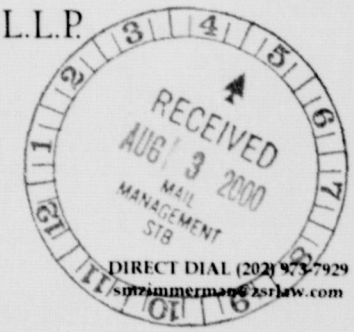
199432

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



SCOTT M. ZIMMERMAN

DIRECT DIAL (202) 973-7929
smzimmerman@zsrlaw.com

August 3, 2000

BY HAND

Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C.

ENTERED
Office of the Secretary

AUG - 4 2000

Part of
Public Record

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies each of NS-2, the Reply of Norfolk Southern Corporation and Norfolk Southern Railway Company. Also enclosed separately, under seal, for filing are the original and 25 copies of NS-2A, the Highly Confidential Appendix to NS-2. Finally, also enclosed is a computer disk containing the text of the enclosed filings in WordPerfect 5.1 format.

NS-2 is being served today on all parties of record in the general oversight proceeding. NS-2A, the Highly Confidential appendix, contains material designated Highly Confidential under, and subject to the terms of, the protective order in Finance Docket No. 33388. Those materials are referenced in NS's reply to the comments of Indianapolis Power & Light Company, Indiana Southern Railroad, and Metro-North Commuter Railroad Company. NS-2A is being served on outside counsel for Indianapolis Power & Light, Indiana Southern and CSX. Because Metro-North's counsel is in-house (and thus not permitted to receive Highly Confidential material), we have not served NS-2A on him; he has confirmed, however, that Metro-North already is in possession of the materials in NS-2A relevant to Metro-North, and therefore does not require service of that pleading in any event.

Please contact me if you have any questions.

Sincerely,

Scott M. Zimmerman

Enclosures

cc: service list in Finance Docket No. 33388 (Sub-No. 91)

199432

ORIGINAL

NS-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

(GENERAL OVERSIGHT)

REPLY OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

J. Gary Lane
Henry D. Light
Joseph C. Dimino
George A. Aspatore
Greg E. Summy
John V. Edwards
James R. Paschall
Maquiling B. Parkerson
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

Constance A. Sadler
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

Date: August 3, 2000

TABLE OF CONTENTS

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)

REPLY OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Pursuant to Decision No. 1 (served February 9, 2000), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby reply to the comments submitted by various parties to this general oversight proceeding.

INTRODUCTION AND SUMMARY

NS and CSX filed their first oversight reports on June 1, 2000. Thirty-seven parties have filed comments responding to those reports. Many of those comments are in large part complimentary about of the Transaction, or about conditions generally, one year after the Split Date. In particular, NS appreciates that, despite the fact that each expressed some concerns with the Transaction, both E.I. DuPont de Nemours and Company ("DuPont") and the American Chemistry Council (formerly Chemical

Manufacturers Association) ("ACC") applaud its safe implementation.[1] Wisconsin Central System, Congressman Dennis Kucinich, and New York Cross Harbor Railroad also comment favorably on the current state of implementation, although each correctly notes that neither NS nor CSX should be satisfied with the current state of affairs. Indeed, we think it significant that, despite the active participation of many shipper groups in the main proceeding, the only shipper association to file comments in this oversight proceeding – the American Chemistry Council – comments quite favorably on the fact that many shippers have benefited from new competition.[2] Similarly, the U.S. Department of Transportation, while generally abstaining from making substantive comments in its filing, does describe NS's and CSX's overall safety record since the Split Date[3] as "excellent." While some parties complain generally about service problems

---

[1] As it is with DuPont and the chemical industry generally, Norfolk Southern is proud of the fact that it does place safety first in all its operations.

[2] Also noteworthy are the many other parties who participated actively in the main proceeding who did not file comments in the oversight proceeding, including representatives of rail labor and numerous railroads, shippers, shipper organizations and regional and local interests.

[3] Pursuant to the Board's Decision No. 89, most of the routes and other assets of Consolidated Rail Corporation ("Conrail") were conveyed on June 1, 1999, to one of two subsidiaries of Conrail, New York Central Lines LLC ("NYC") and Pennsylvania Lines LLC ("PRR"). In turn, those companies entered into long-term operating agreements with CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"), respectively, under which those two rail carriers would operate those allocated assets of Conrail as part of their respective rail systems. The term "Split Date" in this document refers to June 1, 1999. For the sake of simplicity, any reference to CSX or NS lines or facilities may be, depending on the context, a reference to lines or facilities being operated by CSXT or by NSR under those operating agreements. The remaining assets of Conrail not so allocated mainly consist of the "Shared Assets Areas" ("SAAs") in which both CSX and NS conduct railroad operations, with the continuing Conrail handling certain operations on their behalf.

encountered after the Split Date, some also note that service generally has improved markedly in recent months.

Most of the parties that filed comments do not ask the Board to modify any conditions or impose new ones, but have filed simply to advise the Board of problems or circumstances as they perceive them. Some of these parties have stated that they will try to work out solutions to their problems with NS and CSX but that they may return to the Board for specific relief if they are unsuccessful.[4]

The only Class I railroad to file comments, the Canadian Pacific Railway ("CP"), seeks one condition and intimates its intention to seek others if unsuccessful in extracting agreements from NS and CSX despite the fact that CP entered into settlements with both Applicants in 1997 providing it with significant commercial benefits in consideration for its agreement to support the application and not seek any conditions. In addition to the fact that the conditions discussed by CP have little or no relation to any effects of the Transaction, its request for conditions is a blatant breach of its agreements with NS and CSX, and any consideration of such requests by the Board would thwart the Board's strong policy of encouraging and supporting the resolution of disputes by negotiated agreement.

Several parties complain that there are more trains operating on certain lines than the Applicants' operating plans projected, and some of these parties again ask the Board

---

[4] One of these parties, the Housatonic Railroad Company, enumerates a number of issues it raised in prior pleadings, but seeks no relief with respect to those issues. Instead, it "requests a six month extension of time or such other extension of time as the Board deems appropriate" to file a request for additional relief. We assume, based on Decision No. 1 and the Board's practice in the UP/SP oversight proceeding, that the Board will (continued...)

to impose caps on the number of trains that can be operated on certain lines. These comments rest on a basic misconception about the difference between an Operating Plan in an application to approve a rail consolidation and actual operations following consolidation. Actual volumes and operations are determined largely by customer demand and economic conditions and developments largely beyond the applicant's control. Imposing restrictions on the number of trains operated over particular line segments would either simply shift traffic from one community to another or, worse, create bottlenecks that could jam the entire rail network and in any case thwart the development of a responsive rail network capable of reacting to changing and developing markets. For these reasons the Board in Decision No. 89 wisely declined the requests of these and other parties to impose train caps on line segments, and no better reasons are offered for doing so now.

After outlining the pertinent legal principles, we address in detail the comments of individual parties that raise issues pertinent to NS. None of them, NS submits, demonstrate that the conditions imposed by the Board in Decision No. 89[5] are not achieving their intended purpose or that additional conditions are needed.

(...continued)
conduct its oversight on an annual basis, and we suggest that any deviation from that schedule for individual parties is unwarranted.

[5] With the exception of references to "Decision No. 1," references to decisions are to decisions served in the Control Proceeding, Finance Docket No. 33388, unless otherwise specified. References to "Decision No. 1" are references to the first decision served in this Sub-No. 91 general oversight proceeding. References to decisions served in "UP/SP" are to decisions served in Finance Docket No. 32760.

PERTINENT LEGAL PRINCIPLES

As indicated in Decision No. 1, as well as in decisions in previous oversight proceedings, the purpose of this proceeding is to determine whether the conditions imposed by the Board in Decision No. 89 are being complied with and are serving their intended purpose or whether the Board needs to impose additional conditions or take other actions that might be "necessary to address harms caused by the Conrail transaction." Decision No. 1 at 2. The principal focus of an oversight proceeding is on competitive harms. UP/SP (Sub-No. 21), Decision No. 10 (served October 27, 1997) at 2. Service and operational issues, the Board made clear in Decision No. 1, will not be considered in this proceeding but instead as part of the ongoing operational monitoring by the Board's Office of Compliance and Enforcement.[6]

It is also not the function of an oversight proceeding to relitigate issues resolved in the decision approving the transaction. As the Board said in the UP/SP oversight proceeding: "It is not the purpose of this oversight proceeding to give the parties an opportunity to relitigate our merger decision, and in the absence of a competitive problem, it would not be appropriate for us to reopen the merger and impose additional conditions." Id. at 14. Under this principle, parties should not be permitted in an oversight proceeding to seek conditions they could have but failed to seek in the main

---

[6] In contrast to the parties that submitted comments devoted largely to recitations of service problems, DuPont acknowledges that this oversight proceeding is not intended to address such issues but regrets that that is so. NS believes that the Board's procedure of working through service-related issues through the Office of Compliance and Enforcement remains the most responsive avenue to resolving such problems. ACC simply notes (correctly) that "many of the same shippers [that have benefited from new competition introduced in the SAAs] have been among those who have suffered from service disruptions during the past year." ACC Comments at 3.

proceeding or conditions they sought but did not obtain. An oversight proceeding is not a five-year extension of the time prescribed by the initial procedural schedule for seeking conditions. Furthermore, of course, it is not appropriate at any time to impose conditions that are unrelated to harms caused by the transaction.

Based on these principles and the comments received, NS submits that the conditions the Board imposed in Decision No. 89 are being complied with and are serving reasonably well the purposes for which they were imposed, and that no additional conditions are warranted.

DISCUSSION OF COMMENTS BY SPECIFIC PARTIES

The balance of NS's reply is dedicated to responding to various comments by specific parties that raise issues pertinent to NS.[7]

AES Eastern Energy

AES Eastern Energy ("AESE") expresses several concerns, primarily related to service. AESE notes that cycle times for its train sets have failed to return to pre-Split

---

[7] A number of parties' comments are directed at issues pertaining solely to CSX, and thus do not require a specific NS response. These include Amtrak, the Housatonic Railroad, the Illinois Central Railroad, the Livonia, Avon & Lakeville Railroad, the Louisville & Indiana Railroad, Resources Warehousing & Consolidation Services, Inc., and the Transit Riders League of Metropolitan Baltimore. Additionally, NS does not specifically respond to parties whose comments, in NS's view, generally are favorable, including the New York Cross Harbor Railroad, the Wisconsin Central System, and the U.S. Department of Transportation (which, as noted previously, generally abstained from making substantive comments, but describes the Applicants' overall safety record since the Split Date as "excellent"). Finally, the views of certain other parties are referenced not in a specific section but in various places throughout this Reply: Congressman Dennis Kucinich (see pp. 2, 54); the American Chemistry Council (see pp. 1-2 and 5 n.6); and E.I. DuPont de Nemours and Company (see pp. 1 and 5 n.6).

Date service levels, particularly with regard to traffic moving via NS. The cycle time on the these AESE trains has improved from a 14-day cycle experienced just after the Split Date to 8-day cycles. While this is not yet on par with the 7-day cycle often achieved by Conrail, NS currently is evaluating the best approach for getting the cycle times on these trains down to the pre-Split Date level.

AESE points out that crew and power shortages at times have impeded smooth and timely operations. An aggressive hiring and training process initiated before the Split Date helped to alleviate initial crewing issues. In addition, as a result of smoother system-wide operations, AESE trains are now fully powered from origin to prevent power delays in Buffalo.

AESE notes that congestion often slows traffic between Ashtabula and Buffalo and suggests use of a former Erie Lackawanna line to avoid this congestion. While NS operations between Ashtabula and Buffalo do continue to be slowed by congestion, the Erie Lackawanna line is not a viable alternative because of general track conditions and because NS does not own the entire route from Meadville to Buffalo. NS is instead working to secure an alternative route that will provide a less congested path for the AESE unit trains.

AESE is no longer in a regulated electricity market. It is clearly in NS's best interest to help AESE keep electricity generating costs as low as possible in order to maximize electricity sales into the wholesale electricity markets, which in turn maximizes coal burns and deliveries at the NS-served generating stations. NS will work with AESE to achieve our mutual goals.

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

The Buffalo & Pittsburgh Railroad ("B&P") and the Rochester & Southern Railroad ("R&S"), sister roads under the Genessee and Wyoming ("GWI") mantel, have taken the opportunity in this general oversight proceeding to ask for the imposition of trackage rights for R&S over NS's Southern Tier from Silver Springs, NY to Buffalo Creek Yard in Buffalo. The Board should deny the request.

First, GWI, on behalf of itself and its subsidiaries, including B&P and R&S, entered into a settlement agreement and supported the Transaction without conditions. As noted at the outset, the Board has repeatedly stated its strong policy of encouraging parties to settle their disputes through agreements. Nothing would undermine that policy more than the Board's granting a party relief that it specifically agreed in a settlement agreement not to seek.

In addition, the request is unjustified even apart from its inconsistency with the settlement agreement. The principal justification B&P and R&S assert for the requested trackage rights is service problems that occurred after the Split Date, not a competitive problem caused by the Transaction. The Board is fully aware, through its ongoing operational monitoring, of the efforts NS and CSX have taken to improve service, and we believe that it is aware that NS's service has improved significantly in recent months.

In any event, the Board made clear in the UP/SP oversight proceeding that it is not appropriate to impose post-approval conditions on applicants to a rail consolidation merely to address service difficulties encountered by the applicants; the only proper basis for imposing post-approval conditions as part of the Board's oversight of a consolidation is to rectify competitive harms caused by the consolidation. See UP/SP (Sub-No. 21),

Decision No. 10 at 2. All railroads are subject to service difficulties from time to time, and if they are severe enough to cause an emergency, the Board has authority to consider action under 49 U.S.C. § 11123, including the procedure established in Ex Parte No. 628. But there is no basis for other railroads to use an oversight proceeding to gain advantage from a consolidation applicant's post-consolidation service difficulties. The Board made this clear in Decision No. 1, when it stated that service difficulties would not be considered in this oversight proceeding.

Furthermore, NS has taken a number of steps to resolve the problems at issue. For example, NS recently instituted a new haulage service for R&S traffic between Silver Springs and Buffalo. This has been coordinated with CP and should be given a chance to work. Additionally, R&S proposed infrastructure improvements, including a new connection, at Silver Springs that would smooth operations at Silver Springs and resolve the "headlight meet" issue B&P/R&S describe. R&S submitted a request on December 10, 1999 for New York State funding to construct these infrastructure improvements.[8] NS submitted support for this request. Finally, although NS recognizes that there have been service deficiencies, particularly immediately after the Split Date, those deficiencies are being addressed and resolved.

Moreover, there are several alternative routes available to carry the traffic for which R&S seeks trackage rights over the Southern Tier. The R&S and Livonia, Avon &

---

[8] Although B&P/R&S state that there is no room for new tracks at Silver Springs, Collins VS at 4, they neglect to state that other infrastructure improvements can be made to resolve their concerns.

Lakeville Railroad ("LAL") traffic comes off the R&S on the south end of R&S's line where it connects with the Southern Tier at Silver Springs. CP then moves this traffic in haulage over the NS Southern Tier into Buffalo (SK Yard) to the B&P, which in turn interchanges the traffic to NS and Canadian National ("CN"). Both R&S and LAL, however, also can interchange this traffic with CSX in Genessee Yard on the Water Level Route. The Genessee and Wyoming Railroad ("GNWR") traffic that B&P/R&S speculate will develop also may move via either of these two routes over a variety of carriers.[9]

B&P/R&S also cite as support for their request the fact that NS can now interchange R&S and LAL traffic at Silver Springs that Conrail handled before off the Water Level Route, but that this interchange causes congestion that the requested trackage rights allegedly would mitigate. BPRR-2/RSR-2 at 3. According to B&P/R&S, service difficulties purportedly "preclude the full realization of the benefits contemplated by the Board in conditioning approval of the transaction granting [LAL] the right to cross Conrail's Genessee Junction Yard to reach a connection with R&S." Id. This issue could have been raised in the Control Proceeding, but was not.[10] Further, the operational and infrastructure improvements discussed above for Silver Springs should help the 106-mile

---

[9] If the Board granted the requested trackage rights, however, the revenues from the hoped-for GNWR salt, grain and fertilizer traffic and the current R&S traffic can remain entirely in the GWI family, which seems to be the real motivation behind the request.

[10] In fact, the Applicants specifically stated in their rebuttal submission that any LAL traffic interchanged with R&S at Genessee Junction for NS destinations would have to be interchanged with NS. CSX/NS-176 at 374.

LAL-Genessee Junction-R&S-Silver Spring-NS/CP-Buffalo route be more competitive with the 70-mile LAL-Genessee Junction-CSX-Buffalo route.

The real reason R&S wants the trackage rights it seeks is that those rights would give R&S more of an economic piece of that traffic, give LAL but one more routing option that it did not have prior to the Transaction, and perhaps enable R&S to win more of the traffic that it had hoped would result from its haulage agreement with LAL.[11] None of these motivations, however, address any loss of competition arising from the Transaction, and they therefore do not justify the imposition of new trackage rights in this general oversight proceeding.

On the other hand, imposition of the requested condition certainly would create more service difficulties than it ever could resolve. The condition B&P/R&S seek to impose would create additional operational hardship on all carriers now on the Southern Tier and in the Buffalo terminal area, which David Collins, Senior Vice President of GWI characterizes as being in a "chaotic condition." Collins VS at 1. Even though they characterize an underlying operational problem as CP's need to use "NS's congested tracks," Collins VS at 3, B&P/R&S propose to add to that congestion.

Canadian Pacific Railway

Most of CP's comments are exactly what should not be in an oversight filing. CP seeks Board assistance to improve its own position notwithstanding that (1) CP has a settlement agreement with NS in which CP agreed not to seek conditions against NS, in

---

[11] In its submission to the Board, however, LAL did not even mention the B&P/R&S request.

return for valuable commercial benefits which CP's comments do not even mention; (2) the basis for CP's requested relief is not restoration of pre-Transaction competition; (3) CP seeks to resurrect the (deservedly) discredited DT&I gateway conditions; and (4) CP seeks permanent changes as a remedy for temporary implementation problems (while at the same time failing to say much about its own service inadequacies). This type of filing is not appropriate in an oversight proceeding.

CP voluntarily entered into a settlement agreement with NS. That agreement benefits CP, and clearly places CP in a more competitive posture than it was in prior to the Transaction. There will be few if any settlements in future proceedings if parties may disregard them under the guise of comments in an oversight proceeding.

CP begins its evaluation of the impact of the Transaction (CP Comments at 4) with the misleading statement that as "a result of the Transaction, NS and CSX changed from friendly end connectors to competitors in many of the same markets accessed by D&H." Certainly it is true that the Transaction increased the markets in which NS or CSX now competes with CP, but this result generally is not considered the type of competitive "harm" resulting from a transaction. CP further fails to mention that (1) there was no adverse effect on competition since NS and/or CSX merely stepped into Conrail's shoes in these markets and (2) the Transaction gave CP substantial benefits in addition to those it obtained in the settlement agreement, including the opportunity to participate in numerous moves into and out of New England which it would never have had were it not for the Transaction. Conrail had no reason to compete with itself for New England traffic, but NS has every reason to work with CP and other carriers to compete against CSX in this market.

CP then claims that the Transaction "threatened D&H with the loss of up to one-half of its freight revenues." Claims of potential diversions from one part of CP – a Class I carrier – is of little relevance in an oversight proceeding, particularly after CP entered a voluntary settlement in the underlying proceeding. CP's claim of potential diversions, accompanied by not a shred of evidence and apparently not reflecting the significant benefits received from its settlement and the Transaction, is entitled to no weight and should be disregarded by the Board.

CP complains about implementation problems and then explains why it believes that it is in the best interests of NS to (1) move the point of interchange for certain traffic to Oak Island and other traffic to Philadelphia and (2) eliminate NS from the routing of traffic to and from certain shortlines and allow direct interchange between CP and those shortlines notwithstanding existing contracts prohibiting such interchanges.

Where carriers interchange traffic is seldom an issue for the Board to decide. There are various commercial and operating considerations to take into account, but if changing a point of interchange is mutually beneficial, it can be done. CP seeks to move one of the interchanges with NS to Oak Island, despite the fact that the only right given to CP (D&H) when Conrail was created was to interchange intermodal traffic at Oak Island. CP also seeks to move its Selkirk interchange with CSX to Oak Island. NS agrees with the objections CSX raises in its reply comments to this proposal, including those emphasizing the adverse effect on SAA operations. CP also wants the Board to impose DT&I conditions, even though those conditions were discredited years ago.

CP's premise for moving the points of interchange is also faulty. To the extent it is based on temporary implementation problems, there is no reason to require a

permanent change. To the extent it is based on an allegedly "better mousetrap," it remains contrary to the settlement agreement, lacks the required basis of adverse effect on competition and has not been shown to be worse than the pre-Transaction situation. To the extent it is based on CP's desire to create "a competitive service sufficient to draw customers from other carriers" (CP Comments at 13), there is no suggestion that the Transaction created a competitive problem. CP is simply attempting to gain something from this oversight proceeding that will work to the detriment of other carriers.

