan requested by the Four Cities Region to mitigate the transaction's impacts:

CSX is making substantial modifications in the Four Cities area. . . . Those operational improvements would flow into the Four Cities area and also in response to the Four Cities concerns, CSX did offer up certain voluntar[y] mitigation of proposals including rerouting a few trains away from the key line segment that was at issue between Pine Junction and Barr Yard. . . .

So given the operational improvements that the CSX will be making in the area, the mitigation measures they will be imposing of themselves or recommended themselves and the ones we are recommending, we did not see any environmental driving reason to search out an alternative or to adopt, certainly, an alternative. We felt that the solutions proposed by the carrier and by the section on environmental analysis would certainly address the issues that were raised.

Finance Docket No. 33388, Voting Conference Transcript (June 8, 1998), at 118-19 (Statement of Michael Dalton).³

stated: "For example, in the Four Cities area, CSX agreed to make operational improvements and offered to reroute trains away from a rail line segment between Pine Junction and Barr Yard This voluntary mitigation will be in addition to the mitigation we are imposing for the Four Cities area to address grade crossing traffic delay and safety concerns."

³The Board's General Counsel reiterated the Board's presumption that, when imposing applicable conditions, it could

In recent rail merger cases, the merging carriers have presented reams of evidence and argument in an attempt to predict the future in the areas of service and operational performance. They have routinely painted glowing pictures of the post-merger future. The Board has generally accepted and based its approval of mergers on the basis of these statements. The Conrail transaction was no exception. However, as the Board is acutely aware, the railroad industry's predictions have been less than accurate -- with the Applicants' predictions in connection with the Conrail transaction again being no exception.⁴ This is all the more reason to ensure accountability.

rely on the Applicants' representations as to their ability to improve the congestion situation in the Four Cities (Id. at 119-20):

I think it would be fair to say that the changes that have been made are suggested largely voluntarily [and] will more than offset the incremental increase in traffic that will be going over the line. So that is a net plus environmentally.

⁴See e.g. NS's pronouncement in the pending proceeding addressing the revision of railroad merger rules that "[t]here is no doubt that current rail management, that of NS included, failed to deliver many of its claimed merger benefits." Norfolk Southern Comments, Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation, V.S. McClellan, at 11.

C. CSX and NS's Adherence to Conditions Imposed and Representations Made as to the Four Cities

As discussed above, in approving the Conrail transaction the Board imposed a number of environmental/safety-related conditions with respect to the Applicants' post-transaction operations in the Four Cities region. The October 26, 1999 Four Cities/CSX Settlement Agreement addressed additional issues. These conditions and private settlement requirements were predicated on CSX's and NS's successful implementation of their operating plans and adherence to additional representations made during the course of the proceeding whereby the railroads promised that certain actions would produce demonstrable improvements in rail operations in the Four Cities region and mitigate the adverse impacts of the transaction on that region.

1. Critical Rail Line Segments

The focus of these Comments is on the Applicants' operating performance on two critical line segments operated by CSX and NS. These are: (1) CSX's BOCT line between Pine Junction, IN and Calumet Park, IL (STB Designated C-023)⁵ and (2) NS's "Nickel Plate" line between Hobart, IN and State Line Tower,

⁵BOCT is a wholly-owned subsidiary of CSX. The BOCT line in question is a part of CSX's primary route between Willow Creek, IN and Barr Yard, IL which is CSX's principal rail yard in the Chicago area.

IN (STB Designated N-469).⁶ The reason the Four Cities are focusing on these line segments is because they are where the most critical post-transaction congestion problems are occurring. In addition, these lines are the only lines for which CSX and NS have voluntarily provided post-transaction train movement data (average daily volumes and speeds) which is necessary to meaningfully assess their operations.

In order to provide the Board with a complete assessment of CSX's and NS's post-transaction operations over other line segments traversing the Four Cities region, the Four Cities need additional information from the Applicants. As described in more detail infra, both CSX and NS refused to provide any additional information voluntarily or in response to the Four Cities' formal discovery requests for narrowly focused and limited post-transaction train movement data over area lines. Obtaining this information, which is not otherwise available or obtainable through independent analysis, is obviously critical in order for the Consortium to respond more fully to the Board's request for comments on the railroads' post-transaction performance and fulfillment of the conditions imposed.

⁶The line segment designated N-469 actually ends at Hammond, IN. The line segment designated N-470 is a continuation of the Nickel Plate line across the Indiana/Illinois State line.

2. CSX and NS's June 1 Reports

As part of its oversight of the transaction, the STB ordered CSX and NS to file status reports on the implementation of the transaction and their compliance with the conditions imposed in approving the transaction. CSX and NS filed their initial Progress Reports on June 1, 2000.

CSX's June 1 Report cites, at page 121, the October 26, 1999 Settlement Agreement with the Four Cities, stating that the "goal of the agreement is 'to alleviate Acquisition-related highway/rail at-grade crossing traffic delay and safety concerns in East Chicago, Hammond, Gary, and Whiting, Indiana through operational improvements and safety measures.' Capital improvements are required to achieve this goal." CSX explains that it is taking certain actions to improve the situation but acknowledges that the promised effects of these improvements are not being experienced yet, and may not be achieved until some months down the road. Id. ("the beneficial effects of these capital improvements may not be experienced in the Four Cities area until late 2000.") CSX acknowledges that the end result is that there are "continued highway/rail at-grade crossing delays in the Four Cities." Id. at 122. CSX promises that the work it is undertaking to provide full TCS operation over its Barr Subdivision (which encompasses the BOCT corridor) will improve the situation. CSX also confirms that it has held several

meetings with representatives of the Four City Consortium.

NS's June 1 Report does not reference any problems with its operations in the Four Cities region. NS also acknowledges, at page 59, that it has held meetings with the Four Cities and represents that it is complying with all applicable requirements imposed by the Board with respect to its operations in northwest Indiana. NS states that it is "working independently and with the Indiana Harbor Belt Railroad and the City of Hammond to develop means by which to improve traffic flow in the Four City Consortium area." Id. at 60.

D. CSX and NS's Adherence to Conditions
Imposed and Representations Made

Despite CSX and NS's assurances that post-transaction congestion problems in the Four Cities would get better as the result of certain operational and infrastructure improvements, the situation has actually gotten worse, at least over the CSX/BOCT line and the NS/Nickel Plate line. These current problems are caused, at least in part, by (i) daily train traffic levels in the region higher than those originally projected by CSX and NS, (ii) post-transaction average train speeds that are far below the levels projected, and (iii) the railroads' refusal to reroute any of the increased train traffic away from these corridors and failure to prevent trains from stopping in positions where they block major at-grade highway crossings.

CSX and NS have both acknowledged in their June 1 Reports and in their meetings with the Four Cities that they have failed to deliver on their promises to improve the congestion situation in the Four Cities. In response to the growing congestion problems being experienced in the region, and because of the perceived lack of attention the railroads were paying to these serious issues, the Cities of Hammond and East Chicago enacted ordinances prohibiting the railroads from blocking at-grade highway/rail crossings for periods of more than five minutes at any one time without allowing vehicles and pedestrians to cross the tracks, except where required for safety or other unusual circumstances. These ordinances are appended hereto as Exhibit 4.

The intent of these crossing-blockage ordinances was to provide a deterrent to the railroads' propensity to block critical at-grade highway/rail crossings. Such blockages result in increased citizen exposure to railroad operations and adverse impacts on public health, safety, and the environment. See Mayors' V.S. at 7. As a result of these ordinances, East Chicago issued over 1000 tickets for illegal blockage of crossings in 1999 and almost 800 tickets through June of this year. Id. Hammond issued an even larger number of tickets for illegal train blockages, including more than 3,900 tickets in 2000 (through June). Id.

Obviously, the Four Cities would not need to pass ordinances and issue large numbers of train blockage tickets to the railroads if there was not a real and pervasive problem with grade crossing blockages. Id.⁷ However, the ticketing of trains for illegal blockages has been one of the only means available to the communities to get the railroads to pay closer attention to their concerns with respect to the impacts of the blockages. Id.

Since the crossing-blockage ordinances were enacted, CSX and NS have been making more concerted efforts not to block crossings in the Four Cities, and they have assured the Four Cities in recent meetings that they are refocusing their attention on the blockage situation. Less tickets, indeed, have been issued in recent months, at least in part because of the Applicants' expressed willingness to make certain operating improvements. The Four Cities are pleased, of course, to hear of any improvements being made by the railroads to prevent

⁷It is interesting to note the actions CSX has taken in other communities affected by the Conrail transaction to avoid blocking of at-grade highway/rail crossings. In December 1999, CSX announced that it was establishing voluntary "No Parking Zones" for trains traversing key, heavily traveled at-grade crossings in northern Ohio. It has instructed its crews not to block these crossings, to split trains in part where necessary to avoid blockages, and it has marked the crossings with "No Parking" signs. CSX explains that "we are taking these steps to respond to the concerns from these communities." See CSX Transportation Launches Pilot Program to Reduce Blocked Crossings in Northern Ohio, CSXT Press Release (December 9, 1999) (submitted herewith as Exhibit 5). No such program has been volunteered for the Four Cities region.

blockage of congested at-grade highway/rail crossings. With that said, it is unfortunate that, in response to the Four Cities' self-help remedial response to the crossing-blockage problem, NS has sought to have the ordinances overturned in federal court on federal preemption grounds, arguing that it has the right to block crossings as needed without taking into account the destructive community impacts of its actions. See Mayors' V.S. at 7-8; NS Complaint for Declaratory and Injunctive Relief in Norfolk Southern Ry. v. City of Hammond, Docket No. 2:00CV357JM filed June 6, 2000 (Attached hereto as Exhibit 6).

1. CSX's Post-Transaction Operations
Over the BOCT Line

One of the most critical rail line segment in the Four Cities region from a safety and environmental perspective is the BOCT's 7-mile Pine Junction to Calumet Park line. This line crosses the heart of the Cities and the downtown business districts of East Chicago and Hammond. Mayors' V.S. at 5. The heavy train traffic using this line causes critical congestion problems as it has 20 busy at-grade highway/rail crossings. These severe congestion problems are compounded by the fact that the BOCT line crosses at grade 10 other rail lines, including lines operated by, among others, both the NS and the Indiana Harbor Belt Railroad ("IHB") at State Line Tower on the west edge of Hammond, the Chicago South Shore Railroad in Hammond, the IHB

at two locations in East Chicago, and the Elgin, Joliet and Eastern Railroad in East Chicago. Burris V.S. at 15. CSX does not control train dispatching over any of these crossings, and in many instances either the other railroad's trains have priority or trains are dispatched on a first come, first served basis. Id. This critical at-grade railroad crossing situation did not change post-transaction.

Very late in the Conrail control proceeding, after recognizing the concerns expressed by the Four Cities about even small incremental post-traffic increases in rail traffic moving over the BOCT line, CSX "voluntarily" agreed to take an additional two trains per day off the BOCT line. Burris V.S. at 13; Applicants' May 4, 1998 Verified Statement of James E. Roots. With that change in predicted operations, CSX represented it would be operating an average of 31.7 trains per day over the line, an increase of 1.7 trains per day over pre-transaction levels. Burris V.S. at 14, Table 1. As indicated earlier, the Board in Decision No. 89 relied on these representations in imposing modest mitigation for the Four Cities.⁸

Unfortunately, the frequency of post-transaction train

⁸At the oral argument in F.D. 33388, CSX counsel expressed that CSX "understood [the Consortium's] concerns" as to any increases in traffic over the BOCT line, and, in response, that CSX "went back to our operating plan and we found a way to put an additional train over the Lakefront line and we moved a couple of trains down to the alternate Conrail Porter Branch." June 4, 1998 Oral Argument, Transcript at 448.

movements over the BOCT line has been considerably higher than CSX represented during the Conrail Control proceeding. Post-transaction, CSX is moving an average of 36 trains per day over the BOCT Line, six more trains per day than it moved pre-transaction. Burris V.S. at 14, Table 1. The congestion situation caused by these increases is compounded by the fact that CSX's actual post-transaction average speed for trains moving over the BOCT line has been only 9.0 MPH - or significantly below the 19-40 MPH average it predicted for the line during the Conrail control proceeding (and even below its pre-transaction average speed of 12.0 MPH.) See Burris V.S. at 14-15.⁹

CSX argues in its June 1, 2000 Report that certain infrastructure improvements have been made and will continue to be made this year to its Barr subdivision to improve train speeds and the congestion situation in the Four Cities. CSX's Report indicates that signaling upgrades have been completed on the BOCT line. Even with these improvements, however, CSX's average BOCT line train speeds have decreased post-transaction. Burris V.S. at 15.

⁹In their filings in F.D. 33388, the Applicants challenged the Four Cities' traffic delay analysis and resulting calculation of costs/benefits on the ground that they improperly assumed low train speeds of 13.2 MPH on the BOCT line. In fact, the Four Cities' train speed predictions made in the Conrail control proceeding proved to be very conservative.

A major problem preventing train traffic flow improvements over the BOCT line, which was totally ignored by CSX in its June 1, 2000 Report, is the large number of at-grade railroad/railroad crossings on the line and the fact that CSX trains do not have dispatching priority over any of these crossings. Burris V.S. at 16. Any CSX train that stops on the BOCT line to permit another railroad's train to cross must decelerate to a stop and then accelerate from a stop to running speed. Because of this process of stopping and starting, improving the train speeds on the line will be very difficult even with completion of all the infrastructure improvements being made by CSX.

Finally, many of the upgrades CSX is making on the BOCT corridor are designed to accommodate much larger trains. In the Conrail control proceeding, CSX represented that the average train weight for trains moving over the BOCT line would increase from 4,070 gross tons per train to 5,324 gross tons per train, an increase of 31 percent. This use of longer, heavier trains requires even more time for deceleration and acceleration for each stop. Combined with the frequent stops occasioned by the numerous rail crossings of the BOCT line, this will prevent CSX from increasing average operating speeds to any significant extent. The increase in the length of trains, without a corresponding increase in train speeds, unfortunately only serves

to increase the amount of time drivers/pedestrians must wait for trains to pass at a specific highway/rail at-grade crossing.

At oral argument, CSX promised that it would "achieve speed increases over the BOCT that are going to more than offset any slight increase in traffic." June 4, 1998 Oral Argument, Transcript at 449. Its witnesses represented that "even given an increase in traffic of six trains, the overall delays situation along the BOCT will actually be improved as a result of the capital improvements." CSX/NS-176, Joint Rebuttal Verified Statement of James C. Rooney and T. Stephen O'Connor, at 17. The Board's SEA in its Final Environmental Impact Statement ("EIS") gave CSX the benefit of the doubt and relied on these representations when imposing remedial conditions for the Four Cities. The Final EIS states:

The recent revision of the Operating Plan by CSX reduces the number of trains on rail line segment C-023, one of the routes about which the Four City Consortium is concerned. SEA concludes that the rerouting coupled with the improvements proposed by CSX to upgrade the track structure and signal systems to allow 40-mile per hour train operations on rail line segment C-023 (Pine Junction-to-Barr Yard) would mitigate the impacts associated with the proposed Conrail Acquisition along this rail line segment.

Final EIS, at N-127. In point of fact, as demonstrated by the lower average train speeds, the increase in the number of trains using the BOCT line, and the large numbers of crossing-blockage

tickets issued by Hammond and East Chicago, the situation most definitely has not improved.

2. NS's Post-Transaction Operations
Over the Nickel Plate Line

NS's Nickel Plate line contains 49 at-grade highway/rail crossings between Hobart, IN and State Line Tower, IN. NS asserted during the Conrail control proceeding that it would be reducing the number of average daily trains moving over this line from the pre-transaction level of 26.3 to a post-transaction level of 11.2, or a reduction of 15.1 trains per day. See Burris V.S. at 14. However, NS has reported to the Four Cities that it is in fact moving 25 trains per day over this line post-transaction, or a reduction of only one train per day. Mayors' V.S. at 5-6; Burris V.S. at 14. The end result is that NS is moving an average of at least 14 more trains over this line each day than it represented it would during the Conrail control proceeding (Mayors' V.S. at 5-6), and probably more.¹⁰

In addition, during the Conrail control proceeding the Applicants estimated a post-transaction average train speed on

¹⁰Contrary to what NS has been representing to the Four Cities in the parties' meetings, in its recent federal district court Complaint against the Hammond crossing-blocking ordinance, NS states that "approximately 50 Norfolk Southern trains per day" move over the Nickel Plate Line. See NS Complaint for Declaratory and Injunctive Relief in Norfolk Southern Ry. v. City of Hammond, Docket No. 2:00CV357JM, filed June 6, 2000, at 5 (Attached hereto as Exhibit 6). At these levels, NS is moving an incredible 39 trains per day over and above what it represented it would be moving post-transaction.

the Nickel Plate line of 40 MPH. See CSX/NS-176, Joint Rebuttal Verified Statement of James C. Rooney and T. Stephen O'Connor; Burris V.S., Exhibit PHB-3. Post-transaction, NS reports that trains are actually moving at an average speed of 22.7 miles per/hour -- or barely more than one-half the speed projected. This further intensifies the impact of NS's higher-than-expected train frequency on this line.

The safety and environmental impact of NS's post-transaction operations over the Nickel Plate line is extremely important to the Four Cities, as this line traverses the area in a southeast to northwest direction, and thus crosses both east-west and north-south highways. See Mayors' V.S. at 6.¹¹ As a result of the line's location, NS's operations often result in two or three crossings being blocked simultaneously even by moving trains. The situation exacerbated when NS's trains stop on the line, which they continue to do. Id.

It is also important to understand that the NS Nickel Plate line crosses the critical BOCT line at-grade at State Line Tower. Thus, the high volume of rail traffic moving over the

¹¹The problem is most severe on the segment of this line between Van Loon and State Line Tower, where the line crosses the heart of the City of Hammond, with a number of critical at-grade crossings of many of the same highways that cross the BOCT line at-grade to the north. The Four Cities' Alternative Routing Plan, as proposed in the Conrail control proceeding, would have resulted in the continued movement of 16 trains per day over only the portion of the Nickel Plate line between Hobart and Van Loon -- which is the less problematic portion of this line.

Nickel Plate line further inhibits the efficient operation of trains on the neighboring and critical BOCT corridor.

NS certainly was given fair warning of the concerns of the Four Cities about post-transaction train movements over the Nickel Plate line. The Consortium's request for conditions in the Conrail control proceeding asked that NS be held to its representations that it would operate no more than 11 average daily trains per day post-transaction on the Nickel Plate line in the absence of a mutual agreement between NS and the Consortium. See FCC-15, at 47. Despite its representations, NS has failed to come even close to this daily train frequency.

3. The Adverse Cumulative Impacts of CSX's
and NS's Post Transaction Operations

The increases in train traffic and decreases in train speeds transaction outlined above have caused serious adverse impacts on the Four Cities that were not anticipated or adequately planned for by the Applicants in the Conrail control proceeding. Most notably, their operations have caused increases in vehicle delay times, which have significant adverse impacts on, among other things, the efficient provision of fire, police, and emergency service; families commuting to/from work and school; the propensity of area motorists to ignore grade crossing protection devices (including, in particular, lowered crossing gates) at significant risk to themselves and their passengers;

and the propensity of pedestrians (particularly children) to climb under and through stopped trains. In addition to these considerable safety, congestion, and transportation system impacts, the increases in vehicle delay times have substantial air quality, noise, and fuel consumption impacts.

It is impossible to quantify all of the adverse environmental impacts of the transaction on the Four Cities, and the Consortium has not attempted to do so. Moreover, the Four Cities are lacking crucial information necessary to prepare a cumulative impact analysis because of the CSX and NS's refusal to provide operating information for most of the area's rail line segments.

The Consortium has, however, updated its motor vehicle delay time estimates submitted in the Conrail control proceeding (see FCC-9 and FCC-13) to reflect the higher train frequency and lower average train speeds on the BOCT line post-transaction. Based on the limited information provided, vehicle delay hours have increased from 220,104 hours to 734,947 hours in the Four Cities alone as a result of the Conrail transaction. This is an increase of 514,843 hours, which represents an astonishing 234 percent increase in delay time from pre-transaction levels. The actual delay levels, of course, are in stark contrast to the Applicants' representations that congestion problems in northwest Indiana would improve post-transaction.

E. CSX and NS's Lack of Responses to Discovery Requests

On June 23, 2000, the Consortium served discovery requests on both CSX and NS for purposes of eliciting limited information on train operation and accident data in northwest Indiana necessary to enable the Consortium to meaningfully review and evaluate the issues that are the subject of this proceeding. See Exhibit 7 attached hereto. This is the same type of data provided by the Applicants in their Application during the Conrail control proceeding, including train volumes, speeds, and lengths. The requests pertained to operating information on 5 NS line segments and on 7 CSX line segments (out of a collective total of 1,022 line segments on the Applicants' systems). Both Applicants refused to provide this information, even on an informal basis, stating that discovery is not available in this proceeding and that compliance with the Four Cities' discovery requests would be unduly burdensome.¹² See Exhibit 8 attached hereto. The Applicants' refusal to produce this information is wholly without merit.¹³

¹²CSX also stated that the provision of this information would somehow violate the parties' October 26, 1998 Settlement Agreement. This argument is without merit, as the information sought is necessary to respond to the Board's request in Decision No. 1 for meaningful "comments on the progress of implementation of the Conrail transaction and the conditions [it] imposed" in approving the transaction.

¹³Both CSX and NS cite an STB decision in the Union Pacific/Southern Pacific merger oversight proceeding as authority for their refusal to provide this information (Finance Docket No.

The Applicants have exclusive control of operating data for the line segments that traverse the Four City region. Other than the information on the BOCT and Nickel Plate lines received during scheduled meetings with the Applicants, the Consortium (and the Board) has no information to assess the Applicants' post-transaction performance and compliance with the environmental conditions imposed and representations made. As a matter of fairness, and to assist in developing the information necessary for meaningful evaluation of the railroads' performance in the Board's continuing Conrail oversight proceeding, the railroads should not be permitted to continue with their unilateral refusals to provide the requested post-transaction comparative operating information.

32760 (Sub-No. 21), Decision No. 10 (served Oct. 27, 1997)). That decision is inapposite, as it dealt with attempts by interested parties to obtain information to determine whether the competitive conditions imposed by the Board in that case were working. In that case, the Board provided the requesting parties with access to the railroad's 100% waybill traffic tapes, which provided them with sufficient information to respond to the Board's request for comments on those competitive conditions. In this case, the 100% traffic tapes were made available to parties by the Board in its Decision No. 1, and were obtained from the Applicants and reviewed by the Consortium. However, the tapes provided no helpful information for purposes of allowing for meaningful environmental review. Therefore, limited discovery was necessary and sought by the Consortium.

IV. REQUEST FOR ADDITIONAL CONDITIONS

In the underlying Conrail control proceeding, CSX and NS urged the STB not to impose additional conditions with regard to their operations in the Four Cities, arguing that "[t]he Board could not have made it plainer to the Four Cities that the Board will hold the Applicants fully accountable." CSX/NS-217, at 12. The Consortium fully agrees that the Board should hold the Applicants "fully accountable" for their representations that "we are going to be improving the situation in the Four Cities." June 4, 1998, Oral Argument, Transcript at 449.

The Four Cities note that the Applicants themselves recognize the severity of the impacts of their transaction, as they have been engaged in negotiations with the Cities over additional steps they should take to address their operational impacts in the area. The negotiations have been pursued with greater vigor in recent weeks. See Mayors' V.S. at 8-9. The Consortium remains hopeful that mutual agreements can be negotiated with both CSX and NS in the near future. Such agreements may or may not obviate the need for the imposition of additional necessary environmental mitigating conditions by the Board, but in any event, the Consortium will advise the Board promptly if any agreement is reached.

The Four City Consortium respectfully submits that the transaction's adverse safety and environmental impacts on the Four City region require the imposition of additional protective conditions designed to mitigate those impacts on northwestern Indiana. The additional protective conditions requested are as follows:

1. CSX's BOCT Line

- a. In accordance with its representations in the Conrail control proceeding, CSX shall re-route traffic off of the BOCT line between Calumet Park and Pine Junction in at least sufficient amounts so that no more than 31.7 trains per day on a monthly average basis traverse this line segment. To the extent possible, trains re-routed off the BOCT line shall move over the Conrail Porter Branch and the grade-separated IHB line via Ivanhoe and Tolleston;
- b. In any month in which CSX expects to operate more than an average of 31.7 trains per day over the BOCT line between Calumet Park and Pine Junction, it shall (i) provide as much advance notice as possible to the Consortium, and (ii) conduct its train operations in a manner that will mitigate congestion (e.g., non-rush hour operations, no blockage of critical at-grade highway/rail crossings, alternative routings). In any event, CSXT shall not be permitted to operate more than 31.7 trains per day over the BOCT line until mitigation issues are resolved through a mutually acceptable agreement with the Consortium.

2. NS's Nickel Plate Line

- a. In accordance with its representations in the Conrail control proceeding, NS shall operate no more than 11.2 trains per day on a monthly average basis over its Nickel Plate line segment between Hobart, IN and State Line Tower, IN;

- b. In any month in which NS desires to operate more than an average of 11.2 trains per day on a monthly average basis on the Nickel Plate line between Hobart, IN and State Line Tower, IN it shall (i) provide as much advance notice as possible to the Consortium, and (ii) conduct its train operations in a manner that will mitigate congestion (e.g., non-rush hour operations, no blockage of critical at-grade highway/rail crossings, alternative routings). In any event, NS shall not be permitted to operate more than 11.2 trains per day over the Nickel Plate line until mitigation issues are resolved through a mutually acceptable agreement with the Consortium.

3. Reporting Requirements

On at least a quarterly basis during the remaining period of the Board's oversight imposed in Decision No. 89, and on at least an annual basis for a period of five years thereafter, CSX and NS shall each provide the Consortium with Reports containing the average number of daily train movements, average train speeds (or elapsed time between segment end points for each train), and average train lengths (or actual length for each train) for each of its owned and/or operated rail line segments in the Cities of East Chicago, Hammond, Gary, and Whiting, Indiana during the period in question.

- V. CONCLUSION

CSX and NS represented to the Board and the Four Cities during the Conrail control proceeding that their infrastructure and operational improvements planned for the Chicago area would eliminate any potential adverse impacts of the Conrail transaction on the Four Cities. The Board gave the Applicants the benefit of the doubt when imposing ameliorative conditions in Decision No. 89. The promised benefits have not been realized in

the Four Cities. Accordingly, for the reasons set forth herein, the Consortium requests the Board to impose the additional conditions described above to mitigate the substantial environmental, safety, and socioeconomic impacts of the Conrail transaction on the Four Cities' region.