There are likewise numerous shortcomings in CP's proposal to eliminate NS from the route and allow direct interchange between CP and certain shortlines. First, the fact that CP enjoys commercial access to the shortlines is the result of NS's settlement agreement with CP. CP now wants that benefit of the settlement agreement but without the obligation the settlement imposed on CP to refrain from seeking conditions. CP's request would also repudiate the terms of the settlement by which CP and NS specifically agreed to interchanges at Harrisburg, Binghamton and Allentown. CP seeks to renounce that deal and have the Board impose a new one with terms NS never would have agreed to and which are objectionable to NS.

Second, CP's request has nothing to do with remedying any asserted competitive effects of the Transaction. Its only result would be to benefit CP monetarily at the expense of NS. But conditions are not imposed simply to allow one large carrier – in this case CP – to earn even more money at the expense of another large carrier. Conditions are imposed to remedy adverse effects on competition, not competitors, caused by a transaction.

Third, although CP acknowledges that "the Board will not normally impose conditions on a [transaction] to protect a carrier unless essential services are affected," CP Comments at 9 n.4 (quoting 49 C.F.R. § 1180.1(d)), CP makes no claim that any essential services are affected. Instead, CP's complaint is that while it is better off post-Transaction, it is not as better off as it wants to be. That simply is not a basis for imposing new conditions.

Fourth, there are valid contractual provisions (over and above the settlement contract between NS and CP) which prohibit direct interchange between CP and the shortlines.[12]

Finally, CP complains about NS's failing to grant CSX trackage rights in Buffalo to allow CSX to take turns in moving traffic between Frontier Yard and CP's SK Yard. What NS and CSX proposed to do in Buffalo was not a secret. Both NS and CSX entered into settlements with CP and the issue was never raised (at least in the course of CP's discussions with NS). Moreover, NS understands that there was no formal agreement between CP and Conrail to take turns delivering traffic. Instead, NS understands that there was an "interline service agreement" setting forth operating standards for train service between Conrail and CP in Buffalo, which by its very terms was not intended to be a binding legal contract and which specifically contemplated termination upon any material change in the operations of either carrier, as has happened at the Split Date. These agreements are common in the railroad industry and are subject to modification or termination upon changes in other operating conditions.

---

[12] See, for example, the discussion of an example of these in NS's reply to the comments of the Reading Blue Mountain & Northern Railroad Company.

City of Cleveland

The comments submitted by the City of Cleveland indicate satisfaction with NS's continuing compliance with its obligations under the May 28, 1998 Negotiated Agreement between the City and NS. NS shares the City's goal of a cooperative effort leading to the completion of an Asset Management Plan.

Cleveland does, nevertheless, comment about horn noise and vibrations from NS and CSX trains passing through the City. Specifically, Cleveland asserts that the Board in assessing the Transaction did not adequately consider horn noise and vibrations. This assertion belies the extensive environmental review undertaken by the Board, as evidenced in the Draft Environmental Impact Statement (Draft EIS), the Final Environmental Impact Statement (Final EIS) and Appendix Q to Decision No. 89. Further, it reopens matters Cleveland once closed in a settlement agreement reached with NS.

Impacts related to horn noise and vibrations were determined by the Board not to be remediable, in the case of horn noise, due to safety reasons and federal law requiring train horns to be sounded, and not harmful, in the case of vibrations related to train traffic. The Board has steadfastly maintained, as it must, that horns are needed to enhance safety and that neither loudness nor duration of the horn should be tampered with. See Draft EIS, Vol. 1 at 3-36 (served December 12, 1997). In objecting to the loudness and length of the train horns sounded within Cleveland, the City is seeking a remedy for a safety precaution that is mandated under federal and state law. 49 CFR § 229.129(a) establishes a minimum sound level of 96 dBA at 100 feet ahead of the locomotive for train horns. This is a critical safety measure, providing warning to

motorists, pedestrians and railroad workers alike of the approach of a train. Similarly, the duration of the activation of train bells and whistles is regulated by the State of Ohio. Ohio Revised Code §4955.32 requires that the devices be sounded at least 1320 feet in advance of an at-grade crossing. This too is a law established for the safety and welfare of the public. While residents living near railroad tracks may experience horn noise as an annoyance, these safety laws requiring the activation and prescribing the decibel level and duration of a train horn must be obeyed.

Cleveland once again raises the issue of vibrations caused by passing trains. The issue of the impact of vibrations was addressed in the Final EIS in response to comments submitted by Cleveland. The Board's Section of Environmental Analysis (SEA) determined that vibrations produced by freight trains are "substantially below cosmetic damage criteria (106 dB re 1 mico-inch/second), which is lower than structural damage criteria (126 dB re 1 micro-inch/second)." Final EIS, Vol. 3 at 5-309 (May 1998). Moreover, SEA found that "[i]t is unlikely that vibration levels would exceed any damage criterion and thus unlikely that freight train activity at any level would cause damage to buildings in the study area." Id. Cleveland's comments provide no compelling basis for reopening that analysis by SEA.

The City also suggests that the Board did not sufficiently study the environmental impacts of trains idling and stopping and starting within Cleveland, including along the rail line converted by NS from a secondary line to a main line at the request of the City. However, SEA indicated quite clearly the environmental impacts and assessment criteria it intended to apply in the Final EIS through the scoping process. A scoping notice and opportunity to submit public comments was published in the Federal Register several

months before SEA issued its Draft EIS.[13] Cleveland submitted detailed comments on the Draft EIS and engaged in months-long negotiations with both NS and CSX to resolve the City's environmental concerns related to the Transaction. The negotiations explored myriad environmental topics of concern to the City and resulted in Negotiated Agreements with NS and with CSX that established numerous remedial and construction projects to be implemented by the railroads at a cost of tens of millions of dollars, in addition to the payment by NS and CSX of over $20 million into a community fund established by the City to address the environmental impacts of the Transaction deemed by the City to be important. Many of the remedial and funding measures NS agreed to undertake far exceed the mitigation measures available to be imposed by the STB. In exchange for this extensive set of obligations by NS, Cleveland provided its express acknowledgment that all environmental concerns related to NS's participation in the Transaction had been resolved. This oversight proceeding is not intended to provide an additional opportunity to enlarge the package of benefits negotiated by the City, nor is it intended to reopen the environmental review process initiated by SEA more than three years ago. Cleveland is obtaining the substantial benefits of the bargains it made with NS and CSX and for which it obtained Board approval. It cannot both claim those benefit packages worth millions of dollars and now seek further to enhance its position.

One additional comment included by the City warrants a reply by NS. The City notes the occurrence of two recent blocking incidents. The Board might wrongly

---

[13] Notice of Intent to Prepare an Environmental Impact Statement and Request for Comments on Proposed EIS Scope (July 3, 1997); Notice of Final Scope of EIS (October 1, 1997).

conclude from the City's description that the railroad was to blame for those lengthy blocking incidents. That is not the case.

The first incident took place on March 18, 2000 when an air hose on a NS train became separated. While the NS crew repaired this mechanical problem, four at-grade crossings on Cleveland's east side were blocked. Upon completion of the repair, the crew walked the train as required by FRA regulations, re-pumped the air and conducted the FRA-required air test. As the train started to move again, however, a second emergency signal was indicated. The crew discovered that vandals had taken the opportunity to pull the coupling pins between several cars while the train was stopped for the air hose repair, a potentially very dangerous action. The train separated again and additional blocking delay ensued.

The second incident occurred on April 19, 2000. An NS crew observed debris on the track ahead of a moving train. An emergency stop was made to avoid hitting the debris. Once again, vandals were responsible for a potentially very dangerous scenario. The debris had been placed on the track by vandals and included items such as a fire hydrant. Had the train not stopped, necessarily blocking crossings, a fuel spill or even a derailment could have occurred. The crew removed the debris. While the crew was then following the checklist of safety and engineering actions required after an emergency stop, vandals again acted, this time separating several air hoses. This of course lengthened the duration of the crossing blockage. In both incidents, NS train crews detected the dangerous actions by vandals and were able to avert any accidents. NS shares the City's concern about the impact of vandalism on the safety of rail operations. These sorts of incidents do not, however, arise from the Transaction.

The Four City Consortium

The Four City Consortium (FCC), comprised of East Chicago, Hammond, Gary and Whiting, Indiana, submitted comments seeking additional conditions to be imposed by the Board as well as an expansion of the scope and duration of Applicants' reporting period. None are warranted for the reasons discussed below.

The gravamen of the FCC's objections directed towards NS seems to be dissatisfaction with the fact that NS is meeting its obligation to provide certain operating information to the Consortium, as set forth in Decision No. 96 (served October 19, 1998) and Decision No. 114 (served February 5, 1999). The FCC is apparently not satisfied with the scope of the reporting obligations determined by the Board to be appropriate. Rather, the FCC continues to seek additional data, regardless of the burden placed upon NS or the merits of the FCC's basis for seeking the additional data from NS. When the FCC filed a discovery request for this additional operating data in the Conrail oversight proceeding, both NS and CSX objected on sound legal bases. Despite explanations by NS that the sort of operating data sought by the FCC is not routinely collected by NS and that to do so would require substantial expenditure of resources, the FCC continues with its demands for more and more onerous data collection and disclosure by the railroads, in addition to the regular meetings and ongoing reporting obligations already in place.[14] NS

---

[14] NS submits that the mitigation already imposed by the Board should be allowed to work. Specifically, NS believes that the mechanisms in place providing for joint meetings among the FCC, the IHB, CSX and NS as well as status reports by NS and CSX are appropriate to address the FCC's issues. The first joint meeting contemplated by Environmental Condition 21(i) was scheduled by the FCC on March 15, 2000. NS has participated in that and all subsequent meetings convened by the FCC and has provided status reports detailing monthly average train traffic and train speed on rail line segment N-469 for the period since December 1998, in compliance with Decisions No. 96 and 114.

is fully complying with the mitigation imposed by the Board under STB Decision No. 89, as amended by Decisions No. 96 and 114 – the FCC objects to the fact that NS is not volunteering to undertake the cost and effort of satisfying the FCC's further demands.

In addition, the FCC objects to NS's exercise of its legal right to challenge in court an ordinance imposed against NS by the City of Hammond which NS believes to be unlawful. Contrary to the arguments made by the FCC in its comments, neither NS's objection to the discovery demands of the FCC nor its legal challenge to an unlawful local ordinance constitutes a valid basis for imposing additional mitigation or extending the period of oversight.

The FCC acknowledges that NS is engaged in ongoing discussions with the communities to resolve concerns about grade crossing blocking. Indeed, the FCC notes that it is optimistic, as is NS, that mutually agreeable solutions will be found to alleviate the grade crossing issues. The FCC encourages the continuation of such cooperative efforts, and NS fully concurs with that approach. In the same breath, however, the FCC argues to the Board that if NS does not acquiesce to the demands of the FCC prior to the Board's issuance of its decision in the oversight proceeding, draconian restrictions should be imposed upon NS, limiting the number of NS trains allowed to operate in the FCC area to a level far below pre-Transaction levels.

Even the terms of such extreme mitigation, as proposed by the FCC, are grossly inconsistent. The FCC first suggests that NS should be required to provide the FCC with "as much advance notice as possible" of its desire to operate more than 11.2 trains through the FCC area and mitigate congestion by operating trains only during non-rush periods, eliminating all blocking of certain grade crossings and devising alternative routes

for rail traffic. This advance notice and operational change proposal is then expanded by the FCC to become an absolute cap of 11.2 trains per day until NS "agrees" with all of the mitigation requested by the FCC. The FCC focuses on a limit of 11.2 trains per day, far below the pre-Transaction level of 26.3 trains per day.[15]

The FCC objects that a lesser *decrease* in rail traffic has been reported to date in the post-Transaction period than anticipated at the time of the Application. This is hardly a compelling basis for considering train caps at all, much less a requested cap that is one-half to one-third of the pre-Transaction traffic levels. The Board has made abundantly clear its position on train limits in response to the FCC's demands for train caps in its petition for reconsideration of Decision No. 89. In denying the FCC's renewed request for train caps, the Board held:

> [W]hile railroads do their best to predict the amount of post-transaction traffic likely to move over a given line, railroads need flexibility because the amount of traffic that actually moves over a particular line depends upon shipper demand. Indeed, a traffic cap could well interfere with applicants' ability to carry out their statutory obligation to provide common carrier service upon reasonable request. Therefore, neither we nor the ICC has imposed permanent caps on the number of trains the railroads can operate or specified that existing freight must be transported by a specific route . . . [R]ailroads must be permitted to decide on a continuous and ongoing basis which routes are most efficient to meet their customers' needs.

Decision No. 96 at 22. The FCC would have the Board treat an applicant's Operating Plan as ironclad, to be enforced several years after its development. To do so would constitute an enormous deviation from previous Board practice and would render unworkable the control application process. As the FCC is fully aware, the Board does

---

[15] The traffic data presented by NS for rail line segment N-469 in its status reports at the FCC meetings are accurate.

not share that rigid view of the data the railroads are required to develop for their applications.

Furthermore, NS has only just completed the first year of operations of the expanded NS system. Adjustments continue to be made as operational improvements are put into place.

The FCC also objects that average train speeds reported by NS have been slower than anticipated in the Application. Train speed is, of course, a critical element for ensuring rail safety. NS cannot increase train speeds when safety is at stake simply to accommodate the desire of the FCC to shorten crossing delays. Moreover, NS is required to stop for red signals at interlockers controlled by CSX and the IHB, necessarily slowing NS's own traffic. These are not matters requiring Board action through the imposition of additional conditions.

The basis for the FCC's argument that action by the Board is appropriate is simply that the negotiation process may not provide the FCC with all of the extra mitigation it is seeking. As should be obvious, there is little incentive for NS to continue good-faith negotiations with the FCC if the FCC takes the position that all of its demands, no matter how extreme or crippling to rail service and rail safety, must be met in order to come to a "mutually" acceptable resolution. NS submits that the Board should allow the parties to continue their efforts to seek reasonable solutions that will accommodate both the interests of the FCC and the needs of NS for the efficient and safe operation of its rail system without the threat of train caps or other unnecessary restrictions hanging overhead to force an inappropriate resolution.

Furthermore, the comments submitted by the FCC paint an unrealistically dark picture and fail to note significant steps already taken by NS to alleviate congestion in the FCC area. NS and the IHB have entered into an agreement to install power switches at the Osborn Avenue interchange. When this work is completed later this summer, coal trains going to the steel mills in Lake County will no longer need to stop in Hammond while switches are thrown by hand. This improvement will of course benefit grade crossing conditions in the area. NS has also explained to the FCC members why in some instances a crossing delay cannot be reasonably avoided, including the need for mandatory air brake tests, stops to address emergency mechanical problems and mandatory signal stops, among other reasons. The City of Hammond and NS are presently engaged in discussions addressing a plan that would keep certain grade crossings in Hammond free from blockage whenever feasible. In addition, NS has responded to a broader proposal by the City to resolve the dispute pending in federal court concerning the lawfulness of the imposition of a Hammond ordinance prohibiting grade crossing blocking. NS now awaits a reply from the City and is hopeful that the lawsuit can be settled.

The FCC also requests that additional operational data be compiled and periodically reported by NS and CSX for a period to extend five years beyond the Board's oversight period. From its proposal for this lengthy extension (which would double the reporting period established under STB Decision No. 89), it is clear that the FCC's focus is not restricted to impacts of the Transaction, which is of necessity the limit of the Board's consideration in this oversight proceeding.

NS urges the Board to deny the FCC's requests for the imposition of additional conditions so that the existing conditions can be fairly utilized.

Growth Resources of Wellsboro Foundation, Inc.

Growth Resources of Wellsboro Foundation, Inc. ("Growth Resources") submitted comments addressing the purported "critical lack of responsiveness on the part of NS with respect to interchange of traffic at its Gang Mills Yard." Comments at 1. The congestion at Gang Mills assertedly was creating economic hardship for Wellsboro & Corning Railroad Company ("W&CR"), which operates a shortline for Growth Resources that connects with the Southern Tier at Gang Mills. Neither Growth Resources nor W&CR was a party to the Control Proceeding.

NS confirms that after the Split Date Gang Mills Yard has experienced some of the same congestion difficulties experienced across the NS system, despite its efforts to work there with the W&CR and CP. Just as those difficulties are being resolved elsewhere, so are they at Gang Mills. Reports from local NS officials indicate that, due to operational changes on the Southern Tier, Gang Mills is now a fluid yard.[16] Notwithstanding that fact, however, NS will continue to work and consult with W&CR and CP with regard to operations at Gang Mills.

NS does not believe, however, that a formal STB process with quarterly reports is required. The Board already has set forth an informal consultative process with the

[16] In fact, NS's local trainmaster received a letter of appreciation from W&CR in recognition of service improvements and responsiveness to requests.

Board's Office of Compliance and Enforcement. Should operational difficulties arise in the future, the parties should first attempt to resolve matters via this avenue.

Indianapolis Power & Light Company / Indiana Southern Railroad

Indianapolis Power and Light ("IP&L") repeats its request, already denied three times by the Board, to revisit Decision No. 89 and increase the competitive options for access to its Stout and Perry K plants. Specifically, it seeks to add new, direct access by Indiana Southern Railroad ("ISRR") via trackage rights over lines operated by CSX and, in the case of Stout, the Indiana Rail Road ("INRD"). ISRR supports that request.

Currently, Stout enjoys (1) access by INRD, (2) access by CSX via INRD and, pursuant to the Board's orders, (3) direct access by NS via trackage rights over INRD. Additionally, although IP&L consistently ignores this option, Stout already enjoys the competitive pressure of potential direct access by ISRR (or NS) through preservation of a build-out option to the Indianapolis Belt. See Decision No. 89 at 117, n.180. The Board found in Decision No. 89 that the preserved build-out option was "the most likely primary cause of competitive pressure at Stout" before the Transaction. Id. at 117.

IP&L now, as it has before, asks the Board for yet another competitive option: direct service by Indiana Southern Railroad to both the Stout and Perry K plants via trackage rights over CSX and INRD, "at a fee of no more than 29 cents per car-mile" with "ironclad assurances" of "non-discriminatory dispatching" and other unspecified "arrangements to ensure that Indiana Southern can effectively compete." IP&L Comments at 14-15. Granting additional relief to IP&L is no more warranted now than it has been before, when the Board declined to do so in Decision No. 96, Decision No. 115

and Decision No. 125. Indeed, IP&L enjoys more competitive pricing constraints than it did prior to the Transaction.[17] We address several points in turn.

The NS/INRD trackage rights fee. IP&L complains first that the fee that applies to NS's trackage rights over INRD's line is 35 cents per car-mile rather than 29 cents. See IP&L Comments at 2-4. But a little arithmetic shows how baseless that complaint is. The NS trackage rights over INRD extend for approximately 3.3 miles. Including a return empty trip, for each car delivering coal to Stout, therefore, the difference between a 35-cent fee and a 29-cent fee amounts to 39.6 cents per car; reasonably assuming an average load of 100 tons per car, that comes to $0.00396 – that is, less than four-tenths of one cent – per ton. IP&L wastes the Board's time arguing that that difference prevents NS from competing for service to Stout.

NS's "confirmation" that it can't compete. As it has before, IP&L claims that NS has "confirmed" to IP&L that NS cannot compete for business to Stout from southern Indiana coal origins. See Weaver VS at 4 ¶ 6.

The fact is, however, that NS has vigorously pursued IP&L's business and has repeatedly asserted to IP&L that NS can compete for service to Stout from Indiana sources and elsewhere, if given the right service opportunity. NS has made a preliminary proposal for doing so, and has followed up with suggestions for steps to make that proposal more attractive – steps that require IP&L's cooperation in providing information about its service requirements, which IP&L has not provided.

---

[17] Prior to the Transaction, the ISRR-CR route was seldom used, but it did provide certain pricing constraints on the rates charged by INRD.

In his accompanying verified statement (Attachment A hereto),[18] William E. Clark, until recently NS's Manager Marketing, Utility Coal, and now its Manager, Domestic Metallurgic Coal Marketing, describes, among other things, the negotiations and discussions with IP&L regarding NS service to Stout.[19] Mr. Clark's statement sheds more light on the course of negotiations.[20] To summarize, Mr. Clark as early as 1998 advised IP&L that NS could not provide a specific quote until the terms of access to the plant were finalized and that IP&L itself could facilitate the process by providing NS with certain details regarding their service requirements, such as specific volumes, frequencies, etc. As Mr. Clark notes, that kind of information affects issues such as locomotive utilization, labor arrangements, and coordination with ISRR, and thus directly affects NS's ability to construct an appropriate quote for joint ISRR/NS service.

IP&L never has provided NS with the kind of information that NS has long requested that would permit NS to determine the best possible quote for service to Stout. In the absence of information from IP&L, NS in June 1999 submitted a quote for service

---

[18] Exhibits 1, 2 and 3 to Mr. Clark's verified statement have been designated Highly Confidential pursuant to the protective order in Finance Docket No. 33388. A copy of Mr. Clark's verified statement with those exhibits included may be found in NS-2A, the Highly Confidential Appendix to this Reply, at Tab 1.

[19] Contrary to the impression IP&L creates, see, e.g., Weaver VS at 11, Table 2 (heading), NS has not, in fact, quoted rates to IP&L specifically for service to the Perry K plant. NS's focus has been on service to the Stout plant. The "ISRR/NS/Truck" rates shown in that Table 2 apparently were constructed by IP&L.

[20] It should be noted that Mr. Clark's discussion of issues raised in Mr. Weaver's verified statement is hampered by the extensive redactions in that statement. Because much of the discussion redacted from Mr. Weaver's statement pertains to negotiations between IP&L and NS itself, NS's outside counsel, out of courtesy, reasonably sought agreement from IP&L for NS personnel to review certain portions of the redacted material pertaining to events in which NS participated and thus involving information that NS already would know, while keeping redacted other information that is properly highly confidential vis-à-vis NS. IP&L, however, flatly refused.

to Stout that necessarily comprised what Mr. Clark calls a "worst-case scenario"; that is, the case making the most unfavorable assumptions about critical matters such as volume and frequency. In response to IP&L's demand (again, without providing NS any information) for NS's "best and final offer," Mr. Clark replied that NS could not provide a "best and final offer" without more specific information from IP&L. Nevertheless, Mr. Clark went on to outline a possible rate reduction tied to tonnage guarantees, and suggested that depending on the nature of IP&L's requirements, other possible steps to reduce costs could be explored. He concluded by asking that IP&L give NS "the tools we need to give [IP&L] the lowest rates possible." Clark VS, Exhibit 3 at 2. IP&L, however, never responded to Mr. Clark's request.

Far from admitting it cannot effectively serve the Stout plant, NS repeatedly has sought from IP&L, and IP&L has failed to provide, specific information regarding its requirements at Stout necessary for NS properly to tailor a plan to fulfill those needs at the most competitive rate possible. For that reason, the rates quoted by NS for service to Stout in June 1999 are not necessarily the last word – as NS has told IP&L. Until NS obtains from IP&L the information it repeatedly has requested, NS cannot know how to structure a plan to fulfill that requirement most efficiently and competitively, and NS's June 1999 rate quote therefore does not now justify the relief IP&L seeks.

IP&L's market access. In its June 1, 2000 report, NS points out that its trackage rights to Stout give IP&L access to new single-line NS routes between the Stout plant and NS coal origins in the east, which should promote head-to-head competition between NS and CSX for service to Stout from eastern and western origins. See NS-1 at 38. IP&L acknowledges this potential for competition, see IP&L Comments at 14 n.11 and Weaver

VS at 4, ¶ 7, but discounts this new competitive benefit by carefully stating that it uses only Indiana coal "at this time" and does not "now" use eastern or western coal, and asserts that access to non-Indiana coal "is not the issue." Weaver VS at 4, ¶ 7. Immediately thereafter, however, IP&L concedes the importance of its new access to lower-sulfur non-Indiana coal, demonstrating that that access is indeed an important issue. Id.; see also Decision No. 125 (served May 20, 1999) at 1 n.2 (noting IP&L's concession at oral argument in the main proceeding in 1998 that it "expects" to shift away from Indiana coal sources "in the near future").[21]

Following the Transaction, IP&L has, via NS, joint-line access to ISRR coal sources (which, as just discussed, IP&L in any event has conceded will become less important "in the near future"); it has preserved its pre-Transaction build-out option (to either NS or ISRR); it retains, of course, access by INRD, its main coal supplier; it has access to CSX via INRD; and it has gained new direct access to the NS rail network, including single-line NS service from NS coal origins in the east and long-haul NS service from origins in the west. IP&L now seeks a condition that would give IP&L new single-line access by ISRR – more direct access to ISRR than IP&L enjoyed before the Transaction.[22]

---

[21] If anything, IP&L's recently-announced acquisition by AES Corporation, see "AES to Acquire IPALCO," (press release dated July 17, 2000), increases the chance that non-Indiana coal sources will become more attractive and underscores the importance of the access to eastern and western coal sources that NS brings to the table.

[22] Prior to the Transaction, ISRR-origin coal was delivered by ISRR to Conrail, which in turn delivered it to INRD for switching into Stout. See IP&L-3 (Control Proceeding) at 8.

Operational issues. IP&L and ISRR again raise the same operational matters that have been raised with the Board before, which they believe (to use ISRR's phrase) "hopelessly handicap" NS's ability to compete for southern Indiana coal traffic to Stout.

NS previously has acknowledged to the Board that its closest presence to Indianapolis is some 60 miles away in Lafayette, which presents a "challenge," see NS-77 (Control Proceeding) at 3. But NS at the same time reported that its then-contemplated INRD trackage rights "will enable NS effectively to serve the Stout plant either from NS or western coal origins or via interchange with ISRR at Crawford Yard, and from an operational point of view, either service is entirely feasible." Id. NS remains of the view that, given the right service opportunity, operational issues need not prevent NS from offering a viable competitive presence at Stout.

The bottom line is that, for the reasons already discussed, it is not yet possible to assess realistically the operational and economic feasibility of that service. As NS reported in its initial Oversight Report on June 1, 2000, there has been no ISRR/NS service to Stout since the Split Date. That is because, as already noted, IP&L has not been forthcoming with information regarding its service requirements, preferring instead to rehash to the Board the same arguments it has made throughout, in the hope that the Board will grant it further relief. Thus, NS has not had a reasonable opportunity to try to develop an operating plan with ISRR tailored to providing that service.

* * *

NS has demonstrated its desire to serve Stout, and believes, given cooperation by IP&L itself and ISRR and the right service commitments, there is the potential to provide an effective competitive presence at Stout from Indiana coal sources as well as elsewhere.

To date, however, IP&L apparently has been more interested in manufacturing a paper rec d for the Board "proving" that NS cannot compete than in working with NS to see whether, in fact, it can. The answer is not to give IP&L still more access now, thereby putting it in a far better position than it enjoyed before the Transaction. What is needed, rather, is for IP&L and ISRR to work cooperatively with NS to put together the best possible rate and service proposal appropriately tailored to IP&L's needs. NS remains hopeful that they will do so. The Board, however, should (yet again) reject IP&L's requests for new conditions.

ISG Resources, Inc.

ISG describes service problems following the Split Date and its rerouting of its traffic to a multi-carrier movement. The reroute, in which NS does not participate, nevertheless requires NS's cooperation to allow the desired participation by one of the carriers in the new route, Reading Blue Mountain & Northern. ISG's only request is that the Board "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."

NS's cooperation in the reroute of ISG traffic demonstrates our good faith in trying to meet the needs of our customers. But alternatives such as the reroute that are provided during the difficulties experienced just after the Split Date need not be made permanent. Every rail transaction changes service patterns. The Board (and its predecessor) has recognized that fact and allowed service offerings to be determined through the normal give-and-take among commercial entities. ISG has presented no

competitive issue to be resolved in this oversight proceeding. Instead, the service issues presented by ISG, now that NS has resolved many of its implementation problems, should be addressed in the normal private sector process.

Maryland Department of Transportation

The State of Maryland comments concern CSX almost exclusively, but they do discuss (in Attachment 3 to its comments) several NS infrastructure improvements and new service matters, some of which have not yet been implemented. NS recognizes the importance of these to the State and the Port of Baltimore and hopes to implement many of these over the coming years. Service disruptions and the absence of anticipated market developments, however, undermined the immediate utility of certain infrastructure and service improvements, while demonstrating the need for others.[23] NS intensified discussions with the State concerning these matters as early as August 1998. NS has kept, and will continue to keep, the State apprised of developments in this regard, and will work with the State and the Port of Baltimore to develop new markets and to develop new initiatives that make sense in the post-Split Date environment.[24]

---

[23] For example, NS has been able to certify Delmarva Peninsula Lines for 286,000 pound cars. This is a significant development for commercial interests served by the line.

[24] New initiatives NS has developed with the State include the concerted effort to bring a major new international business opportunity to the Port of Baltimore and to work with public interests to improve rail service along the I-95 corridor. The former could not be brought to fruition, but the latter remains very much a possibility.

Metro-North Commuter Railroad Company

Metro-North raises two issues with respect to NS: the alleged need for a formal allocation and assignment of Conrail's rights and obligations under a certain 1983 trackage rights agreement, and revisiting the issue of conveyance of a portion of the Southern Tier line to Metro-North.

Assignment of Trackage Rights. Under a trackage rights agreement effective January 1, 1983 among Conrail, Metro-North, the Metropolitan Transportation Authority, and Connecticut Department of Transportation ("the 1983 Agreement"), Metro North obtained use of a portion of Conrail's Southern Tier line between Port Jervis, NJ and Suffern, NY. Conrail, on the other hand, obtained use of (1) Metro-North's "Piermont Branch" and (2) portions of Metro-North's Harlem, Hudson and New Haven lines. The 1983 Agreement includes a provision prohibiting assignment of the Agreement without the written consent of the other parties.

Pursuant to the Transaction, the Southern Tier line is owned by Pennsylvania Lines LLC and is operated by NS; NS, therefore, effectively succeeds Conrail as Metro-North's host railroad on that line. Additionally, NS and CSX each have succeeded Conrail in providing freight service over separate portions of the Metro-North lines covered by the 1983 Agreement: NS provides service along Metro-North's Piermont line, and CSX does so over the portions of the Harlem, Hudson and New Haven lines.

The parties have been negotiating among themselves to resolve a dispute regarding the effect of the Transaction on the Metro-North lines covered by the 1983

Agreement.[25] Metro-North asserts that because the 1983 Agreement required the parties' consent to any assignment, the parties must negotiate and execute a formal assignment agreement in order for NS (and/or PRR) and CSX (and/or NYC) to succeed to their respective portions of Conrail's rights and obligations under the 1983 Agreement. Moreover, even though the rights and obligations that used to belong to Conrail are now effectively split between two vigorous competitors, NS and CSX, Metro-North insists that under any such formal assignment agreement, the rights and obligations of CSX and NS must remain "intertwined." Specifically, Metro-North insists that, in order for Metro-North to "consent" to an assignment, the proposed assignment agreement must provide that Conrail's right to terminate the 1983 Agreement pursuant to Section 8.01 of that Agreement may not, post-assignment, be exercised independently by NS or CSX, but only jointly by NS and CSX "acting as a single party." See Metro-North Comments, Exhibit A at 5 (¶ 3(d)). In other words, Metro-North will only "consent" to an assignment if the assignment agreement requires NS and CSX – vigorous post-Transaction competitors having succeeded to separate interests under the 1983 Agreement – to exercise their right to terminate the 1983 Agreement together or not at all.

NS submits that Metro-North's position, as stated in its Comments and crystallized in its proposed "assignment agreement," is incorrect as a matter of law and completely unworkable in practice. Other passenger agencies have recognized the

---

[25] Because NS had hoped the parties could resolve this dispute amongst themselves, we did not specifically raise it in our June 1, 2000 oversight report. But because Metro-North has now brought the matter to the Board, we, of course, must respond.

apportionments between NS and CSX with regard to Conrail agreements and there is no reason for Metro-North to fail to do so as well.

First, as to the need for a formal assignment at all: There plainly is none. Under 49 U.S.C. § 11321(a), a rail carrier, corporation or person participating in an STB-approved transaction "is exempt from the antitrust laws and *from all other law*, including State and municipal law, as necessary to let that rail carrier, corporation or person carry out the transaction, hold, maintain and operate property, and exercise control or franchises acquired through the transaction." (emphasis supplied). Private contracts are among the "other law" encompassed within the exemption. See Norfolk & Western Railway Co. v. American Train Dispatchers' Ass'n, 499 U.S. 117 (1991). The Board expressly exercised this exemption power in Decision No. 89 in relation to the restrictions on unilateral assignment of Conrail trackage rights agreements. In Ordering Paragraph No. 9, the Board authorized NS and CSX to

> conduct, pursuant to 49 U.S.C. 11321, operations over the routes of Conrail as provided for in the application, *including those presently operated by CRC under trackage rights* or leases (including but not limited to those listed in Appendix L to the application), as fully and to the same extent as CRC itself could, *notwithstanding any provision in any law, agreement, order, document, or otherwise, purporting to limit or prohibit CRC's unilateral assignment of its operating rights to another person or persons*, or purporting to affect those rights in the case of a change in control.

Decision No. 89 at 175 (Ordering Paragraph No. 9) (emphasis supplied). Indeed, the referenced Appendix L to the application lists several line segments over which Conrail was granted trackage rights by Metro-North (identified as "MNCR"), including rights at issue under the 1983 Agreement. See CSX/NS-18 (Control Proceeding) at 221-222.

As well as there being no legal impediment to the automatic assignment to NS and CSX of their respective interests in the 1983 Agreement, there are no practical

impediments either. Metro-North asserts it is "impossible to discern" the rights of the parties by reading the existing 1983 Agreement prior to the Split Date. Metro-North Comments at 4. That is simply not so. The automatic assignment of Conrail's rights and obligations to NS and CSX effectively split the 1983 Agreement into separate parts pertaining to each of those two competing carriers, and, reading the 1983 Agreement in conjunction with the Transaction Agreement and Board's order, as all contracts affected by the Transaction must be, it is perfectly clear which rights and obligations belong to which party. Further, there is clear consideration for each part of the 1983 Agreement as divided between NS and CSX because separate charges for the use of the respective tracks now operated over by CSX and NS are set forth. Additionally, there is linkage in the 1983 Agreement between NS's (formerly Conrail's) use of the Piermont Branch and Metro-North's use of NS's (formerly Conrail's) Southern Tier.

Despite the clear operation of Decision No. 89 and the automatic assignment of separate rights to CSX and NS under the 1983 Agreement, Metro-North insists that it must retain a linkage between NS and CSX as if they were a single carrier, instead of the vigorous competitors with different interests that they in fact are. Specifically, Metro-North insists that Conrail's right to terminate the 1983 Agreement pursuant to Section 8.01 of that Agreement may not, post-assignment, be exercised independently by NS or CSX, but only jointly by NS and CSX "acting as a single party." Metro-North further states that it must retain the ability to cancel the use by CSX of the Harlem, Hudson and New Haven lines if NS cancels Metro-North's use of the Southern Tier. Metro-North Comments at 6-7.

The mere statement of Metro-North's position shows it is untenable. This condition on Metro-North's "consent" to the assignment is demanded even though the contract deals with rail lines that are no longer inter-related and have been allocated for operation by two separate carriers who are competitors. The Board clearly cannot permit Metro-North to claim to withhold its "consent" to the assignment of the 1983 Agreement as an excuse to demand concessions that would treat NS and CSX as if they were one and would link provisions of the 1983 Agreement that can no longer be related. It is just this type of situation that the Board's override order was meant to prevent.

NS has discussed its position and corresponded with Metro-North and has proposed an alternative. Instead of signing a legally unnecessary and unjustified assignment document, NS proposed that the parties execute a document that NS had styled an "agreement," which would simply acknowledge the effect of the Board's order, thus satisfying Metro-North's desire for formality without setting an unnecessary and erroneous precedent permitting a party to trade its "consent" to an assignment in exchange for winning concessions from the applicants that they could not get from the Board.[26]

Metro-North's refusal to pay accrued trackage rights fees. Finally, the dispute regarding assignment of the 1983 Agreement has had another serious ramification that

---

[26] NS's June 20, 2000 letter to Metro-North explaining its position and enclosing NS's proposed "agreement," and Metro-North's June 28, 2000 reply, have been designated Highly Confidential under the protective order in Finance Docket No. 33388, and may be found in NS-2A, the Highly Confidential Appendix to this reply, at Tabs 2 and 3, respectively.

Metro-North fails to mention but now must be brought to the Board's attention.[27] Metro-North continues to use the Southern Tier Line between Port Jervis, NJ and Suffern, NY pursuant to the 1983 Agreement, but has taken the curious and inconsistent position that it cannot pay NS for the use of the line because, absent an assignment, there is "no contractual vehicle" for payment. (One is left to wonder, then, what "contractual vehicle" Metro-North thinks there is for its use of the line for free.) Metro-North has not paid NS for use of the line since June 1, 1999. Indeed, as of April, 2000, Metro-North had accrued outstanding and unpaid trackage rights invoices and maintenance charges in the amount of $448,593.95. Further charges continue to accrue. This is a serious and growing problem for NS. The 1983 Agreement remains in effect; therefore, Metro-North has its "contractual vehicle" for payment of past due amounts to NS.

Request for Conveyance of the Southern Tier Line. Metro-North also urges the Board to "reevaluate" the need for Metro-North to acquire the Suffern-Port Jervis segment of the Southern Tier. Metro-North's desire to acquire the line may, indeed, be part of the motivation for its untenable insistence that it must "consent" to assignment of the 1983 Agreement and its wrongful withholding of trackage rights fees for its use of that very line as a means to pressure PRR to sell the line.

There is no justification for the Board to revisit Metro-North's request for conveyance of the Southern Tier Line to it. The Board has declined Metro-North's request, and Metro-North presents no new evidence or argument. The issue is settled.

---

[27] Again, NS refrained from bringing this matter to the Board's attention in its June 1, 2000 oversight report in the hope that the matter could be resolved between the parties. Metro-North's filing, however, demonstrates that it cannot.

Further, it is indeed too soon to be able to tell what NS's needs for use of the property will be. The line represents a significant part of NS's capacity in the New York-New Jersey area, and it should not be sold without careful study and some experience. However, NS is certainly willing to discuss Metro-North's desire to invest in improvements in the line in return for increased passenger capacity over a longer period of time.

In sum, NS believes that Decision No. 89 made very clear the automatic nature of the assignment of former Conrail trackage rights and that, therefore, Metro-North already has a clear "contractual vehicle" for paying NS the substantial and growing sum of trackage rights fees it has been withholding. NS submits that, rather than granting any additional relief to Metro-North, the Board instead should simply make clear to Metro-North what it already plainly held in Decision No. 89.

National Lime and Stone Company / Wyandot Dolomite

Both Wyandot Dolomite and National Lime & Stone ("NL&S") seek relief that the STB has already considered and rejected. Wyandot Dolomite asks that the Board restore it to the situation it was in prior to the Transaction by granting the relief it originally requested. See Verified Statement of Timothy A. Wolf at 5. Rather than grant the extensive conditions requested, the Board fashioned what it considered to be appropriate relief by requiring NS and CSX to provide "single-line service for all existing movements of aggregates ... provided they are tendered in unit-trains or blocks of 40 or more cars." Decision No. 89 at 111. With respect to new movements, the Board required NS and CSX to "work out run-through operations (for shipments of 60 cars or more) and

pre-blocking arrangements (for shipments of 10 to 60 cars) for shipments moving at least 75 miles." Id. The Board included these requirements in Ordering Paragraph No. 43 of Decision No. 89. Wyandot Dolomite has not presented any evidence that requires the Board to alter the relief it already granted.

NL&S, on the other hand, asks that the Board permanently[28] impose the condition stated in Ordering Paragraph No. 43, rather than limiting the duration of the condition to five years. Again, the Board has already considered and rejected this request. In Decision No. 96, the Board limited the application of this condition to a period of five years from Split Date, stating that this time was sufficient for NL&S (and Wyandot Dolomite) to make adjustments to the altered business environment brought about by the Transaction. See Decision No. 96 (served October 19, 1998) at 8-9.

As stated in our initial report, NS has not received any request to develop new aggregate moves from the CSX-served quarries at Carey, Woodville, or Spore, OH. Unfortunately, without such requests, NS is helpless to aid either NL&S or Wyandot Dolomite in developing new business opportunities for aggregate moves in the changed business environment that the Board already acknowledged would occur.

---

[28] Although NL&S states that it is not seeking "'permanent' relief," it argues that Condition No. 43 should "remain in force until CSX and NS obtain permission from the Board to abandon service to [NL&S], just as Conrail would have done." NL&S Comments at 3. This would effect a distinction without a difference.

The State of New York

Among other things,[29] the State of New York presents the concerns of the City of Dunkirk. The City suggests that NS has not adequately fulfilled its obligations under Environmental Condition 24 of Decision No. 89. NS strongly disagrees with this assessment. Environmental Condition 24 requires that two mitigation measures be undertaken by NS: (1) NS is required to implement its Trespasser Abatement Program along the NS right-of-way in Dunkirk; and (2) NS is required to make available to school and community organizations within Dunkirk Operation Lifesaver presentations. NS has fully complied with both requirements of Environmental Condition 24. Nevertheless, the City of Dunkirk alleges in its comments that NS has not resolved a problem with the operation of the electronic safety control devices installed at at-grade crossings in Dunkirk, asserting that this mechanical problem amounts to a deficiency in NS's implementation of the Trespasser Abatement Program. Dunkirk does not explain how a mechanical problem with the operation of crossing gates relates to the Trespasser Abatement Program. Moreover, the mechanical problem causing electronic gate arms to come down upon receipt of a "false" train approach message is not related to the Transaction. The City simply attempts to obtain Board redress for an issue that is beyond the scope of this oversight proceeding. NS has not ignored the problem with the electronic gate signal in Dunkirk. On the contrary, NS repaired the malfunctioning gate signal. Indeed, the NS C&S supervisor for the Pittsburgh Division brought a task force

---

[29] With the exception of matters pertaining to the Southern Tier Extension, other issues presented by the State of New York will be addressed by CSX. NS discusses the Southern Tier Extension in its comments addressed to the Southern Tier West Regional Planning and Development Board.

of about 16 to Dunkirk for several days to repair that signal mechanism and to inspect and make any necessary adjustments to other NS gates and lights in Dunkirk. In addition, NS has worked directly with the Dunkirk Chief of Police and the Fire Chief to address trespassing issues. Operation Lifesaver presentations by NS have been made to several schools and NS has provided the Mayor of Dunkirk with a rail crossing safety videotape for broadcast via local public television.