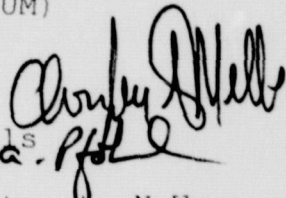
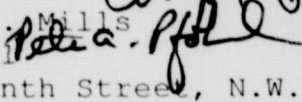
Respectfully submitted,

THE CITIES OF EAST CHICAGO,
INDIANA; HAMMOND, INDIANA;
GARY, INDIANA; AND WHITING,
INDIANA (COLLECTIVELY, THE
FOUR CITY CONSORTIUM)

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Congress of the United States

Washington, DC 20515

July 12, 2000

Ms. Linda Morgan
Chairwoman
Surface Transportation Board
1925 K Street Northwest
Washington, D.C. 20423

Dear Chairwoman Morgan:

We are writing to share with you our interest and concern over the growing railroad traffic congestion problems being experienced in Northwest Indiana since the approval of the acquisition of the assets of Conrail by CSX Transportation (CSX) and Norfolk Southern Railroad (NS).

We are aware that as part of the STB's oversight of the Conrail acquisition transaction, on June 1, 2000, CSX and NS filed status reports on the implementation of the transaction. We further understand that neither CSX nor NS referenced in their filings any problems with respect to their operations in Northwest Indiana, other than an indication by CSX that the results of its promised improvements in the region may not be experienced until "late 2000."

The Cities of East Chicago, Hammond, Gary, and Whiting, collectively participated in the Conrail proceeding as the Four City Consortium. The Consortium has informed us that they will be responding to the railroads' June 1, 2000 status reports, and will be arguing that, despite CSX and NS's assurances that post-transaction congestion problems would improve, the situation has worsened over certain critical area line segments. These problems appear largely to be the result of the railroads' incremental increases in traffic levels beyond those first projected, their constant blockages of at-grade highway crossings, and their refusal to reroute traffic off critical congested rail line segments. We are also aware that NS is challenging in federal court the right of the Four Cities to ticket trains for illegal road blockages, arguing that they have a right to operate and stop their trains in any manner they see fit.

The adverse safety, environmental, and quality of life impacts resulting from the constant flow of rail traffic through Northwest Indiana is of great concern to us and our constituents. Most through rail traffic between Chicago and the East Coast moves through the region by CSX and NS. These operations impact over 200,000 residents of the Four Cities who must traverse the hundreds of at-grade highway/rail crossings in the area on a daily basis. Unfortunately, because of the high levels of at-grade crossings, rail accidents have become all too common an occurrence. In addition, the blocked crossings adversely impact the fire, police, and emergency services, cause environmental pollution, traffic delays, and growing frustration among residents.

Ms. Linda Morgan

July 12, 2000

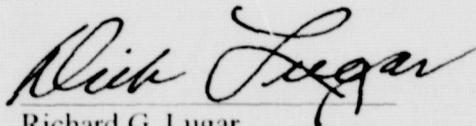
Page 2

It is extremely troubling to hear that rail congestion problems in the Four Cities have intensified since the Conrail break-up. We have, and will continue, to pursue the allocation of public resources to assist the Four Cities in implementing infrastructure and other safety improvements to mitigate the serious problems associated with the high intensity of railroad lines and operations. However, such efforts cannot be successful without the willingness of the railroads to meaningfully cooperate with the Consortium to minimize community impacts.

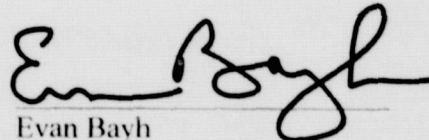
We are aware that CSX and NS have discussed with the Four Cities the possibility of taking additional steps to mitigate train impacts. However, to the extent that a mutually agreeable solution cannot be made, we believe the STB has the authority and responsibility to step-in and take appropriate actions. We urge the STB to closely review the Four Cities reply comments, and to take the appropriate steps necessary to ensure that the railroads are held accountable to improve the regional congestion problems.

We appreciate your assistance with this important matter.

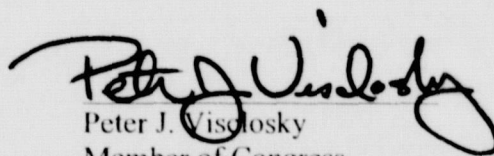
Sincerely,



Richard G. Lugar
United States Senator



Evan Bayh
United States Senator



Peter J. Visclosky
Member of Congress

29900
EB

SERVICE DATE - FEBRUARY 5, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 114

Decided: February 4, 1999

In Decision No. 89, served July 23, 1998, we approved, subject to certain conditions, including environmental mitigation conditions, the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively Conrail) and the division of Conrail's assets by CSX Corporation and CSX Transportation, Inc. (collectively CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). As pertinent here, Environmental Condition No. 21 of Appendix Q in Decision No. 89 requires CSX and NS to implement various mitigation measures in Northwestern Indiana (specifically, in the cities of East Chicago, Hammond, Gary, and Whiting, IN, also known as the Four City Consortium or the Four Cities). In Decision No. 96, served October 19, 1998, in response to the Four Cities' request for additional monthly reporting on the line segments in the Four Cities area, we modified Environmental Condition No. 21(i), which requires applicants to conduct regularly scheduled meetings with representatives of the Four Cities for 3 years. Our revised condition specifies that applicants will be required at those meetings to provide a status report on average train traffic volumes and speed on the applicable portions of the four rail segments in the area, and on the progress of operational and capital improvements required by us to address highway/rail at-grade crossing safety and delay issues in the Four Cities area.

On December 23, 1998, CSX provided us with a copy of a settlement agreement between CSX and the Four Cities executed on October 26, 1998. CSX explains that this settlement agreement incorporates the conditions imposed by us in Decision No. 89, Appendix Q, Environmental Condition No. 21(a)-(h), but supersedes the modification of Condition No. 21(i) in Decision No. 96, with respect to CSX. Specifically, although the settlement agreement does not change NS' reporting requirements, CSX will be required to provide the information specified in Section VI of the October 26, 1998 settlement agreement. By supplemental letter filed January 20, 1999, CSX requests that Condition No. 21(i) be amended to reflect the parties' settlement agreement and that the negotiated agreement between CSX and the Four Cities be added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q in Decision No. 89, which requires CSX to comply with the terms of all listed negotiated agreements

developed with states, local communities, and other entities regarding environmental issues associated with the Conrail transaction. CSX states that the Four Cities concur with its request.

In view of the October 26, 1998 settlement agreement between CSX and the Four Cities, and the parties' acceptance of the modified reporting format in Section VI of that agreement, we will: (1) add the negotiated agreement between CSX and the Four Cities to Condition No. 51 of Appendix Q of Decision No. 89; and (2) delete Condition Nos. 21(a)-(h) of Appendix Q of Decision No. 89 (which apply only to CSX and have been superseded by the parties' settlement agreement). In addition, we will renumber Condition No. 21(i) of Decision No. 96 as Environmental Condition No. 21 and modify that condition to apply only to NS. These changes do not affect the reporting requirements previously imposed on NS.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened. In accordance with the settlement agreement between CSX and the Four Cities, executed on October 26, 1998, the following is added to the CSX Subsection of Environmental Condition No. 51 of Appendix Q of Decision No. 89:

10. The Cities of East Chicago, Hammond, Gary, and Whiting, IN (also known as the Four Cities Consortium or the Four Cities), dated October 26, 1998.

In addition, Environmental Condition No. 21 of Appendix Q of Decision No. 89 is deleted. Furthermore, Environmental Condition No. 21(i) of Decision No. 96 is renumbered as Environmental Condition No. 21, and the condition is modified to read as follows:

NS shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement. At each meeting, NS shall provide a status report on average train traffic volumes and speeds on the applicable portions of rail line segment N-469, and on the progress of operational and capital improvements required by the Board to address highway/rail at-grade crossing safety and delay issues in the Four City Consortium area. CSX shall comply with the terms of its negotiated agreement

with the Four City Consortium, as set forth in Environmental
Condition No. 51.

2. This decision shall be effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams
Secretary

Finance Docket No. 33388
Settlement Agreement Between
the Four City Consortium and CSX Transportation, Inc.

The following is a Settlement Agreement between the Cities of East Chicago, Hammond, Gary, and Whiting, Indiana (the "Four City Consortium") and CSX Transportation, Inc. ("CSX"). It is understood that by ratifying this proposal, the parties' remaining differences over the terms and conditions of CSX operations will be resolved and the Four City Consortium will not undertake a judicial appeal of Finance Docket No. 33388. The Agreement would not, however, limit the Four City Consortium's right to petition the Board for relief during the imposed five (5) year oversight period governing the proceeding should it determine such action is necessary based upon events occurring after the execution of the Agreement.

Promptly upon execution of this Agreement, the parties will notify the Surface Transportation Board of the Settlement; the parties will provide it with a copy of this Agreement; and, the parties will request that the Board adopt its terms as a condition under its Decision approving the Conrail application.

Preamble: In the Surface Transportation Board Finance Docket 33388, Decision 89, Condition 21, the Board ordered the following mitigation measures among others to be undertaken by CSX to alleviate Acquisition-related highway/rail at-grade crossing traffic delay and safety concerns in East Chicago, Hammond, Gary, and Whiting, Indiana through operational improvements and safety measures as follows:

- a) CSX shall upgrade the highway/rail at-grade crossing signal warning systems with constant warning time circuits to reduce crossing blockage time and the likelihood of motorists driving around the gate at the highway/rail at-grade crossings listed below on the Pine Junction to Barr Yard rail line segment and the Tolleston to Clark Junction rail line segment.

- Sheffield Avenue
- Hohman Avenue
- Calumet Avenue
- Columbia Avenue
- Indianapolis Boulevard
- Railroad Avenue
- Kennedy Avenue
- 5th Avenue (U.S. 20)

- b) CSX shall make Operation Lifesaver programs available to schools and other community organizations in the vicinity of the Pine Junction to Barr Yard rail line segment, Tolleston to Clark Junction rail line segment, and the Tolleston to Hobart portion of the Warsaw to Tolleston rail line segment.
- c) CSX shall upgrade the track structure and signal systems to allow 40 mph train operations, consistent with safe operating practices, between Pine Junction and Barr Yard.
- d) CSX shall install temporary notification signs or message boards consistent with Condition No. 1(B) at least 30 days before initiating new train traffic between the Tolleston and Clark Junction rail line segment and the Hobart to Tolleston portion of the Warsaw to Tolleston rail line segment. CSX shall certify to the Board that it has complied with this condition before increasing traffic on these rail line segments.
- e) CSX shall improve coordination between Pine Junction and Barr Yard at Indiana Harbor Belt Railroad interlockings where CSX rail lines cross or join, to reduce railroad congestion and blockage at highway/rail at-grade crossings to the extent practicable.
- f) CSX shall reroute train traffic as much as practicable from the Pine Junction to Barr Yard rail line segment to other rail lines in the area.
- g) CSX shall instruct its train crews not to stop trains in positions where they would block major highway/rail at-grade crossings identified by the Four City Consortium on the Pine Junction to Barr Yard rail line segment whenever practicable and consistent with safe operating practices.
- h) CSX shall work with the Four City Consortium to better coordinate train movements and emergency response. If practicable, CSX shall install a train location system by interconnecting the grade crossing warning devices to nearby traffic signals and provide a display in the local emergency response center showing the position of the grade crossing warning signals.
- i) Applicants shall attend regularly scheduled meetings with representatives of the Four City Consortium for 3 years following the effective date of the Board's final decision. Representatives of the

Indiana Harbor Belt Railroad shall also be invited. These meetings would provide a forum for assessing traffic delay, emergency response, and driver compliance with railway grade crossing warning systems through improved education and enforcement.

- I. **STB Ordered Mitigation.** The parties agree to abide by all requirements outlined in the Surface Transportation Finance Docket 33388, Decision 89, as clarified in Decision 96, except to the extent that CSX and the Four City Consortium agree to modify the requirements.
- II. **The Former Pennsylvania Railroad ("PRR") line between Hobart and Clarke Junction.**
 - A. CSX Railroad Safety Fund for Gary. CSX agrees to dedicate \$50,000 in a Railroad Safety Fund to be used for safety upgrades on the former Pennsylvania Railroad line between Hobart and Clarke Junction. The fund could be used for crossing protection upgrades, median barriers, rubberized crossings, or other safety related activities. The City of Gary shall determine how the money is spent although the funds will stay at CSX and any work will be done either by CSX or contractors working for CSX. Any upgrades relating to types of at grade warning protection devices need to first be approved by the Indiana Department of Transportation. All projects must be consistent with generally approved railroad operating practices and federal and state regulations.
- III. **The Baltimore, Ohio, and Chicago Terminal Railroad ("BOCT") line between Pine Junction and Calumet Park.**
 - A. CSX Railroad Safety Fund for East Chicago. CSX agrees to dedicate \$50,000 in a Railroad Safety Fund to be used for safety upgrades on the Baltimore, Ohio and Chicago Terminal Railroad line between Pine Junction and Calumet Park. The fund could be used for crossing protection upgrades, median barriers, rubberized crossings, or other safety related activities. The City of East Chicago shall determine how the money is spent although the funds will stay at CSX and any work will be done either by CSX or contractors working for CSX. Any upgrades relating to the types of at-grade warning protection devices need to first be approved by the Indiana Department of Transportation. All projects must be consistent with generally approved railroad operating practices and federal and state

regulations.

- B. Hammond At-Grade Crossings. To the extent practicable and consistent with safe operating practices, CSX will ensure that its trains are operated in a fashion such that the following existing at-grade highway/rail crossings on the line are not blocked by stopped trains.

- Sheffield Avenue;
- Hohman Avenue;
- Calumet Avenue; and
- Columbia Avenue.

- C. Average Daily Number of Trains

1. The CSX revised operating plan states that approximately 31.7 trains are expected to move over the BOCT line on a daily average. The parties understand that Condition 50 of the Surface Transportation Board's Decision 89, gives the parties the ability to petition the Board for relief for five years from the Board's final decision if there is a material change in the facts or circumstances (including the average daily number of trains if the Board determines that there is a material increase) upon which the Board relied in making its decision.
2. CSX agrees to cooperate with the Four City Consortium to reroute train traffic as much as practicable from the Pine Junction to Barr Yard line to the IHB line or other rail lines in the area. This shall include working with the IHB and other entities to secure necessary public funding for the cost of rehabilitating and upgrading the IHB elevated line and appropriate connections for use in the movement of through trains between Willow Creek and Calumet Park.

- D. Railroad Avenue Easement. CSX will cooperate with the City of East Chicago in developing a grade-separated truck route over the line at Railroad Avenue, including conveying to the City an appropriate easement and a monetary contribution toward the project in the amount of seven and one-half percent (7.5%) of total project costs to facilitate construction of the grade separation. The total contribution from CSX will not exceed \$187,500. In consideration of this monetary contribution, the rail crossing at Railroad Avenue will be closed upon completion of the grade separation project. CSX will

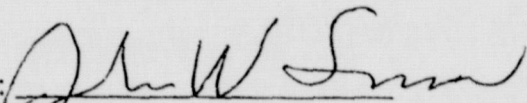
consider a higher percentage contribution in exchange for additional grade crossing closures in the City.

- IV. **Whiting Park.** To the extent practicable and consistent with safe operating practices, CSX will ensure that its trains are operated in a fashion such that the existing at-grade highway/rail crossings at the entrance and exit to Whiting Park at 117th Street and White Oak Avenue and 119th Street and Front Avenue are not blocked simultaneously by stopped trains.
- V. **Review of Gary At-Grade Crossings.** CSX will cooperate with the City of Gary and provide reasonable and appropriate expertise and assistance in conducting a city-wide review of all CSX highway/rail at-grade crossings. This review will determine whether operational and/or structural improvements/closings are necessary to help promote highway safety and provide for the orderly, predictable, and safe movement of all vehicular, rail, and pedestrian traffic.
- VI. **Monthly Reports.**
- A. As specified in Finance Docket No. 33388, CSX shall provide the Four City Consortium with reports on a monthly basis providing the information described by the Board in Decision No. 96 pertaining to condition 21(i). However, the parties have mutually agreed to not have CSX report average train speeds and have also agreed to limit the reporting requirements on train traffic volumes to the following information:
- Throughout the Board's five (5) year oversight period in Finance Docket No. 33388, CSX shall report, on a daily average basis (calculated monthly), the number of trains per day operated in both (and separately in each) direction over the following rail line segments:
- The Pine Junction-to-State Line Tower portion of the Pine Junction-to-Barr Yard line segment (C-023);
 - Tolleston-to-Clarke Junction rail line (C-024); And
 - The Tolleston-to-Hobart portion of the Warsaw-to-Tolleston line segment (C-026).
- B. The parties understand that the Board's condition 21(i) provides for different conditions than those agreed to in section VI (A) of this

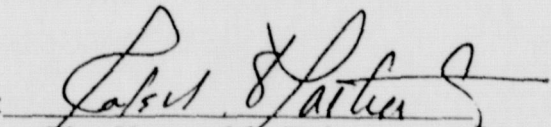
agreement. As part of this settlement agreement, the parties will advise the Board of their acceptance of this modified reporting format in lieu of that provided in Decision No. 96. The parties Agreement does not affect reporting requirements imposed on Norfolk Southern Railroad under condition 21(i).


In witness whereof, the parties have caused this agreement to be executed by their duly authorized representatives on this date, October 26, 1998.

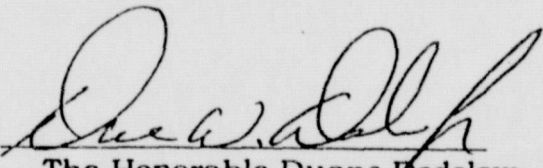
CSX Transportation

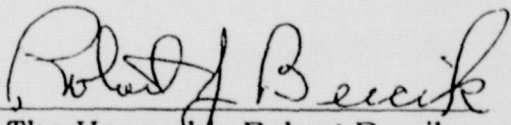
By: 
John W. Snow
Chairman, CEO, and President, CSX Corporation

The Four Cities Consortium

By: 
The Honorable Robert Pastrek
Mayor, City of East Chicago, Indiana

By: 
The Honorable Scott King
Mayor, City of Gary, Indiana

By: 
The Honorable Duane Dedelow
Mayor, City of Hammond, Indiana

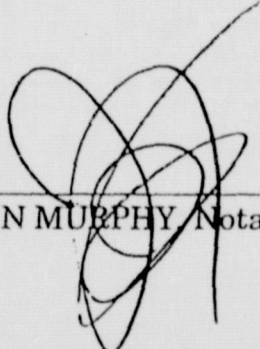
By: 
The Honorable Robert Bercik
Mayor, City of Whiting, Indiana

STATE OF INDIANA)
)
COUNTY OF LAKE)

VERIFICATION

I, J. Justin Murphy, a Notary Public in and for the above-mentioned state and county, hereby declare that on the 26th day of October, 1998, John W. Snow, Chairman, CEO, and President of CSX Corporation, The Honorable Robert Pastrick, Mayor of the City of East Chicago, Indiana, The Honorable Scott King, Mayor of the City of Gary, Indiana, and The Honorable Robert Bercik, Mayor of the City of Whiting, Indiana, personally appeared before me and executed the foregoing Settlement Agreement between CSX Corporation and the Four Cities Consortium.

I further verify that The Honorable Duane Dedelow, Mayor of the City of Hammond, Indiana, did also appear before me and execute in my presence the Settlement Agreement between CSX Corporation and the Four Cities Consortium on the 28th day of October, 1998.



J. JUSTIN MURPHY, Notary Public

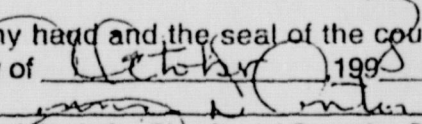
My Commission Expires: November 13, 2001

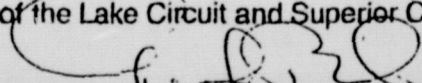
My County of Residence: Lake

CERTIFICATION OF CLERK

As legal custodian I hereby certify that the above and foregoing is a true and complete copy of the original on file with this office in the cause stated thereon.

Witness my hand and the seal of the court this
28 day of October, 1998.


Clerk of the Lake Circuit and Superior Courts

By: 
Deputy Clerk

99- 54

SPONSOR: EDWARD G. REPAY
COUNCILMAN AT LARGEORDINANCE NO. 8169

**AN ORDINANCE PROHIBITING RAILROADS FROM
BLOCKING STREET CROSSINGS FOR MORE THAN FIVE
MINUTES AND PRESCRIBING PENALTIES THEREFOR
(AS AMENDED)**

WHEREAS, serious traffic problems are created by the blocking of street crossings by railroads for more than Five (5) minutes; and

WHEREAS, the Common Council finds that the public health and safety should be protected by an ordinance prescribing the maximum fines for such infractions.

THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF HAMMOND as follows:

SECTION 1:

Any person, firm or corporation operating or employed by any railroad in the City of Hammond shall not block any street crossing for more than five (5) minutes.

SECTION 2:

Each violation of this Ordinance shall be punished by a fine of no more than Two Thousand Five Hundred Dollars (\$2,500.00).

FROM : Dennis Terry

**AN ORDINANCE PROHIBITING RAILROADS FROM
BLOCKING STREET CROSSINGS FOR MORE THAN FIVE
MINUTES AND PRESCRIBING PENALTIES THEREFOR**

(cont.)

(AS AMENDED)

SECTION 3: EFFECTIVE DATE.

This ordinance shall be effective upon final passage by the Common Council, signature by the President, approval by the Mayor or override of any veto of the Mayor by the Common Council, and its publication as provided by Law.

PASSED by the Common Council of the City of Hammond, on the
12th day of April, 1999.

David Hamm
DAVID HAMM, President

ATTEST:

Gerald Bobos
GERALD BOBOS, CITY CLERK

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond, to the Mayor of said City for his approval on the 13th day of
April, 1999.

Gerald Bobos
GERALD BOBOS, CITY CLERK

The foregoing Ordinance No. 8169 consisting of 2 pages, including
this page Vetoed by the Mayor on the 21st day of
April, 1999.

Duane W. DeDelow, Jr.
DUANE W. DEDELOW, JR. MAYOR
City of Hammond, Indiana

PASSED by the Common Council on the 12th day of April,
1999, and vetoed by the Mayor on the 21st day of
April, 1999.

Gerald Bobos
GERALD BOBOS, CITY CLERK

FROM : Dennis Terry

ORDINANCE NO. 8162

Vetoed Ordinance Number 8169 presented to the Council on the 26th day of April, 1999, for consideration of override of the Mayor's Veto.

Mayor's Veto of Ordinance Number 8169 overridden by the Common Council on the 26th day of April, 1999.


DAVID HAMM, President
Hammond Common Council

ATTEST:


GERALD BOBOS, CITY CLERK

00- 65

CO-SPONSORS: Alfonso Salinas
2nd District Councilman

Dr. George Jancosek
1st District Councilman

ORDINANCE NO. 8259

AN ORDINANCE TO AMEND ORDINANCE NO. 8169 AND HAMMOND
MUNICIPAL CODE §100.16 REGARDING STANDING RAIL CARS AND
THE BLOCKING OF PUBLIC WAYS

WHEREAS, the City of Hammond is concerned about the blocking
of public rights of way by trains; and

WHEREAS, it is in the best interests of the City and the
public health, safety and welfare to control the use and access of
public ways;

WHEREAS, the City is not attempting to control railroad safety
or supplant state laws.

NOW THEREFORE BE IT ORDAINED that Ordinance 8169 and Hammond
Municipal Code §100.16 is hereby deleted in its entirety and
replaced with the following language:

SECTION § 1. CONDUCT PROHIBITED

It is unlawful for any railroad company or any person operating or
having charge or control of any railroad train, railroad car or
engine within the city:

A. To permit, allow or cause any train, railroad car or
engine to stand at any intersection of any street, sidewalk or
alley, for a period longer than five minutes at any one time,
without allowing vehicles and pedestrians to cross such railroad
tracks, except when necessary to comply with governmental safety
regulations or where such train, railroad car or engine cannot be
removed by reason of circumstances over which the railroad company
has no control.

B. To obstruct any intersection of any street, sidewalk or
alley for a period longer than five minutes at any one time by
switching, without allowing vehicles and pedestrians to cross such
railroad tracks over any such street, sidewalk or alley, except
when necessary to comply with governmental safety regulations or
where such train, railroad car or engine cannot be moved by reason
of circumstances over which the railroad company has no control.

Put & code

ORDINANCE NO. 8259

AN ORDINANCE TO AMEND ORDINANCE NO. 8169 AND HAMMOND MUNICIPAL CODE §100.16 REGARDING STANDING RAIL CARS AND THE BLOCKING OF PUBLIC WAYS

C. This Ordinance shall not apply to trains, railroad cars or engines in motion, other than those engaged in switching

D. This Ordinance is enacted to promote the public interest and welfare of the residents of City of Hammond and those using its public streets, sidewalks and alleys, not to control railroad safety, thus its enactment shall not supplant current Indiana Law governing "negligence" or the lack thereof by railroads, their employees and/or agents at street, sidewalk and alleyway crossings.

SECTION 2. PENALTY

For each violation of this Ordinance, defined as each separate stopping or switching of trains, railroad cars or engines in violation hereof, a penalty consisting of a fine not exceeding \$2,500 shall be assessed, thus any person, firm, or corporation who shall violate the provisions of this Ordinance shall, upon conviction, be fined in any sum not to exceed \$2,500. However, no railroad conductor or engineer acting under the rules or orders of the railroad company or its supervisory personnel may be fined for thereby violating this ordinance.

BE IT FURTHER ORDAINED by the Common Council that this ordinance shall be in full force and effect from and after its passage by the Common Council, signing by the President thereof and approval by the Mayor.

McKinley Nutall
McKinley Nutall, President
Common Council

ATTEST:

Robert J. Golec
Robert J. Golec, City Clerk

PRESENTED BY ME, the undersigned City Clerk of the City of Hammond to the Mayor of said City for his approval on the

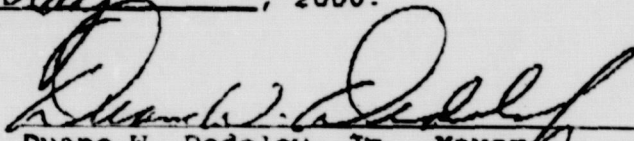
25th day of April, 2000.

Robert J. Golec
Robert J. Golec, City Clerk

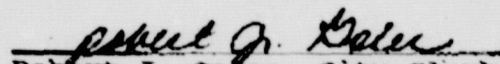
ORDINANCE NO. 8259

AN ORDINANCE TO AMEND ORDINANCE NO. 8169 AND HAMMOND
MUNICIPAL CODE §100.16 REGARDING STANDING RAIL CARS AND
THE BLOCKING OF PUBLIC WAYS

The foregoing Ordinance No. 8259 consisting of three (3)
typewritten pages, including this page was approved by the Mayor on
the 1st day of May, 2000.


Duane W. Dedelow, Jr., Mayor
City of Hammond, Indiana

ADOPTED by the Common Council on the 24th day of April,
2000 and Approved, by the Mayor on the 1st day of
May, 2000.


Robert J. Gofec, City Clerk

RECEIVED

ORDINANCE NO. 0-99-0028

DEC 28 1999

CITY CLERK'S OFFICE

**ORDINANCE GOVERNING THE OBSTRUCTION OF STREETS AND
ROADWAYS AT RAILROAD CROSSINGS BY TRAINS**

SECTION § 1. CONDUCT PROHIBITED

It is unlawful for any railroad company or any person operating or having charge or control of any railroad train, railroad car or engine within the city:

A. To permit, allow or cause any train, railroad car or engine to stand at any intersection of any street, sidewalk or alley, for a period longer than five minutes at any one time, without allowing vehicles and pedestrians to cross such railroad tracks, except when necessary to comply with governmental safety regulations or where such train, railroad car or engine cannot be moved by reason of circumstances over which the railroad company has no control.

B. To obstruct any intersection of any street, sidewalk or alley for a period longer than five minutes at any one time by switching, without allowing vehicles and pedestrians to cross such railroad tracks over any such street, sidewalk or alley, except when necessary to comply with governmental safety regulations or where such train, railroad car or engine cannot be moved by reason of circumstances over which the railroad company has no control.

C. This Ordinance shall not apply to trains, railroad cars or engines in motion, other than those engaged in switching.

D. This Ordinance is enacted to promote the public interest and welfare of the residents of East Chicago and those using its public streets, sidewalks and alleys, not to control railroad safety, thus its enactment shall not supplant current Indiana Law governing "negligence" or the lack thereof by railroads, their employees and/or agents at street, sidewalk and alleyway crossings.

SECTION § 2. PENALTY

For each violation of this Ordinance, defined as each separate stopping or switching of trains, railroad cars or engines in violation hereof, a penalty consisting of a fine not exceeding \$2,500 shall be assessed, thus any person, firm, or corporation who shall violate the provisions of this Ordinance shall, upon conviction, be fined in any sum not to exceed \$2,500. However, no railroad conductor or engineer acting under the rules or orders of a railroad company or its supervisory personnel may be fined for thereby violating this ordinance.

SECTION 3. That this ordinance shall be in full force and effect upon passage by the Common Council and upon its approval by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of East Chicago, Indiana, upon this 30 day of Dec., 1999.

AYES 7 NAYES 0

David Kolter
President

ATTEST:

Mary Morris Leonard
City Clerk

PRESENTED by me to the Mayor of the City of East Chicago, Indiana, upon this 4 day of January, 1999, at the hour of o'clock 2000.

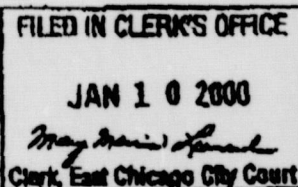
Mary Morris Leonard
City Clerk

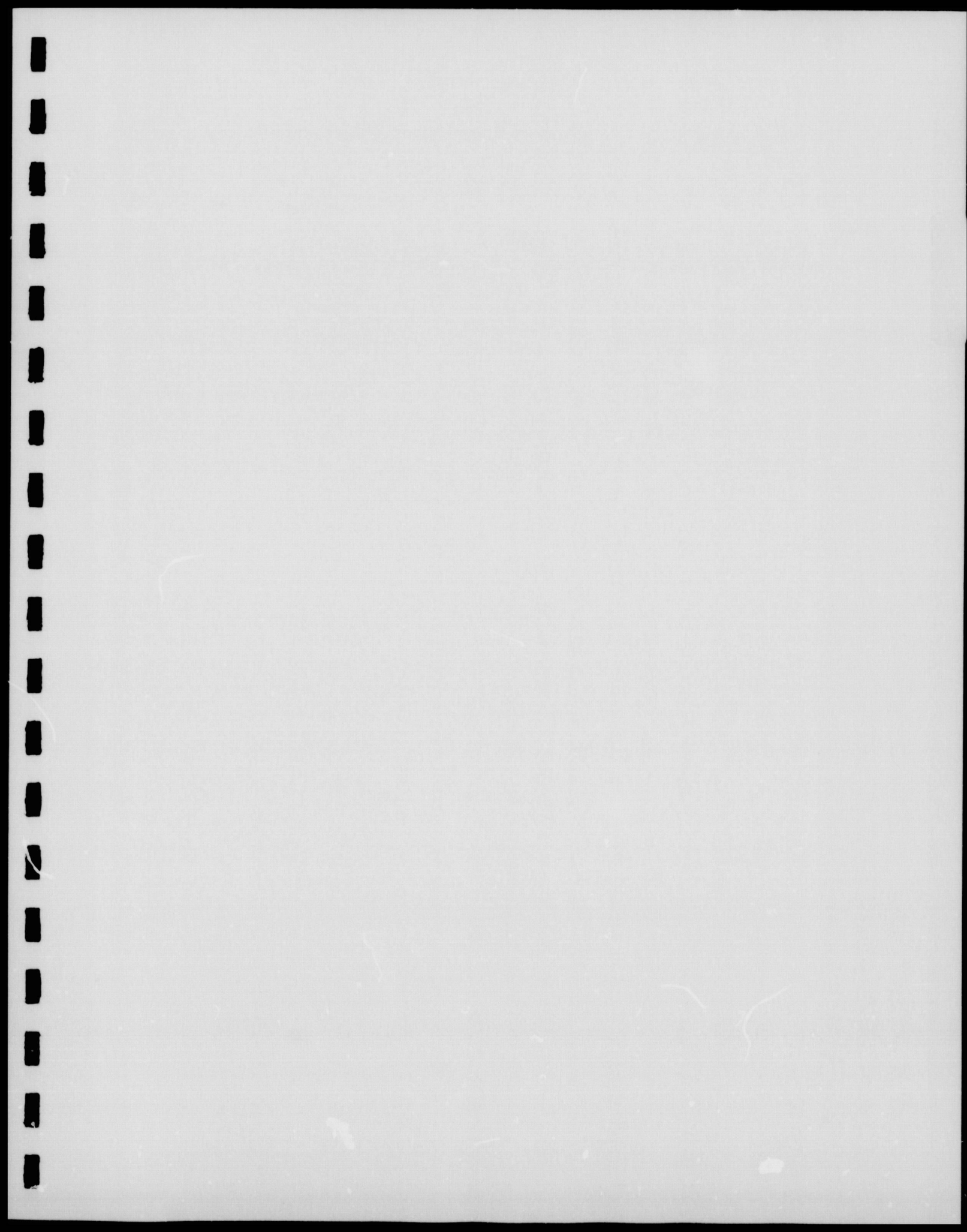
THIS ORDINANCE approved and signed by me upon the 10 day of January, 1999, at the hour of o'clock 2000.

[Signature]
Mayor

ATTEST:

Mary Morris Leonard
City Clerk







LINK A TOPIC

CUSTOMERS

E-COMMERCE

MEDIA

SAFETY

ABOUT CSXT

CSX CORP	FAQS
SEARCH	JOBS
SITE MAP	CONTACT

media

personnel

**press
release**

csxt express

media kit

acquisition

CSXT Press Release

CSX Transportation Launches Pilot Program to Reduce Blocked Crossings in Northern Ohio

09-DEC-99

STRONGSVILLE, Ohio

CSX Transportation Inc. (CSXT) today announced a voluntary pilot demonstration program establishing "No Parking Zones" for trains on selected key highway-rail grade crossings in Cuyahoga, Huron and Lorain counties.

"Even though we are not required to do this by any state or federal law, we are taking these steps to respond to the concerns from these communities," said Emory A. Hill, general manager of CSXT's Great Lakes Service Lane, which operates through northern Ohio. "We are very aware of the impact rail traffic volume has had on the residents of this area."

In cooperation with local officials, CSXT has established No Parking Zones at 15 key highway routes in the three counties. These crossings will be kept open in all preventable circumstances.

"We are reinforcing these strategic locations during this period of heavy rail traffic," Hill said. "As we continue to improve our operations, our goal is to not block any crossings and make every effort to keep them open."

While current CSXT operating rules already require train crews to avoid blocking crossings or to separate a train at crossing when it is unavoidable, these zones will serve as a reminder to allow traffic to move on key routes. CSXT crews will continue to separate trains stopped at all crossings for reasons other than mechanical problems. The identified crossings have been communicated to train crews and each of these crossings also will be marked by signs that reinforce the No Parking Zone designation.

CSX Transportation and its 34,500 employees provide rail transportation and distribution services over a 22,700 route-mile network in 23 states, the District of Columbia and two Canadian provinces. CSXT is a business unit of CSX Corporation, based in Richmond, Va.

Contacts:

Gary Wollenhaupt
317-267-3004

◦ [back to top](#)

4. Norfolk Southern is a "rail carrier" as defined in 49 U.S.C. § 10102(5), engaged in interstate commerce subject to the jurisdiction of the Surface Transportation Board, established under 49 U.S.C. §§ 701-723, and a "railroad carrier", as defined in 49 U.S.C. § 20102, subject to regulation under the Federal Railroad Safety Act, 49 U.S.C. §§ 20101-21311.

5. Norfolk Southern operates a railroad system (comprised of over 21,000 miles of mainline track) with trains originating, terminating, traversing and/or interchanging traffic with other transportation modes in 22 states, including the State of Indiana.

6. Hammond, Indiana, is a municipality, a political subdivision of the State of Indiana.

7. Venue is conferred upon this court by 28 U.S.C. § 1391 (b) and (c) because defendant, City of Hammond, is a resident of this judicial district and the events giving rise to Norfolk Southern's claims occurred in this judicial district.

8. On April 26, 1999, the Hammond Common Council enacted (over the veto of Hammond City Mayor Duane W. Dedelow, Jr.) Hammond City Ordinance 8169, entitled: "An Ordinance Prohibiting Railroads From Blocking Street Crossings For More Than Five Minutes and Prescribing Penalties Therefor (As Amended)." A Copy of Hammond City Ordinance 8169 is attached as Exhibit A.

9. Hammond City Ordinance 8169 limits Norfolk Southern's use of its tracks at any railroad/highway at-grade crossing in the City of Hammond to five (5) minutes. Hammond City Ordinance 8169 states, in pertinent part, as follows:

WHEREAS, serious traffic problems are created by the blocking of street crossings by railroads for more than five (5) minutes; and

WHEREAS, the Common Council finds that the public health and safety should be protected by an ordinance prescribing the maximum fines for such infractions.

THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF HAMMOND as follows:

SECTION 1:

Any person, firm or corporation operating or employed by any railroad in the City of Hammond shall not block any street crossing for more than five (5) minutes.

SECTION 2:

Each violation of this Ordinance shall be punished by a fine of no more than Two Thousand Five Hundred Dollars (\$2,500.00).

10. At the time Hammond City Ordinance 8169 was enacted, there was in effect in the State of Indiana a statute prohibiting trains from blocking railroad grade crossings in excess of ten (10) minutes. IND. CODE § 8-6-7.5-1, states in pertinent part:

It shall unlawful for a railroad corporation to permit any train, railroad car or engine to obstruct public travel at a railroad-highway grade crossing for a period in excess of ten (10) minutes, except where such train, railroad car or engine cannot be moved by reason of circumstances over which the railroad corporation has no control.

11. Norfolk Southern operates an east/west line of railroad through and within the limits of the City of Hammond. This particular line, the Chicago District of Norfolk Southern's Lake Division, is a part of an interconnected system of rail traffic linking the east and west coasts of the United States with the Midwest.

12. Norfolk Southern's east/west lines within the City of Hammond intersect with north/south railroad lines owned by Indiana Harbor Belt ("IHB") in the vicinity of Osborn Road and in the vicinity of the Indiana/Illinois State line, and with a north/south railroad line owned by CSX Transportation, Inc. ("CSXT") in the vicinity of Hohman Avenue.

13. In order to avoid train collisions between trains using Norfolk Southern's east/west tracks and trains using the north/south lines owned by IHB and CSXT respectively,

STB FD-33388 (SUB 91) 7-14-00 D 199285 3 of 3

interlockers have been built in and around the points where Norfolk Southern's east/west tracks intersect with the north/south lines owned by IHB and CSXT.

14. An "interlocker" consists of an arrangement of interconnected signals that govern train movement at specific locations and over particular routes by means of signal indications given to approaching trains.

15. The Osborn, Hohman and State Line interlockers are manual interlocker systems as defined by the Secretary of Transportation in 49 C.F.R. § 236.751. The use, train speed, train priority and maintenance of manual interlocker systems, such as the Osborn, Hohman, and State Line Interlockers, is regulated by the Secretary in 49 C.F.R. Part 236, Subpart C.

16. The signal aspects and indications that govern Norfolk Southern's movement of trains through the interlockers are defined by federal regulation (see 49 C.F.R. § 236.23) and include indications requiring trains to stop or to proceed at a restricted speed.

17. Norfolk Southern is required by federal regulations to include in its Operating Rules the names, indications and aspects of wayside signals (49 C.F.R. § 236.23(e)) and to instruct and test its employees with respect to those Operating Rules. See 49 C.F.R. §§ 217.1 and 217.9. Norfolk Southern is also required to file its Operating Rules with the Federal Railroad Administration. See 49 C.F.R. § 217.7.

18. Compliance with federal regulations governing the movement of Norfolk Southern trains through the Osborn, Hohman and State Line interlockers requires that Norfolk Southern trains stop or reduce their speed through the interlockers, depending on the signal that is received by the train as it approaches the interlocker.

19. Norfolk Southern does not control the signals at the Osborn, Hohman and State Line interlockers. The Osborn and State Line interlockers are controlled and operated by IHB;

the Hohman interlocker is controlled and operated by CSXT.

20. Norfolk Southern trains passing through Hammond carry coal, steel, United States mail, automobiles, automobile parts, grain, chemicals, construction materials and a wide variety of other items vital to interstate commerce. Approximately 50 Norfolk Southern trains per day cross the Osborn Road, Hohman Avenue, and State Line interlockers. Most of these trains exceed one mile in length.

21. Trains stopped at the Osborn, Hohman or State Line interlockers (awaiting permission from IHB or CSX to occupy the interlocker) occupy Norfolk Southern tracks at several grade crossings within the corporate limits of Hammond. These crossings include the railway/highway grade crossings at Grand Avenue, 173rd Street, Parrish Street, Arizona Avenue, 169th Street, Kennedy Avenue, Osborn Road, 165th Street, Indianapolis Boulevard, Columbia Avenue, Carroll Street, Maywood Avenue, Cahmet Avenue, Sohl Avenue, Oakley Avenue, Sibley Street, and State Street.

22. Given the amount of time it takes trains stopped (to obey signals) at the interlockers to gain momentum after the engineer receives permission to proceed, most Norfolk Southern trains that are required to stop at the interlockers will occupy nearby grade crossings in the City of Hammond for a period of time in excess of ten minutes.

23. Norfolk Southern can only open these grade crossings for motor vehicle traffic (during the time that the engineer is awaiting permission to proceed through the interlocker) by breaking the train in to two or more segments (train segments), depending upon the length of said train. Once a crew has received permission to proceed through the Interlocker, the crew must reassemble these train segments and perform an airbrake safety test required by the Secretary in 49 C.F.R. § 232.13 before the train can be moved -- an airbrake test that can only be performed

once the train is completely reassembled. Reassembling the train and performing the federally mandated airbrake test is a procedure that requires more than ten minutes to complete.

24. In addition, Norfolk Southern's travel through the Osborn, Hohman and State Line interlockers is subject to the proper functioning of the signals at the interlockers. Norfolk Southern trains have been stopped while proceeding through Hammond as a result of improper functioning of the interlocker signals, a circumstance over which Norfolk Southern has no control. In such an event (and in others where a train is unexpectedly required to stop or slow), it is sometimes necessary for flagmen to coordinate train movements, pursuant to Norfolk Southern Operating Rules and federal regulations. See 49 C.F.R. §§ 217-18.

25. The City of Hammond has been enforcing Hammond City Ordinance 8169 and IND. CODE 8-6-7.5-1 against Norfolk Southern when a Norfolk Southern train blocks crossings as a result of Norfolk Southern's compliance with signal restrictions requiring it to slow or stop its trains at the interlockers; when moving trains block crossings due to their length and the speed at which the train is traveling; when circumstances require the use of flagmen to coordinate train movements, and when trains are engaged in federally mandated airbrake testing.

26. The City of Hammond applies IND. CODE 8-6-7.5-1 and Hammond City Ordinance 8169 to trains that block crossings whether the train is stopped on the crossing, or is in movement over the crossing.

X 27. Since January of 1999, approximately 1000 citations for alleged violation of IND. CODE 8-6-7.5-1 have been issued to Norfolk Southern. Since February of 2000, approximately 1084 citations for alleged violation of Hammond City Ordinance 8169 have been issued to Norfolk Southern. If Norfolk Southern were to be convicted in all pending cases where it is alleged that Norfolk Southern violated Hammond City Ordinance 8169, the total fines would

exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000). The City of Hammond continues to issue a large number of citations to Norfolk Southern under Hammond City Ordinance 8169.

28. Norfolk Southern has no adequate remedy at law. Unless the injunctive relief requested herein is granted, Norfolk Southern will suffer irreparable injury, loss and damage.

COUNT I

29. Norfolk Southern incorporates the facts stated in paragraphs 1-28 as if fully rewritten herein.

30. Rules, regulations, orders and standards relating to all areas of railroad safety must be nationally uniform to the extent practical. 49 U.S.C. § 20106.

31. Authority to prescribe rules, regulations, orders and standards for all areas of railroad safety is vested in the Secretary under 49 U.S.C. § 20103. The Secretary has delegated his authority to the FRA.

32. Under the provisions of the Federal Railroad Safety Act, until the Secretary has adopted a regulation or order relating to a subject matter of an area of railroad safety, a State is authorized to adopt and enforce a law or regulation relating to the same subject matter. However, once the Secretary has adopted a regulation or order covering a subject matter relating to an area of railroad safety, a State may not adopt or continue a law or regulation covering the same subject matter unless the State's regulation is necessary to reduce or eliminate an essentially local safety hazard, is not incompatible with the federal regulation and does not create an undue burden on interstate commerce. 49 U.S.C. § 20106.

33. The Secretary of Transportation has issued regulations which "cover the subject

matter" of train speed, manual interlocking systems, train signals, air-brake testing, and other matters implicated by the City of Hammond's enforcement of IND. CODE § 8-6-7.5-1 and Hammond City Ordinance 8169.

34. IND. CODE § 8-6-7.5-1, as interpreted and enforced by the City of Hammond against Norfolk Southern, is a statewide law covering the same subject matter as a regulation issued by the Secretary.

35. IND. CODE § 8-6-7.5-1, as interpreted and enforced by the City of Hammond against Norfolk Southern, has been preempted by the Federal Railroad Safety Act and is void. *See CSX Transp., Inc. v. City of Plymouth*, 92 F.Supp.2d 643 (E.D. Mich. 2000); *CSX Transportation, Inc. v. City of Mitchell*, No. 97-98-C (S.D. Ind., December 30, 1999)(Copy attached as Exhibit(B)).

COUNT II

36. Norfolk Southern incorporates the facts stated in paragraphs 1-35 as if fully rewritten herein.

37. Unlike States, local municipalities are not authorized to adopt or enforce any laws, regulations or ordinances relating to railroad safety. 49 U.S.C. § 20106. *See Lara v. National Railroad Passenger Corp.*, 1986 WL 15725, *2 (N.D. Ind.)(Moody, J.); *Consolidated Rail Corp. v. Smith*, 664 F.Supp 1228, 1237 (N.D. Ind. 1987).

38. Hammond City Ordinance 8169, as interpreted and enforced against Norfolk Southern trains, regulates subject matter relating to railroad safety -- an act prohibited by 49 U.S.C. § 20106. Accordingly, Hammond City Ordinance 8169 has been preempted by federal law, and, therefore, by virtue of the Supremacy Clause, U.S. CONST., art. VI, cl. 2, it is void.

See CSX Transportation, Inc. v. City of Plymouth, 86 F.3d 626 (6th Cir. 1996), *Rotter v. Union Pacific R.R.*, 4 F.Supp.2d 872, 874 (E.D. Mo. 1998).

COUNT III

39. Norfolk Southern incorporates the facts stated in paragraphs 1-38 as if fully rewritten herein.

40. Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1, as interpreted and enforced by the City of Hammond, do not regulate evenhandedly to effectuate a legitimate local public interest.

41. The effects of Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1, as interpreted and enforced by the City of Hammond, on interstate commerce are not merely incidental and the burden imposed on interstate commerce by Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1 is clearly excessive in comparison to the putative local benefits derived therefrom.

42. Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1, as interpreted and enforced by the City of Hammond, place undue burden on interstate commerce in violation of the Commerce Clause, U.S. CONST. Art. 1, § 8, cl. 3, and are thus void.

COUNT IV

43. Norfolk Southern incorporates the facts stated in paragraphs 1-42 as if fully rewritten herein.

44. Because there exists a State statute governing the blocking of highway/railway grade crossings by trains, the City of Hammond is without authority to enact an ordinance, such as Hammond City Ordinance 8169, that imposes a fine for that conduct.

45. Hammond City Ordinance 8169 is therefore void pursuant to IND. CODE § 36-1-3-8 and Article IV, §§ 22 and 23 of the Indiana Constitution. *See City of Indianapolis v. Sablica*, 342 N.E.2d 853 (Ind. 1976).

COUNT V

46. The City of Hammond's unconstitutional application of Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1 has resulted in the imposition of fines against Norfolk Southern in an amount exceeding One-Hundred Thousand Dollars (\$100,000). There are currently pending claims against Norfolk Southern for alleged violation of Hammond City Ordinance 8169, alleging liability on the part of Norfolk Southern in an amount exceeding Two-Million Dollars (\$2,000,000).

47. Norfolk Southern is entitled to an order of restitution and a money judgment from the City of Hammond for all amounts illegally collected from Norfolk Southern by the City of Hammond as a result of Hammond's unconstitutional application of Hammond City Ordinance 8169 and IND. CODE § 8-6-7.5-1.

PRAYER FOR RELIEF

WHEREFORE, pursuant to 28 U.S.C. §§ 2201 and 2202, Norfolk Southern prays that this Court:

A. Declare that Hammond City Ordinance 8169 is void under the Supremacy Clause, U.S. CONST., Art VI, cl. 2, the Commerce Clause, U.S. CONST. Art. 1, § 8, cl. 3; IND. CONST. art. IV, cl. 23, and IND. CODE § 36-1-3-8;

B. Preliminarily and permanently enjoin the City of Hammond from issuing any citations under, and all further enforcement of Hammond City Ordinance 8169;

C. Declare that IND. CODE § 8-6-7.5-1, as applied by the City of Hammond to moving trains, trains stopped in compliance with signals, trains performing federally mandated

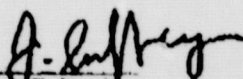
air brake testing, and trains engaging in necessary flagging operations, is void under the Supremacy Clause, U.S. CONST., art. VI, cl. 2, and the Commerce Clause, U.S. CONST. art. 1, § 8, cl. 3; IND. CONST. art. IV, cl. 23; and

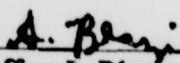
D. Preliminarily and permanently enjoin the City of Hammond from issuing any citations under, and all further enforcement of IND. CODE § 8-6-7.5-1 to moving trains, trains stopped in compliance with signals, trains performing federally mandated air brake testing, and trains engaging in necessary flagging operations, and to make investigation into the cause of each blocked crossing to ascertain, prior to issuing a citation, that the train is not stopped in excess of 10 minutes for one of the aforesaid reasons.

E. Enter a decree of restitution and a money judgment against the City of Hammond in an amount sufficient to make Norfolk Southern whole for the illegal fines it has heretofore been suffered to pay.

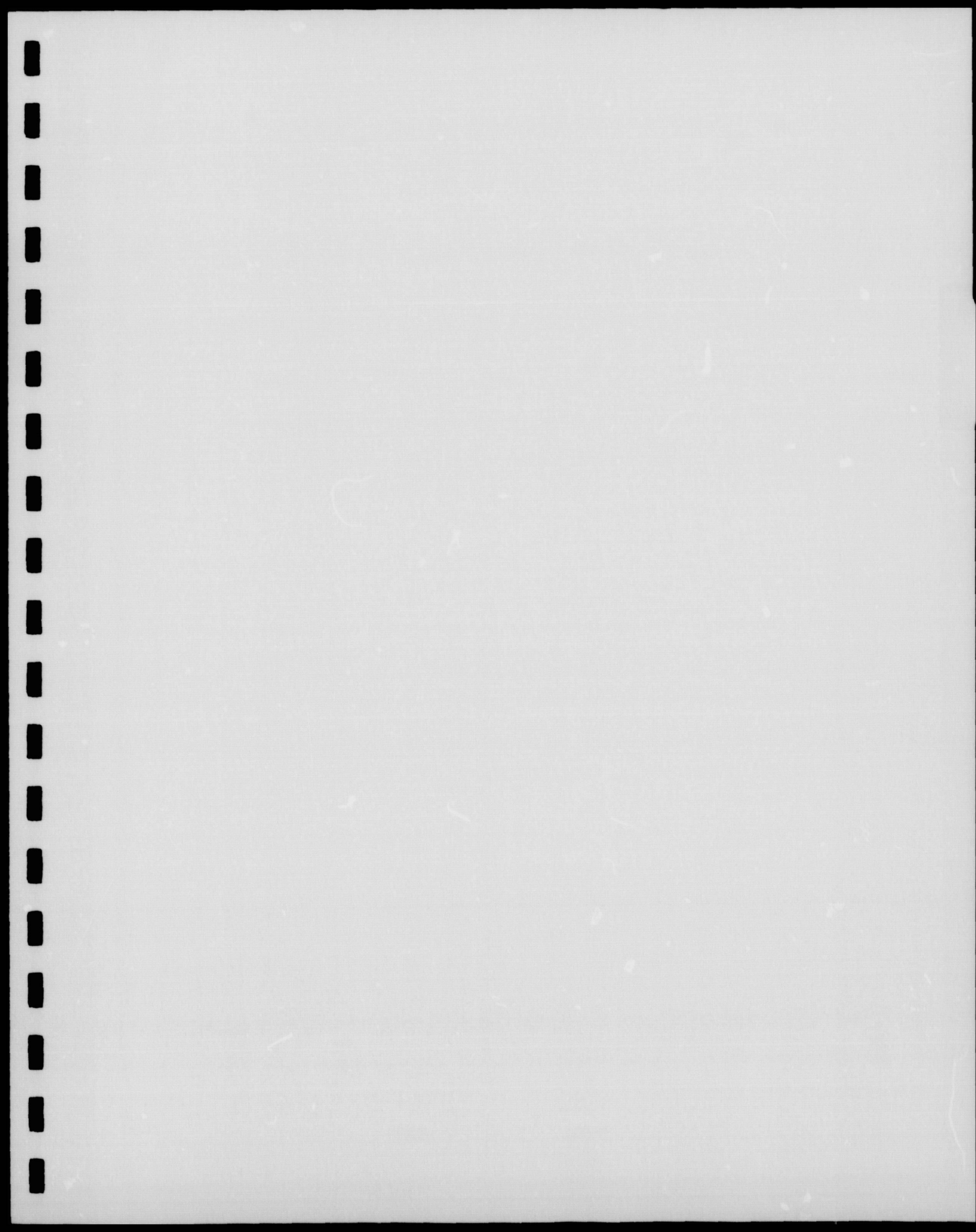
F. Such other and further relief as the Court deems appropriate.