Comments pertaining to Dunkirk were also submitted by the Southern Tier West Regional Planning and Development Board (STW), albeit concerning an issue that pre-dates the Transaction. STW objects to a proposal by NS to close certain grade crossings along a span with 9 at-grade crossings within approximately one mile, asserting that closure would impact pedestrian safety. All at-grade crossings within the city limits of Dunkirk are signalized, and many have pedestrian walkways, all of which are also signalized. NS's proposal would leave the signalized pedestrian walkways intact at the closed grade crossings. Furthermore, the Dunkirk Chief of Police and Fire Chief have conferred with NS concerning the closure proposal and agree that emergency vehicle service would not be disrupted. NS has agreed to a request by the City to install a water line along one side of the road by the closed grade crossings to ensure access by fire-fighting equipment to the City water supply.

NS is concerned with the safety of the citizens of Dunkirk and with the safety of its employees; it is not NS's policy or practice to ignore problems with crossing safety devices when they occur, but rather to take the appropriate steps to correct the irregularity. This is precisely what transpired in Dunkirk. As explained above, NS is not

proposing grade crossing closures in Dunkirk that would impede pedestrian or vehicular traffic or create safety concerns. Board intervention is not warranted.

New York City Economic Development Corporation ("NYCEDC")

The Board required NS and CSX to monitor the origins, destinations and routings for truck traffic at their intermodal terminals in northern New Jersey and Massachusetts and submit quarterly reports so that the Board could discern the effects of the Transaction on truck traffic over the George Washington Bridge. NS and CSX worked closely with the Board to establish a methodology for collecting and reporting the data. To date, NS has complied fully with the Board's approved methodology and expects to file its sixth report shortly. Despite the fact that these reports are available from the Board, NS will provide the NYCEDC with copies of all past and future reports. NYCEDC, however, provides no new evidence or argument that would justify any change in the frequency or methodology of the NS and CSX reports.

North Shore Railroad, *et al.* / SEDA-COG Joint Rail Authority

Several rail lines under common management with the North Shore[30] (collectively referred to herein as "North Shore") provide the Board with the status of implementation of the settlement agreement North Shore reached with NS. North Shore requests no action of the Board and therefore NS will restrict its comments to only addressing the

---

[30] The referenced comments were filed on behalf of North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County (continued...)

status of negotiations.[31] NS is indeed in negotiations with North Shore, with which NS has a valued relationship. The June 10, 1997 settlement agreement[32] provides that NS will "provid[e] access to CP that does not harm Norfolk Southern." NS believes its discussions both before and after the letter have been in that context. It is NS's view that the final agreement(s) rising out of the settlement agreement should fully incorporate this restriction. NS expects to work out appropriate arrangements with Mr. Robey.

Ohio Rail Development Commission, *et al.*

The Ohio Rail Development Commission (ORDC), the Attorney General for the State of Ohio, the Public Utilities Commission of Ohio (PUCO) and the Ohio Emergency Management Agency submitted a joint set of comments in this oversight proceeding, including a statement by James E. Seney, Executive Director of ORDC, generally discussing the affairs of other parties appearing in this general oversight proceeding.[33] Those matters are dealt with elsewhere under the subtitle of the respective parties, to the

---

(...continued)
Industrial Railroad Company. Richard D. Robey is the president of each of these Class III carriers.

[31] SEDA-COG Joint Rail Authority, owner of the North Shore Railroad, also submitted comments in this General Oversight Proceeding, supporting negotiations with Mr. Robey.

[32] SEDA-COG refers to two agreements – the June 10, 1997 settlement and a June 24, 1999 agreement. The June 10, 1997 agreement is discussed in both SEDA-COG's and North Shore's submissions. The June 24, 1999 agreement, not described anywhere in the SEDA-COG or North Shore submission, was an interim agreement entered into at the depth of the NS service difficulties under which North Shore moved traffic to relieve severe congestion on the NS line to Buffalo. This agreement no longer is in effect and is not relevant to the issues at hand.

[33] For purposes of this reply, the parties shall be referred to collectively as "Ohio" or "the State."

extent they relate to NS.[34] Addressed here, however, are Ohio's comments as they relate to the so-called "Acquisition Premium," the Port of Toledo, and various safety/environmental matters.

Acquisition Premium. Ohio asserts that NS and CSX can, but simply choose not to, squarely address the issue as to whether an "Acquisition Premium" is being paid by Ohio rail users. The State instead suggests a study examining the trend in rates for sole-served shippers since the Split Date compared to that for other shippers.

The Board ordered NS and CSX to address the effect of the Transaction on jurisdictional thresholds and revenue adequacy. NS and CSX did so in their initial filings in this general oversight proceeding. Ohio finds the NS and CSX submissions on exactly those two issues "confusing and obtuse," but fails to offer any rebuttal or even address jurisdictional thresholds and revenue adequacy at all.

Instead, Ohio returns to an old theme raised by others in the Control Proceeding, and requests a burdensome study of no value. Besides demonstrating a fundamental misunderstanding of certain matters,[35] Ohio is attempting to relitigate a matter it never

---

[34] To the extent those parties focus their remarks on CSX, matters will be dealt with in CSX's submission, and not separately herein.

[35] Ohio's apparent association of demurrage charges with the Acquisition Premium issue demonstrates this basic lack of understanding. Demurrage charges generally are not imposed as a revenue measure, but as a car supply tool to encourage quick unloading and release of cars. Moreover, the issue the Board has raised for review in this oversight proceeding is what effect, if any, the so-called "acquisition premium" (which the Board defined as "the difference between the book value [i.e., the value of Conrail's properties stated on Conrail's books before the Transaction] and the purchase price of the Conrail's properties," Decision No. 89 at 62, n. 93) has on the Board's jurisdictional threshold and its revenue adequacy determinations. The study proposed by Ohio would have nothing to do with that issue. Finally, even as to the purpose Ohio advances for its proposed study (albeit one not within the scope of this proceeding – determining whether an "acquisition premium" is being paid by Ohio shippers – Ohio fails to understand that the study would (continued...)

raised before but which has been litigated and relitigated by several others in the underlying proceeding and currently in the U.S. Court of Appeals for the Second Circuit. Responses to the issues raised by Ohio simply do not need yet another reiteration here.

Port of Toledo. Ohio simply misstates the facts with regard to the Port of Toledo when it claims that "the Port of Toledo no longer has competitive rail service options as a result of the failure of NS to exercise access rights it acquired in the Conrail proceeding." ORDC-1, Seney VS at 7. As was clearly set forth in the Applicants' rebuttal in the Control Proceeding, "NS will obtain all trackage rights and operating rights currently held by Conrail that provide access to the Toledo Docks facilities." CSX/NS-176 at 70. The commercial circumstances covering service to the Toledo Docks have not changed from those that existed prior to the Split Date.[36] NS will use the Toledo Docks facilities when it is reasonable and efficient to do so. NS notes that Conrail's use of the facilities was sporadic at best.

(...continued)
provide no insight into that question. The determination of any given rate is very complex, involving a range of commercial, operational, competitive, and other considerations that vary from customer to customer and from movement to movement. Identifying a trend is one thing, but presuming to discern the causes of that trend is another thing altogether. Ohio's suggested study would do nothing to isolate all the various influences on rates or shed light on whether a purported acquisition premium is causing whatever trend the study might show.

[36] Any concerns that could have been raised with regard to the commercial terms for the Conrail (pre-Split Date) and NS (post-Split Date) use of these facilities could and should have been raised in the Control Proceeding.

Safety/Environmental. Ohio's comments address several environmental and safety issues raised by individual communities in Ohio. The Cities of Cleveland and Sandusky submitted separate comments and NS replies to those comments elsewhere in this document.

Ohio applauds NS and CSX for their excellent safety records, noting in particular NS's top ranking among Class I railroads in the annual Harriman S .ety Awards and both railroads' dedication to safety. Ohio also acknowledges that some communities in the State are pleased with the environmental and safety mitigation they have received as a result of the Transaction, especially with respect to hazardous materials response training and coordination.

Ohio commends NS and CSX for their partnership with the State in its grade crossing corridor programs and new grade separation program. NS and CSX have spent almost $6 million for nearly 200 grade crossing flasher and gate projects in accordance with their respective Rail Corridor Safety Agreements negotiated with ORDC and PUCO, addressing crossings affected by the Transaction. In addition, NS and CSX have now each committed to contribute very substantial funds toward Governor Taft's Rail Grade Separation Project for the construction of approximately 40 new grade separations at locations throughout the State to be selected by the Governor. NS is pleased to be a significant participant in this State-wide grade separation program.[37]

---

[37] To the extent that the State's comments can be understood to request that the Board consider imposing yet additional grade separation obligations upon the Applicants, NS strenuously objects. Under the Governor's program, the State will assess which grade crossings could best benefit from grade separation construction. Not all candidates submitted by Ohio communities will likely be funded, based on the criteria to be applied by the State. By the same measure, not all candidates for grade crossing upgrades urged (continued...)

Letters provided by individual Ohio communities are included in the Ohio comments. The City of Conneaut, for instance, notes that NS has coordinated with the City in the development of a Real Time Train Monitor System and expects the system to be complete by June 1, 2001. Upon installation of the system, NS will have fulfilled the requirement set out in Environmental Condition 28 of Decision No. 89. The City also indicates its interest in obtaining a grade separation at Parrish Road and in obtaining Quiet Zone designations. NS understands that Conneaut will submit an application to Governor Taft's grade separation program seeking consideration of the Parrish Road location. The FRA has not yet issued final regulations establishing a program for communities to apply for Quiet Zone designations. NS will comply with any applicable provisions when such FRA regulations become effective.

The comment letter provided by the City of North Ridgeville requires a reply by NS to clarify the record. Under Environmental Condition 35, NS was required to consult with the City and submit a report to the Board on its progress in resolving local concerns. As NS has previously certified to the Board, that condition has been satisfied.[38] Mayor Hill nevertheless asserts that NS was reticent about meeting with the City and has made

---

(...continued)
by local communities and individual citizens in the Conrail environmental proceeding were found by the Board to warrant the remedies sought. Moreover, NS and CSX each entered into Negotiated Agreements with ORDC, PUCO and several Ohio communities which defined the limits of their obligations in connection with the Transaction to provide funding for grade crossing upgrades. The State was able through those Negotiated Agreements to select the grade crossing improvement projects it determined to be the most important. NS and CSX have agreed to participate in the Governor's new grade separation program at very substantial levels, and no more should be assessed through the oversight proceeding vehicle.

[38] Letter from Bruno Maestri, NS Assistant Vice President of Public Affairs, to STB Secretary Vernon A. Williams, dated February 22, 1999.

no offers to help alleviate the City's concerns about grade crossings in the community. With all due respect, NS submits that this is not an accurate report on the status of discussions among NS, the City of North Ridgeville and other public officials. NS has met on several occasions with Mayor Hill, Congressman Sherrod Brown and other officials to discuss the City's desire to alleviate its grade crossing concerns with the construction of a grade separation at SR 83 in North Ridgeville. As a result of those productive discussions, NS has committed to contribute up to $600,000 towards a grade separation project at SR 83. Attachment B is a copy of an October 29, 1998 letter from Bruno Maestri, then NS Assistant Vice President for Public Affairs, addressed to Congressman Brown. The letter announces this cost-sharing offer by NS, contingent upon full funding being obtained by state and local officials and elimination of the at-grade crossing at SR 83. NS's offer of contribution was also related to the Board in NS's February 22, 1999 certification of compliance with Environmental Condition 35.

NS has made the $600,000 funding offer to North Ridgeville despite the fact that post-Split Date rail traffic over the North Ridgeville line was projected to decrease by approximately 10%. In addition, NS provided a voluntary grant of $16,000 towards a demonstration project sought by Mayor Hill to install highway guardrails along the approaches to two grade crossings in North Ridgeville. The remaining $24,000 estimated cost of the demonstration project was funded by ORDC, such that no cost of the project was borne by the City. A copy of the October 25, 1999 letter from Michael Scime, NS Public Affairs Manager, addressed to Mayor Hill, providing NS's offer of participation is attached as Attachment C. The guardrails have since been installed. The suggestion in Mayor Hill's letter that NS has not cooperated in seeking to resolve the City's concerns is

thus quite surprising to NS, given its demonstrated willingness to share the cost of a grade separation project and a guardrail demonstration project sought by the City. It is now the responsibility of the City of North Ridgeville to seek the additional funds required for the SR 83 grade separation project from Governor Taft's grade separation program or other public funding sources. NS intends to continue to cooperate with North Ridgeville on safety and environmental issues of concern to the community. Board action is not required.

In a letter comment from Ashtabula Fire Chief Rick Balog, the Ashtabula Fire Department acknowledges NS's cooperation in developing a Real Time Monitoring System, as required by Environmental Condition 25 of Decision No. 89. The Fire Department also acknowledges that NS has provided hazardous materials response software and training to Department personnel. The Fire Chief includes a request to the ORDC that a grade separation be provided at West Avenue. A request for funding for a bridge is to be made by Ashtabula to Governor Taft's Rail Grade Separation Project. No action by the Board is required.

The City of Euclid noted a NS train derailment incident near East 222nd Street and asserted that "regular inspection and excellent maintenance" should be provided. City of Euclid Comments at 2. NS assures the City and the Board that it is the policy and practice of NS to apply inspection and maintenance standards at least as stringent as those required by the FRA. Euclid also requests grade separations at Dille Road and at Chardon Road. NS's contribution towards funding of the Dille Road grade separation is incorporated in the Negotiated Agreement between NS and the City of Cleveland. A request by the City to obtain a grade separation at Chardon Road should be submitted to

the ORDC and to Governor Taft's new program. No further action by the Board is needed.

The City of Fostoria acknowledges that NS and CSX are complying with Environmental Condition 31 (D) of STB Decision No. 89 by holding trains, to the extent practicable, in areas that minimize blocking of major grade crossings in Fostoria. Consistent with this goal, NS endeavors to stop its trains when necessary only when they are outside the city limits of Fostoria in order not to block emergency access and city intersections. Fostoria nevertheless complains that compliance with this condition shifts the blockages to areas outside of the city limits. NS is aware of this fact and will consider appropriate measures that would alleviate this matter. However, suitable options are limited for areas outside of Fostoria if Fostoria wishes to maintain clear crossings within the City, and once a train has been stopped outside city limits to avoid blocking inside the City, start-up speeds through the City are necessarily slow.

The City complains that the average number of trains per day operating over line segment N-467 is 30 instead of the projected 28. Besides the fact that NS must be able to respond to market and operational requirements in routing its traffic, NS submits that this is a very small difference. This simply does not warrant imposition of additional mitigation by the Board. NS understands that the City of Fostoria intends to apply to Governor Taft's Rail Grade Separation Program for funds for the construction of bridges in areas most affected by blocking. Action by the Board is not required.

The City of Mentor seeks, among other items, a grade separation at Heisley Road. As indicated in the City's comment letter, this project is in the State pipeline. Indeed, it pre-dates the Transaction. NS has committed $800,000 in funds towards this shared

federal/state grade separation project, and NS will continue to cooperate with the design needs for this project. Mentor also seeks agreements with NS and CSX for new at-grade crossings at the Plaza Boulevard Extension, a project not related to the Transaction, and requests "contacts" for planning grade separations on Hopkins Road. Any determination of the need for a new at-grade crossing or a grade separation must be made by the Ohio county court system, in the case of at-grade crossings, and by the State, in the case of grade separations, not by the railroads. Therefore, NS recommends that the City of Mentor apply to the ORDC and other appropriate Ohio authorities and to Governor Taft's grade separation program for the requested grade crossings. Further action by the Board is not necessary.

Mentor also requests that the railroads interconnect with the City's traffic signal system. NS has not received a formal request from Mentor, but notes that it cooperates with localities when similar requests are made.

NS is required under Environmental Condition 49(B) of Decision No. 89 to provide a real-time train location monitoring system in Oak Harbor to monitor approaching trains on four NS rail line segments. Oak Harbor has indicated its preference instead for funding assistance by NS towards a project to improve the underpass at Park Street. The ORDC, Oak Harbor and NS are presently engaged in discussions concerning the funding of this project. Should an agreement be reached, NS would have no objection to substituting for the real-time train location monitoring system cost a contribution by NS to the underpass project, provided that the Board approves the Negotiated Agreement. NS hopes that negotiations with ORDC and the Village will result in an acceptable solution. A meeting among NS, the Village and ORDC will be

scheduled later this month. Should negotiations fail, however, NS is prepared to go forward with the installation of the real-time monitoring system as originally planned to fulfill its obligation under Environmental Condition 49(B).

The comment letter of Olmsted Falls warrants a reply by NS. The Negotiated Agreement among NS, CSX and Olmsted Falls, and incorporated by the Board under Environmental Condition 51, contains the parties' obligations with respect to grade crossings, including Fitch Road. As noted by Congressman Kucinich in his comments, a dispute between Olmsted Falls and Olmsted Township concerning the location of this grade separation has arisen and has been referred to the Cuyahoga County Engineer and the County Board of Commissioners for resolution. That issue must be resolved at the local and county levels; action by neither the railroads nor the Board is needed.

Furthermore, although not acknowledged in the comment letter, NS has significantly reduced grade crossing blocking in the last six months, and continues work to reduce further blocking occurrences in Olmsted Falls. In May of this year, NS invested $80,000 to provide crossing predictors in Olmsted Township which now enable NS trains to pull up to an at-grade crossing without blocking the intersection and causing the crossing lights and gates to be activated. The crossing predictors calculate the speed of the approaching train and thereby determine whether it will continue across the at-grade crossing, requiring activation of the safety gates and lights. This mechanism enhances motorist safety while permitting the maximum parking area for NS without causing blocking inside the city limits of Olmsted Falls. In his comments in the Conrail oversight proceeding, Congressman Dennis Kucinich praised NS for providing this solution to the blocking issue in Olmsted Falls/Olmsted Township. Another significant

improvement to alleviate potential blocked crossings near Rockport Yard in the Olmsted Falls area will occur when the NS Cloggsville Connection project is completed. NS anticipates beginning operations over the Cloggsville Connection later this year.

Pennsylvania House of Representatives Transportation Committee Chairmen

The comments of the Transportation Committee of the Pennsylvania House of Representatives mainly express concern about NS's progress on several capital projects and question NS's commitment to growing rail business in the Commonwealth. Although NS's post-Split Date operations in the former Conrail territory and emerging traffic flows have required NS to reprioritize projects to which it can allocate its resources, NS remains fully committed to improve its service and grow its business in Pennsylvania.

NS's actions clearly show its commitment. NS has made significant infrastructure improvements to its transportation network in Pennsylvania. See, e.g., NS-1 at 6, 8-10, 70-72. Particularly noteworthy are the two new intermodal facilities at Rutherford and Bethlehem. These will help NS grow its intermodal business and will provide jobs and business opportunities for many constituencies in Pennsylvania. NS has worked steadily with shortline partners to increase both business and service in an effort to grow business through this important feeder network. While it is true that NS has developed certain projects in the Commonwealth ahead of those cited by the Committee, the efficient allocation of NS's resources across its system only serves to benefit NS, the Commonwealth, and rail customers located there.

The Port Authority of New York and New Jersey

The comments of the Port Authority of New York and New Jersey ("Port Authority") mainly express concern that the rail infrastructure in the North Jersey Shared Assets Area ("NJSAA") will be inadequate to handle the expected growth of traffic into and out of the Port and that NS and CSX will be unable to fund the necessary capital investments. The Port Authority acknowledges that NS and CSX have worked closely with the Port Authority to solve operational problems and also to identify and prioritize capital investment needs. Comments at 5-6. This review is a continuing effort. It also asserts that the insufficiency of infrastructure resulted from pre-Transaction decisions by Conrail over the years to rationalize its rail properties . Id. at 2, 6 and Appendix B. Nevertheless, the Port Authority "suggests that the Board initiate a study to determine the capacity of the NJSAA to handle existing, and projected traffic volumes within that area," and, in that connection, require NS and CSX to provide information concerning NJSAA capacity, projected traffic volumes and capital investment plans and sources of funds. Id. at 7, 9-10.

NS agrees that rail service to the Port and the NJSAA is very important. That is why NS has worked so closely with the Port Authority on operational issues and on identifying and prioritizing capital projects. But the Port Authority's comments themselves show why it would be both unnecessary and unwarranted for the Board to initiate a special study of the rail infrastructure capacity and projected needs of one particular port and service area among the many ports and areas served by NS and CSX. The comments and the report attached to them as Appendix B show that NS, CSX, Conrail and the Port Authority have been studying these matters already and are well

aware of the capacity status and infrastructure needs in the NJSAA. These are not issues that have suffered from a lack of attention and study. Furthermore, even if this were not the case, the Port Authority offers no reason why the Board should single out one port and one service area for special requirements or require Applicants to do so, particularly when, by the Port Authority's own assertions, the roots of the problem pre-dated the Transaction.[39]

In any event, NS and CSX have ample incentives without any external prods to maintain the infrastructure in the NJSAA at a level to secure existing freight, attract new freight and keep operations running at optimum efficiency. In fact, those incentives have already led NS to commit a huge amount of capital to expanding capacity in the former Conrail service area. While not all of Applicants' capital programs for the Conrail territory have been completed, the Northeast already has significantly more rail capacity than it had before the Transaction was approved. Whereas pre-Transaction Conrail had been engaged for many years in a systematic effort to reduce capacity, NS and CSX are moving in the opposite direction.

While most of the capital projects are not in the NJSAA itself, most of them benefit operations in the NJSAA. A particularly noteworthy case in point is NS's new intermodal facility at Rutherford Yard in Harrisburg, PA. This is a facility that the former Conrail never would have developed, yet it enables NS to block and classify cars

---

[39] The Port Authority's speculation about the future of the Shared Assets Areas arrangements is clearly not a reason to single out the NJSAA for special Board attention. In any event, any proposal to change those arrangements in ways not contemplated by the Application and the Transaction Agreement would require Board and public scrutiny before they could be implemented, and there is no need for speculating now about the potential effects of possible future events.

there rather than in yards in the NJSAA, thereby greatly helping the flow of cars into and out of the NJSAA. Other examples include a traffic control project out of Harrisburg, PA, which should be completed soon, and the construction of a double track at CP Capital in Harrisburg, PA (to be completed this year), which will remove the only remaining single-track segment of NS's route between Reading, PA and Chicago, IL. It should also be noted that NS has an extensive, systemwide program to identify "choke points" and to deal with them systematically. Another major capacity investment serving to enhance the Port, but located at some distance, was clearance work on the Pattenburg Tunnel.

The Port Authority's comments appear to appreciate that NS, CSX and Conrail have worked long and hard with the Port Authority to address operational and infrastructure issues. We will continue to do so. NS also believes the Board is aware, through its ongoing operational monitoring, that service in the NJSAA has improved significantly in recent months. We respectfully submit that no additional special studies or reporting requirements are warranted.

Reading Blue Mountain & Northern Railroad Company (RBMN-2)

RBMN wants to walk away from the terms of the contract it agreed to when it purchased its "Lehigh Cluster" from Conrail. NS understands why RBMN would want to pay less than it agreed to pay, but NS does not believe the Board should permit, encourage or be involved in such actions. RBMN's filing reads like a contract complaint as it sets out RBMN's position by arguing that the "behavior and actions of NS . . . have repudiated the bargain struck between Conrail and RBMN." (RBMN Comments at 3).

Although NS submits that a court, not an STB oversight proceeding, is the correct forum to resolve such matters, we cannot help but note the glaring inconsistencies, the self-serving nature of the verified statements introduced as evidence and the lack of legal basis for the remedies RBMN seeks.

Verified statement of Andrew M. Muller, Jr.

Mr. Muller begins by complaining that he believed the purchase of the Lehigh Line would benefit him because he could make over $800,000 each year from CP for trackage rights charges. Of course, he fails to note that there was no requirement that CP use the trackage rights. As a result of the Transaction, CP was given another option that it elected to use rather than the trackage rights over RBMN. This is not a competitive harm; instead, it is but another example of the public benefits of the Transaction. CP still has the option to use trackage rights over RBMN. To the extent CP elects not to use such rights, RBMN's loss of revenue is not a competitive harm and certainly is not the type of loss which justifies any conditions being imposed.

Mr. Muller then claims that he was "stunned" when the Board rejected all of RBMN's requests in the original Control Proceeding hearing, and he now claims he would never have entered into the Lehigh sale agreement had he known that NS would not honor certain alleged unwritten "understandings" he had with Conrail.[40] But the oversight proceeding is not intended to be a forum to relitigate issues decided by the Board and therefore we will not go back and refute (again) the claims originally made by

---

[40] These include "understandings" that Conrail "was seriously committed to its shortline partners," had promised it would allow waivers to handle certain business notwithstanding the express contract prohibitions, and would sell the two other parts of the Lehigh Line not included in the sale to Mr. Muller.

RBMN. Mr. Muller is an experienced businessman, and if he wanted a commitment with respect to each of his "understandings" with Conrail he should have put them in a written agreement, signed by Conrail. He also should not have signed agreements (such as the sale agreement of the Lehigh Line) that provide that the written agreement sets forth "the entire understanding of the parties."

Verified statement of Wayne A. Michel.

Mr. Michel claims special expertise and perspective because of his prior position with Conrail. His current perspective, however, could be equally influenced by his present position as an employee of RBMN.

Mr. Michel claims that the bargain received by RBMN in its purchase of the Lehigh Line included CP trackage rights revenues, waivers of the interchange restrictions and the opportunity to purchase two other (more valuable) rail segments. All of this may have been what RBMN hoped would happen, but the clear, undisputed fact of the matter is that none of these alleged benefits were part of the contract entered into by Conrail and RBMN. Mr. Michel is saying now that the contract consisted of items that he was unwilling (or unable), as Conrail's representative, to put in writing at the time the parties signed their agreement. Mr. Michel makes it clear, however, that the restriction on RBMN's ability to interchange with CP was an essential term of the sale. He even notes that "in our experience, no buyer would pay the price Conrail would require when a large portion of the traffic was divertible." Michel VS at 13. Now that he has a different perspective and employer, it seems fair to him to eliminate the interchange restrictions he negotiated while at Conrail and thus significantly alter a critical element of virtually all contracts, the price. RBMN does not assert that customers would experience lower rates

if the interchange restriction were lifted. In fact, RBMN (and CP) would extract the maximum price they could charge for the move. RBMN and CP simply would get more money at the expense of NS.

Mr. Michel also argues that the routing (via Harrisburg and Allentown) required by the terms of the settlement between NS and CP "is contrary to the public interest." Michel VS at 16. The routing may not be the route RBMN would choose, but RBMN complains about a routing that, but for the Transaction, would not have existed. Whatever its shortcomings may be, there is no public harm or need to impose additional conditions when options have been increased, not decreased, as a result of the Transaction.

Mr. Michel also contends that Conrail had a wonderful process set up to consider waivers. He notes the high level of support the shortline program had within Conrail and concludes "the business groups knew they had a real burden to show why the waiver should not be granted. Moreover, they knew I would take the case directly to the Senior Vice President of the CORE Service Group if I was not satisfied with the answer." Michel VS at 20. Perhaps Conrail really had undergone an amazing metamorphosis, but the fact is that Mr. Michel did not give one example of a waiver granted to RBMN by Conrail and could point to only one waiver ever being granted to any EXPRESS shortline. Notwithstanding all of his claims of commitment to partnership with the shortlines, he admits that as soon as it looked as if Conrail were going to merge, "Conrail essentially shut down its waiver program." Id.

Mr. Michel is critical of NS for granting waivers which were generally of short duration. First, NS did in fact granted waivers when NS deemed it appropriate. Second,

it only makes sense to grant short term waivers when there is a temporary problem (such as the implementation difficulties experienced following the Split Date). Finally, when it comes to commitment to shortlines, NS is willing to compare its record to any other Class I. This commitment is real and has been proven by actions for a long time. In sum, there is no basis for RBMN's requested conditions.

City of Sandusky, Ohio

The City of Sandusky contends that NS has ignored a design issue that caused an airbrake line to break and resulted in a blocking incident at Venice Road and Tiffin Avenue in Sandusky on May 9, 2000. An engineering measure implemented by NS in Sandusky on July 14, 2000 will alleviate this concern. The break in the airbrake line was due to the tight curvature of the track. NS has now realigned the track to reduce the sharp turn from a 20 degree curve to a 15 degree curve, a significant improvement. This change will help prevent airbrake line failures. The City also objects to the speed of the trains in this area. In order to maintain adequate sight-line clearance and to operate manual switches, train speed along the transfer track leading to the Triple Crown Service yard is necessarily reduced. This is done as a safety measure.

Sandusky also objects to the omission of yard moves from the train counts used to evaluate level of service (LOS) impacts in the SEA environmental assessment of the Transaction. Yard moves, which may take the form of a variety of switching movements needed to add, transfer or deliver rail cars and engines in a given rail yard, are of necessity quite variable. The number and location of yard moves is dependent upon the daily demands of shippers, changes in routing and system-wide rail operations. They are

not included in the through train traffic estimates provided in an application filed with the STB, are not routinely counted and are not assessed by SEA for level of service (LOS) changes.[41] In any case, while the City of Sandusky complains of increased NS rail traffic over the Bellevue to Sandusky Docks rail line segment related to such yard moves, the number of yard moves has in fact decreased, because coal traffic to and from Sandusky Docks has been somewhat lighter over the last year. Yard moves to accommodate coal shipments are related to fluctuations in the coal market, not to the Transaction.[42]

Another issue raised by Sandusky pertains to a crossing at Mills Street, near the Mills School. The City complains that NS trains using the siding that crosses Mills Street (actually the lead from a small rail yard) interfere with children crossing the street while going to and from school. In order to address the City's concerns and minimize blockage of this crossing, NS already has modified its operating practices to hold trains leaving the Triple Crown Service facility heading east in the yard until they are clear to move directly onto the main line. NS must also take exception to an allegation by the City that NS "inched" its trains forward for the purpose of avoiding fines for "stopping" on crossings. This is simply not true. The trains on the track near Mills Street are required to move forward slowly in order to trip the gates and allow sufficient time for the gates to

---

[41] NS notes that DOT regulations exclude from the definition of "train" switching operations and rail car classification and assemblage in rail yards. See, e.g., 49 C.F.R. § 171.8; 49 C.F.R. § 220.5; 49 C.F.R. § 221.5; 49 C.F.R. § 232.23(a)(2).

[42] NS will not in this reply attempt to respond to the numerous allegations by the City concerning specific vehicular traffic counts, train speeds, crossing times, blocking durations or other miscellany, other than to note that Sandusky seems to be more interested in accumulating sets of statistics than in exploring reasonable options for addressing its concerns.

come down. This is a safety measure, not an attempt to play a "semantic game," as the City asserts.

The City seeks further environmental analysis by the Board to address what it characterizes as "serious consequences of the Conrail transaction," City of Sandusky Comments at 1-2, and contends that SEA ignored certain of its comments on the Draft EIS, id. at 9. Sandusky asserts that sufficient study of the environmental impacts related to the operation of the NS Triple Crown Service facility in Sandusky was not undertaken. It bases this argument on the change in NS's original selection of Bellevue, Ohio as the location of an NS intermodal facility to the selection of an existing rail yard site in Sandusky. NS kept SEA apprised of the status of its decision about the new Triple Crown Service facility in Sandusky through a series of written reports providing environmental and other data. It is not unusual for different sites to be selected for various rail operations during the course of a lengthy control proceeding such as the Transaction, and SEA was formally notified by NS of the Sandusky site selection in October 1997, in advance of the December issuance of the Draft EIS. SEA disclosed this site selection change in the Draft EIS and informed interested parties that a full analysis of environmental impacts would be included in the Final EIS. The City of Sandusky submitted detailed comments on the Draft EIS, to which SEA responded in its 40-page discussion of issues pertinent to Northwestern Ohio, belying the City's speculation that its comments were ignored. NS provided SEA with updated estimates of truck routing and other impacts as needed for incorporation in the Final EIS.

The City did not challenge the Board's conclusions in Decision No. 89 with respect to either the assumptions it applied or the conditions imposed upon NS. Now,

however, Sandusky attempts to use the rail traffic projections included in the Application for purposes for which they are not intended, expecting that precise train counts and speeds should be calculable from the data filed with an applicant's operating plan. It cannot reasonably be expected that the Operating Plan, developed more than two years before the Split Date, utilizing projected increases to base traffic from an even earlier period, will be perfectly on target in all instances. Yet that is the gist of the objections raised by the City of Sandusky. The Board well knows that such is not the expectation of its application process:

> As applicants correctly note, traffic projections made by a merger applicant must be based on good faith traffic projections of the traffic patterns that will follow consummation of an acquisition. In this case, we reviewed applicants' operating plans and revisions and found them to be good faith projections of anticipated train traffic levels . . . Moreover, while railroads do their best to predict the amount of post-transaction traffic likely to move over a given line, railroads need flexibility because the amount of traffic that actually moves over a particular line depends upon shipper demand.
>
> Decision No. 96, supra at 21-22.

The impacts related to the NS Triple Crown Service facility in Sandusky were thoroughly studied and reported by the Board, and further study and imposition of additional conditions is not warranted. NS fully intends to continue to seek ways in which it can improve its rail operations in the Sandusky area. It is NS's hope that the City will wish to join in a cooperative effort to explore solutions that will benefit both the City and NS.

Southern Tier West Regional Planning and Development Board (STW-1)

The Southern Tier West Regional Planning Board ("STW") is concerned with preserving the Southern Tier Extension, a 145-mile line extending west from Hornell, NY, to Corry, PA. Ninety-five miles of the line has been out of service since 1991 and there are few active rail shippers on the remaining 50 miles. STW entered into a settlement agreement with NS in June 1998 regarding the Southern Tier Extension.

STW does not contend that NS is not in compliance with the settlement agreement. STW merely notes that with certain New York legislation now in place, "we will work with NS to achieve the objectives of the agreement." Comments at 2. NS will work in good faith to implement the agreement, but STW must recognize that even with the tax relief promised by the agreement, which itself comes nearly two years later than promised,[43] insufficient traffic on the line may require other disposition of the line such as a transfer to a shortline railroad or abandonment. More generally, while NS will comply with the agreement, the reality must be faced that significant investments in the line can only be justified by realistic prospects of traffic, and the lack of such prospects may prevent the ultimate realization of STW's objectives.

STW also expresses concern about service over the Southern Tier itself and with the lack of repairs on the Southern Tier Extension. NS, of course, has complied and will comply with the settlement agreement. But most of the Southern Tier Extension has long

---

[43] NS notes that the settlement agreement called for tax abatement for NS on the Southern Tier Extension by no later than September 26, 1998. It was not until June 2000, however, that legislation was passed establishing a rail authority, which was a necessary prerequisite for the tax abatement to occur.

been out of service. The agreement does not require NS to maintain the out-of-service portion, and it would make little sense to put scarce resources into out-of-service lines.[44]

Wheeling & Lake Erie Railway Company

The Board imposed several conditions in favor of the Wheeling & Lake Erie Railroad Company ("W&LE") to provide it an opportunity to remain a viable carrier in the region where it currently operates. NS, in this Reply, will focus on the two discussed at length in the Comments filed by W&LE that pertain to NS: (1) an extension of the lease at Huron Dock and (2) access to Toledo. In its Comments, W&LE acknowledges that the parties remain far apart with regard to final agreements covering these two conditions, but recognizes that each condition has been implemented. Traffic continues to flow uninterrupted from Huron Dock pursuant to the extended lease. Further, W&LE has signed a major marketing initiative that its partner, the Canadian National, has trumpeted, and traffic is flowing to W&LE from CN in Toledo. NS agrees with W&LE that agreements need to be reached, and joins with it in committing to accomplish that goal through private negotiation. Nevertheless, there are matters set forth in W&LE's Comments that require discussion.

W&LE seems to have misinterpreted NS's position with regard to the lease extension for Huron Dock. Simply put, any lease extension must begin from the expiration date of the original term of the lease – September 27, 1998. Further, and as set forth in its submission of October 18, 1998, and reviewed and discussed in Decision No.

---

[44] STW also discusses issues pertaining to Dunkirk. NS addresses concerns relating to Dunkirk in its reply to the comments of the State of New York.

107 (served December 9, 1998), NS offered W&LE two different terms of extension – either a 5-year exclusive occupancy (resulting in an extended term longer than the original term of the lease) or a 10-year extension provided that W&LE share the dock with NS on a 60/40 basis. Until October, 1999, W&LE wanted the latter, and all negotiations were directed to achieving an agreement that would implement that decision. But W&LE changed its mind, and in response, NS presented W&LE an agreement providing for a 5-year extension with no change in any other terms – including compensation – but so far NS has not received any response.

With regard to Toledo access, W&LE implies that the temporary "detour rights" agreement gives it but a tenuous hold on trackage rights on the NS line between Bellevue and Toledo. In fact, the agreement is temporary because, at the time W&LE elected to begin operations, no trackage rights agreement had been signed. The parties had to provide for allocation of liability and other matters attendant to joint operations on a rail line even though final negotiations of such matters had not yet been concluded.

W&LE takes issue with the fact that NS is not offering to lease to it sections of Homestead Yard. The Board directed NS to provide W&LE access to Ann Arbor Railroad and CN in Toledo. The access granted to W&LE by NS is a direct route to Ann Arbor's and CN's yards in Toledo, where interchange with those carriers can take place.[45] Although as an independent commercial matter NS could have decided to

---

[45] This route is over the Maumee River Bridge, which NS had filed to abandon in the main proceeding. In accordance with a settlement reached with the Toledo-Lucas County Port Authority and the Toledo Metropolitan Area Council of Governments, NS (Norfolk & Western) advised the Board that it instead sought authorization for a discontinuance only. See Decision No. 89 at 47, n.69. That authorization was granted. Id. at 181.

provide W&LE with tracks in Homestead Yard, NS has determined that doing so is not operationally feasible.

In its most extensive remarks, W&LE discounts NS's concerns about the capacity on the Bellevue to Toledo line. Those concerns, however, are serious enough that NS has spent over $8 million since the Split Date to enhance capacity on the line sufficient to handle the increased NS traffic.[46] The addition of a second carrier to a severely capacity-constrained line must bring with it capacity enhancements to handle the additional traffic. It is that traffic that must bear the economic cost of the required underlying infrastructure.[47] An independent study of the capacity on the line would both reveal the line's capacity constraints and the improvements necessary to address them. Although NS believed W&LE had agreed to such a study, W&LE did not respond to the proposal presented to it.

---

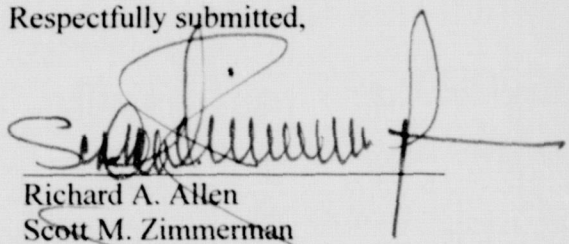
[46] In a litany concerning the fact that NS did not set forth plans for a siding on the line in its Application, W&LE conveniently fails to mention that capacity improvements actually have been made to the line, and that W&LE reaps the benefit of them every time it operates over the line. These improvements include a 10,000-foot siding constructed at Kingsway (in-service as of December, 1999) and a connection track with PRR at Oak Harbor (in-service as of February, 1999). In addition, NS is now converting several hand-throw switches to power switches in Bellevue, which will further enhance capacity.

[47] ORDC suggests that W&LE should not have to contribute to any capacity improvements until it begins to move 8 trains per day. ORDC-1, Seney VS at 7. It argues that this is appropriate because the Board uses this level of increase in the use of a line resulting from transactions as requiring environmental reporting. Besides being an extraordinarily high "floor," the suggestion fails to recognize that the measure is applied in the review of freely-negotiated transactions among parties that presumably have excess capacity to contribute. In this case, there is none.

CONCLUSION

None of the comments submitted by the various parties in this general oversight proceeding demonstrate that the conditions imposed by the Board in Decision No. 89 are not achieving their intended purpose or that additional conditions are necessary.

Respectfully submitted,



Richard A. Allen
Scott M. Zimmerman
ZUCKERT, SCOUTT & RASENBERGER, LLP
888 Seventeenth Street, NW
Suite 600
Washington, D.C. 20006
(202) 298-8660

J. Gary Lane
Henry D. Light
Joseph C. Dimino
George A. Aspatore
Greg E. Summy
John V. Edwards
James R. Paschall
Maquiling B. Parkerson
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

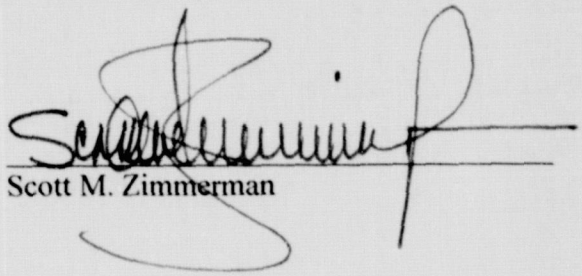
Constance A. Sadler
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Attorneys for Norfolk Southern Corporation and Norfolk Southern Railway Company

Date: August 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2000, I caused to be served a true and correct copy of the foregoing "**NS-2, Reply Of Norfolk Southern Corporation And Norfolk Southern Railway Company**" to the parties on the Service List for Finance Docket No. 33388 (Sub-No. 91) by first-class mail, postage prepaid, or by more expeditious means.