Respectfully submitted,


John C. Duffey
Attorney No. 4756-79


Geoffrey L. Blaz
Attorney No. 17018-71
Stuart & Branigin
300 Main Street, Suite 800
P.O. Box 1010
Lafayette, IN 47902-1010
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Telecopier: (765) 742-8175

Attorneys for Plaintiff Norfolk Southern
Railway Company



SLOVER & LOFTUS

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(202) 347-7170

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(202) 347-3619

WRITER'S E-MAIL:

pag@sloverandloftus.com

June 23, 2000

VIA FACSIMILE AND HAND DELIVERY

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

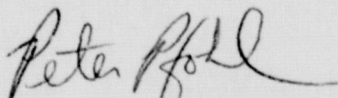
Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corp.
et al. -- Control and Operating Leases/Agreements --
Conrail et al. (General Oversight)

Dear Mr. Allen:

Enclosed please find the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium") Discovery Requests to Norfolk Southern Railway Company in the above-referenced proceeding.

As indicated in the Discovery Requests, we are prepared to work with you in obtaining the information requested on an informal basis rather than through a formal discovery response (if that is what NS would prefer), or to discuss steps that might otherwise expedite a response to the requests. As indicated in the Discovery Requests, responses should be provided to us within seven (7) days of today's date, or June 30, 2000.

Sincerely,



Peter A. Pfohl

cc: Hon. Vernon L. Williams

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium") hereby directs the following discovery requests to Norfolk Southern Railway Company ("NS"). The purpose of these requests is to elicit information necessary to enable the Consortium to meaningfully review and evaluate the issues that are the subject of this proceeding: i.e., the implementation of the Conrail transaction and of the workings of the various conditions established by the Board in its Decision No. 89 in the lead docket approving the application of CSX Corporation and CSX Transportation, Inc. (collectively "CSX") and Norfolk Southern Corporation and NS for control and division of the assets of Conrail Inc. and Consolidated Rail Corporation.

The Consortium on June 13, 2000 requested NS's 100% traffic waybill tapes for purposes of preparing an analysis of

the effects of the implementation of the Conrail control transaction on the Four Cities' region. These tapes were produced on June 16, 2000 and an initial review of the tapes has been conducted by the Consortium. This review has revealed that the types of data contained on the tapes is insufficient to allow the Four Cities to conduct a reasonable analysis to be able to respond to NS's June 1 Report and the Board's request in Decision No. 1 for meaningful "comments respecting the progress of implementation . . . and the workings of the various conditions . . . imposed." In particular the tapes do not contain the type of individual line segment data of the nature requested herein, and which was contained in the Application and relied on by the Board and the parties in the lead docket to evaluate the transaction's safety and environmental impacts on the Four Cities.

These requests are narrowly focused, and seek the type of information, and certain limited other safety information, that could not be ascertained through the traffic tapes or through the informal exchange of information between NS and the Consortium, and which is necessary for the Consortium to analyze post-acquisition operations by NS in the Four Cities.

Unless otherwise agreed, responses to the Consortium's discovery requests should be delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036. Because of the very limited time available before comments from parties in this docket are due, the Consortium requests that responses be made as soon as possible, and no later than seven

(7) days from the date hereof. Additionally, the Consortium is prepared to discuss with NS the possibility of producing responses to its requests on an informal basis, if that is what NS would prefer.

I.

DEFINITIONS

The following terms used herein are defined as follows:

1. "NS" means Norfolk Southern Railway Company, its parent, affiliates, and any of its or their present or former employees, agents, counsel, officers, directors, consultants, or any other person(s) acting on its or their behalf.

2. "NS line segments" means, collectively, the following line segments in Indiana (and, where applicable, Illinois), owned, controlled, and/or operated by NS, including the Indiana Harbor Belt Railroad Company, (see Decision No. 7 in the lead docket) as identified and defined in the Conrail Transaction Application¹:

- a. Hobart to Hammond (N-469)
- b. Porter to CP 501 (N-308)
- c. Indiana Harbor to South Chicago (N-047)
- d. Indiana Harbor to Kankakee (N-311)
- e. CP 501 to Indiana Harbor (N-042)

¹ These line segments were summarized, among other places, in the Board's May 29, 1998 Final Environmental Impact Statement, at App. N, N-119 and Vol. 2, 4-154 and 4-155.

3. "Four Cities" means East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana individually and collectively participating as parties to this proceeding.

4. "Identify," when referring to a type of information, means to list and produce documents containing the specified information.

II.

INSTRUCTIONS

1. Each paragraph below shall operate and be construed independently, and each discovery request should be answered separately and fully in writing.

III.

INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

1. Provide the following information with respect to each of the NS Line Segments:
 - a. the daily average number of trains traveling in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;
 - b. the daily average train speed for trains traveling in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;

- c. the average number of loaded cars and empty cars in trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000;
 - d. the average number of locomotives on trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000; and
 - e. the average train length, expressed in the number of cars, for trains moving in both (and separately in each) the eastbound and westbound directions (or northbound/southbound, as applicable) calculated for each month December 1998 through May 2000.
- 2. Please provide the date and location of any (i) grade crossing accidents and (ii) grade crossing fatalities occurring on NS in the Four Cities' city limits during the period December 1998 and May 2000 (inclusive).
 - 3. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify the number of persons injured and the number of fatalities.
 - 4. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify and produce any documents prepared internally

and/or documents/reports provided to any local, state or federal government agency.

Respectfully submitted,

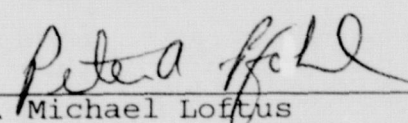
THE CITY OF EAST CHICAGO,
INDIANA
THE CITY OF HAMMOND, INDIANA
THE CITY OF GARY, INDIANA
THE CITY OF WHITING, INDIANA
COLLECTIVELY THE FOUR CITY
CONSORTIUM

OF COUNSEL:

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

Dated: June 23, 2000

By:


C. Michael Loftus
Christopher A. Mills
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

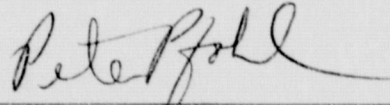
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Discovery Requests were served this 23rd day of June, 2000, by facsimile and hand delivery upon:

Richard A. Allen, Esq. (Counsel for NS)
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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

The Board has not yet issued publicly a service list for this General Oversight Proceeding, and the Four Cities are unaware of any other parties of record at this time.



Peter A. Pfohl

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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June 23, 2000

VIA FACSIMILE AND HAND DELIVERY

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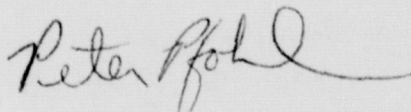
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et al. -- Control and Operating Leases/Agreements --
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As indicated in the Discovery Requests, we are prepared to work with you in obtaining the information requested on an informal basis rather than through a formal discovery response (if that is what CSX would prefer), or to discuss steps that might otherwise expedite a response to the requests. As indicated in the Discovery Requests, responses should be provided to us within seven (7) days of today's date, or June 30, 2000.

Sincerely,



Peter A. Pfohl

cc: Hon. Vernon L. Williams

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY - CONTROL AND OPERATING LEASES 'AGREEMENTS - CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (GENERAL OVERSIGHT))	
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**FOUR CITY CONSORTIUM DISCOVERY REQUESTS
TO CSX TRANSPORTATION, INC.**

Pursuant to 49 C.F.R. §§ 1114.21-1114.31, the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the "Four City Consortium") hereby directs the following discovery requests to CSX Transportation, Inc. ("CSX"). The purpose of these requests is to elicit information necessary to enable the Consortium to meaningfully review and evaluate the issues that are the subject of this proceeding: i.e., the implementation of the Conrail transaction and of the workings of the various conditions established by the Board in its Decision No. 89 in the lead docket approving the application of CSX Corporation and CSX and Norfolk Southern Corporation and Norfolk Southern Railway Company for control and division of the assets of Conrail Inc. and Consolidated Rail Corporation.

The Consortium on June 13, 2000 requested CSX's 100% traffic waybill tapes for purposes of preparing an analysis of

the effects of the implementation of the Conrail control transaction on the Four Cities' region. These tapes were produced on June 16, 2000 and an initial review of the tapes has been conducted by the Consortium. This review has revealed that the types of data contained on the tapes is insufficient to allow the Four Cities to conduct a reasonable analysis to be able to respond to CSX's June 1 Report and the Board's request in Decision No. 1 for meaningful "comments respecting the progress of implementation . . . and the workings of the various conditions . . . imposed." In particular, the tapes do not contain the type of individual line segment data of the nature requested herein, and which was contained in the Application and relied on by the Board and the parties in the lead docket to evaluate the transaction's safety and environmental impacts on the Four Cities.

These requests are narrowly focused, and seek the type of information, and certain limited other safety information, that could not be ascertained through the traffic tapes or through the informal exchange of information between CSX and the Consortium, and which is necessary for the Consortium to analyze post-acquisition operations by CSX in the Four Cities.

Unless otherwise agreed, responses to the Consortium's discovery requests should be delivered to the offices of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036. Because of the very limited time available before comments from parties in this docket are due, the Consortium requests that responses be made as soon as possible, and no later than seven

(7) days from the date hereof. Additionally, the Consortium is prepared to discuss with CSX the possibility of producing responses to its requests on an informal basis, if that is what CSX would prefer.

I.

DEFINITIONS

The following terms used herein are defined as follows:

1. "CSXT" means CSX Transportation, Inc., its parent, affiliates, and any of its or their present or former employees, agents, counsel, officers, directors, consultants, or any other person(s) acting on its or their behalf.

2. "CSX line segments" means, collectively, the following line segments in Indiana (and, where applicable, Illinois), owned, controlled, and/or operated by CSX, including the Indiana Harbor Belt Railroad Company, (see Decision No. 7 in the lead docket) as identified and defined in the Conrail Transaction Application¹:

- a. Pine Jct. to Barr Yard (C-023)
- b. Clark Jct. to Tolleston (C-024)
- c. Warsaw to Tolleston (C-026)
- d. Pine Jct. to Willow Creek (C-027)
- e. Ivanhoe to Willow Creek (C-693)
- f. Ivanhoe to Tolleston (C-775)

¹ These line segments were summarized, among other places, in the Board's May 29, 1998 Final Environmental Impact Statement, at App. N, N-119 and Vol. 2, 4-154 and 4-155.

g. Gibson to Ivanhoe (C-776)

3. "Four Cities" means East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana individually and collectively participating as parties to this proceeding.

4. "Identify," when referring to a type of information, means to list and produce documents containing the specified information.

II.

INSTRUCTIONS

1. Each paragraph below shall operate and be construed independently, and each discovery request should be answered separately and fully in writing.

III.

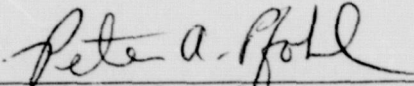
INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

1. Provide the following information with respect to each of the CSX Line Segments:
 - a. the daily average number of trains traveling in both (and separately in each) the eastbound and westbound directions calculated for each month December 1998 through May 2000;
 - b. the daily average train speed for trains traveling in both (and separately in each) the eastbound and westbound directions calculated for each month December 1998 through May 2000;

- c. the average number of loaded cars and empty cars in trains moving in both (and separately in each) the eastbound and westbound directions calculated for each month December 1998 through May 2000;
 - d. the average number of locomotives on trains moving in both (and separately in each) the eastbound and westbound directions calculated for each month December 1998 through May 2000; and
 - e. the average train length, expressed in the number of cars, for trains moving in both (and separately in each) the eastbound and westbound directions calculated for each month December 1998 through May 2000.
- 2. Please provide the date and location of any (i) grade crossing accidents and (ii) grade crossing fatalities occurring on CSX in the Four Cities' city limits during the period December 1998 to May 2000 (inclusive).
 - 3. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify the number of persons injured and the number of fatalities.
 - 4. For each incident of a grade crossing accident/fatality identified in response to Request Number 2 above, please identify and produce any documents prepared internally and/or documents/reports provided to any local, state or federal government agency.

Respectfully submitted,

THE CITY OF EAST CHICAGO,
INDIANA
THE CITY OF HAMMOND, INDIANA
THE CITY OF GARY, INDIANA
THE CITY OF WHITING, INDIANA
COLLECTIVELY THE FOUR CITY
CONSORTIUM



OF COUNSEL:

By:

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

C. Michael Loftus
Christopher A. Mills
Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: June 23, 2000

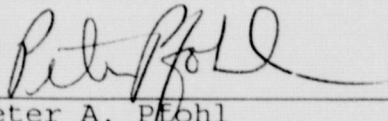
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Discovery Requests were served this 23rd day of June, 2000, by facsimile and hand delivery upon:

Richard A. Allen, Esq. (Counsel for NS)
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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

The Board has not yet issued publicly a service list for this General Oversight Proceeding, and the Four Cities are unaware of any other parties of record at this time.



Peter A. Pfehl

ZUCKERT SCOUTT & RASENBERGER, L.L.P.
ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683

RICHARD A. ALLEN

DIRECT DIAL (202) 973-7902
raallen@zslaw.com

June 30, 2000

BY HAND

Peter A. Pfohl, Esq.
Slover & Loftus
1224 17th Street, N.W.
Washington, D.C. 20036

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

Dear Mr. Pfohl:

On behalf of Norfolk Southern Railway Company ("NS"), I am responding to your letter dated June 23, 2000 enclosing the "Four City Consortium Discovery Requests to Norfolk Southern Railway Company" in connection with this proceeding.

NS declines to respond to the Four Cities' discovery requests for the reason that discovery is not available in a general oversight proceeding, as the STB has ruled. In recent rail consolidation proceedings, the Board and the ICC have established post-decision general oversight proceedings, but the decisions in those cases establish that discovery is not available in those proceedings. The Board squarely so ruled in Union Pacific Corp., et al. - Control and Merger - Southern Pacific Rail Corp., et al., ("UP/SP"), Finance Docket No. 32760 (Sub-No. 21), Decision No. 10 (served October 27, 1997). In that decision, the Board rejected the request of some parties that formal discovery be permitted in the general oversight proceeding. The Board found "no reason to open this proceeding for formal discovery procedures as some parties have suggested." Id., slip op. at 19. That decision was consistent with Chairman Morgan's comment accompanying the Board's decision initiating the UP/SP general oversight proceeding that the oversight process must not be "unduly burdensome." UP/SP, Finance Docket No. 32760 (Sub-No. 21), Decision No. 1 (served May 7, 1997), slip op. at 9.

Nothing in Decision No. 1, establishing the oversight proceeding in this case, suggests any intent on the Board's part to change the oversight process from earlier cases or to allow parties discovery rights not available in those cases. On the contrary, the time frames established by the Board in this general oversight proceeding demonstrate that the Board did not contemplate discovery here. For example, the Board established a period of only 20 days between the submission of interested parties' comments on July 14 and the Applicants' reply comments on August 3 — clearly insufficient time if discovery were contemplated in the interim. Indeed, the

Peter A. Pfohl, Esq.

Peter A. Pfohl, Esq.

June 30, 2000

Page 2

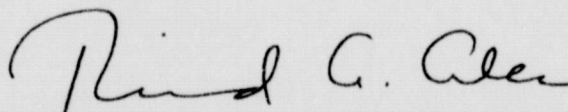
fact that the Four Cities found it necessary to ask for responses to its requests in a mere seven days (as compared to the 15 day response time under 49 C.F.R. § 1114.26(a) and under the discovery guidelines adopted in Decision No. 10, served June 27, 1997, in the main proceeding in this case), assertedly because of the "very limited time" before the July 14 deadline for its comments, simply confirms that discovery was not contemplated under the Board's schedule. Nothing in your letter or accompanying discovery requests provides any basis for believing that the Board would or should depart from its current procedure and past precedent.

Moreover, much of the information sought is or should readily be available to the Four Cities, in part as a result of the extensive reporting requirements imposed on NS and CSX in Decision No 89. Most pertinently with regard to your discovery demand, Decisions No. 89 and 96 specifically required Applicants to meet regularly with the Four Cities and to provide them a great deal of data about train operations throughout the Four Cities. To the extent your discovery seeks information about train counts, train speeds, train lengths, locomotive counts, line segments, etc. beyond the information required by Decision Nos. 89 and 96, that discovery seeks in effect to circumvent the reporting conditions imposed by the Board in those decisions. Furthermore, that is information that is not readily available to NS. NS does not routinely maintain records of such data, and developing the data would be extremely costly, burdensome and time-consuming.

The accident data you requested is also information that is or should be readily available to the Four Cities, either from their own police departments or from data published by the Federal Railroad Administration. NS does not maintain accident data by cities. If you supplied the pertinent mileposts, NS would be willing to work with you to provide the information on an informal basis from its records if for some reason you found it unavailable elsewhere.

In sum, NS respectfully declines to respond to the discovery requests of the Four Cities because discovery is not available in this proceeding.

Sincerely,



Richard A. Allen

cc: Hon. Vernon A. Williams
Dennis G. Lyons, Esq.

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1206

(202) 942-5000
FACSIMILE (202) 942-5999

DENNIS G. LYONS
(202) 942-5858

NEW YORK
DENVER
LOS ANGELES
LONDON

June 30, 2000

BY HAND

Peter A. Pfohl, Esq.
Slover & Loftus
1224 Seventeenth Street, NW
Washington, DC 20036

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

Dear Mr. Pfohl:

This is in response to your letter of June 23, 2000, in the above proceeding, enclosing certain "Discovery Requests" to CSX Transportation, Inc. ("CSX") on behalf of your clients, the "Four Cities." The requested discovery relates to (1) train movements, speeds, and consists, and (2) grade-crossing accidents.

CSX objects to the proposed discovery and will not respond to it. CSX is, however, furnishing to you, in this letter, the information you request with respect to grade-crossing accidents, as a matter of courtesy to you and your clients.

The Surface Transportation Board ("Board" or "STB") has ruled that discovery is not to be had in proceedings of this sort, that is, in general oversight proceedings following a major merger. See *Union Pacific Corporation, et al. - Control and Merger - Southern Pacific Rail Corporation, et al.* ("UP/SP"), Finance Docket No. 32760 (Sub-No. 21), Decision No. 10, served October 27, 1997, at 19. The current proceeding is similar to the oversight proceeding involved in the UP/SP case. The time periods prescribed for commentators' responses and applicants' replies (since if there were to be discovery, obviously it would have to be a two-way street) are too short to assume that the Board contemplated discovery. The Four Cities' demand that the response be made in seven days, contrary to what would be permitted if the discovery rules were pertinent, bears that out.

CSX has numerous other reasons not to respond to the requested discovery:

Peter A. Pfohl, Esq.

June 30, 2000

Page 2

1. A Settlement Agreement covering Finance Docket No. 33388 and the oversight under Decision Nos. 89 and 96 therein was entered into between your client and CSX dated October 26, 1998. The agreement was executed by the Mayors of the Four Cities and by John W. Snow, the Chairman/CEO and President of CSX Corporation. Section VI.A. of the Agreement provides as follows:

As specified in Finance Docket No. 33388, CSX shall provide the Four City Consortium with reports on a monthly basis providing the information described by the Board in Decision No. 96 pertaining to condition 21(i). However, the parties have mutually agreed to not have CSX report average train speeds and have also agreed to limit the reporting requirements on both train traffic volumes to the following information:

Throughout the Board's five (5) year oversight period in Finance Docket No. 33388, CSX shall report, on a daily average basis (calculated monthly), the number of trains per day operated in both (and separately in each) direction over the following rail line segments:

- The Pine Junction-to-State Line Tower portion of the Pine Junction-to-Barr Yard line segment (C-023);
- Tolleston-to-Clarke Junction rail line (C-024); and
- The Tolleston-to-Hobart portion of the Warsaw-to-Tolleston line segment (C-026)

As the above indicates, the parties, including your clients, there "mutually agreed to not have CSX report average train speeds and have also agreed to limit the reporting requirements on train traffic volumes to the following information....:" and then specified the information that will be provided "[t]hroughout the Board's five (5) year oversight period." The information to be provided is limited in detail, and in breadth to certain specified segments, three in number. Two of these three segments are expressly carved out of longer segments on which you are now seeking discovery, namely, items (a) and (c) in ¶ 2 of the "Definitions" in your request. The other four segments on which you want discovery are not permitted at all under the Settlement Agreement.

ARNOLD & PORTER

Peter A. Pfohl, Esq.
June 30, 2000
Page 3

We understand that CSX has regularly complied with the reporting requirements in the Settlement Agreement.

We believe that the Four Cities' attempt to obtain information with respect to enlarged segments, additional segments, and information going beyond the information as to which the parties "agreed to limit" reporting, is contrary to and forbidden by the Settlement Agreement. We note that the Settlement Agreement was, by agreement of the parties, submitted to the STB for its approval, and was approved by the STB in Decision No. 114, served February 5, 1999. It covered the reports to be made "throughout the five (5) year oversight period" which had been established by the Board. Your clients now seek additional information for use in connection with that very oversight. That appears to CSX to be clearly precluded by the Settlement Agreement. Apparently your clients repent the bargain that they made and want partially to undo the agreement.

2. CSX also views these requests as to additional train movement data as unduly burdensome. Special arrangements, including computer programs, were made by CSX to produce the reports agreed upon in the Settlement Agreement. New programs would have to be written to obtain the information that you request. Some of it may not be available at all, since you have requested information going back to December 1998, at which time certain of the segments you seek information about were Conrail segments, the "Split" not having occurred until June 1, 1999. That work necessarily diverts people and other resources from running the railroad and completing the tasks of integrating the Conrail routes. Some of the requests might seek information which is in the control of IHB, which is operated through its own management and in which CSX is only one of three owners, and an indirect owner at that.

3. CSX also views your purported deadline of seven days within which to respond as unreasonable. By way of analogy, if the discovery rules applied, the rules (49 C.F.R. § 1114.26(a)) would provide a minimum of fifteen days after service of the requests; your requests were served on June 23, 2000. While we are submitting this response to you within the seven days which you have requested, it would take much longer than that to produce the data concerning train movements you have requested. As your letter indicates, CSX has produced for you its 100% waybill tapes, as expressly required by the Board's Decision launching the oversight proceedings. These tapes were produced promptly after your verification, on June 14, 2000, that the persons who would examine them had signed the appropriate "Highly Confidential" undertaking under the applicable protective order. Your letter says that your review of the tapes "revealed" that what you were looking for, such as trains speeds, the particular path followed by

ARNOLD & PORTER

Peter A. Pfohl, Esq.

June 30, 2000

Page 4

waybilled cars between origination and destinations, the number of locomotives pulling and fellow cars accompanying the cars involved in the waybills in the train consist, were not contained in the data on the tapes. We are surprised that anyone would consider this a "revelation"; your fine firm has been active in ICC and STB practice for many years and is very familiar with the information that is found, and not found, on waybill traffic tapes. The sort of information you were seeking about train lengths and train speeds, size of trains, numbers of locomotives, etc., is not that sort of information. If your reference to the revelations as to what the tapes did not hold was intended as a justification requiring CSX's response in a highly expedited manner, it is not an adequate explanation. In any event, the seven days allowed are not reasonable.

If this situation were subject to the discovery rules, we would have numerous objections, the basis for some of which we have touched on above. But discovery is not required in oversight proceedings under the procedure established in *UP/SP*. The subject matter of your interrogatory and production requests Item No. 1 is, among other things, both unduly burdensome and precluded by the terms of the Board-approved Settlement Agreement. As to Item No. 2 relating to the grade-crossing accidents, while we wonder why the information is not available from your clients – municipalities notoriously, in the United States usually, through the Police Department, keep records of collisions between trains and motor vehicles within city limits – CSX is presenting the following information on a voluntary basis; it meets the substance of what you have asked for.

With respect to grade-crossing accidents since December 1998 involving CSX trains within any of the "Four Cities," we are advised by our client that there have been four grade-crossing accidents reported, all within the City of Gary. These include (i) an accident on January 9, 1999, at grade crossing no. 163643V, with respect to which there were no fatalities or injuries, but some property damage, this accident involving a collision between two vehicles on the crossing, where a train came by thereafter and hit one of the trucks on the crossing; (ii) an accident on October 15, 1999, at grade crossing no. 163643V, again with no fatalities or injuries, but some property damage, the driver being reported to have gone around the crossing gates, and while uninjured, was taken to the hospital since he was shaken up; (iii) an accident on November 19, 1999, at grade crossing no. 155645N, again with no with fatalities or injuries, but some property damage, where the driver is reported to have gone through flashing lights; and (iv) an accident on March 22, 2000, at grade crossing no. 163643V, in which the driver was reported to have gone around the crossing gates, where there were no fatalities, but the driver, reported as drunk and disorderly, was injured and taken to the hospital by the police.

ARNOLD & PORTER

Peter A. Pfohl, Esq.

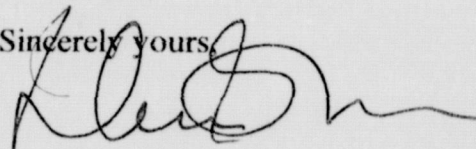
June 30, 2000

Page 5

Since you sent a copy of your letter and discovery requests to the Secretary of the Board, I am doing the same.

With kind regards.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dennis G. Lyons", with a long horizontal flourish extending to the right.

Dennis G. Lyons

Counsel for CSX Transportation, Inc.

rjm

cc Hon. Vernon A. Williams

Richard A. Allen, Esq.

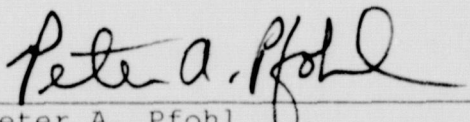
CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of July, 2000, served copies of the foregoing Comments and Request for Additional Conditions of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively, the Four City Consortium) by hand upon Applicants' counsel:

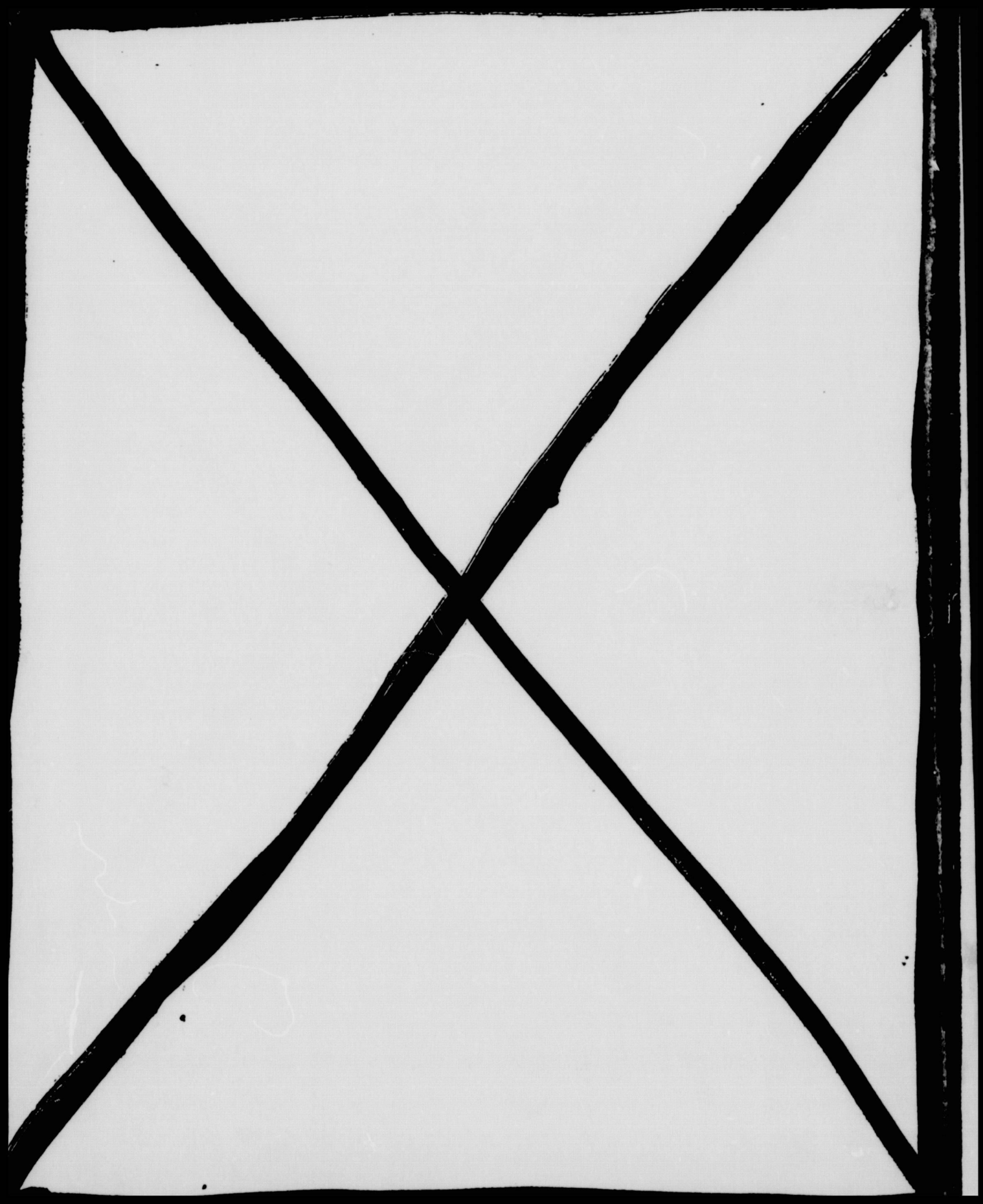
Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger,
L.L.P., Suite 600
888 Seventeenth Street, N.W.
Washington, D.C. 20006-3939

and by first-class mail, postage prepaid on all other Parties of Record in Finance Docket No. 33388 (Sub-No. 91).



Peter A. Pfohl



STB FD-33388 (SUB 91) 7-14-00 D 199282

THOMPSON
HINE & FLORY LLP

Attorneys at Law

159282



July 14, 2000

Via Hand Delivery

Case Control Unit
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-00001

ENTERED
Office of the Secretary

JUL 14 2000

Part of
Public Record

Frederic L. Wood
202-331-8800
rwood@thf.com

D

Re: Financé Docket No. 333388 (Sub-No. 91) *CSX Corp., et al. - Control and Operating Leases/Agreements - Conrail Inc. et al. (General Oversight)*

Gentlemen:

Enclosed for filing with the Board in the above proceeding are an original and 25 copies of the Comments of E. I. du Pont de Nemours and Company. Also enclosed is a computer diskette with a copy of the comments.

Respectfully submitted,

Frederic L. Wood

FLW/flw

159282
ORIGINAL

BEFORE THE SURFACE TRANSPORTATION BOARD

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

CSX Corp., et. al. - Control and Operating Leases/Agreements - Conrail, Inc, et. al.

(General Oversight)

COMMENTS

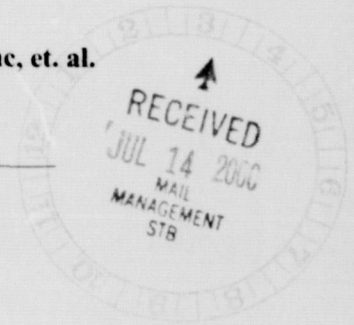
By

E. I. DUPONT DE NEMOURS AND COMPANY

JULY 14, 2000

ENTERED
Office of the Secretary

JUL 14 2000
Part of
Public Record



DuPont is a \$26 billion diversified chemical and life sciences corporation with over 200 manufacturing sites and almost 100,000 employees worldwide. Rail transportation is critical to DuPont's domestic and export business, and is for many of our chemical products the only safe and practical mode of transportation. Each year, DuPont and its affiliates ship in excess of 70,000 rail shipments, representing over \$220 million in railroad freight revenue, in a private fleet of over 9,000 rail cars. More importantly, these shipments are the fundamental basis of DuPont's diverse global supply chains, and directly produce \$5.5 billion of North American sales and exports. 75% of this traffic has no other transportation alternative because of either safety considerations or sheer volume.

DuPont has been a participant throughout the original merger proceeding and appreciates the opportunity to submit further comments on this first anniversary of the merger implementation. With five major manufacturing sites and numerous customer and

transfer sites on the former Conrail system, DuPont has a substantial stake in the success or failure of this complex transaction. We commend the Board for ordering a full five years of merger oversight as originally requested by DuPont and others.

At DuPont, we believe that *safe, reliable, and efficient transportation at a competitive cost is critical to our business success*. Indeed, DuPont's principal core value is safety. With a heritage of nearly 200 years committed to the safe manufacture, transport and distribution of its products, DuPont has long been recognized as a leader in safety, and has received numerous awards from the Class One railroads. Our corporate policy states that DuPont will only manufacture, distribute, and transport materials and product which can be safely handled, transported, stored and used by its employees, distributors, and customers. There is little doubt that rail is one of the safer modes of transportation for shipping hazardous goods. The safety of our goods in transportation is so very important to us that it is not unusual for us to disqualify a carrier from carrying our goods if that carrier's safety performance or rate of safety improvement does not satisfy us. Our reputation, indeed our very license to operate, is at stake.

With this in mind, DuPont is extremely pleased with the safe manner in which the merger implementation was executed. Despite numerous and well-documented operational and computer problems, and more recent track maintenance concerns in other regions, safety performance on the former Conrail territory appears to be excellent.

In large measure, we believe the Board's requirement for thorough Safety Integration Plans was a major factor. We commend both the Board and both railroads for keeping a strong focus on safety.

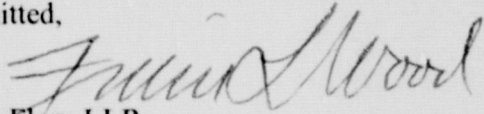
DuPont is disappointed that this Oversight proceeding does not address service issues. While both CSX and Norfolk Southern have made some progress in recent months at stabilizing service levels, we remain concerned because current overall transit times on the former Conrail territory are still on average almost two days longer than prior to the June 1 split. This adds cost, inefficiency and additional investment in rail cars and inventory to DuPont's diverse global supply chains, and hinders our ability to compete with other global chemical producers. We will provide our specific service issues and supporting data to the Office of Compliance and Enforcement as requested, but would much prefer that service be fully examined in a public proceeding.

While the metrics established as part of the Board's Operational Monitoring process have helped railroad customers follow overall railroad system performance, they continue to exclude such customer-oriented measures as transit times on key corridors and benchmarks of current versus pre-merger Conrail performance. Transit and cycle times are particularly critical measures of the effectiveness of customers' supply chains. Without such customer-focused metrics, it is also difficult to assess whether the two railroads are fulfilling the promises claimed in their original application. The associations participating in the Conrail Transaction Council originally requested that the corridor transit time and benchmark metrics be included within the Operational Monitoring

measures, but the railroads would not agree. We ask the Board to reconsider this exclusion.

DuPont, for its part, will continue to follow railroad performance closely and participate actively in this ongoing Oversight process. We encourage both CSX and Norfolk Southern to listen carefully to and focus on their customers, and to cooperate with each other and the rest of the railroad industry to deliver the consistent and predictable service that will grow business revenue for all.

Respectfully submitted,

Frederic L. Wood 
Thompson Hine & Flory LLP
1920 N Street, NW
Washington, DC 20036-1601
Tel. (202) 331-8800

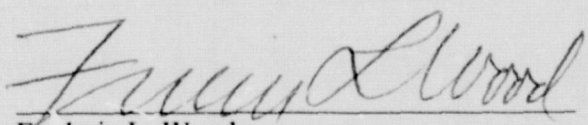
William A. McCurdy, Jr.
Logistics & Commerce Counsel
DuPont Legal
D-8098-1
1007 Market Street
Wilmington, DE 19898

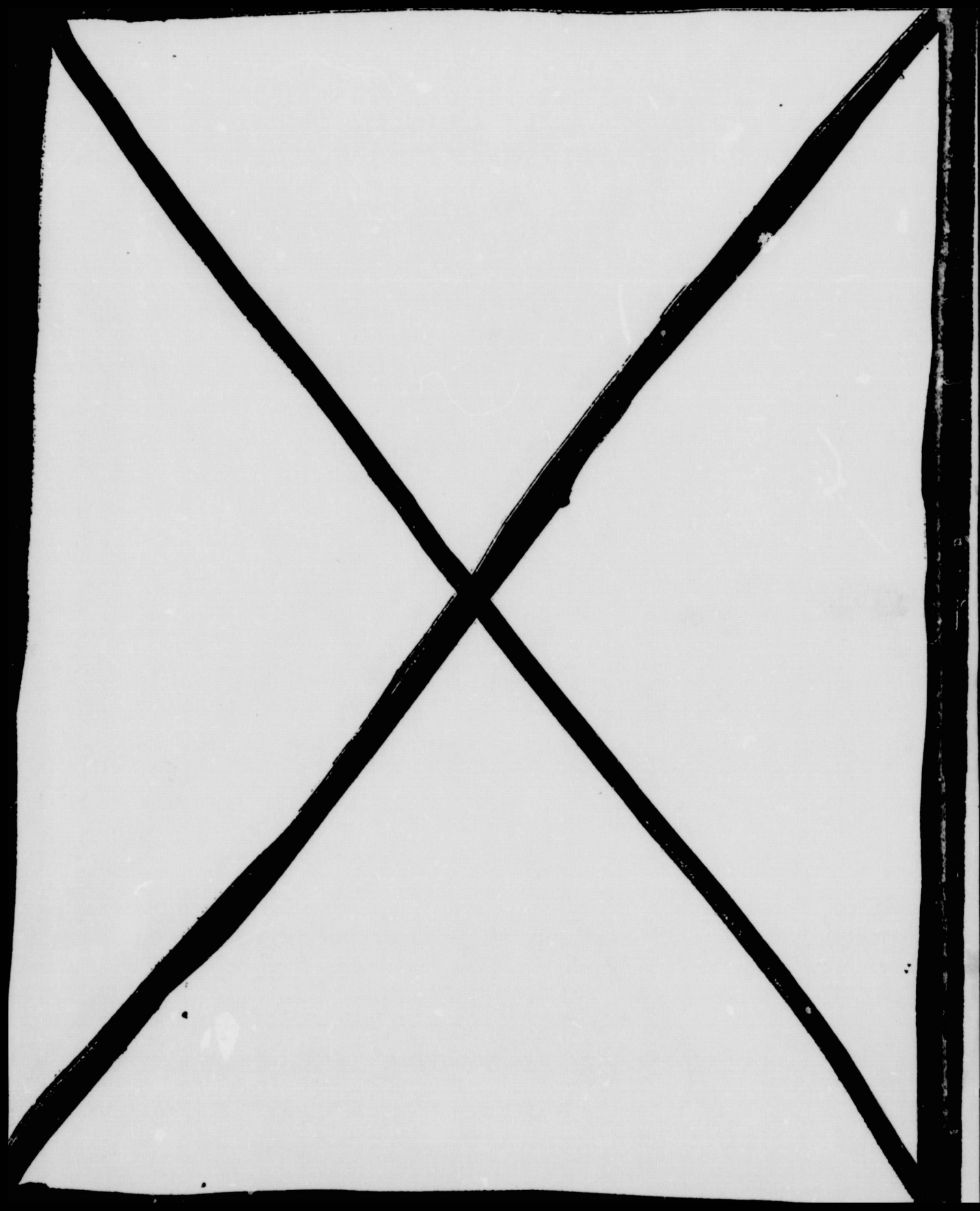
Attorneys for E. I. du Pont de Nemours and Company

Dated: July 14, 2000

Certificate of Service

I hereby certify that I have this 14th day of July, 2000, served a copy of the foregoing Comments upon all parties of record, via first-class mail, in accordance with the Rules of Practice.


Frederic L. Wood



STB

FD-33388 (SUB 91)

7-14-00

D

199281

199281

ORIGINAL

ISGR-2

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC 20423

In the Matter of

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

STB Finance Docket No. 33388 Sub-No.91
(Oversight Proceeding)

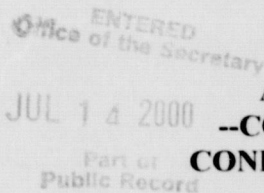
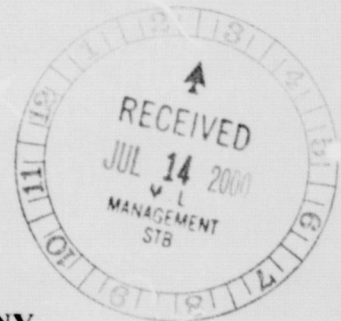
COMMENTS OF ISG RESOURCES, INC.

ISG Resources, Inc. (hereinafter known as "ISG"), by its attorney, respectfully submits its comments in response to the Board's invitation to provide comments on issues related to the acquisition and division of Conrail by CSX Transportation ("CSX") and Norfolk Southern Railway ("NS").¹

STATEMENT OF INTEREST

ISG is the leader in marketing performance building materials from coal combustion products. ISG employs fly ash from power plants to enhance concrete production, produce masonry and for agricultural uses and industrial fillers. Through management of the fly ash disposition for utility clients, ISG turns nearly 19 million tons of coal combustion waste products for electrical utilities and industrial customers into performance enhancing building products and specialty uses.

¹ STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 1 (Served Feb. 9, 2000). Hereinafter this proceeding may be referred to as "Conrail," both citing to the principal proceeding and to the Oversight Proceeding.



INTEREST IN THE CONRAIL ACQUISITION OVERSIGHT PROCEEDING

One of the electric generating utility plants for which ISG manages fly ash disposition is the AES Thames power plant at Montville, Connecticut. ISG operates as a subcontractor to CSX in the disposition of fly ash from the utility plant, which moves to Good Spring, Pennsylvania, where a majority of the fly ash is utilized as landfill to replace mined coal.

Prior to the Conrail acquisition and division, the fly ash movement from Montville to Good Spring was a three-line move: New England Central – Conrail (Palmer, MA) – Reading, Blue Mountain & Northern Railroad (Reading, PA). The division of Conrail left CSX operating the New England Conrail routes, with Norfolk Southern operating the relevant Pennsylvania routes. ISG's movement of fly ash became subject to the "single-line to joint-line" effect of the transaction.²

In approving the Conrail transaction, the Board established both an oversight process and operational monitoring of the transaction.³ In addressing the single-line to joint-line effect of the transaction, the Board noted that the replacement of single-line service with joint-line service will result in a degradation of efficiency to those affected shippers; however, it deemed such an

² In approving the Conrail acquisition and division in Finance Docket No. 33388, Decision No. 89, the Board refers to "Single-Line to Joint-Line Issues." Decision No. 89 at 72. The Board recognizes, however, that the division of Conrail's routes, resulting in new joint line handling of service Conrail provided single-line, affects not only those served single line by Conrail but also those who connect to Conrail via a shortline railroad. *Id.* at 56. In the instant situation, both the origin and destination are served by shortline railroads, thereby in effect creating a "3-line to 4-line" routing. Regardless of the involvement of shortline carriers in the origin and/or destination routing, the effect on service of the division of Conrail's routes is the same.

³ *Conrail*, Decision No. 89, at 160-162.

effect as "an unavoidable by-product of this transaction."⁴ While declining to mandate that CSX and NS grant tracking rights to each other to maintain the *status quo ante*, the Board did impose remedial conditions in two specific circumstances, one involving aggregate movements in Ohio wherein the applicants agreed to the limited exchange of trackage rights, and secondly to Rochester-area shippers served by the Livonia, Avon, and Lakeville Railroad (LAL), which entailed granting rights to LAL over a segment of former Conrail line to be operated by CSX to provide an alternative routing.⁵ The Board further provided that "as part of our overall monitoring of the transaction, we will focus on ensuring that shippers affected by a loss of single-line service continue to receive adequate service."⁶

ISG is mindful that the Board does not intend to address operational issues in this general oversight proceeding.⁷ While operational implementation issues undoubtedly affect all aspects of the division of Conrail, the single-line to joint-line effects are separate and apart; and while they may be impacted by the operational problems experienced by CSX and NS, they nonetheless are embraced within the "broadly based" oversight process.⁸

COMMENTS

The transit time for the Montville to Good Spring movement, approximately 500 miles, when Conrail provided the linehaul routing was a consistent 6-7 days, both outbound and for the

⁴ *Id.* at 72.

⁵ *Id.* at 72, n.113.

⁶ *Id.* at 72.

⁷ *Id.* at 161; *Conrail* (sub-No. 91), Decision No. 1 at 2, n.1 and at 3.

⁸ *Conrail*, Decision No. 89 at 160.

return of empty cars. Consistency in the cycle period is critical inasmuch as the power plant does not operate a storage facility for the fly ash. Accordingly, the lack of availability of rail cars to receive the fly ash produced as coal is burned by the plant would result in plant closure.

Post Split-Date,⁹ CSX and NS proposed to maintain what essentially was the same Conrail routing for the Montville to Good Spring fly ash movement, with an interchange from CSX to NS at Oak Island in the New Jersey Shared Assets Area. The trip plan furnished to ISG by NS contemplated a transit time of 10-12 days. This, in itself, constituted an increase of 40-100% from the transit time performed by Conrail. Necessarily, such an increase from the transit time Conrail achieved would have had a substantial impact upon the size of the rail fleet required to accommodate the fly ash movement. The Board is well aware that CSX and NS did not perform according to their operational plans. In fact, the diversion from single-line Conrail service to joint-line CSX and NS service coupled with the operational problems experienced by CSX and NS resulted in a transit time of 20-25 days. Consequently, in an effort to avoid Oak Island, CSX changed the routing of the car movements to interchange with NS at Buffalo. This routing was no better: between the circuitry of this route (over 800 miles) and the operational problems at Selkirk and Buffalo, transit times increased to 30+ days.

Promptly, ISG established a new 5-carrier route, completely avoiding CSX and NS handling of the fly ash cars. New England Central moves cars from Montville, CT to the Green Mountain Railroad (interchanging at Bellows Falls, VT), to the Clarendon and Pittsford (at Rutland, VT), to St. Lawrence & Hudson, a CP affiliate (at Whitehall, NY), to Reading, Blue Mountain (at Taylor, PA). The Reading, Blue Mountain then completes delivery to Good

⁹ Split-Date was June 1, 1999, when CSX and NS initiated divided operation of Conrail's lines and other assets.

Spring. This route requires Reading, Blue Mountain to traverse approximately 700 feet of NS track in the vicinity of Packerton Junction (Jim Thorpe, PA). This 5-line haul, although more circuitous than the former Conrail route (approximately 600 miles versus 500 miles), achieves a transit time of 8-10 days.¹⁰

The 5-line haul utilizing CP over the principal route of movement exists at the sufferance of Norfolk Southern, inasmuch as the haul requires Norfolk Southern to allow the Reading, Blue Mountain to operate over a small segment of NS track. In March, 2000, NS expressed an intent to terminate the Reading, Blue Mountain trackage rights and to return to participation in the linehaul for the fly ash movement. To avoid Oak Island, NS proposed routing via St. Lawrence & Hudson to NS at Binghamton, NY, with an interchange with Reading, Blue Mountain at Mehoopany, NY. In addition to NS terminating Reading, Blue Mountain's use of less than 0.2 miles of trackage rights, operating this routing would allow NS to participate in approximately 105 miles of what now would be a 6-line haul, whose route would increase to approximately 645 miles. Even with these deficiencies, NS could not achieve compliance with its routing plan on several test shipments made by ISG. When ISG traced the cars to Elkhart, IN, ISG was told NS does not interchange with Reading, Blue Mountain at Mehoopany, and the cars were being routed to Elkhart for routing to Reading, PA! NS quickly elected to forego its effort to recapture this movement for the present time, and extended the Reading, Blue Mountain authorization to utilize the Packerton Junction track segment until June 1, 2001.

¹⁰ From time to time, there has been some slippage, with transit times up to 12 days. CP and Reading, Blue Mountain have met with ISG to agree on measures to maintain the 8-10 day transit schedule.

LESSONS LEARNED AND RELIEF REQUESTED

Service degradation due to the division of Conrail, creating joint-line routing where single-line routes previously were operated, has been far greater than anticipated. The extent to which this service degradation has been impacted by the operational problems is unknown; however, the recent attempt by NS to recapture the traffic demonstrates that major service deficiencies still exist. Without question, both CSX and NS have been cooperative in addressing the transportation needs of ISG. CSX, which holds the principal contract with AES for the movement of the fly ash, has provided additional cars to meet the car fleet requirement imposed by the extended transit times.¹¹ Having undertaken to function as a service supplier to AES for disposition of the fly ash, CSX undoubtedly understands the shipper's perspective. Hopefully, that understanding will extend beyond the expiration of the contract between CSX and AES, and CSX will continue to be willing to accommodate its former fly ash disposition customer who it now also has the capability to serve in its rail carrier capacity as the successor to Conrail's New England routes.

NS has granted trackage rights to Reading, Blue Mountain & Northern Railroad, in order to enable the fly ash to move over an alternate route. As noted above, those rights currently will expire June 1, 2001. It is important that the routing involving the Green Mountain Railroad and the St. Lawrence & Hudson (CP) be maintained in order to provide an effective alternative to ISG for the movement of fly ash from the AES power plant. The fragile nature of the CSX/NS routing which supercedes the Conrail direct routing mandates the need to preserve the route of movement currently being utilized. This is consistent with the Board's expressed intent,

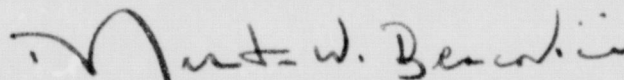
¹¹ While fly ash typically moves in pressure differential covered hopper cars, some of the cars provided by CSX are coal cars, which impose additional requirements for unloading.

previously cited, of "ensuring that shippers affected by a loss of single-line service continue to receive adequate service."¹²

ISG anticipates that CSX and NS will continue to act responsibly, to ensure that the larger public interest in receipt of efficient rail transportation service is realized, whether CSX and/or NS participates in the route of movement. Nonetheless, ISG respectfully requests the Surface Transportation Board to strongly encourage NS and CSX to continue to assure that the needs of the user community are satisfied, and for NS to maintain the trackage rights agreement described above with the Reading, Blue Mountain. Such cooperative arrangements on part of the applicant carriers avoid the need for remedial prescription by the Board.

WHEREFORE, THE PREMISES CONSIDERED, ISG Resources, Inc. respectfully urges the Surface Transportation Board to take the foregoing into account and to exercise its oversight authority in a manner conducive to preserving the rail routing utilized in the deposition of the AES power plant fly ash.

Respectfully submitted,



Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W.
Washington, DC 20001
202-434-4144

Attorney for ISG Resources, Inc.