Scott M. Zimmerman

US OFFICE PRODUCTS

VERIFIED STATEMENT OF WILLIAM E. CLARK

My name is William E. Clark. I am Manager, Domestic Metallurgic Coal Marketing for Norfolk Southern, a post I have held since May 1, 2000. Immediately prior to that, from April 1, 1998 to April 30, 2000 I held the post of Manager Marketing, Utility Coal for NS. In that position, I was responsible for the marketing of utility coal. As such, I was the primary point of contact for NS in its negotiations with Indianapolis Power & Light Company ("IP&L") and Indiana Southern Railroad ("ISRR") regarding service by NS to IP&L's Stout Plant in Indianapolis. Since the Split Date, I have been in direct and frequent contact, by telephone, letter, and in person, with, among others, Michael Weaver, IP&L's Manager of Fuels, in attempting to negotiate the terms of an agreement to implement ISRR/NS service to the Stout plant.

The purpose of this statement is to describe the negotiations between Mr. Weaver and me concerning NS service to Stout, to explain NS's view regarding service to the Stout Plant, and to respond, to the extent I can, to the comments submitted by IP&L and ISRR in this proceeding. I have reviewed the submission by ISRR and the public version of the submission by IP&L (including the public version of Mr. Weaver's verified statement). I have not been privy to the Highly Confidential version of IP&L's materials.

Mr. Weaver asserts that during negotiations, NS "confirmed" to him "once again" that NS cannot compete with Indiana Rail Road ("INRD") for coal deliveries to Stout from southern Indiana coal sources. To the contrary, in negotiations with INRD, I have repeatedly advised IP&L that NS is interested in competing for their business, and that NS is willing and able to do

so. I have asked IP&L to supply specific information regarding their needs which would allow NS to put together the most competitive bid possible, but my requests for this information have gone unanswered.

A brief recap of the course of the discussions is in order. I have personally met with IP&L concerning NS service to Stout on at least four occasions over the past two years. Additionally, we have exchanged various correspondence (some of which I will talk about shortly) and held many phone calls.

In our initial meeting in 1998, IP&L asked NS to prepare, in conjunction with ISRR, a quote for ISRR/NS service from a number of mines located on ISRR. At the time, I advised Mr. Donald Knight of IP&L, and Mr. Weaver, that we would be unable to provide a specific quote until the terms of access to the plant were finalized. I further advised IP&L that IP&L itself could facilitate the process by providing us with more detailed information about the moves they were seeking (such as frequency, total tonnage, etc.). Information such as the volume and frequency requested is important because it affects issues such as locomotive utilization, labor arrangements, and coordination with ISRR.

IP&L never provided us the information we requested. Nevertheless, NS submitted a preliminary offer in a letter from me to Mr. Weaver dated June 30, 1999 (appended to this statement as Exhibit 1). Working without any information from IP&L that would permit us to tailor a competitive bid, we were forced to prepare our offer on a "worst case scenario" basis, meaning using the most unfavorable assumptions about issues such as volumes and frequency of service.[1]

---

[1] It should be noted that, because most of an ISRR/NS joint move is ISRR, the major part of the total rate for a joint ISRR/NS move to Stout is ISRR's. NS has no control over the rate ISRR (continued...)

IP&L wrote back in October, asserting that our offer was not acceptable and requesting NS's "best and final offer." They wrote again on January 31, 2000, following a meeting between us. Although IP&L apparently asserts (on page 7 of their comments) that I never responded to that letter, in fact I did respond, in a letter to Mr. Weaver dated February 7, 2000 (appended to this statement as Exhibit 2). In that letter, I corrected some of his misstatements about the meeting he recounted. I noted, for instance, that I had not "acknowledged that the economics of an [ISRR]-NS route would be prohibitive." Indeed, I made quite clear that NS "[does] not believe this to be the case." I emphasized that frequency and volumes would affect NS's costs, and that we still did not know the details of IP&L's requirements. I noted that NS's intent regarding our previous offer was to "stimulate a discussion" between IP&L and NS, and that, because various issues remained to be worked out among the parties, NS believed "it would be productive to continue to refine our proposal so that it more closely met your requirements." I concluded that NS believed it could offer a competitive option for Indiana coal, as well as other types of coal, and that we looked forward to further discussion on how we "might improve our offer."

IP&L wrote to me again on May 16, 2000, stating, among other things, that they concluded that my June 30, 1999 offer was NS's "best and final." I responded (again, contrary to IP&L's claim on page 7 of its comments that I did not) by letter the next day. (My response is attached as Exhibit 3.) Again, I noted that there are a number of factors that affect NS's ability to compete for business into Stout, including annual volume, train size considerations, frequency of moves, and turn time. And again, I reiterated that, without more specific information from

---

(...continued)
decides to charge IP&L to work in conjunction with NS as opposed to what ISRR might
(continued...)

IP&L, "it is difficult, if not impossible, for Norfolk Southern to give IP&L a 'best and final offer'." I explained that because of the lack of information from IP&L, NS's proposal necessarily was based on a set of worst-case assumptions: "very few trains, delivered sporadically throughout the year." I said that if those assumptions were incorrect, NS would be happy to consider a more specific proposal. Indeed, I even suggested the possibility of specific and significant rate reductions tied to tonnage guarantees. I further suggested other possible options to reduce costs further, such as "larger train sizes, using ISRR power and NS crews, establishing fixed cycle times, etc.," and suggested the possibility of additional incentives for higher volumes. I reiterated that NS continued to be interested in developing business with IP&L. I noted that NS's market reach would provide IP&L with competitive access to many new coal sources, and that NS would be an "aggressive, flexible competitor." All we ask, I said, is that IP&L provide us "the tools we need to give [IP&L] the lowest rates possible." IP&L has never responded to my letter.

I should also say a few words about the operational issues raised by IP&L and ISRR. ISRR, for example, asserts that NS is "hopelessly handicapped" and faces "insurmountable hurdles" in offering service with ISRR from southern Indiana sources. NS has previously acknowledged that there are operational challenges involved in a joint ISRR/NS movement. But those challenges are not insurmountable. For example, although ISRR is correct that a "headlight" meet is not the most preferred method for interchanging traffic, headlight meets are often used in other circumstances and need not be an impediment to creating an efficient move. If the parties are committed to making the move work, and if there is the assurance of significant

---

(...continued)
charge IP&L for a single-line ISRR move.

business to be derived from it, the nature of the interchange need not prevent efficient and competitive service.

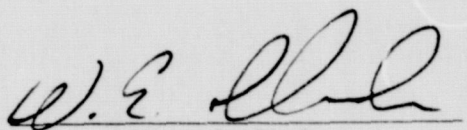
Nor does the distance from Lafayette to Indianapolis present an "insurmountable" obstacle. To use IP&L's "BWI taxi" analogy, whether such a taxi trip is feasible and economical may depend on whether the taxi driver is assured that fares will be available. In short, to suggest that NS and ISRR cannot provide effective competition, without first addressing IP&L's specific requirements, is premature. (In this case, it is also wrong.) IP&L has never outlined for NS what its specific requirements are, which in turn has prevented NS from working with ISRR to devise an operating plan to meet those requirements.

In sum, NS remains ready to work with IP&L and ISRR to provide competitive service to Stout. NS repeatedly has expressed its interest in serving Stout from southern Indiana sources, we have made an initial proposal for doing so, we have identified avenues of discussion regarding opportunities to make our offer more competitive and more closely tailored to IP&L's needs, and have sought further information and dialogue from IP&L that would allow us to take those steps. But despite our requests, IP&L has never given us the specific kinds of information about their requirements that would permit us to put together an operating plan with ISRR and allow us to further refine and tailor an offer to IP&L's needs. While NS is disappointed that IP&L has not shown more of a commitment to working with us to date, we remain available to meet further with IP&L and ISRR to discuss how ISRR and NS together can construct a plan to serve Stout.

Verification

I, William E. Clark, verify under penalty of perjury that I have read the foregoing statement and know its contents, and that the same is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on August 1, 2000.



William E. Clark

ATTACHMENT A
Exhibit 1

REDACTED

ATTACHMENT A
Exhibit 2

REDACTED

ATTACHMENT A
Exhibit 3

REDACTED

US OFFICE PRODUCTS

NORFOLK SOUTHERN

Norfolk Southern Corporation
1500 K Street, N.W., Suite 375
Washington, D.C. 20005
202 383-4166
202 383-4425 (Direct)
202 383-4018 (Fax)

Bruno Maestri
Assistant Vice President
Public Affairs

October 29, 1998

The Honorable Sherrod Brown
U. S. House of Representatives
Washington, D. C. 20515

Re: Grade Separation Project in North Ridgeville, Ohio

Dear Congressman Brown:

This is in reference to the potential grade separation at Route 83 in North Ridgeville, Ohio.

Our engineers have recently completed a review of the potential project, in coordination with officials of the Ohio Rail Development Commission, and have concluded that the project merits our active participation. Accordingly, I am pleased to inform you that Norfolk Southern Railway Company is prepared to provide $600,000 towards the project if construction proceeds. Our participation is contingent upon the state and local officials obtaining full funding and approval of the project and, of course, the elimination of the at-grade crossing at this location.

We look forward to working with you on this very important community safety project and other matters of mutual interest.

Sincerely,

Bruno Maestri
Assistant Vice President
Public Affairs

US OFFICE PRODUCTS

NORFOLK SOUTHERN

Norfolk Southern Corporation
One American Square
Suite 1370, Box 82069
Indianapolis, IN 46282
317-635-4845
317-267-9732 FAX

Michael Scime
Manager
Public Affairs

October 25, 1999

The Honorable Deanna L. Hill
Mayor, City of North Ridgeville
7307 Avon Belden Road
North Ridgeville, OH 44039

Dear Mayor Hill:

I am pleased in to inform you that Norfolk Southern has agreed to participate in a demonstration project to install highway guardrail along the approaches to the Root and Maddock Road crossings. I apologize for this delayed response to your June 24th request but, as this is a very unique demonstration project, it has taken a while to get approval from all interested parties.

Norfolk Southern's participation will be in the form of a $16,000 grant which will act as matching funds for an Ohio Railroad Development Commission grant of $24,000. Together, ORDC and the railroad will completely fund the city's estimated cost of $40,000 for the two installations. Any costs exceeding North Ridgeville's estimate will be the city's responsibility.

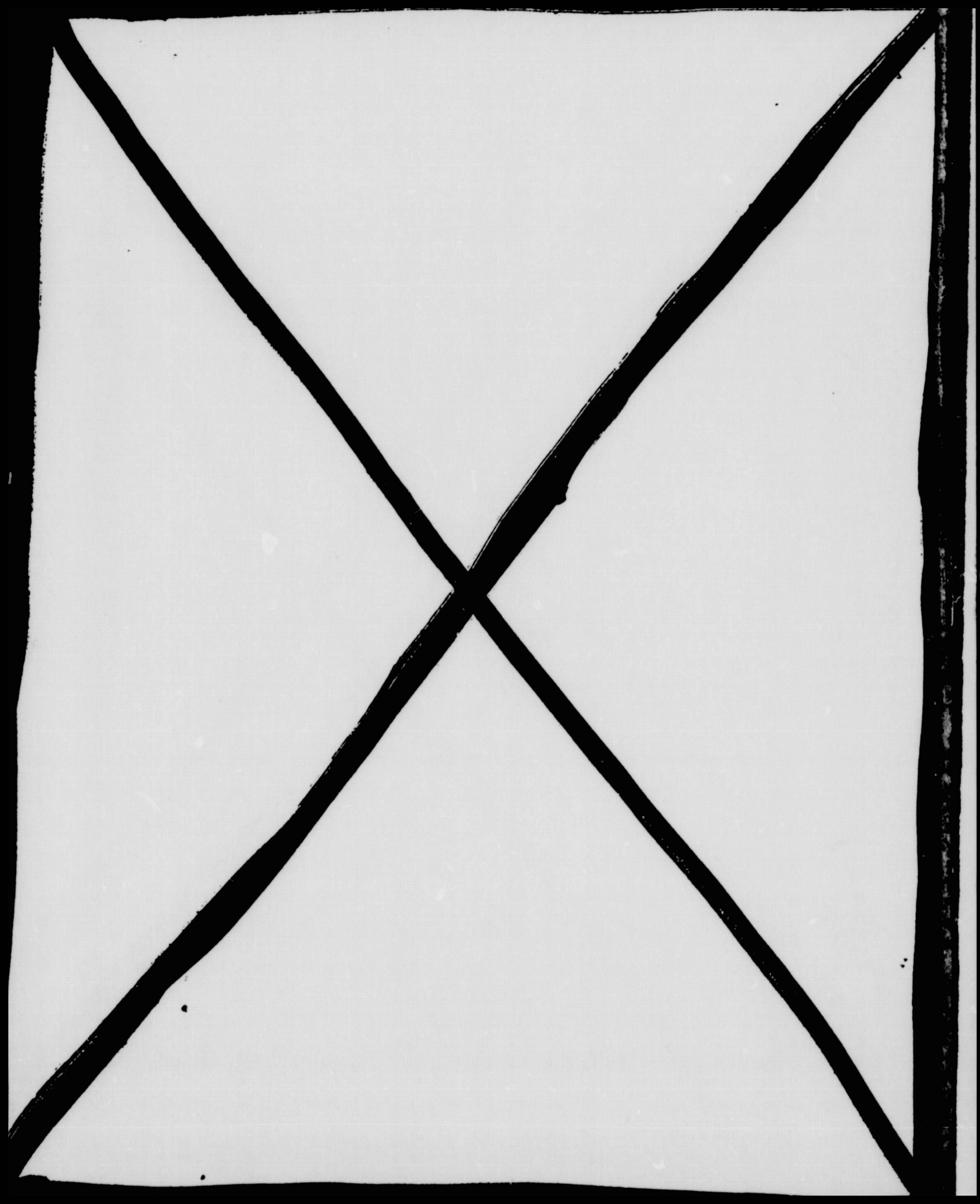
Please note that Norfolk Southern's participation is in the form of matching funds. It remains the city's responsibility to apply for the ORDC grant. As we discussed, ORDC is eager to undertake this demonstration and awaits your grant request letter. Once the grant is approved, it is my understanding that ORDC, NS and the city will enter into a three party agreement for this project. Once the agreements are signed, the city will be responsible for project construction and will be reimbursed all expenses (up to $40,000) by ORDC and NS. It will be necessary to coordinate all guardrail installation on NS right-of-way with our engineering department and the city will be responsible for locating and accommodating all utilities (including railroad signal cables).

I am very pleased that we have been able to work out the funding for this safety demonstration project. Thank you for your patience during the process. If you have any questions, please do not hesitate to contact me.

Sincerely,

Michael Scime
Public Affairs Manager

Cc: Susan Kirkland, ORDC



199430

ENTERED
Office of the Secretary
AUG - 4 2000
Part of
Public Record

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1206
(202) 942-5000
FACSIMILE: (202) 942-5999

NEW YORK
DENVER
LOS ANGELES
LONDON

DENNIS G. LYONS
(202) 942-5858

RECEIVED
AUG 3 2000
MAIL
MANAGEMENT
STB

August 3, 2000

BY HAND

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

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

Dear Secretary Williams:

Enclosed are an original and twenty five (25) copies of CSX-2, the Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc., to Comments Made on Their First Submission, with twenty five (25) copies of the Verified Statement of Thomas G. Hoback produced in a Public Version as an attachment, and, in a separate, sealed envelope, the original and twenty five (25) copies of the Highly Confidential version, Subject to Protective Order, for filing in the above-referenced docket. A certificate of service is included in the Reply Comments.

Please note that the three enclosed 3.5-inch diskettes contain a separate WordPerfect 5.1 formatted copy of each of these filings. One of the diskettes also contains spreadsheet material formatted in Excel.

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

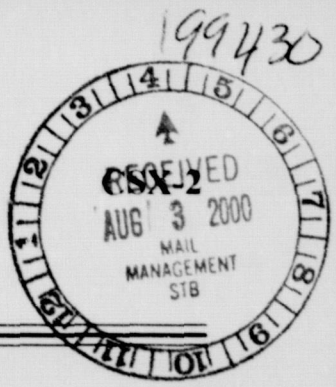
Thank you for your assistance in this matter. Please contact the undersigned at (202) 942-5858 if you have any questions.

Respectfully yours,

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

rjm
Enclosures
cc All Parties of Record

199430



CSX-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

REPLY COMMENTS OF APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC., TO COMMENTS MADE ON THEIR FIRST SUBMISSION

Of Counsel:

Mark G. Aron
Peter J. Shudtz
CSX CORPORATION
One James Center
901 East Cary Street
Richmond, VA 23219

Paul R. Hitchcock
CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, FL 32202

Dennis G. Lyons
Mary Gabrielle Sprague
Sharon L. Taylor
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

Samuel M. Sipe, Jr.
David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Dated: August 3, 2000

TABLE OF CONTENTS

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)

REPLY OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
TO COMMENTS MADE ON THEIR FIRST SUBMISSION

CSX Corporation and CSX Transportation, Inc. (collectively "CSX"; "CSXC" and "CSXT" individually, respectively) filed their first submission in this matter on June 1, 2000 (CSX-1) (the "Submission"). Approximately three dozen Comments were thereafter filed by the public, including shippers, railroads, States, cities, passenger authorities and interests, industrial and regional development organizations, ports and other governmental authorities, and other members of the public.

In several areas, the Comments (or lack of them) indicated that major aspects of the Conrail Transaction had gone well. A number of the Commenters remarked positively on the fact that the implementation of the split of Conrail's routes and their separate operation as part of the systems of CSX and NS had been accomplished in a safe manner by CSX and NS. CSX was particularly gratified by

these comments, which were made by the United Sates Department of Transportation (p. 3),[1] American Chemistry Council (formerly Chemical Manufacturers Association) (p. 4), and DuPont (pp. 2-3).[2] The American Chemistry Council indicated that the Split of Conrail's routes and the new rail-to-rail competition caused by it had the effect of lower rates for a number of its members (p. 3). The CSX Submission (as did that of NS) in detailed treatments indicated that labor relations issues involved in the Transaction had been resolved in a generally mutually satisfactory manner, and no comments taking exception by any labor organization or other labor interests were filed. There were no complaints that Chicago operations, or the independence of the Indiana Harbor Belt Railway ("IHB"), had been impaired by the Transaction, issues which the Board had identified as particular subjects for oversight. Decision No. 89, served July 23, 1998 (the "Decision"), at 161.

Many commenters spoke of the operational difficulties that surrounded implementation following the Split Date,[3] and the service difficulties that attended

---

[1] Unless otherwise indicated, page references marked with "p." refer to the pages of the particular Comments being cited.

[2] On the other hand, one commenter, the New York City Economic Development Corporation ("NYCEDC"), actually took issue with a safety provision required by CSX. We discuss that in Part III below.

[3] On June 1, 1999, most of the routes and other assets of Consolidated Rail Corporation ("Conrail") were conveyed to one of two subsidiaries of Conrail, New York Central Lines LLC and Pennsylvania Lines LLC. In turn, those companies entered into long-term operating agreements with CSXT and Norfolk Southern Railway Company ("NSR"), respectively, under which those two rail carriers would operate those allocated assets of Conrail as part of their respective rail systems. Informally, we refer to the June 1, 1999 date, officially called the "Closing Date," as the "Split Date," and we refer to the assets of Conrail that are being operated by CSXT as being allocated to CSX, and those that are being operated by NSR as being allocated to NS. The remaining assets of Conrail not so

[Footnote continued on next page]

them. These problems were discussed candidly by CSX in its Submission, Part I, at pp. 2-13. Where specific forms of relief are sought or clearly particularized problems are discussed in Comments relating to CSX operations, CSX will reply herein. Otherwise, we will rest on what we said in the June 1, 2000, Submission, and point to the Board's operational monitoring in place and informal availability of the Board's staff with respect to operational issues. Similarly where commenters say that things are presently working out satisfactorily but reserve the right to comment in the future if problems arise, we generally do not reply.[4]

In general, CSX will reply herein to issues raised by commenters concerning CSX's operations and CSX's observance of the conditions imposed by the Board in Docket No. 33388. Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") are also submitting reply comments. CSX will not reply to comments that appear to it to relate only to NS.[5]

While many of the Comments are thoughtful and are mindful of the scope of a proceeding such as this — which is to judge the working of conditions and to

---

[Footnote continued from previous page]
allocated consist in large part in the "Shared Assets Areas" in which both CSX and NS conduct railroad operations, with the continuing Conrail handling certain operations on their behalf.

[4] In our Conclusion to these Reply Comments, we set forth CSX's views concerning the continuation of this formal public Oversight proceeding.

[5] Since a number of the comments are quite discursive, CSX will not undertake to respond to every assertion made in the comments that refer to it, and accordingly, silence with respect to a particular assertion should not be taken as agreement.

One commenter, AES Eastern Energy, makes a comment related to the Buffalo Rate Survey, being conducted in Finance Docket No. 33388 (Sub-No. 90). CSX will observe the Board's instruction to confine Buffalo rate issues to that proceeding.

see if there are unanticipated major problems that urgently require the attention of the Board — others seem to misunderstand the limits of this proceeding. CSX does not understand the proceeding to offer a standing tribunal for adjudication of day-to-day operating and commercial issues, or to offer a continual petition for reconsideration of issues determined in the Conrail case itself after full briefing and consideration,[6] or determined in timely petitions for reconsideration filed under the Board's rules. Certainly this proceeding does not afford a general forum for either the reformation of settlement agreements where a party now wants more than it had found sufficient at an earlier time, or for the adjudication of issues having no relationship to the transaction involved in the Conrail case. Neither should it be employed as a vehicle for resolving potential issues which lie in the future and may or may not ripen into a problem.

CSX will discuss the comments made in groups involving various interests.

I. SHIPPERS

1. <u>Ohio Aggregate Shippers</u>. — In the consideration of the Conrail Transaction before the Board, three Ohio aggregate shippers, Martin Marietta

---

[6] To be sure, rejection of a condition in the main case does not preclude its imposition in an oversight proceeding, *see UP/SP*, served March 31, 1998, at 6-7. But it can be fairly said, as the Board said a year ago that:

> Our oversight condition is not nearly as broad in scope as [the party] imagines. It does not give all parties, in all circumstances, a second bite of the apple. The oversight condition was intended to permit us to determine whether the conditions that we have imposed are working as intended to ameliorate competitive or other harm, and whether any additional conditions are required to remedy such harm . . . .

CSX/NS/CR, Decision No. 124, served May 20, 1999, at 7.

Materials, National Lime & Stone, and Wyandot Dolomite made substantial presentations. These Conrail-served shippers were concerned with the impact of the division of Conrail on certain of their Conrail single-line rail movements. They contended that the NITL Settlement, which provided relief for shippers using such "one-to-two" routes, would not provide adequate relief for them. Toward the close of the Board's consideration of the Conrail matter, CSX and NS made a proffer of a contractual settlement to those three shippers which, among other things, provided for actual single-line service, using trackage rights, on certain movements having certain specifications as to minimum number of cars, limited to five years. Martin Marietta accepted the proffered settlement. The other two shippers did not. The Board imposed the terms of the proffered settlement, with some enhancements, upon CSX and NS as a condition with respect to those other two shippers. The two shippers challenged the Board's failure to give them additional relief — by way of further, permanent, single-line service via trackage rights — in the United States Court of Appeals for the Second Circuit. These two shippers also now seek (or appear to want) modifications of the conditions imposed for their benefit in this oversight proceeding.[7]

Citing the operating difficulties that were experienced during the first year after the Split of Conrail's routes, National Lime seeks removal of the five-year limits on the single-line service that is being provided to it under the condition (pp. 2-3). But there is no connection between (i) the service difficulties that

---

[7] Ohio Rail Development Commission's Comments support these shippers.

followed the division of Conrail's routes, and (ii) the appropriate length of time for the shippers who found certain of their single-line movements become joint-line movements to adjust to those changes and seek to use single-line service to other markets. The five-year period was the term of the proffered settlement and CSX and NS did not undertake to make these special arrangements continue indefinitely. There is no reason for the Board to change a decision which it very consciously made. *See* Decision No. 96, served October 19, 1998, at 8-9, clarifying that the condition extended for only five years from the Split Date.

National Lime says that the condition should last until CSX and NS justify a complete abandonment of service (as would have been the case if Conrail has not been "split") (p. 3). That is simply an argument that a transaction is contrary to the public interest if it creates any "one to two's," a proposition rejected by the Board in its Decision No. 89, served July 23, 1998 (the "Decision"), approving the Transaction.

Wyandot Dolomite does not appear to seek an extension of the five-year period, but complains that it has not been able to use the single-line service made available to it as frequently as it would like. But it is clear that the Carey-to-Alliance movement has dried up because of a decision by Wyandot Dolomite's customer for which neither CSX nor its service was to blame. CSX would gladly have continued operation of that service for the period specified in the condition. Wyandot Dolomite says that its inability to use the condition otherwise has not been due to operating difficulties, but to the 40-car minimum requisite to the

single-line service rendered via the trackage rights (p. 3). However, no formal request for modification of the condition is made.

The running of short trains, particularly of aggregates, is not efficient. Short trains require as much in the way of crews as long trains and proportionately to their length burn more fuel. They are not a productive use of rail assets. So the running of short run-through trains would increase the burden imposed on the carriers by these special arrangements. A 40-car threshold for the entitlement to a special run-through train on a trackage rights basis with a single crew is certainly not unreasonable. For new movements, it was made higher, as the Board determined in this case. Condition No. 43, Decision at 179 (60 cars for new movements of more than 75 miles). Dropping the 40-car threshold would increase the burden on the carriers, while decreasing the benefit to the shipper, of trackage-right single-line service.

Neither National Lime nor Wyandot Dolomite makes a case that would have been appropriate for acceptance if the Board were looking at these issues for the first time, and their presentations certainly do not reach any threshold for relief appropriate in an oversight proceeding of the present nature. CSX is appreciative of these shippers' business and will faithfully perform the special services required by the condition during its term. No change in their situation is appropriate.

2. **ASHTA Chemicals, Inc.** — This shipper is located in Ashtabula, OH, and ships hazardous chemical materials, as pertinent here, to destinations west and south of Ashtabula. It has been concerned that CSX, which is the carrier that has succeeded to Conrail's service to ASHTA's facility, routes its shipments with

an initial movement eastward to Buffalo. In response to ASHTA's concerns, the Board imposed Condition No. 24 requiring consultation with respect to the routing of ASHTA's hazardous materials shipments. Decision at 177. ASHTA has not made a filing in this proceeding itself, but wrote a letter to the Ohio Rail Development Commission ("ORDC") outlining its difficulties and the negotiations it has had with CSX; ORDC submitted the letter in its filing. The letter states that there has been a great deal of communication between ASHTA and CSX, and says that that communication, which takes place on several levels, "represents a significant improvement from that which was experienced prior to CSX taking over a portion of the Conrail assets." Nonetheless, ASHTA states that it is still concerned about the routing through Buffalo and wishes to have its movements to the west and south re-staged through Willard Yard on the line to Cleveland west of Ashtabula. It notes that this routing was in fact used for a period of time, but CSX then turned to using the Buffalo routing again.

Preliminarily, it should be noted that avoidance of circuity is frequently not required in order to have a safe movement of chemical and other hazardous cargoes, and that in fact quite often the longer of two routings produces the safer movement. Many considerations enter into the picture, including the number of handlings received and the lengths of time cars are held in yards. Total mileage is only one consideration. Among other things, the safe movement of such cargoes involves aggregating and then appropriately disaggregating trains devoted to such cargoes.

As to ASHTA's operation, CSX services it daily with a switch crew. During the period when cars were routed directly west toward Willard, the crew separated out ASHTA's eastbound traffic from its westbound traffic and left each for pickup by eastbound and westbound trains. While CSXT's eastbound trains routinely had sufficient capacity to pick up ASHTA's eastbound cars, the westbound trains often did not have sufficient capacity to pick up westbound cars, either because of their consist by the time they reached ASHTA, or because of the number of the ASHTA westbound cars available for pickup on the day in question. Accordingly, CSXT found that some of ASHTA's westbound cars sat for up to several days before they could be moved. This, of course, was not a desirable form of handling.

Accordingly, CSXT changed the handling plan to move all of ASHTA's traffic first to Buffalo to be divided between eastbound and westbound and assembled into the appropriate trains. The end result is a more consistent transit time. While CSXT has the matter under study and does not rule out the possibility of returning to the prior operating plan or some modification of it, it must maintain the day-to-day operating flexibility to conduct its operations safely and efficiently. CSXT will continue to consult with ASHTA as operational adjustments are made. As noted, ASHTA does not seek any specific relief from the Board.

3. <u>Resources Warehousing and Consolidation Services ("RWC")</u>. — RWC operates a small private intermodal terminal in North Bergen, NJ, on the New York, Susquehanna & Western Railroad ("NYSW") and provides container yard and warehousing services for international ocean carriers. *See* Decision at 123. It complains that it does not have competitive intermodal service from

CSX despite representations that such service would be established post Split. RWC also complains that CSX has refused to meet to discuss service issues.

CSX understands that the primary international ocean carrier customer utilizing RWC is Hanjin which routes its Chicago/North Jersey traffic via NS connecting to NYSW. CSX understands that Hanjin utilizes NS's Landers Yard intermodal terminal in Chicago and has a service contract with NS.

The fact is that RWC does have access to intermodal service provided by CSX Intermodal, Inc. ("CSXI") with rail transportation by CSXT, for its business. To the extent that RWC has container or trailer business and wishes to utilize that intermodal service, it can easily access any of the CSXI terminals at Little Ferry, North Bergen and Kearny, all quite close to it in Northern New Jersey. As to direct intermodal service at RWC's own facility, CSX notes that the RWC facility is a local station on NYSW. Therefore any direct service involving CSX must be routed interline via NYSW and CSX. CSX has met with NYSW to arrange post-merger joint-line intermodal service to the RWC facility. Indeed, as a result of those arrangements, a service proposal was made by CSX to Hanjin for direct service in conjunction with NYSW to the RWC facility. However, this proposal was declined and Hanjin retained its existing service route via NS and NYSW. CSX is willing to work with other ocean carriers or other customers of RWC along with NYSW to consider future opportunities for direct service to the RWC facility.

4. **ISG Resources**. — This company is in the business of finding uses for fly ash from coal-burning electric utility plants and arranging transportation of that waste product to places where it can be used. The matter discussed in its

Comments involves a route from Montville, CT, at the AES Thames Power Plant, to Good Spring, PA, where the fly ash is used as landfill following coal-mining activities. The plant at Montville is served by New England Central and the mining activities at Good Spring are served by the Reading Blue Mountain & Northern ("RBMN"). The routing before the Split of Conrail was New England Central — Conrail — RBMN. In the split of Conrail's routes, the old Conrail lines involved, which were between Palmer, MA, and Reading, PA, were divided between CSX and NS, requiring the movement to become a four-carrier movement instead of a three-carrier movement. CSX and NS took the place of Conrail and handed off the traffic between themselves at Oak Island. According to ISG, this routing did not work as congestion at Oak Island in the North Jersey Shared Assets Area was serious and transit times became unacceptable. An alternative routing, including the use of two short-line carriers in Vermont and CP's St. Lawrence & Hudson, was substituted for the CSX-NS participation in the movement, improving transit times but creating a five-carrier route. This five-carrier routing eliminated both CSX and NS from the route. However, according to ISG, it appears that the five-carrier routing involved the use by RBMN of 700 feet of NS's track near Packerton Junction at Jim Thorpe, PA (p. 5).

ISG's current problem, it says, is caused by NS's unwillingness to permit the use of the 700 feet of its trackage for the movements in question after June 1, 2001. NS is reported by ISG as wishing to receive the fly ash from the St. Lawrence & Hudson at Binghamton, NY, with interchange with the RBMN at Mehoopany, NY,

thus creating a six-carrier route after handling by the New England Central and the two Vermont carriers (pp. 4-5).

CSX has a commercial interest in the fly ash removal operation, although it does not directly serve the plant at Montville. While CSX would like to participate in the route, it is willing to continue to exclude itself from the route if necessary to provide quality service to the fly ash operation. Above all, CSX would not want the routing to cause difficulty in the North Jersey Shared Assets Area where the troublesome hand-off between CSX and NS occurred with respect to these movements in the early months following the division of Conrail's routes. CSX voluntarily withdrew from the routing when the Oak Island difficulties were experienced. It is important that operations within the shared assets areas be efficient and for that purpose CSX and NS have restricted even their own activities within those areas, delegating many of them to the continuing Conrail operation. CSX will be willing to work with the originating carrier, New England Central, and other carriers in developing an efficient route.

It appears that the problem which the ISG filing brings to the Board's attention relates to NS's position with respect to the continued use of the segment of its lines required by the present five-carrier movement. CSX is not familiar with the arrangements made between the participating carriers for the use of NS's line in this way, and does not know whether the arrangements were detour arrangements, trackage rights, or otherwise. NS will be stating its position in that regard in its Reply. No relief is sought against CSX. CSX hopes that a solution can be found for ISG which will provide an acceptable and consistent cycle time

for it without prejudice to what CSX believes to be an important principle, namely, that the basic terms of the creation of shortlines, bargained for among the parties, be respected.

5. **Indianapolis Power & Light**. — Indianapolis Power & Light Company ("IPL") resurrects arguments that the Board has soundly rejected after full consideration. IPL bemoans that Indianapolis did not become a shared asset area, hoping that the Board will reconsider and give it a lesser consolation prize (p. 6, n.5). IPL also adds a new dimension to its argument — a "bid" from Norfolk Southern, responding to terms that are commercially absurd, for coal that is contractually bound to another carrier — to demonstrate that NS cannot "effectively" compete with CSX in Indianapolis.

What is the goal of these Comments? It is to give IPL, which now has even more opportunities than before the Conrail Transaction, even more opportunities, at the expense of CSX and INRD.

The principal coal-burning plant of IPL in Indianapolis is Stout; IPL's smaller plant, Perry K, is to be sold, and published reports indicate that Perry K will be converted to burn manufactured or natural gas. *See* CSX's Submission at 85. Prior to the Conrail Transaction, Stout was served solely by Indiana Rail Road Company ("INRD"), a shortline majority-owned CSX subsidiary running about 110 miles to the Southern Indiana coal fields. A three-carrier movement, involving a short line, Indiana Southern Railroad ("ISRR"),[8] Conrail as an

---

[8] ISRR has filed Comments supporting IPL's position.

intermediate carrier, and delivery by INRD, was also possible. Very little business was done on that route. Movements of coal from Eastern mines served by Conrail or from Powder River Basin mines through interchange with Conrail at the transcontinental gateways was a possibility, though the coal mines in the East served by Conrail were considerably fewer in number than either those of CSX or NS. Delivery of any of that Conrail coal would have to be effected through interchange or switch by INRD. So those movements would involve three or four carriers. According to IPL, a build-out possibility existed in which the Stout Plant could build a connection to Conrail's Indianapolis Belt Line, which would have given Conrail direct access to Stout, and ISRR two-carrier access to Stout.

After the transaction, Stout of course still has its single-line service via INRD. It has expanded access, via CSX-INRD, to all of the coal sources available to CSX, including those CSX acquired from Conrail. It has access to ISRR coal in a two-carrier movement involving ISRR and NS. It has single-line access to all of NS's Eastern coal sources, including those acquired from Conrail. It also has two-carrier service (via interchange at the transcontinental gateways) to Powder River Basin coal via either CSX or NS. It also has its rights to build out to the Indianapolis Belt Line preserved by Condition No. 23, Decision at 177, in order to reach either of ISRR or NS in that fashion and have them serve Stout in single-line service using the build-out.

What more could IPL want? — "Even more new options." It wants three carriers, not the one it had before the Conrail transaction, not the two it has now, to have direct physical access to the Stout Plant. It wants authorization that ISRR be

able to use NS's right of direct access over INRD to Stout. Is that right of direct access to Stout to be in lieu of NS's direct right of access? Of course not. IPL wants all three carriers to have direct access, thus not only giving it single-line direct access to all the Eastern coal mines served by CSX and NS (that is, substantially all of the coal mines in the East), but to all of the smaller Southern Indiana coal mines served by ISRR and INRD — to all of which it presently has access, in the case of ISRR on a two-carrier basis. And, of course, it would have multiple two-carrier movement access to Powder River Basin coal. In the aggregate, it would have access to most of the coal mines in the lower 48 States and three carriers to deliver their coal to IPL. No substantial reason has been given thus to change the Board's already generous disposition of the IPL requests. The Board should reaffirm its prior rulings and deny IPL's requests.

(a) IPL's Stout and Perry K Plants Are Entitled to No Further Relief. — From all appearances, IPL is attempting to exploit this oversight proceeding to gain benefits to which it is not entitled. In the Decision, the Board gave NS access to the Perry K plant via a CSX switch, thereby creating a second carrier option and expanding the coal sources available to that plant. NS also gained access to the Stout plant via an INRD switch or trackage rights over INRD (at IPL's election), also increasing options and expanding the coal sources available to that plant.

IPL makes clear that it is pleased to have this new access by NS (p. 14, n.11). It simply wants more. Specifically, it seeks direct access by ISRR at both

plants to supplement the NS access which the Board has imposed. Any such additional relief will amount to unjust enrichment.

In several filings before the Board, CSX has explained the pre- and post-Transaction scenarios at Perry K and Stout. We have given a synopsis again as to Stout just above. While CSX would prefer to spare the Board another reading of them, IPL's repetition of inaccuracies concerning rail access at those plants requires outlining the facts yet again.

Perry K. IPL continues to lament that the Board offered no "remedy" at Perry K. *See* Weaver V.S. at 1. But, as the Board correctly observed in Decision No. 89, "Conrail [was] already a bottleneck carrier controlling rail access to this plant. Thus, the transaction will not create new market power." Decision at 116. ISRR could access Perry K only via a joint-line move. No other railroad served the plant.[9] Until January 1998, ISRR's movements were governed by Contract 4553 among Conrail, ISRR, and IPL. In October 1998, that contract expired; it was replaced by a tariff, CR 4611.

Post-Transaction, CSX substituted for CR 4611 its own tariff COBU-4, thereby maintaining the same Conrail joint-line rates for ISRR-origin coal. Contrary to statements by IPL, ISRR pays the same rate for ISRR-CSX coal movements to Perry K that it paid for ISRR-Conrail movements to Perry K. The Transaction gave NS access to Perry K — and the opportunity to bring NS-origin

---

[9] On occasion, when Perry K was burning coal full tilt (between 250,000 and 350,000 tons/year), INRD supplied coal to Stout that was then trucked to Perry K. According to IPL, this movement occurred only during "emergencies." Weaver V.S. at 10.

or Western-origin coal to Perry K through a cost-based switch by CSX.[10] In short, Perry K is in a better position today than it was before the Transaction. Accordingly, it is not entitled to additional direct access by ISRR.

Stout. IPL states that ISRR should have the right to serve Stout directly, "at a trackage rights fee of no more than 29 cents per car-mile, with ironclad assurances of non-discriminatory dispatching and all other arrangements so that Indiana Southern is not precluded from being an effective competitor." IPL at 7. As with Perry K, IPL simply wants "more" — a lot more.

---

[10] Although it now insists that the Perry K and Stout plants burn only Southern Indiana coal, during the consolidation proceeding, IPL actively argued that it wanted the right to bring western coal to its Perry K and Stout plants. IPL-3 at 34-37; *id.*, Ex. 1 (Weaver V.S.) at 17, 20:

> Maintaining existing competition for moving western coal is of critical importance to IPL because it may need to use western coal to comply with its environmental obligations under the Clear Air Act and other statutes or regulations. IPL would have to rely on sources outside of Indiana to obtain lower sulfur coal. Given that low-sulfur coal reserves in the East are quite limited and in demand, it is more likely that IPL would buy western compliance coal. . . .
>
> For example, in the year 2000, much uncertainty in utility coal markets will develop, as Phase II of the Clean Air Act Amendments of 1990 become effective. Under Phase II, IPL may have to "scrub" more of the sulfur from its emissions, or otherwise have to use low-sulfur coal. (It may not have to do so precisely in the year 2000, because IPL can accumulate credits, deferring such a decision.) depending on the cost of low-and high-sulfur coal, the cost of scrubbing, the cost of sulfur dioxide credits, and other factors, IPL may well be required to change coal supplies to meet the then-applicable emission limitation requirements, after our current contract for high-sulfur coal expires in 2002. In addition, EPA's recently proposed ozone and particulate regulations and EPA's recent proposal to reduce nitrogen oxide emission may accelerate IPL's need to buy western compliance coal. (Emphasis added.)

Before the Transaction, Stout was directly served by one railroad — INRD. INRD ran unit trains of coal from the nearby Southern Indiana coal fields. In addition, under Contract 4553 among Conrail, ISRR, and IPL, ISRR could move Southern Indiana coal via Conrail to INRD for delivery to the plant by INRD. In 1996, IPL entered into an agreement whereby IPL granted INRD what was close to an entire requirements contract on coal movements to the Stout plant. That year, the ISRR-Conrail-INRD movement amounted to only 158,000 tons (compared with Stout's annual burn of about 1.5 million tons). Since 1996, 100% of Stout's coal requirements (except for two trains in 1998) were met without an ISRR-Conrail-INRD movement.[11]

In Condition No. 23, NS gained the right, at IPL's option, to access the plant directly via trackage rights or via a switch by INRD. IPL does not want to lose this new carrier access; it simply seeks additional direct access — by a third carrier, ISRR. As justification for this unprecedented three-carrier direct access, IPL claims that NS cannot "effectively compete" with CSX. Like many of IPL's statements in this proceeding, that conclusion lacks factual support.

During the Conrail proceeding before the Board, IPL maintained that it had the ability to build out from Stout to reach a nearby Conrail line, thereby giving the option of gaining direct physical access to a rail carrier other than INRD. IPL

---

[11] The INRD contract was not quite a full requirements contract. The amount excluded is Highly Confidential (with the exception noted above). It may be seen, subject to the Protective Order, in Vol. 3D, CSX/NS-178 at 396 *et seq.* But after 1996, the relatively small amount of excluded coal has also come via INRD from the mines it serves. Clearly, IPL felt that it was in its interests to move that uncommitted coal via INRD rather than by ISRR-Conrail-INRD.

fought hard to retain its build-out rights, vigorously maintaining that a build out not only constrained INRD pricing, but that construction of a build out was economically feasible. IPL-3, at 22-24; *id.*, Ex. 2 (Porter V.S.); *id.*, Ex. 3 (Anacker V.S.); *id.*, Ex. 4 (Crowley V.S.) at 8; IPL-11 at 21 ("In any event, a build-out to Conrail from the Stout Plant is feasible."); IPL-11 at 22 ("Mr. Crowley and Dr. Woodward also testified that the build out operates as competitive leverage over CSX's subsidiary INRD. . . . The ICC and STB recognize the competitive leverage offered by build-out options."); and IPL-11 at 23 ("Based on evidence and precedent, IPL's build-out option to Stout is feasible and must be meaningfully preserved.").