July 14, 2000

¹² *Conrail*, Decision No. 89 at 72.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of ISR Resources, 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

Attorney for CSX Corporation

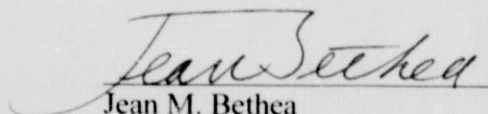
Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Washington, DC 20006-3939

Attorney for Norfolk Southern Corporation

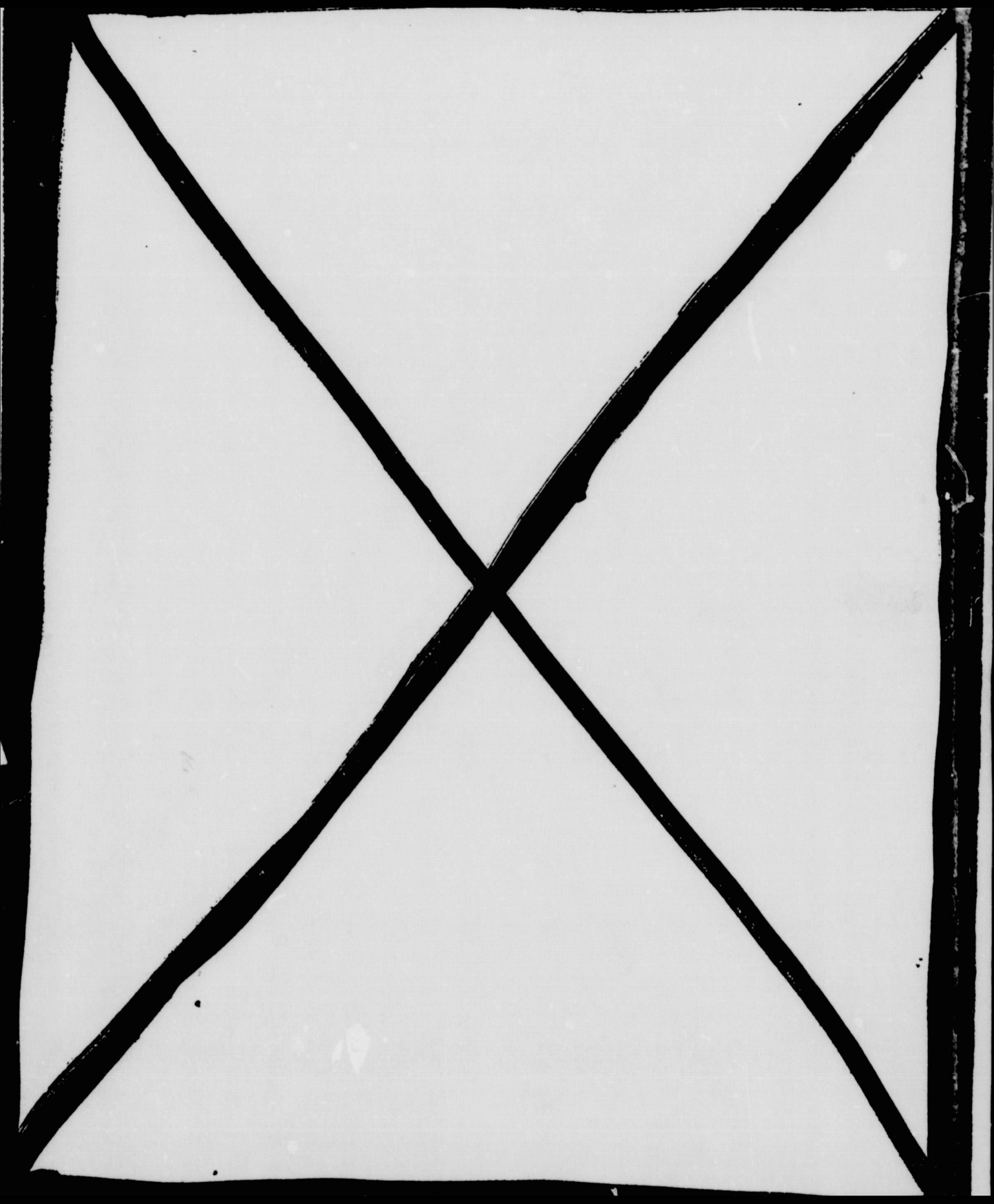
and

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

Attorney for Reading, Blue Mountain & Northern Railroad
Company


Jean M. Bethea

Date: July 14, 2000



STB FD-33388 (SUB 91) 7-14-00 D 199280

199280
KARL MORELL

BALL JANIK LLP
ATTORNEYS

1455 F STREET, NW, SUITE 225
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TELEPHONE 202-638-3307
FACSIMILE 202-783-6947



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July 14, 2000

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BY HAND DELIVERY

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Comments of Indiana Southern Railroad, Inc. Also enclosed is a 3.5-inch diskette containing the filing in WordPerfect format.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions regarding this matter, please contact me.

Sincerely,

Karl Morell
Attorney for INDIANA SOUTHERN
RAILROAD, INC.

Enclosures

19280

ORIGINAL

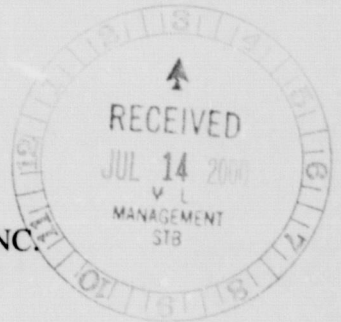
BEFORE THE

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)

COMMENTS OF INDIANA SOUTHERN RAILROAD, INC.



Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
INDIANA SOUTHERN
RAILROAD, INC.

Dated: July 14, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

COMMENTS OF INDIANA SOUTHERN RAILROAD, INC.

Indiana Southern Railroad, Inc. ("ISRR"), hereby submits its comments on the implementation of the condition the Surface Transportation Board ("Board") imposed on behalf of Indianapolis Power & Light Company ("IPL") in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (served July 23, 1998).

In Decision No. 89, the Board ordered Applicants to allow IPL to choose between having its Stout plant served directly by Norfolk Southern Railway Company ("NS") or via switching by the Indiana Rail Road Company ("INRD"), to allow for the creation of an NS-ISRR interchange at ISRR MP 6.0 for traffic moving to or from the IPL's Stout and Perry K plants, and to provide for conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line. Decision No. 89, Ordering Paragraph 23.

The Board subsequently explained that the condition it had imposed on behalf of IPL was intended "to ensure efficient and competitive service." Decision No. 96, at 14. On a number of

occasions, ISRR informed the Board that NS would not be able to compete for the Stout traffic.

In response, the Board explained that:

[i]f NS comes to share ISRR's concerns over any potential inefficiencies associated with an ISRR-NS movement into Stout, or if, after having been given an opportunity to work, the ISRR-NS movement into Stout proves to be problematic, ISRR and NS may choose to negotiate a mutually beneficial agreement through which ISRR operates as NS' agent for movements into that plant. In addition, demonstrated deficiencies in the operations into Stout may be examined as part of our review in the oversight process of whether there is a need at that time to modify the terms of the relief we have granted in order to preserve competition that existed prior to implementation of the approved transaction.

Decision No. 115, at 4.

In Decision No. 125, the Board reiterated its willingness to explore options other than the imposed condition if the ISRR-NS movement proves not to be competitive. In so doing, the Board noted that, at the time of Decision No. 125, which was prior to the division of Conrail:

it was too early to determine whether the new NS-ISRR service...will work as we intended to preserve the competition that Conrail had provided at Stout. We do not yet know what kind of joint rate NS and ISRR will be willing to offer IP&L for this service.... At this point, however, Conrail's lines have not yet been transferred to CSX and NS, so that most of the arguments presented here about difficulties that NS and ISRR will have in providing this service are simply speculation. We will continue to oversee this situation, and we will impose additional relief as necessary to ensure that our conditions work as intended.

Decision No. 125 at 4-5 (footnote omitted).

It has been over one year since the division of Conrail and ISRR can report to the Board that the condition imposed on behalf of IPL has not worked to date and, in ISRR's view, will never work as intended by the Board.

In its First General Oversight Report ("NS Report"), NS informed the Board that NS had provided no service to the Stout plant since Day One. While it is unclear, NS appears to attribute its lack of service to the Stout plant to the transportation contract between IPL and INRD. NS

goes on to explain, however, that, once that contract expires, NS will be able to compete head-to-head against CSXT for eastern-origin coal movements to Stout. NS Report at 38.

ISRR can confirm that no traffic has been handled to the Stout plant in a joint ISRR-NS move. ISRR, however, would not attribute the inability of ISRR and NS to garner any Stout traffic to the IPL-INRD contract, but rather to the fact that NS -- ISRR's essential partner for traffic moving to the Stout plant -- is hopelessly handicapped in competing for the Stout traffic. The amount of coal traffic open to competition at Stout is not as limited as NS would have the Board believe. ISRR and Conrail competed for the non-contract traffic in the past and, as pointed out by CSX Transportation, Inc. ("CSXT") in its First General Oversight Report ("CSXT Report"), ISRR and Conrail had some limited success in winning the traffic from INRD. CSXT Report at 86. ISRR continues to be very much interested in handling all or part of the non-contract Stout traffic and is similarly interested in bidding on all of the Stout traffic in the near future. NS, however, has been unable to aggressively pursue the Stout traffic with ISRR. NS's inability to do so is understandable given the insurmountable hurdles NS faces in offering a competitive service for coal movements to Stout from the nearby Indiana coal sources.

In prior filings with the Board, ISRR has detailed some of the operational constraints NS faces in competing for the Stout traffic. Unlike Conrail -- ISRR's prior partner for the Stout traffic -- NS has no facilities, locomotives or crews stationed in Indianapolis or the surrounding area. NS's closest presence is about 60 miles from Indianapolis at Lafayette and Muncie, IN. In order to serve the Stout plant, NS would need to: (1) send a crew and locomotive from Lafayette or Muncie some 60 miles to Crawford Yard; (2) await the ISRR coal train which, pursuant to the agreement between NS and CSXT, will be held on ISRR's tracks until the NS crew and locomotive arrive at Crawford Yard; (3) perform an inefficient headlight interchange with ISRR

in Crawford Yard; (4) transport the loaded cars to the Stout plant; and (5) return the crew and locomotive some 60 miles to their home base in Lafayette or Muncie. In order to return the empties to ISRR, NS would need to: (1) send a crew and locomotive from Lafayette or Muncie some 60 miles to the Stout plant; (2) transport the empty cars to Crawford Yard; (3) again await the arrival of the ISRR crew and locomotive being held on ISRR's tracks; (4) perform the same inefficient headlight interchange of the empty cars; and (5) return the crews and locomotives some 60 miles to their home base in Lafayette or Muncie. Even if these operations worked smoothly, it is highly questionable whether the round trip from Lafayette or Muncie and the switching operations in Indianapolis could be completed before the NS crew goes out of service.

ISRR does not question NS's ability to compete with any other railroad. The ISRR-NS movement to Stout, however, was intended by the Board to replicate the prior ISRR-Conrail service to Stout and provide a competitive alternative to INRD. For Conrail, service to Stout essentially consisted of a local switching operation in a city where Conrail had a major presence. For NS, service to Stout involves traveling an additional 120 miles and performing an inefficient interchange in a yard owned and controlled by its direct competitor. No carrier, including NS, can be expected to provide competitive service under these circumstances.

Indeed, NS has acknowledged to the Board that NS is competitively challenged in providing service to the Stout plant:

Although NS's rights will provide a constraint on CSX and INRD pricing, whether NS will be able to provide that service at a price equal to or lower than the price of CSX/INRD pricing to the plant will depend on many factors that cannot be predicted with certainty. It cannot be denied, however, that the fact that NS's closest line is 60 miles away at Lafayette, IN will provide a substantial challenge to NS to provide a price-competitive interline service with ISRR.

NS-77 at 3.

In the Conrail proceeding, a number of proposals were submitted to the Board to rectify the loss of competition at the Stout plant. In adopting Condition No. 23, the Board elected to accept the proposal submitted by the United States Department of Justice ("DOJ") in its brief. Ironically, DOJ, in arriving at its recommended solution, criticized CSXT's proposed remedy because it would double the distance NS would need to travel and possibly produce operational problems in Hawthorne Yard, leading, according to DOJ, to rates as much as 20 to 30 percent higher than the previous rates to Stout. DOJ-2 at 24-26. Because NS's closest home base to Indianapolis is at either Lafayette or Muncie, the ISRR-NS route to the Stout plant is more than double the distance of the INRD route to the Stout plant and CSXT has insisted on an inefficient interchange procedure in Crawford Yard that pales in comparison to DOJ's conjectural concerns about an interchange at Hawthorne Yard. As it turns out, DOJ's criticisms of CSXT's suggested remedy is even more applicable to DOJ's own suggested solution to the loss of competition at Stout which was adopted by the Board.

NS's acceptance of CSXT's requirement for a headlight interchange at Crawford Yard is powerful evidence of NS's apparent recognition that NS would never participate in the transportation of a lump of coal to the Stout plant. From time-to-time, railroads compelled by facility constraints do agree to perform headlight interchanges. Such interchanges, however, are performed only as a temporary measure and only for the movement of small volumes of traffic because such interchanges are inherently inefficient and uneconomical. If NS truly believed that it had a competitive chance of handling coal traffic to the Stout plant, NS would have been foolhardy in agreeing to an inherently inefficient interchange in Crawford Yard. Any chance of ISRR and NS successfully competing for anything other than sporadic movements of coal to Stout were undermined by the CSXT-NS agreement.

NS's contention that it can compete head-to-head with CSXT for eastern-origin coal movements to Stout, while undoubtedly correct, severely misses the mark. The condition imposed by the Board was intended to preserve the preexisting competition for movements of coal to Stout from the nearby Indiana mines. If eastern-origin coal were competitive with the local Indiana coal sources at Stout, there would have been no need for the Board to authorize a joint ISRR-NS move to Stout.

ISRR understands that IPL will also be filing comments urging the Board to modify the condition imposed on behalf of IPL. ISRR fully supports IPL's request and stands ready, willing and able to serve the Stout plant directly if so authorized by the Board. ISRR is confident that, if given the opportunity, it can restore meaningful and effective competition at the Stout plant.

In Decision No. 89, the Board granted IPL relief in order to remedy the loss of rail competition at the Stout plant. In Decision Nos. 96, 115 and 125, the Board consistently stated that IPL was entitled to effective competition at its Stout plant and that, if the condition imposed on behalf of IPL did not work as intended, the Board would impose additional relief. The condition has not and will not work to provide any meaningful competition at the Stout plant. Accordingly, ISRR urges the Board to modify the condition or impose such additional relief as the Board deems appropriate to restore competition to the Stout plant.

Respectfully submitted,



KARL MORELL

Of Counsel

BALL JANIK LLP

1455 F Street, N.W.

Suite 225

Washington, D.C. 20005

(202) 638-3307

Attorney for:

INDIANA SOUTHERN

RAILROAD, INC.

Dated: July 14, 2000

CERTIFICATE OF SERVICE

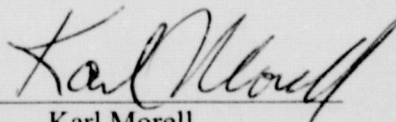
I hereby certify that on this 14th day of July, 2000, I caused a copy of the Comments of Indiana Southern Railroad, Inc., to be served on the following parties by first class mail, postage prepaid, or by more expeditious means:

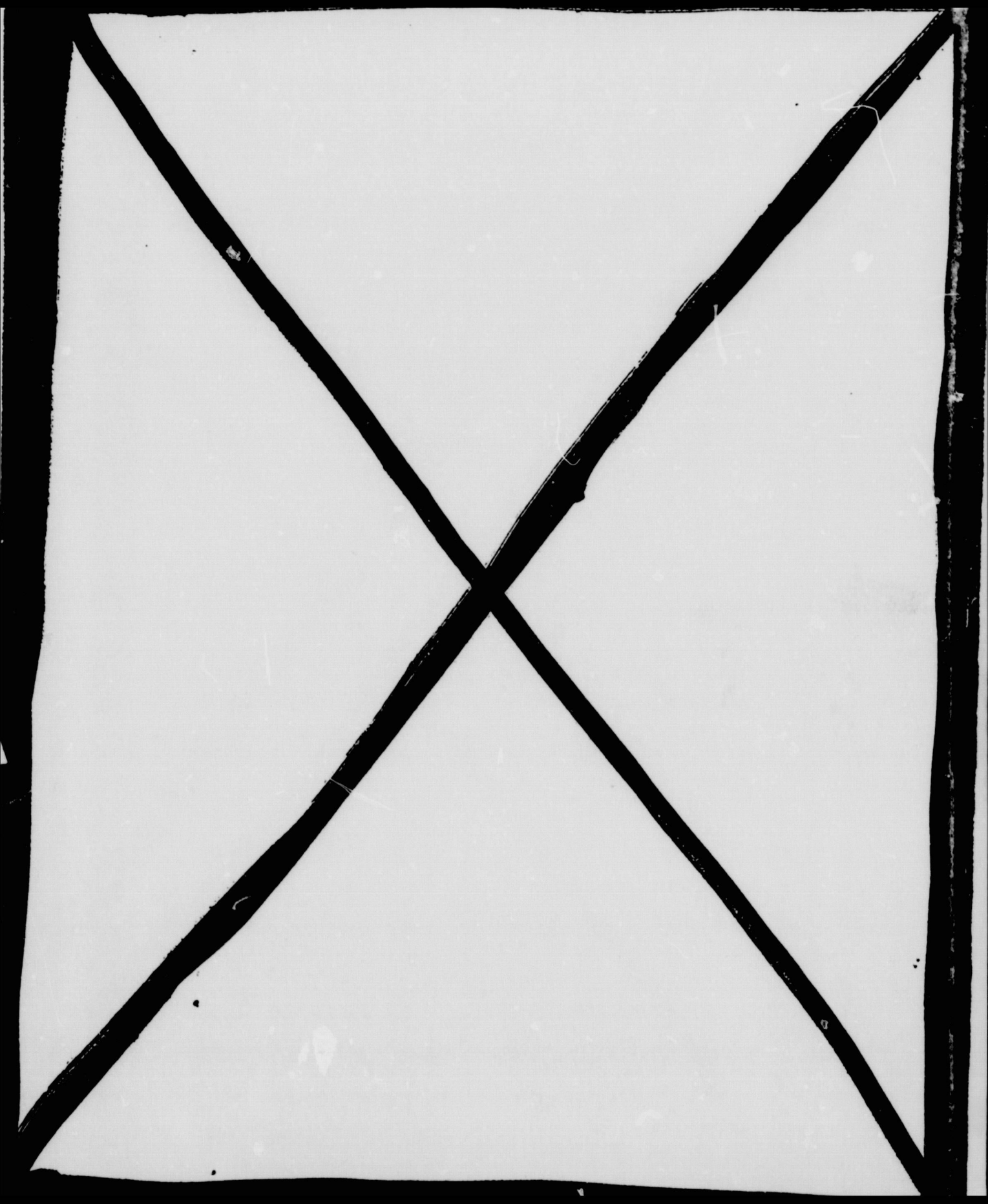
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Washington, D.C. 20530


Karl Morell



STB FD-33388 (SUB 91) 7-14-00 D 199278



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

199270
GENERAL COUNSEL

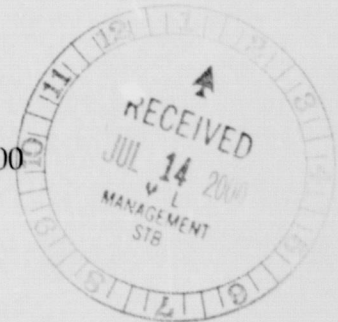
400 Seventh St., S.W.
Washington, D.C. 20590

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July 14, 2000



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

Re: Fin. Dkt. No. 33388 (Sub-No. 91)

Dear Secretary Williams:

Pursuant to Decision No. 1 in the above-referenced proceeding, enclosed herewith are the original and twenty-five copies of the Initial Comments of the United States Department of Transportation (DOT-1). Enclosed herewith as well is a computer diskette containing these Initial Comments, convertible into WordPerfect 7.0.

Respectfully submitted,

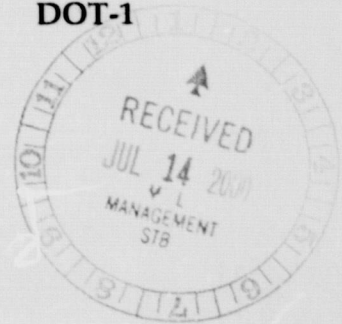
Paul Samuel Smith
Senior Trial Attorney

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

Enclosures

DOT-1

**Before the
Surface Transportation Board
Washington, D.C.**



CSX Corp. and CSX Transportation, Inc.,)
Norfolk Southern Corp. and Norfolk Southern)
Railway Co. -- Control and Operating Leases/) Fin. Dkt. No. 33388 (Sub- No. 91)
Agreements -- Conrail, Inc. and Consolidated)
Rail Corp. (GENERAL OVERSIGHT) _____)

**Initial Comments of the
United States Department of Transportation**

Introduction

The Surface Transportation Board ("STB" or "Board") has instituted this proceeding to implement the oversight condition it imposed in Finance Docket No. 33388, the acquisition and division of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. ("CSX") and the Norfolk Southern Railway Co. ("NS") (collectively, "Applicants"). Decision No. 1, served February 9, 2000. Specifically, the Board has invited comments on "the progress of implementation" of the transaction and the conditions imposed thereon. *Id.* at 1. The United States Department of Transportation ("DOT" or "Department") commends the Board for the initial exercise of its authority to oversee the results of this unique transaction. Like many other parties, DOT is very interested in this subject, as well as in the efficacy of the STB's conditions.

To evaluate a rail consolidation, the Department in virtually every case since the Staggers Act has assessed the information, evidence, and argument presented by other private and public parties before expressing its position on

the merits. We followed this approach not only in this case, but also in the ongoing oversight of the merger of the Union Pacific ("UP") and Southern Pacific ("SP") railroads. Finance Docket No. 32760 (Sub-No. 21). We intend to do so in this oversight proceeding as well, for the same reasons. That is, the record to date consists only of reports submitted by CSX and NS (CSX-1 and NS-1, respectively), and does not yet reflect the views of shippers, communities, or other parties directly affected by these carriers' post-acquisition operations. Accordingly, as a general matter DOT intends to file its substantive views in its reply comments on August 3, once we have reviewed the initial submissions of others.

With one major exception, the Department can therefore offer only preliminary observations at this time, and we do so below. But first we wish to address the exception - - safety.

Safety

The safety problems that occurred in the aftermath of the UP/SP merger and the complicated nature of the transaction in this case gave rise to the first Safety Integration Plan ("SIP"). Decision No. 52, served November 3, 1997. The Federal Railroad Administration ("FRA") worked closely with CSX and NS and their employees to produce a detailed, step-by-step process designed to ensure that the carriers would maintain the highest levels of safety while carrying out the acquisition and division of Conrail. Since then FRA has carefully monitored that process, and modified it as necessary. *See* Decision No. 89, served July 23, 1998, at 419. The Applicants both report that they have maintained or improved upon fine safety records, and that they have almost completed their obligations as contained in the SIP. *See* CSX-1 at 42-48; NS-1 at 20-23.

FRA reports periodically to the Board on the implementation of the SIP. Its first report, covering the period from the date the transaction was approved

(July 23, 1998) through April of 1999, was submitted on May 4, 1999.¹ FRA's most recent report, dated June 23, 2000, covers the period from May through December of 1999.² In brief, FRA considers the Applicants' overall safety records since the "Split Date" (June 1, 1999) excellent, but has identified several systemic safety shortfalls that occurred during integration that will require and receive additional attention. These concern information technology deficiencies, hazardous materials documentation problems, increased inspection defects, "near misses" between trains, and excessive crew delays. FRA has also found that the Applicants' service problems have adversely affected safety. FRA will continue to scrutinize the safety of operations on CSX, NS, and in the shared asset areas, to work carefully with the railroads and their employees to address problems, and to keep the Board abreast of developments as appropriate.

Preliminary Observations

It is important to note at the outset that although this oversight proceeding is "broadly based," it does not embrace every aspect of the underlying transaction. *Id.* at 160. The complexity involved and the service difficulties following the UP/SP merger prompted the Board to devote a separate review to monitor the operations of NS, CSX, and Conrail (the latter in the Shared Asset Areas). *Id.* at 162-65. This entails detailed reporting by these carriers on a number of items, such as the integration of information technology, on-time performance, labor agreements, as well as involvement by shippers through the Conrail Transaction Council. The STB adopted this course in order

¹/ Conrail Merger Surveillance: NS, CSX and CSAO SIP/Safety Update, FRA, May 4, 1999.

²/ Conrail Merger Surveillance: NS, CSXT and CRCX Second Safety Integration Plan/Safety Update, FRA, June 23, 2000. FRA anticipates completing the next report, which will cover the period from January through May of this year, by the end of this month.

to allow for "a timely evaluation of, and response to, any issues that arise during implementation of various operational aspects of the transaction." *Id.* at 162.

The Board has also begun separate proceedings to consider rail rates and infrastructure in the region of Buffalo, New York. Finance Docket Nos. 33388 Sub-Nos. 90 and 93, served December 15, 1999, and June 9, 2000, respectively. DOT is interested in each of these other matters, and will reserve its comments thereon for the appropriate time.

The instant proceeding encompasses, among other things, the relations between the Applicants and shortline and passenger rail carriers, the effects of the "acquisition premium" paid for Conrail, the representations made by the Applicants on various issues, and the conditions imposed to mitigate environmental, competitive, and other impacts. Decision No. 89 at 160-61. CSX and NS have addressed these subjects in their submissions. They have reported that they are in substantial compliance with the Board's conditions, that it is premature to judge the consequences of any acquisition premium, that they have adhered to their representations, and that their relations with other shortlines and rail passenger operators remain positive and cooperation is high. CSX-1 and NS-1, *passim*. In short, although the Applicants acknowledge their widespread and ongoing service difficulties, in most other particulars they present a favorable picture of the consequences of their transaction and the Board's conditions.

That may eventually prove accurate. However, DOT's considers that at this point it is too early to reach definitive conclusions concerning the impacts of the acquisition and division of Conrail or the efficacy of the conditions imposed to mitigate those impacts. Just over a year has passed since the "Split Date" on which CSX and NS began to operate their respective portions of Conrail. This is too short a time to gauge the long-term implications of so massive a reorientation of the major rail systems in the East.

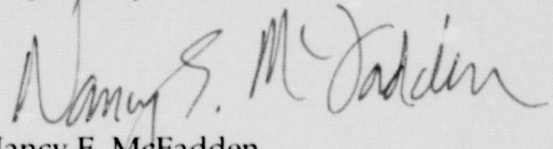
That this period has also been unfortunately marked by substantial service disruptions and the aforementioned safety concerns only compounds the difficulty. Despite the precautions taken by the Board and by the parties, shippers throughout the East and elsewhere have had to endure the consequences of significant and ongoing service deterioration. This very experience tends to distort the data that would otherwise inform the decisionmaker's judgment about the long-term impact of the transaction and conditions. In similar circumstances in the oversight proceeding following the UP/SP merger we stated, "[t]here has simply been no uninterrupted period of more normalized operations on which to base a valid assessment of the competitive impact of the merger and the associated conditions." DOT-3 (filed August 16, 1999) at 5. Although DOT was there clearly addressing competition, the central point remains valid for all issues affected by rail operations, including the ramifications of the acquisition premium and the impacts of the transaction on safety, on communities and the environment, on Amtrak, and on regional passenger rail operators. This is likely to remain the case even after the parties most affected have registered their initial views on the record.

The Department looks forward to learning of those views and, as previously indicated, offering more substantive comments on reply.

Conclusion

The Board is to be commended for this active exercise of its oversight authority. The acquisition and division of Conrail transformed the railroad structure of the eastern United States. It remains to be seen whether the consequences of that transaction have been appropriately addressed by the conditions imposed. The Department intends to remain an active participant in this proceeding in order to attempt to ensure that that is the case.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Nancy E. McFadden", written in a cursive style.

Nancy E. McFadden
GENERAL COUNSEL

July 14, 2000

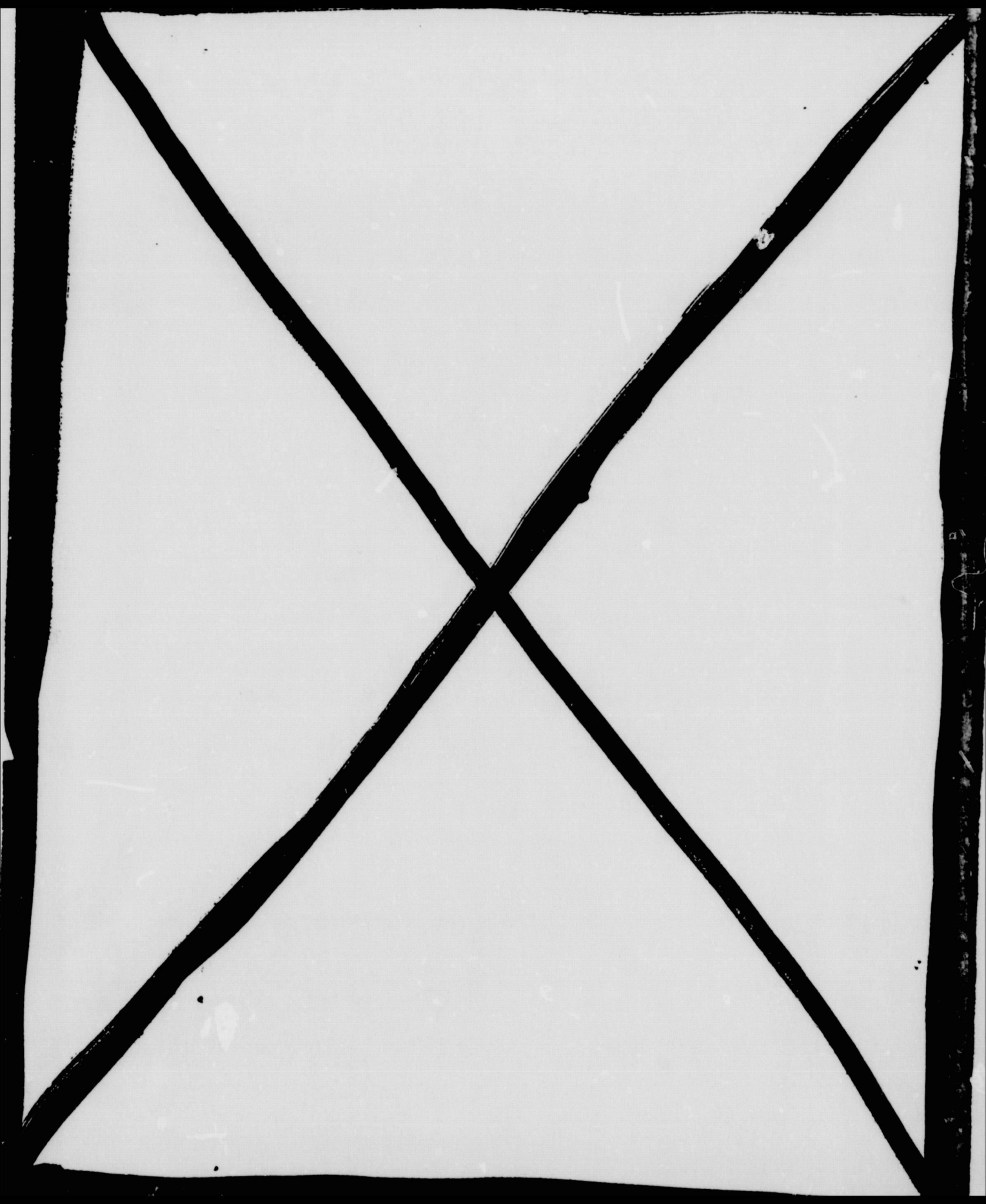
CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the foregoing Initial Comments of the United States Department of Transportation in STB Finance Docket No. 33388 (Sub-No. 91) to be served upon all Parties of Record by first class mail, postage prepaid.

A handwritten signature in cursive script, appearing to read "Paul Samuel Smith".

Paul Samuel Smith

July 14, 2000



STB FD-33388 (SUB 91) 7-14-00 D 199263

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

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Of Counsel to:

Vuono & Gray LLC

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Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

July 13, 2000

VIA FEDERAL EXPRESS

Office of the Secretary

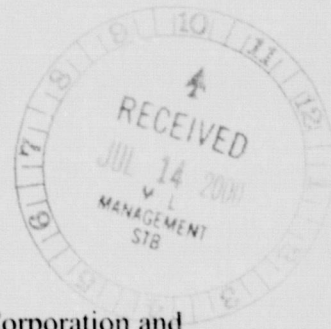
Surface Transportation Board

Case Control Unit

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

1925 K Street, N.W.

Washington, DC 20423-0001



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

Dear Secretary Williams:

Enclosed for filing in the above captioned matter you will find the original and 25 copies of the Comments of SEDA-COG Joint Rail Authority to the First General Oversight Report Submitted by Norfolk Southern Corporation and CSX Corporation. Also enclosed is an electronic copy of this pleading formatted in Word 7.0.

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

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

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

ENTERED
Office of the Secretary

JUL 14 2000
Part of
Public Record

RRW/klh

Enclosures

xc: All Parties of Record

Growth Resources of Wellsboro Foundation, Inc.

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July 13, 2000

VIA FEDERAL EXPRESS

Office of the Secretary

Surface Transportation Board

Case Control Unit

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

1117 K Street, N.W.

Washington, DC 20423-0001



Re: STB Finance Docket No: 33388 (Sub No 91); CSX Corporation and
CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk
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Conrail, Inc. and Consolidated Rail Corporation; General Oversight Proceedings

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

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

RRW/klh

Enclosures

xc: All Parties of Record

Growth Resources of Wellsboro Foundation, Inc.

**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 PROCEEDING)

**COMMENTS OF SEDA-COG JOINT RAIL AUTHORITY
TO THE FIRST GENERAL OVERSIGHT REPORT OF
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY**

Filed on Behalf of SEDA-COG Joint Rail
Authority By:

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

Dated: July 13, 2000

**Before the
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO: 33388 (Sub No. 91)
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk Southern Railway
Company - Control and Operating Leases/Agreements -
Conrail, Inc. and Consolidated Rail Corporation

(GENERAL OVERSIGHT PROCEEDING)

**COMMENTS OF SEDA-COG JOINT RAIL AUTHORITY
TO THE FIRST GENERAL OVERSIGHT REPORT OF
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY**

On June 1, 2000, Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") filed the first General Oversight Report on implementation of the Conrail control transaction. SEDA-COG Joint Rail Authority ("JRA" or "Authority") has carefully reviewed that report and submits the enclosed Verified Statement of its Executive Director, Jeffrey K. Stover, in response to the NS report.

Mr. Stover's statement describes the substantial negative impacts which the NS assumption of Conrail operations has imposed on the Authority's rail lines and shippers. He also discusses the importance of the Canadian Pacific ("CP") - Sunbury interchange to the Authority's economic development efforts and the frustrations posed by the NS failure to abide by its June 10, 1997 settlement agreement with the Authority's rail operator.

Based on the Verified Statements of Jeffrey K. Stover and Richard D. Robey, SEDA-COG JRA respectfully requests that the Board direct NS to enter into immediate and continuing negotiations with Mr. Robey to conclude a formal trackage rights agreement on terms and conditions consistent with the NS interim agreement of June 24, 1999 and the NS settlement agreement of June 10, 1997 with the parties to provide quarterly joint progress reports to the Board.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:

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

Richard R. Wilson
Attorney for SEDA-COG Joint Rail
Authority

**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 PROCEEDING)

VERIFIED STATEMENT OF JEFFREY K. STOVER

My name is Jeffrey K. Stover. I am Executive Director of the SEDA-COG Joint Rail Authority ("SEDA-COG JRA") which is affiliated with the Susquehanna Economic Development Agency - Council of Governments. SEDA-COG JRA is a Pennsylvania municipal authority formed by seven central Pennsylvania counties since 1983 to acquire rail lines and preserve rail service on Conrail branch lines slated for abandonment.¹ Starting with the acquisition of two lines in 1984, the Authority now owns six rail lines which generate approximately 32,000 car loads of traffic annually. The preservation and growth of rail service on the SEDA-COG JRA lines has been instrumental in the promotion of economic development activities and the expansion of employment in Central Pennsylvania over the last sixteen years. All our lines are operated by companies owned and managed by Mr. Richard D. Robey and his rail operations are financially self supporting. We coordinate closely with Mr. Robey and his staff on economic and industrial development projects and we have achieved a most effective public/private rail partnership over the years.

¹ The counties which comprise SEDA-COG JRA include Centre, Clinton, Lycoming, Northumberland, Montour, Columbia and Union Counties.

All of our former Conrail lines now connect with Norfolk Southern Corporation ("NS") and we have closely monitored the NS/Conrail acquisition proceeding and the difficulties our short lines have experienced as a result of NS service problems after the Conrail transition date. Those problems are acknowledged in the NS First General Oversight Report but that report does not begin to adequately describe the negative economic impact which the NS takeover of Conrail operations has had on our shippers and communities. During the initial months after takeover, rail service to SEDA-COG shippers virtually came to a halt. Loaded cars were misrouted, lost and delayed. Empty equipment for loading was sporadic and unreliable. Other plants served by our lines were forced to substantially curtail operations and cut employment. Several plants were forced to close for several weeks. NS service problems caused combined NS carloads on our lines to drop by 30% in the months following the Conrail takeover. More recently, traffic levels have increased modestly, but congestion on NS lines and yards and the unreliability of empty cars are a continuing and recurring problem for our railroads and shippers. On July 30, 1999 we conducted a survey of our shippers and identified specific service difficulties. Our shippers indicated that NS has refused to honor claims associated with losses related to NS service failures which they had promised to consider. They also stated that NS-CSX interline service is very poor with an absence of cooperation on rates, interchange points and service between these carriers. The antagonisms between NS and CSX threatens the loss of significant joint line traffic to and from our lines despite assurances to the STB that former Conrail traffic would be handled without disruptions. We informed both the STB's Bureau of Enforcement and NS of these problems yet, to date, there has been little meaningful improvement of service. Understandably, shipper confidence in rail service on our lines has been seriously eroded and will be very difficult to restore.

In light of these service problems, the NS response to our operator's efforts to conclude a trackage agreement to implement the June 10, 1997 settlement agreement is all the more galling. As described by Mr. Robey, most of the traffic now moving by our Sunbury interchange with Canadian Pacific ("CP") is new traffic which could not be handled by NS in an efficient, cost effective fashion. Yet NS has failed to honor the commitments and representations it made to Mr. Robey in the Conrail acquisition proceeding and appears intent on commercially closing the CP/Sunbury interchange. This NS tactic appears to be an attempt to deprive our shippers of a competitive alternative route to reach CP local stations and to force our shippers to use NS routes which are congested and/or inefficient.

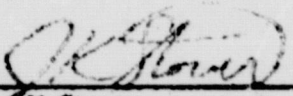
From the standpoint of economic development and growth of employment in our region, the ability of our short lines to have a direct and unrestricted interchange to the entire CP system is vital. Under NAFTA, companies in central Pennsylvania are increasing their business with Canada and direct rail access to Canadian markets via CP helps central Pennsylvania maintain a level playing field with other regions in the Commonwealth and the northeast United States. Given the importance of these commercial arrangements, SEDA-COG JRA must insist that NS fully implement its June 10, 1997 settlement agreement with our operator.

Finally, we believe that the CP-Sunbury interchange with our short lines will improve rail service on NS lines. Initially, it will provide an alternative route for CP traffic, keeping it off congested NS lines. Later, as NS service improves, the CP interchange will promote both price and service competition between NS and CP and to third party carriers encompassed within the June 10, 1997 settlement agreement. This will result in increased rail traffic, lower rail rates and better economic opportunities for our rail lines and the shippers and communities they serve. We urge the Board to carefully monitor the ongoing negotiations between our railroads and NS to insure that these public interest objectives are achieved.

VERIFICATION

I, Jeffrey K. Stover, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on July 12, 2000.



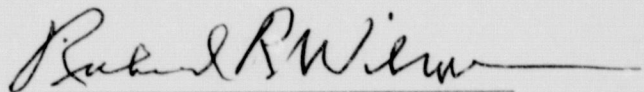
Jeffrey K. Stover

CERTIFICATE OF SERVICE

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

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

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

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

Richard R. Wilson, Esq.

Postage Prepaid

Richard R. Wilson, P.C.

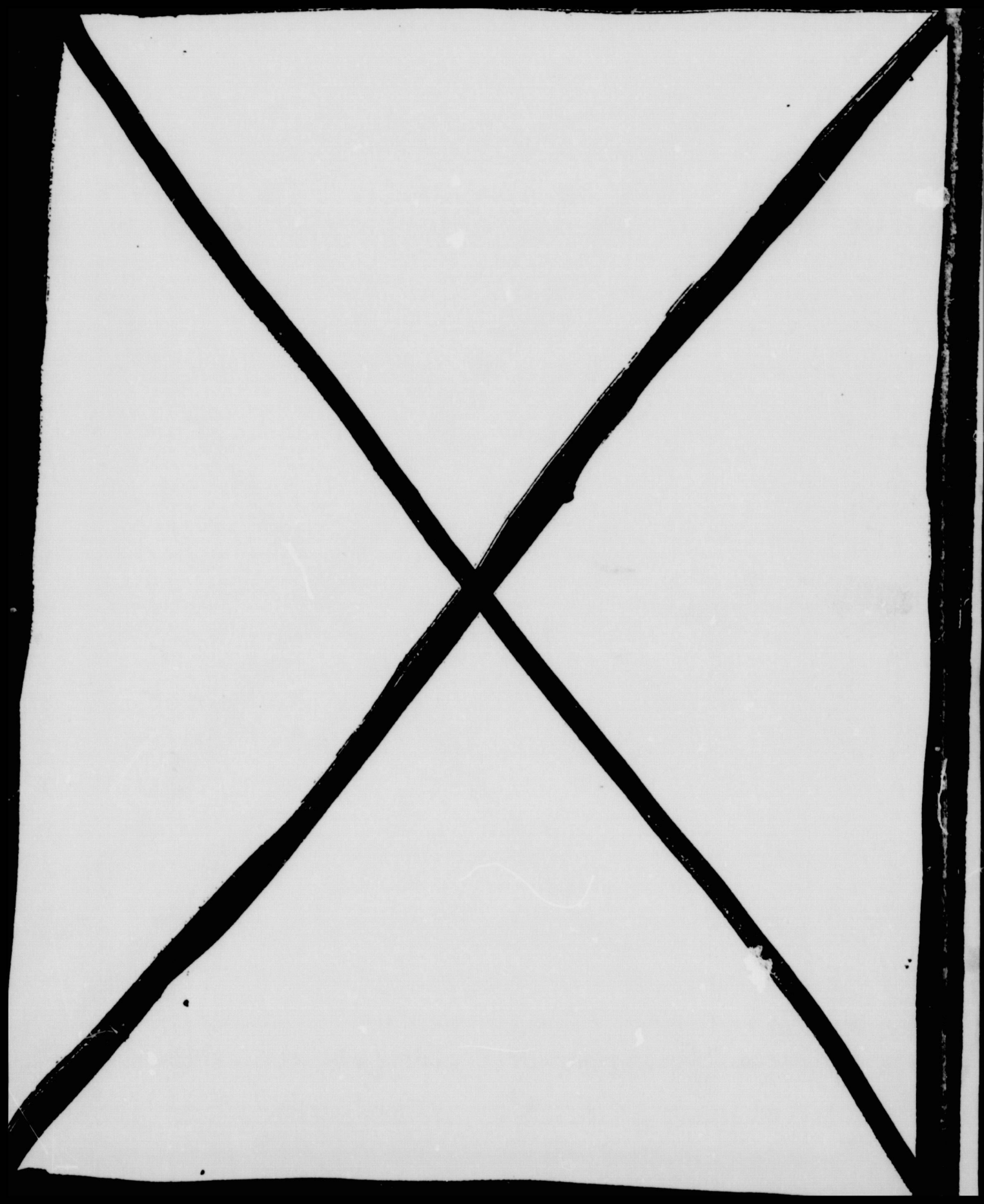
Attorney at Law

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STB FD-33388 (SUB 91) 7-14-00 D 199260



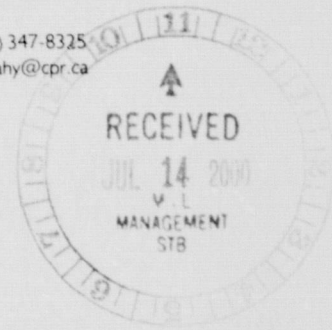
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Calgary

July 13, 2000

M M Szel Q.C.
Vice President
Corporate Secretary

Laura Sugimoto
Director

D E Adolph
D F Barnhardt
T M Bews
K L Fleming
C J Goldie
P A Guthrie
G V Mackenzie
H D Piercy
M W Shannon
G D Wilson

Toronto
M R St. Louis

Montreal
J C Pare

Minneapolis
T G Mulcahy

ENTERED
Office of the Secretary

JUL 14 2000

Part of
Public Record

By Overnight Mail

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

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the comments of Canadian Pacific Railway, Soo Line Railroad Company, Delaware and Hudson Railway Company, Inc. and the Saint Lawrence and Hudson Railway Company in the above captioned matter. Also enclosed is a 3.5 inch diskette, formatted for WordPerfect 5.1 containing the comments.

Thank you for your assistance.

Very truly yours,

Timothy Mulcahy
General Attorney
Canadian Pacific Railway Company

Enclosures.

D

199260

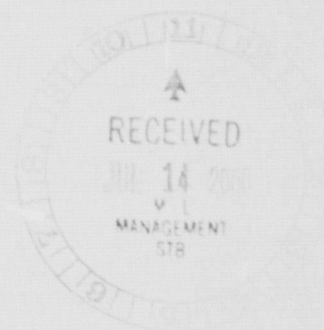
BEFORE THE
SURFACE TRANSPORTATION BOARD

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Office of the Secretary

JUL 14 2000

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



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

COMMENTS OF CANADIAN PACIFIC RAILWAY,
SOO LINE RAILROAD COMPANY AND
THE DELAWARE AND HUDSON RAILWAY COMPANY, INC.
IN REPOSE TO THE FIRST GENERAL OVERSIGHT REPORT OF
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY AND
IN RESPONSE TO THE FIRST SUBMISSION BY
CSX CORPORATION AND CSX TRANSPORTATION INC.

Timothy Mulcahy
Canadian Pacific Legal Services
Attorney for Canadian Pacific Railway,
Soo Line Railroad Company, Delaware
and Hudson Railway Company, Inc. and
St. Lawrence and Hudson Railway
Company
Canadian Pacific Legal Services
501 Marquette Ave. S.
Minneapolis, MN 55402
(612) 347-8325

Date: July 13, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

COMMENTS OF CANADIAN PACIFIC RAILWAY,
SOO LINE RAILROAD COMPANY AND
THE DELAWARE AND HUDSON RAILWAY COMPANY, INC.
IN REPOSE TO THE FIRST GENERAL OVERSIGHT REPORT OF
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY AND
IN RESPONSE TO THE FIRST SUBMISSION BY
CSX CORPORATION AND CSX TRANSPORTATION INC.

Pursuant to the Board's Decision No. 91, Canadian Pacific Railway Company ("CPR"), Delaware and Hudson Railway Company Inc. ("D&H"), Soo Line Railroad Company ("Soo") and St. Lawrence & Hudson Railway Company Limited ("StL&H") (collectively "CPR") hereby submit the following comments in response to the first submissions of Norfolk Southern Corporation and Norfolk Southern Railway Company (hereinafter "NS") and CSX Corporation and CSX Transportation, Inc. (hereinafter "CSXT") (hereinafter collectively referred to as "Applicants").

INTRODUCTION

When the Surface Transportation Board ("Board") approved the division of Conrail between NS and CSXT it retained jurisdiction to impose additional conditions and/or to take other action if, and to the extent, it was necessary to address harms caused by the Conrail transaction. 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, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR Dec. No. 89)(sometimes hereinafter referred to as the "Transaction"). As part of this oversight process the Board established a 5 year oversight process. In CSX/NS/CR Dec. No. 91 the STB initiated a proceeding to monitor the implementation of the transaction generally, the conditions imposed by the Board in CSX/NS/CR Dec. No. 89, and representations made by NS and CSXT made on the record during the course of the proceeding.

The following conditions and comments made in CSX/NS/CR Dec. No. 89 had either a direct or indirect impact on CPR:

1. Gateways: NS and CSXT agreed to keep all major interchanges with other carriers open so long as they are economically efficient. CSX/NS/CR Dec. No. 89 at p. 56. ("Gateway Condition")
2. Buffalo: The Board required CSXT to adhere to agreements made with CPR to provide lower switching fees in the Greater Buffalo area. CSX/NS/CR Dec. No. 89 at p. 88. ("Buffalo Condition").
3. Settlement Agreements: The Board specifically ordered NS and CSXT to adhere to all representations made during the course of the proceeding. CSX/NS/CR Dec. No. 89 at p. 176. ("Representation Condition").
4. East of the Hudson: The Board ordered CSXT to negotiate a trackage rights or haulage agreement allowing CPR to gain commercial

between Selkirk, New York and Fresh Pond, New York. CSX/NS/CR Dec. No. 89 at p. 177. ("East of Hudson Condition").

5. The Belt Line: Nothing in the approval is intended to overturn rights created under the "Belt Line Principle." CSX/NS/CR Dec. No. 89 at p. 179. ("Belt Line Condition").

BACKGROUND

A. Prior to the Transaction.

CPR is a transcontinental railway. In the United States it operates through Soo and the D&H. The Soo operates primarily in the Midwest in corridors running from Detroit to Chicago, Portal North Dakota, to Chicago, and Chicago to Louisville, Kentucky. In the east, the network is operated through the D&H. D&H operates from Rouses Point, on the U.S. Canadian Border south of Montreal, to Albany New York and from Albany to Binghamton, New York. From Binghamton the D&H network runs south to Philadelphia and Washington, D.C. and to Newark, New Jersey. In addition, D&H operates from Binghamton to Buffalo, New York.

The D&H network, as it existed immediately prior to the Transaction, was inextricably interwoven with decisions surrounding the creation of Conrail in 1976. Immediately prior to the creation of Conrail, D&H was granted operating rights over lines to be conveyed to Conrail to allow D&H to interchange with friendly rail connections. Had these additional operating rights not been granted, D&H would have been captive to Conrail.

Through operating rights, the D&H network was extended to Buffalo, Philadelphia, Washington and Newark. These operating rights grants gave D&H comprehensive rights on lines conveyed to Conrail and where limited only by a prohibition against serving local customers along this extended system. United States

Railway Association's intent in granting these rights was to create rail competition to the "Unitary Conrail System."

In 1984 D&H was sold to Guilford Transportation Industries. In 1988, Guilford put the D&H into bankruptcy.

In 1991 CPR bought the assets of the D&H out of bankruptcy and set about rehabilitating that road. CPR invested heavily in the infrastructure of the D&H. In acquiring D&H, CPR had planned on using that carrier as a way of feeding Canadian traffic into major northeastern rail markets. Canadian Pacific, Ltd. Purchase and Trackage Rights Delaware and Hudson Railway Company, 7, ICC 2d 95, 113 (1990).

As part of this strategy, shops and yards on the D&H were rationalized in favor of a more efficient single track main line system designed to allow preclassified rail traffic to move quickly over it. The plan was to allow D&H to move traffic as fast as possible at the lowest possible cost with minimal train handling.

B. Potential Impact of the Transaction as Proposed by the Applicants.

At the time the Transaction was announced, NS and CSXT were D&H's sole friendly connections in the eastern United States. D&H interchanged traffic with CSXT and NS at Buffalo, New York, Philadelphia, Pennsylvania and near Washington, D.C. As the result of the Transaction, NS and CSXT changed from friendly end connectors to competitors in many of the same markets accessed by D&H.

The Transaction threatened D&H with the loss of up to one-half of its freight revenue. In response to the Transaction announcement, D&H had no alternative but to

gain additional or improved access to many of its core markets so that it could provide competition to NS and CSXT on a single line basis.¹

Following extensive negotiations between D&H and CSXT and NS, the parties entered into settlement agreements which were intended to resolve many of the competitive issues raised by the D&H. It was anticipated that these settlement agreements would resolve the competitive harms suffered by D&H and would allow it to provide efficient competitive service.

C. Day One and the Implementation of the Settlement Agreements.

The achilles heel in the settlement agreements was that they were dependent upon CSXT and NS service for their implementation. The access granted D&H was commercial only. As noted by CSXT in its submission, it is impossible to monitor the Transaction and the how it is being implemented without looking at the service actually being provided. See, First Submission by Applicants CSX Corporation and CSX Transportation, Inc. at pp. 2-3. From the very outset of the Transaction, service afforded to D&H traffic was inadequate.²

With regard to CSXT, the most important traffic was intermodal traffic originating out of Port Newark/Port Elizabeth. Prior to the Transaction this traffic was transported by Conrail up the west side of the Hudson River and interchanged to D&H at Selkirk, New York. This was never very important traffic to Conrail and the service

¹ On August 22, 1997, CPR filed a Description of Anticipated Responsive Application ("Description"). In its Description, CPR advised that it would be seeking the following conditions to the Transaction:

- a. Reciprocal switching rights in the North New Jersey and South New Jersey/Philadelphia Shared Asset Areas, the Buffalo-Niagara Terminal Area and the Baltimore Terminal Area;
- b. Removal of restrictions contained in various operating agreements it had with Conrail; and
- c. Trackage rights on Conrail's River Line and Hudson Line.

always suffered due to lack of equipment; however, the service was good enough to divert a significant amount of truck traffic off of the busy I-87 corridor.

Unfortunately, shortly after the split date, this service virtually collapsed. This is due in large part to congestion in Selkirk Yard. Due to poor service, most of this traffic was lost to truck. Indeed, there is data indicating that after the split date, truck traffic at the New York- Canadian border south of Montreal increased by twenty-five percent.

The service problems relating to NS are more complex. Rail traffic to or from D&H bound for the North New Jersey Shared Asset Area is interchanged with NS at either Binghamton, New York or Allentown, Pennsylvania. D&H traffic destined to or originating from NS shortlines is interchanged with NS at either Binghamton, Allentown or Harrisburg, Pennsylvania. Traffic that is destined to or originating from the South Shared Asset Area is interchanged with NS at Allentown, Pennsylvania.

Like CSXT, NS suffered from significant service problems from the split date forward. This necessarily had an adverse impact on the D&H. As the result of these service problems, D&H found that it was unable to attract or keep a significant amount of rail business moving. With respect to short lines, as the result of the NS service failure, CPR and NS modified their operations to allow CPR to directly serve some NS short lines. In particular, CPR provided direct service to the SEDACOG Railroad where it connects with CPR on CPR's Sunbury Line and to the Reading and Blue Mountain Railroad at Taylor, Pennsylvania.

As NS service began to recover, D&H discovered that what little traffic it had moving to or from the Shared Asset Areas failed to participate in this recovery. In

2 This is not to say that NS or CSXT discriminated against D&H traffic. CPR has no evidence of that. Rather, it appears that CPR traffic suffered as the result of the general service failure of both carriers

addition, upon returning to its former interchange points at Allentown, Binghamton and Harrisburg, CPR service to or from short lines declined despite the general improvement of NS operations.

D. Impact of the Transaction on the Rest of the D&H.

The division of Conrail between CSXT and NS has had substantial impacts on D&H. In addition to the service disruptions, the merger substantially changed traffic flows through new gateways. CPR had adequate time to prepare for some of these changes. Other changes caught the railroad completely unprepared requiring it to handle traffic from unexpected directions literally without notice. As stated by CPR's President, Robert J. Ritchie in his recent testimony before the STB in connection with Ex Parte 582:

Our D&H subsidiary has incurred millions of dollars in additional fuel, crew and equipment costs as a result of traffic congestion in the Northeast following implementation of the Conrail transaction. Switching delays in the New York and Philadelphia Shared Asset Areas have undermined our efforts to utilize the trackage rights and pricing authority that we obtained in the *Conrail* case to provide competitive service to those areas.

John Snow and David Goode have acknowledged that they have suffered service disruptions and that those disruptions have been costly to the industry as a whole and to themselves in particular.³

shortly after the "split date."

³ David Goode and John Snow admitted the operating problems of their respective railroads during the hearings on Ex Parte 582. During his testimony David Goode noted:

We are all familiar, in my case painfully familiar, with the details of the service problems that Norfolk Southern and other railroads have experienced in recent times. These problems, although enormously costly to the railroads and to their shippers, are nonetheless short-term in nature.

John Snow stated:

Part of the concern about our industry comes from the problems that have occurred in connection with recent mergers. Unfortunately, much publicized rail congestion and delays resulting from both eastern and western rail mergers – of which I include my own railroad – have shaken customer confidence. In our case, the difficulties of integrating our share of Conrail's system into our network serve as a prime example that extensive planning and significant capital spending do

The division of Conrail between NS and CSXT has cost CPR millions of dollars in increased operating costs. In addition, the settlement agreements have not yielded the benefits anticipated by the parties. The service benefits promised by the applicants to the shipping public have not been forthcoming and the applicants themselves admit that they have not obtained the financial benefits anticipated in the Transaction. Knowing what we know to today, all parties would admit, including the applicants, that despite NS's and CSXT's best efforts the Transaction has not been implemented well.

As noted above, part of the purpose of this proceeding is to determine whether any additional conditions ought to be imposed in connection with this Transaction. Given the fact that, as a practical matter, the Transaction cannot be undone, it may be necessary for the Board to impose some additional conditions to allow the Board to meet the policy goals it sought to achieve when it approved the Transaction in the first instance.

APPLICABLE LEGAL STANDARDS

In this oversight process the Board is assessing NS's and CSXT's compliance and implementation of conditions imposed in Decision No. 89. CSX/NS/CR DEC No. 89, p. 160. The Board is mandated to determine whether any new or additional conditions should be imposed in connection with the Transaction. Id.

In determining whether new conditions are to be imposed or existing conditions modified, the Board should be looking at the transportation policy as set forth in the Interstate Commerce Act as well as the public interest standards applicable to the

not guarantee instant success. While we planned extensively, as did our competition, Norfolk Southern, we fell short of our goals. Some of the problems were unexpected as shippers made decisions to route traffic in ways that we simply failed to anticipate. Regrettably, many of the service problems were of our own doing. For this, I am truly sorry.

approval of the original merger and the original imposition of conditions upon the Transaction. See 49 U.S.C. Section 10101; 49 C.F.R. 1180.1.4, see also, Union Pacific Corp. et. al. Control and Merger Southern Pacific Rail Corp. et. al., Finance Docket No. 32760 (Sub No. 26) August 14, 1998) p. 3 (additional conditions would be granted only upon evidence required for inconsistent application in merger proceedings).

By these comments, CPR asks the Board to continue its oversight of the various issues described below while CPR attempts to negotiate mutually acceptable resolutions of these issues with CSXT and NS. Except as expressly set forth below, CPR does not believe additional or modified conditions are necessary at this time, however, CPR, in the event CPR is unable to reach an acceptable resolution of these issues, CPR may find it necessary to petition the Board for relief.

GATEWAY AND REPRESENTATION CONDITIONS

A. CPR-CSXT Traffic between Port Elizabeth/Port Newark and Selkirk.

CPR intends to negotiate changes in its operating relationship with CSXT that would allow CPR to interchange traffic with Conrail at Oak Island, New Jersey for traffic currently interchanged between CSXT and CPR at Selkirk, New York. CPR

4 The criteria used by the Board for imposing conditions is set forth in 49 C.F.R. 1180.1(d):

(1) The Board has broad authority to impose conditions on consolidations, including those that might be useful in ameliorating potential anticompetitive effects of a consolidation. However, the Board recognizes that conditions may lessen the benefits of a consolidation to both the carrier and the public. Therefore, the Board will not normally impose conditions on a consolidation to protect a carrier unless essential services are affected and the condition: (i) Is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidated carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits. Moreover, the Board believes that indemnification is ordinarily not an appropriate remedy in consolidation proceedings. Indemnification conditions can be anticompetitive by requiring the consolidated carrier to subsidize carriers who are no longer able to compete efficiently in the marketplace.

suggests that, the compensation normally paid by it to CSXT for this service (between Selkirk and Port Elizabeth/Port Newark) be reduced by an amount equal to CSXT's avoided cost it otherwise would have incurred in transporting this traffic between Port Newark/Port Elizabeth and Selkirk, New York. This way CSXT will still enjoy its contribution from this traffic.

The suggested operational change is designed to remedy a harm that is the direct result of the Transaction. The service disruptions were a direct cause of a transfer of traffic previously moving over this corridor to road. The operational change is specifically intended to improve service to the shipping public. At a minimum it will restore a transportation option to shippers into and out of the Port Elizabeth/Port Newark area that was lost. The operational change could also create an opportunity for moving increased volumes through this corridor. In addition, the removal of the remaining traffic from the CSXT system onto the CPR system will help relieve congestion west of the Hudson and in Selkirk Yard. CPR would transport the traffic in single line service from Oak Island to destinations in Toronto and Montreal.

Nor would this operational change impose significant operating problems on CSXT. Just the opposite. The service would remove traffic moving over CSXT's congested west side of Hudson Line and out of Selkirk Yard onto the D&H system. It would have no operational impact on CSXT other than performance of a switch at Oak Island Yard where Conrail and CPR are already co-located.⁵

Finally, this service change will not have an adverse impact on CSXT and will certainly not hamper its ability to obtain the benefits of the Transaction. To the contrary,

this modification will allow CSXT to actually derive the economic benefits from this service change. Indeed, implementation of this modification to the maximum extent possible could actually yield positive revenue gains to CSXT for transportation service it does not participate in.

To fully realize the benefits of this modification, the interchange between CPR and Conrail at Oak Island must be recognized as one of the gateways that must remain open in accordance with Decision No. 89.

The CPR-Conrail gateway at Oak Island was first established in 1979 pursuant to an Agreement between the Delaware and Hudson Railway Company (a predecessor to the current CPR subsidiary) and Conrail. Pursuant to Section 2.01 of the 1979 Agreement Conrail agreed to interchange intermodal traffic with Delaware and Hudson Railway Company at Oak Island. The 1979 Agreement was assigned to CPR's D&H subsidiary at the time it acquired the assets of the then bankrupt Delaware and Hudson. Part of the reason for the assignment was the recognition that the D&H franchise served an important public function in providing competition to Conrail. Canadian Pacific, Ltd., Purchase and Trackage Rights, Delaware and Hudson Railway Company, 7 ICC 2d 95, 118 (1990). The interchange requirement contained in the 1979 Agreement was never removed and remains in force today.

An obligation to maintain a gateway imposes a series of responsibilities upon a carrier. As the Interstate Commerce Commission stated in 1982 in its Traffic Protective Conditions decision:

⁵ CPR operates an intermodal facility at Oak Island pursuant to an operating Agreement between the Delaware and Hudson Railway Company and Consolidated Rail Corporation, dated April 25, 1979 ("1979 Agreement).

In Detroit, T. & I. R. Co. Control, 275 I.C.C. 455, 492 (DT&I) (1950), the Commission developed a standard set of six specific conditions which have been imposed almost automatically and identically in every merger proceeding.

These Conditions are general in nature in that they identify neither specific carriers nor individual gateways. Condition 1 requires a consolidated carrier to 'maintain and keep open all routes and channels of trade via existing junctions and gateways' unless otherwise authorized by the Commission. Condition 3 requires a consolidated carrier to continue 'present traffic and operating relationships.' Conditions 2 and 4 prohibit discrimination 'in the arrangement of schedules' and 'in promptness [and] frequency of service,' respectively. Condition 5 precludes a consolidated carrier from restraining 'the right of industries located on the acquired line to route traffic over any or all existing routes and gateways.' Condition 6 merely provides standing to seek later modification of the Conditions.⁶

Rulemaking Concerning Traffic Protective Conditions in Railroad Consolidation

Proceedings, 366 I.C.C. 112 (1982); see also, Canadian National Railway Co. – Control – Illinois Central Corporation, Finance Docket 33356 p. 56 (1999) (requiring CN/IC to keep its Chicago gateway for Soo originated traffic from North Dakota "open and competitive").

Here CPR requests the Board impose a slight modification to its gateway condition specifically recognizing Oak Island as an interchange within the scope of that condition.

B. CPR-NS Traffic Between Binghamton or Allentown and the Conrail North Shared Asset Area.

On split date and shortly thereafter, there was a general system failure on virtually all of the portion of Conrail acquired by NS. This effectively prevented CPR from effectively marketing the new service into the North New Jersey Shared Asset Area.

⁶ The Commission went on to state that:

The Commission has interpreted the DT&I Conditions, specifically Condition 1, to require rate equalization. A consolidated carrier was generally prohibited from maintaining rates on its new single-line routings resulting from the consolidation below the rates on any competing joint-line routes in which it participated. We feared that if a single-line rate were lowered without securing the concurrence of all connecting carriers in lowering the corresponding joint-line rates, the 'commercial closing' of certain routes or gateways would occur and competition would be reduced.

Even as NS service improved CPR was unable to take advantage of its rights under the settlement agreement because service from Binghamton and Allentown to the North New Jersey Shared Asset Area was too poor to allow CPR to effectively compete. This was more a function of the way NS service into the North Shared Asset Area was structured rather than due to any particular failure of NS to provide service. To provide a competitive service sufficient to draw customers from other carriers, CPR should be permitted to carry this traffic itself to Oak Island and interchange it to Conrail just as NS and CSXT do. This would provide the closest thing possible to competitive single line service.

CPR is currently discussing this revised operating plan and will formally request NS to make the changes described above. CPR requests that the Board retain oversight jurisdiction over this issue in the event the parties are unable to reach agreement. The change suggested by CPR will benefit customers as well as NS since CPR is willing to continue to pay the applicable amount due under existing joint line arrangement with NS less NS's avoided costs.

C. Traffic Between Harrisburg and the Conrail South Shared Asset Area.

As with the North Shared Asset Area, the split date severely disrupted NS service to the Conrail South Shared Asset Area. CPR traffic to this area is interchanged with NS at Allentown, Pennsylvania.⁷ NS then takes this traffic to Philadelphia where it transfers it to Conrail for delivery to customers. Despite the NS recovery, this service remains inefficient and poor.

⁷ The parties originally intended to interchange this traffic at Harrisburg, Pennsylvania. This proved to be not feasible. Later they attempted to interchange this traffic at a location outside Philadelphia known as Abrams Yard. This interchange was unsuccessful as well. The interchange location was then moved to Allentown where the traffic is interchanged today.

Under Section 2.01 of the 1979 Agreement, CPR has the right to interchange traffic directly with Conrail in Philadelphia. CPR suggests that traffic interchanged with NS at Allentown instead be interchanged directly from CPR to Conrail at Philadelphia. Again, as with the North Shared Asset Area, CPR is willing to continue to pay NS its normal division from Allentown less its avoided costs.

As with the other proposed modifications, this change will not deny NS the benefits of the merger. It will improve service and increase revenues for all parties. CPR is currently discussing this revised operating plan with NS and will formally request the changes described above. CPR requests that the Board retain oversight jurisdiction over this issue in the event the parties fail to reach agreement and modify its Gateway Condition to recognize Philadelphia as a gateway for purposes of that condition.

D. Service to Shortlines.

The NS settlement agreement also allowed CPR to gain commercial access to certain shortline railroads along lines acquired by NS from Conrail. As noted above, there have been significant service issues regarding traffic interchanged by CPR to NS for further carriage to these shortlines. The interchanges at Harrisburg, Binghamton and Allentown for this traffic simply do not work.

As noted above, CPR trains go by many of the connections to these shortline carriers. The sole restriction on CPR's ability to interchange traffic to these carriers are the so called "paper barriers" imposed by Conrail at the time it sold these lines to the shortline operators.

It would be in the best interest of all parties if CPR was given the right to interchange traffic with these shortline operators directly or at a nearby mutually convenient location.

This would improve service for all parties and would relieve NS of its obligation to provide low margin short distance switching-type service to these carriers.

CPR respects NS's contractual relationship with these carriers and is willing to reimburse NS for the lost contribution it would have received from handling CPR traffic from the previous points of interchange (Allentown, Binghamton, Harrisburg) to these shortlines.

CONGESTION IN THE NEW YORK METROPOLITAN AREA

An additional condition that may be required during this oversight process would be one giving CPR access to the Staten Island Railway. The Staten Island Railway is an abandoned line which runs approximately nine miles from a connection with Conrail's Lehigh Line in Union County, New Jersey to Arlington Yard on the northwest corner of Staten Island.

Up until 1991, the real property of the Staten Island Railway was owned by CSXT and leased to the Staten Island Railway Corporation ("SIRC")⁸. The line was abandoned after the closure of U.S. Lines at the Howland Hook Marine Terminal in Staten Island and the closure of Proctor and Gamble's Port Ivory facility. Without these shippers the line was not viable and, in 1991, SIRC abandoned it. While CSXT continued to own the track, it provided no service. Subsequently, CSXT sold the New York City portion of the line to the New York City Economic Development Corporation and the New Jersey portion of the line to the State of New Jersey.

In 1996 the Howland Hook Marine terminal was reopened. Since reopening the terminal operators have been demanding renewed rail service. Recently, the

⁸ SIRC was a wholly owned subsidiary of the New York and Susquehanna Railway Corporation which, in turn, was a wholly owned subsidiary of Delaware Otsego Corporation.

governors of New York and New Jersey have entered into agreements necessary to re-establish rail connections to bring this line back into operation.

Sometime in the next five years, CPR expects service to be reestablished on the Staten Island Railway and would like to have an opportunity to be one of the carriers providing service to that railway. Most of the rail infrastructure is already in place and operation of the Staten Island has the potential for relieving some of the congestion in the New York Metropolitan Area.

EAST OF THE HUDSON

In its Decision approving the Transaction the Board , in recognition of New York State's investment in the line, ordered CSXT to negotiate an agreement with CPR for haulage or trackage rights over the east of the Hudson line from Fresh Pond (on Long Island) to Selkirk, N.Y. CSX/NS/CR Dec. No. 89 at p. 83. The STB stated that, in the event the parties were unable to reach an agreement within 60 days of the date of the order, it would initiate a proceeding to "determine how the needs of the New York parties are to be addressed." Id.

CPR and CSXT were unable to reach agreement within the deadline and the Board initiated a proceeding. On December 18, 1998, the Board issued a decision granting CPR trackage rights between Albany, New York and Fresh Pond, New York. This decision was amended and clarified by Decision 123 dated May 20, 1999.

As the result of these decisions, CPR was given trackage rights over CSXT lines between Albany and Poughkeepsie, New York and operating rights to use CSXT's Oak Point Yard. CPR entered into separate agreements with the State of New York and Metro North Commuter Railroad Company to complete its route into New York City. Under

the agreement with Metro North, CPR was granted trackage rights to operate over the Metro North Line between Poughkeepsie, New York to High Bridge, Bronx County, New York. CPR's agreement with the State of New York gave it rights over the State's Oak Point Link from High Bridge to CSXT's Oak Point Yard. Following these decisions, CPR and CSXT entered into a trackage rights agreement and a switching agreement implementing these decisions.

CPR's service into New York City got off to a rocky start. Due to poor communications between the carriers, cars were misidentified and misrouted. CSXT employees on the ground made CPR operations in Oak Point Yard difficult. Cars not switched within 24 hours were sent back to Selkirk. CSXT took the position that many customer served facilities were actually proprietary facilities belonging to CSXT and denied their use to CPR. In short, the conduct of both parties was creating conditions where another round of litigation over East of Hudson service appeared to be inevitable.

Luckily, cooler heads prevailed. Subsequently the employees of CSXT and CPR conducted a series of meetings in an effort to resolve differences and improve service. As part of this process the parties came to agreement over their respective use of Hunts Point Terminal and Harlem River Yard. In addition, from a service standpoint, the parties agreed that CPR would interchange traffic directly with the New York and Atlantic Railway with its own crews and equipment.

As the result of these cooperative efforts, CPR's traffic over the East Side of the Hudson has grown significantly. At the start of the service, CPR transported an average of 6 cars per day between Albany and Oak Point 3 days per week. Today, CPR is carrying 24 cars per day 3 days per week and expects traffic to increase significantly.

CPR and CSXT are working together with the State of New York and Metro North to improve clearances on Metro North's line between Poughkeepsie and High Bridge so the carriers can initiate intermodal service. Finally, CPR and CSXT are in negotiations with Metro North over issues relating to movement of 286,000 pound cars over that line into New York City.

While the events described above certainly are positive, the parties still have a long way to go. Despite a clear commitment by upper and middle level management of both parties to work out issues relating to this service in an amicable manner, CPR still has difficulty with CSXT field personnel. In addition, there continue to be significant issues relating to delivery and pick-up of CPR cars to customers. While we do not believe this is based upon intentional discriminatory treatment, the poor switching service by CSXT is making it difficult for CPR to win new customers. Another problem suffered by CPR continues to be the misrouting of cars.

Despite these difficulties, CPR remains confident that it can resolve these issues with CSXT without the need for Board intervention. CPR does request, however, that the Board retain jurisdiction over and continue to monitor the situation on the East Side of the Hudson. CPR firmly believes continued Board oversight is necessary to insure continued cooperation.⁹ The only additional condition required by CPR in connection with the East Side of the Hudson would be a modification of the Board's trackage rights

9. In its May 20, 1999 decision, with respect to CPR's rights to connect directly to the New York and Atlantic, the Board stated:

CP further requests that we retain jurisdiction over any "failures to agree" as to the matters in Decision No. 109. We stated that CP or NY&A would have certain rights to facilitate a CP-NY&A interchange, but only upon the working out of "suitable compensation arrangements with CSX." See Dec. No. 109, slip op. at 7-8. CSX concedes, and we agree, that we would have jurisdiction to make a determination in the case of such a failure to agree.

grant expressly authorizing CPR direct access to New York and Atlantic at Fresh Pond Junction. 10

BUFFALO CONDITION

In Decision No. 89, the Board made that portion of the CPR-CSXT settlement agreement reducing applicable switching fees for traffic diverted from truck an express condition of the merger. That condition has been successfully implemented and CPR has no issues with regard to it. There is, however, another issue in the Buffalo area that is causing serious service difficulties for CPR. This issue did not become apparent until after the split date.

Prior to the Transaction, CPR and Conrail interchanged traffic between CPR's SK Yard and Conrail's Frontier Yard. By agreement the parties took turns delivering traffic to the other. During a given six month period CPR would take its traffic from SK Yard to Frontier Yard delivering it to Conrail. During the following six months, Conrail would come to SK from Frontier for this traffic.

As the result of the Transaction, CSXT received Frontier Yard while the trackage connecting SK Yard with Frontier Yard was conveyed to NS. 11 CSXT did not receive trackage rights over the this trackage to allow it to travel from Frontier Yard to SK. Because of this, CSXT can no longer travel to SK to pick up or deliver CPR traffic and thus can not live up to its obligations under its interchange agreement with CPR. CPR did retain trackage rights over the these tracks and retained the right to gain access to Frontier.

10 CPR will attempt to negotiate an agreement with CSXT to formalize the service that exists today. Should those negotiations prove unsuccessful, Board intervention may be required.

Thus far, NS has failed to grant trackage rights to CSXT allowing it to interchange traffic with CPR at SK Yard. It is not clear whether this failure is the result of a refusal on the part of NS or a failure to request on the part of CSX. What is apparent, however, is that as the result of CSXT's failure to reserve these rights as part of the Transaction, it has violated the interchange agreement with CPR and has been forced to suspend a balanced, mutually beneficial relationship. Now, as the result of the Transaction, the burden of moving interchange traffic between CPR and CSXT in Buffalo falls exclusively on CPR. CPR is currently attempting to resolve this situation with NS and CSXT, however, if these efforts are not successful it may be necessary for CPR to request the Board to impose an additional conditions requiring NS to convey the necessary trackage rights to CSXT to allow it to come to SK Yard for the purpose of interchanging traffic with CPR. In the alternative, it may be necessary for CPR to ask the Board to require CSXT to reimburse CPR the costs it now incurs in providing interchange service to CSXT at Frontier Yard for six months out the year.

This condition, if required, would be consistent with the Board's policy for the imposition of additional conditions as part of an oversight process. See 49 C.F.R. 1180.1(d) First, it appears that the failure of CSXT and NS to provide for these rights was an oversight in the original transaction. Thus it is directly related to the Transaction. Second, the condition is specifically and solely designed to improve service in the Buffalo Terminal area and, indeed, restore service parity, which will ultimately benefit shippers. Third, this condition would not impose an unreasonable operating burden on CSXT. This condition would restore a balanced interchange and would merely require

11 Specifically, the traffic to gain access to CPR's SK Yard, CSXT would require rights on NS's Bison Street and Howard Street running tracks and the Southern Tier from SK Yard to CP Depew.. The total

CSXT to perform the same service as its predecessor did prior to the Transaction.

Fourth, the cost and burden of this new condition would be minimal, given the scheme of the Transaction and would not frustrate CSXT's ability to achieve anticipated public benefits.¹²

THE BELTLINE CONDITION

CPR has access to Philadelphia and is a participant in the Philadelphia Belt line Agreement. Pursuant to the terms of that Agreement, CPR has access to shippers who have access to the Philadelphia Belt Line Railroad. Thus far, CSXT and NS appear to be adhering to the Philadelphia Belt Line principle and have not interfered with any right of access enjoyed by CPR under it.

CONCLUSION

NS and CSXT have faced significant challenges in implementing this transaction. While their service has improved, much improvement is still needed if NS and CSXT are to deliver the service originally promised in their Application for approval of the Transaction.

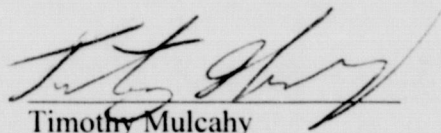
From CPR's standpoint, the Transaction has had a significant adverse impact on CPR's operations and revenues. CPR is, however, committed to working with both of these carriers to improve customer service. The Board should, however, be prepared to retain oversight jurisdiction over this Transaction since it may be necessary to impose

distance is approximately 2 miles.

¹² Pursuant to 49 U.S.C. Section 10742, rail carriers are under a duty to provide for proper, equal and reasonable facilities for interchange. In failing to provide CSXT with these necessary trackage right in order to maintain such facilities for interchange, NS, CSXT or both, arguably violated this provision. For this reason, to the extent, necessary, CPR requests that CPR compel CSXT to compensate CPR for this interchange service pursuant to this section should the Board determine that it does not wish to require NS to convey trackage rights to CSXT to enable it to gain access to CPR's SK Yard.

additional conditions in order to achieve the policy goals the Board sought to achieve when it originally approved the Transaction.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Timothy Mulcahy', is written over a horizontal line.

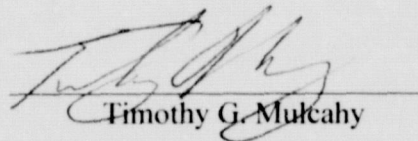
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2000, I caused copies of the foregoing Comments to be served, by first-class mail, postage prepaid, on the following counsel:

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