The Board agreed. In Condition 23, the Board granted IPL's request and required CSX to "provide conditional rights for either NS or ISRR to serve any build-out to the Indianapolis Belt Line." Decision at 177. For CSX's compliance with that aspect of the condition, *see* CSX's Submission at 83. With the build-out option, ISRR has the ability, without further action from the Board, to obtain access to Stout. If IPL wants Stout to be served directly by three carriers rather than two, instead of further conscripting the property of CSX and its subsidiary INRD, IPL could make the investment, which it has said was economically feasible, and construct a build-out.[12]

---

[12] IPL seems to be in a selling, rather than a building, mode. According to a report in *The Wall Street Journal*, July 17, 2000, A3, IPL has agreed to be acquired by AES Corp. The Board of IPL's parent, IPALCO, approved the deal on July 14, 2000. According to the *Wall Street Journal*, AES approached IPALCO in the Spring, attracted by, among other things, the 3,000 MW portfolio of "efficient coal-fired plants owned by IPALCO's utility, Indianapolis Power & Light Co." Under the deal, IPALCO "shareholders would receive fractional shares of AES

[Footnote continued on next page]

(b) There Is No Evidence at this Time that NS Cannot Compete Effectively for Movements to Perry K and Stout. — IPL asserts that the NS access to Perry K and Stout is not an "efficient and competitive remedy" (p. 1). In support of that assertion, IPL tosses a number of sometimes disjointed, convoluted, and irrelevant arguments for the Board's consideration. CSX addresses those arguments below.

(i) NS's "Best and Final" Rates. — IPL makes much of NS's response to IPL's request for bids to serve the Perry K and Stout plants, stating that the higher NS bids evidence NS's inability to compete.

Perry K. In Table 2 in Weaver's verified statement, IPL compares the NS purported "best and final" rate for a movement via ISRR and NS to Stout, which is then trucked to Perry K. Weaver V.S. at 11. This is an odd routing — trucking ISRR-origin coal from Stout to Perry K — upon which to request a rate from NS. According to IPL, this route has only been used in "emergencies." Weaver V.S. at 10. So it is bewildering why IPL bases its conclusion of noncompetitiveness on a rate for a movement that is rarely used.

Further, in what appears to be an incomprehensible statement, IPL asserts that "CSX imposes a substantial penalty on cars supplied by Indiana Southern versus those supplied by IPL [for movements to Perry K]." Weaver V.S. at 11. IPL then instructs the reader to compare the figures in "Column 1" (although there

---

[Footnote continued from previous page]
stock valued at $25 for each share of IPALCO stock they tender — a 16% premium to IPALCO's price."

is no column so designated), which purportedly "[a]pplies in cars to be supplied by ISRR" with "Column 2," which purportedly "applies in Private Cars." *Id.* The impression IPL gives is that the rates for the ISRR/NS/Truck movement are substantially higher than the rate under Conrail/COBU-4 rate because "CSX imposes a substantial penalty on cars supplied by Indiana Southern versus those supplied by IPL." IPL then adds that "IPL has lost competition at Perry K as well as Stout, because CSX is imposing rates and charges that are higher than those imposed by Conrail at both Plants." Weaver V.S. at 12. CSX does not know how it is "imposing rates and charges that are higher than those imposed by Conrail" when CSX republished Conrail's 4611 tariff with the same rates that Conrail charged. Moreover, CSX is puzzled by IPL's reference to the "substantial penalty" on cars supplied by ISRR versus IPL. The Conrail 4611 tariff, as is generally the industry practice, distinguishes between rates for customer-supplied cars (which are lower) and rates for railroad-supplied cars. If CSX is charging a "substantial penalty" under its COBU-4 tariff for use of ISRR cars, then Conrail was also doing so.

Stout. Similarly, IPL presents a rate from NS for a movement from various Southern Indiana coal sources to Stout. Because the NS rates are higher than the INRD rates, IPL concludes that NS is not an effective competitor. But it is clear that IPL's solicitation of the NS bid is a red herring and that serious reliance on it would be sadly mistaken. Today, as was the case when the bid was solicited, substantially all of the coal requirements of the Stout plant are under contract with INRD. IPL tries to dismiss the current contract requirements, saying that NS was

not limited to any coal tonnage not moved under contract with INRD. That is beside the point. The bid that NS submitted was for coal in any quantity, furnished in trains of 50 or more cars. The bid was to remain open for a year. The bid was submitted by NS on June 30, 1999 (very soon after the Split date, when NS was very busy with implementation problems). What IPL got, and what it presumably asked for, was in essence a bid for "any quantity" of coal to be open for a year.[13] So, theoretically (although NS knew well that virtually all of Stout's coal was committed to INRD until some time at least in the year 2001), NS made a bid which would be acceptable to it if it was to cover all of Stout's needs or if NS was called upon to furnish only 50 car loads — about 5,000 tons, or 1/300th of Stout's coal requirements during the year. One does not have to know much about the coal shipping business to know that the bids you will get for transportation will be enormously different if you ask: "Give me a bid for coal in any quantities under which I may give you no business at all or as little business as five thousand tons a year," or "Give me a bid for coal covering substantially all of my requirements for a year," where the parties know that the usual burn is about 1,500,000 tons a year.

The terms under which NS bid, apparently solicited by IPL, prevent the bid from having any real-world significance. It appears to have been solicited only for forensic use. The real-world acid test will come when, and if, IPL gives NS a chance to bid on a substantial portion of its burn at Stout, for movements in combination with ISRR or otherwise. NS is a tough competitor. While NS's

---

[13] There were separate bids for coal from four different Southern Indiana mines; but the bid for each mine involved only a single quotation.

service to Stout has some operational constraints, so did the three-carrier service that ISRR-CR-INRD provided prior to the Conrail transaction; ISRR wound up getting little, if any, of the Stout business. The point is that an opportunity to bid on a serious guaranteed commitment from IPL is likely to provide a true test of NS's ability to compete and overcome the difficulties that IPL continually talks about. A bid on "any and all" quantities, without minimum, hardly would. That sort of bid was all that IPL elicited.

In short, it is too early to test NS's competitiveness at Stout. As long as IPL is purchasing coal under the near-requirements contract from INRD, and a realistic guarantee is not offered to NS, no serious evaluation can be made.[14]

(ii) INRD's Trackage Rights Fee to NS. — "[D]isturbed to learn" that the trackage rights fee charged NS for use of slightly more than 3 miles of INRD's tracks to Stout is 35 cents per car-mile (not the 29¢ charged by CSX on the other segment), IPL repeatedly claims that this fee impedes NS from competing with CSX (p. 2, 3, 8, 11). Not only is IPL wrong, its argument contradicts the

---

[14] In a recent communication to the Board (letter of Michael F. McBride, Esq., dated July 27, 2000) IPL presents as breaking news the fact that the NS/INRD trackage rights agreement was not executed until May 26, 2000. This is rather curious since on June 1, 2000, CSX furnished that trackage rights agreements to Mr. McBride, and the trackage rights agreements clearly states on page one that it was "entered into as of this 26th day of May, 2000." The point IPL is apparently seeking to make is that if NS were really interested in serving Stout, it would have attempted to conclude negotiations on the trackage rights agreements earlier. Since the vast majority of Stout's requirements were committed to the INRD contract until at least sometime in the year 2001, it is hard to see why NS would have been in a hurry. And we understand that NS's Reply Comments complain of a lack of necessary information from IPL, which slowed its negotiations of the details of the agreement. In any event, it has always been CSX's view that NS had the right to use the trackage, once the Board's order was effective and the Split had occurred, notwithstanding the lack of documentation, subject to later completion of the terms documentation or Board resolution of impasse over terms.

Board's conclusions in the Decision. In any event, the 35 cent fee was mutually agreed to — one that NS obviously did not view as a hindrance.

In the Decision, the Board set forth principles for determining the reasonableness of the 29 cent trackage fee charged by CSX. There the Board recognized that different railroads have different below-the-wheel and other costs calculated in trackage rights cases. To that end, the Board "developed Conrail and NS costs of 46 cents and 40 cents per car-mile, respectively" — higher than the 35 cents that INRD is charging NS. Decision at 141. Further, even those higher Conrail and NS costs "understate[d] the fees that would be derived under the *SSW Compensation* method, which uses replacement cost of track to develop a rate of return factor, while the 29 cents, 46 cents, and 40 cents per mile numbers all reflect only the lower URCS book value." *Id.* at n.215 (emphasis added). So the 35 cents is less than NS's costs of using its own tracks, as calculated by the Board. The attached verified statement of Thomas J. Hoback submitted herewith (which is Highly Confidential), president of INRD, indicates that the 35 cent fee is far below the relevant costs of INRD.

We must remember that we are talking about a movement of a little over three miles over INRD. The difference in cost to IPL of the 35 cent INRD fee instead of 29 cents is 39.5 cents per car (loaded inbound and empty return combined) or less than $6,000 a year for the 1,500,000 tons usually burned at Stout.[15] The difference between the 29¢ fee and the 35¢ fee, given the short

---

[15] We assume 100 tons of coal to an inbound car.

movement, is immaterial. Of course, if the negotiation had been on a free-market basis for access to a major coal-burning plant (a sort of negotiation which hardly ever would take place) the fee would have been much more, replicating the economic value of access, not the cost of operation. The form of "valuation" employed in this case is only employed in rail combination or similar cases where the Board perceives a diminution of competition and orders a remedy.

(iii) IPL's Option at Stout. — As evidence that NS cannot compete at Stout, IPL states, "It is apparent that NS has no interest in acting as the competitor if [NS] has elected to let its supposed competitor, CSX/INRD, switch IPL's coal trains rather than serve the Stout Plant itself" (p. 4).[16] This apparently is said because the INRD trackage rights agreement provides, as an alternative, optional provisions for INRD switching. But IPL contorts the facts. According to Condition 23, of Decision No. 89, it is IPL, not NS, which must "choose between having its Stout plant served by NS directly or via switching by INRD." Decision at 177 (emphasis added). Thus, how NS serves INRD is established by IPL, not NS.

In that same vein, IPL states that "if NS does not elect to be the direct competitor [*i.e.*, if it uses the INRD switch], CSX may seek to impose a second switching charge for its portion of the move" (p. 4) (emphasis in original). That statement lacks substance. In the first place, the option is IPL's, not NS's. In the

---

[16] The Hoback V.S. presents information which contradicts IPL's assertions that NS's position in the Indianapolis area prevents it from being an effective competitor to the INRD service to Stout.

second place, if INRD switches, on what basis would CSX impose a second switching charge? If NS does use the trackage rights (at IPL's direction), CSX has already agreed that it will not charge NS a switching fee for the ISRR-NS movements where neither INRD nor CSX provides any switching service.

(iv) RCAF(A). — IPL states that "[n]either NS nor CSX is willing to adjust the switching charge in accordance with the RCAF(A), which was the case when Conrail was the destination carrier" (p. 12). This statement has nothing to do with NS's ability to compete. IPL simply does not like NS's and CSX's strategies to keep abreast of inflation and has thrown this item into its grab bag of complaints. As stated above, in COBU-4 CSX simply has republished the rates in Conrail's 4611, which contained no adjustment provisions at all.[17]

(v) Impact on ISRR. — IPL's Weaver asserts that the revenues generated from business from IPL's plants in Southern Indiana "obviously help Indiana Southern stay viable." Weaver V.S. at 12. Weaver warns that unless the Board takes further action, ISRR might have to abandon the Petersburg Branch north of Milepost 17 "due to the rates and charges of CSX at [Perry K]." *Id.* ISRR currently does no business at Stout and does 100% of the business at Perry K, which has about 18% of the burn of Stout; that was the case also before the Transaction; so ISRR's share of IPL's business is hardly major now. But, as discussed above, the rates CSX charges ISRR for movements to Perry K mirror those offered by Conrail. Should such an abandonment occur

[17] IPL has filed as Attachment D a superseded version of COBU-4. The current version has no adjustment provision.

(curiously, ISRR did not make such dire predictions in its Comments), it will be attributable to the reduced coal burn at Perry K, not the rates charged by CSX. In 1995, the Perry K plant burned 271,000 tons of coal. *See* IPL-4 at 8. Post-Transaction, ISRR-CSX has moved only 78,400 tons of coal to the plant which apparently is all the coal Perry K has used. Further, if IPL is so concerned about ISRR's economic viability, IPL always has the option to build out so that ISRR can serve Stout directly, if that would help.

The multiple arguments made by IPL are either flat wrong, insubstantial make-weights, or unfounded speculation as to what will happen when the long-term contract at Stout runs out, which will not be until sometime in the year 2001, at the earliest. IPL was competitively benefited by the Conrail Transaction, not harmed. Just as there was no point to the Board's rethinking of the provisions it has made for IPL in the Spring of 1999 (*see* Decision No. 125, served May 20, 1999), there is no basis for doing so now. ISRR has all the business at Perry K and INRD's contract for the vast majority of the coal at Stout remains in place. There can be no realistic test of the ability of the ISRR/NS movement to provide competitive constraints at Stout until the expiring contract is rebid. Once again, IPL is crying without being hurt, and crying for access broader than what the Board has given it, which in turn was much broader than it has ever had. While we assume the Board will continue to monitor matters, there is no reason for Board action now.

II. GREATER NEW YORK CITY ISSUES

1. **Canadian Pacific**. — Canadian Pacific (with its affiliates, "CP") raises a number of issues, which it says it is pursuing through negotiations with CSX and NS, mainly involving rail service in the Greater New York region. These include a desire to use Oak Island Yard, in the North Jersey Shared Assets Area, as an interchange point; a desire to provide connecting service to a revivified Staten Island Railroad ("SIR") by using the same Shared Assets Area; and certain grievances with respect to arrangements between it and CSX with respect to CP's overhead trackage rights over the "East of the Hudson" line to the Bronx and Queens. While CP repeatedly makes the point that it has no present issues to raise before the Board, but reserves the right to do so if the negotiations are not fruitful, certain of the observations made by CP are so extraordinary that comment on them now should be made.

(a) Interchange Points. — Essentially, CP wishes to relocate most of its interchange with CSX that now takes place at Selkirk Yard in the Albany, NY, area and to move it to Oak Island Yard, in Newark, NJ, in the North Jersey Shared Assets Area. CP claims that congestion at Selkirk is its reason. CP claims also that there is a "gateway" for interchange between D&H (now CP/D&H) and Conrail (now CSX and NS) at Oak Island that must be kept open by CSX.[18]

---

[18] CP speaks of "negotiat[ing] with CSXT" so as to "allow CPR to interchange traffic with Conrail at Oak Island" (p. 9). Perhaps the reference to "Conrail" is a typographical error for "CSXT." In any event, Conrail does not interchange with other railroads; under the Shared Assets Areas Operating Agreements approved by the Board in the Transaction, its railroading activities are limited to acting as agent for CSX and NS.

Both of these two propositions are incorrect. In the first place, Selkirk is the largest yard in the northeastern part of the former Conrail system and it is presently working quite well. Oak Island, on the other hand, while a major yard, is in the Shared Assets Area and is jointly used by CSX and NS, as well as by the continuing Conrail on their behalf. In order to avoid congestion at Oak Island and other portions of the North Jersey Shared Assets Area (and the other Shared Assets Areas), the continuing Conrail carries on certain operations which the two operating carriers have denied themselves the right to conduct themselves. *See* the Application, Vol. 8C, CSX/NS25 at 74-79.[19] Significantly, comments made in the present proceeding by the Port Authority of New York and New Jersey and by ISG have dwelt upon the capacity constraints in the North Jersey Shared Assets Area and the congestion at Oak Island. The suggestion that the Board might be called upon in an oversight proceeding gratuitously to force a change in a long-established major interchange between CP and CSX from Selkirk to Oak Island is amazing.

Secondly, there is no established gateway between CP (including CP/D&H) and Conrail at Oak Island, and even the paper rights of CP/D&H to effect interchange at Oak Island are restricted to intermodal movements.[20] While, as CP claims, Section 2.01 of an agreement of April 25, 1979, between Conrail and

---

[19] Citations to "CSX/NS" and "CSX" filings, and to numbered Board decisions, unless otherwise designated, are to the main Conrail case Docket, Finance Docket No. 33388.

[20] In a settlement agreement of February 16, 1983, D&H and Conrail agreed to construe D&H's intermodal-only rights in Oak Island to include "bulk transfer operations" as well as "piggy back."

Delaware & Hudson Railway ("D&H")[21] granted D&H the right to interchange traffic at certain specified locations, including "Oak Island," the words "Oak Island" were followed by the words "(intermodal only)."[22] As confirmed by an arbitration award of the United States Railway Association ("USRA") dated October 4, 1982, D&H had no right to interchange with any other carrier than Conrail at Oak Island.

Even more significantly, there never was any established gateway for interchange concerning any commodities or type of movement between D&H and Conrail at Oak Island. As of 1979, following the creation of Conrail and the grant of extensive overhead trackage rights on the Conrail lines to D&H incident to the Final System Plan, the vast majority of D&H's routes consisted of overhead trackage rights on Conrail. Accordingly, there was no reason for Conrail to interchange much, if any, traffic with D&H and certainly not at Oak Island, from which many of Conrail's major routes to the north, west and south radiated. Since the only traffic that could be handled by D&H at Oak Island was intermodal, since Oak Island was geographically a terminus, and since D&H had only overhead rights to Oak Island (as were most of the rights given it in the Final System Plan) and included the right to use the former Lehigh Valley's Oak Island intermodal facility, any assertion of a "gateway" for interchange seems fanciful.

---

[21] The D&H was not affiliated with a major railroad in 1979. Following a bankruptcy, it was acquired by CP in 1990.

[22] Indeed, all of CP/D&H's access to Oak Island Yard is restricted to intermodal movements. *See* Exhibit A to that same April 25, 1979, Agreement.

CP does not even claim that an established pattern of interchange as to any commodity or type of service ever developed between D&H or CP/D&H on the one hand and Conrail on the other at Oak Island. Indeed, any traffic other than intermodal could not go to Oak Island under D&H's rights. It is common knowledge that Conrail was not a friendly connection to D&H or CP/D&H; they were competitors, since most of D&H's routes were identical with Conrail's. Indeed, according to CP's Comments (p. 5), prior to the Split, Conrail traffic coming from Port Newark and Port Elizabeth (places within the North Jersey Shared Assets Area) were interchanged with D&H at Selkirk.

CP seeks to describe the NITL Settlement's provision concerning gateways as if it were like DT&I Conditions, requiring paper interconnection possibilities to be kept open both physically and commercially forever (pp. 11-12). But the NITL Settlement does not so provide, and what it did provide is nothing like the discredited DT&I Conditions.[23] It simply provides that "NS and CSX anticipate that all major interchanges with other carriers will remain open as long as they are economically efficient." Applicants' Rebuttal, Vol. 1, CSX/NS-176 at 773. There was no "major gateway" or indeed anything that could properly be called a "gateway," between Conrail and D&H or CP/D&H at Oak Island.[24]

---

[23] The ICC case cited by CP, *Traffic Protective Conditions*, 366 I.C.C. 112 (1982), was in fact a decision in which the ICC took steps to abolish existing DT&I conditions, finding them to be anticompetitive.

[24] CP speaks of restoring "a transportation option to shippers into and out of the Port Elizabeth/Port Newark area that was lost" (p. 10). But there is no evidence that that option was ever used or even existed.

CP's proposal is sheer opportunism, having no relationship to the purposes of the present oversight proceedings. CP's proposal to change the interchange location is not a proposal to increase competition, let alone a remedy for any diminished competition — the establishment of CSX and NS as competitors for traffic moving to and from the North Jersey Shared Assets Area was one of the major procompetitive benefits of the Conrail transaction. Rather, CP's proposal is an attempt on CP's part to give itself commercial advantage.

It is worth remembering that CP executed a settlement agreement in the Conrail case in which it received substantial commercial advantages, including the right to quote rates on joint movements (i) to and from the Belt Line in the Shared Assets Area in Philadelphia, (ii) as to intermodal movements to specified destinations from the ExpressRail terminal in the North Jersey Shared Assets Area, and (iii) to and from the Bronx via East of the Hudson, in each case jointly with CSX, on a specified revenue requirements basis and on specified commodities. *See* Exhibit 3 to CSX-167, filed November 30, 1998.[25] Even though some of these rights overlapped the route which CP was awarded by a condition of the Board — overhead trackage rights from the Albany area to Oak Point Yard in the Bronx — CP fought, successfully, to keep even that part of those valuable benefits which it obtained under the settlement.

---

[25] These commercial arrangements contemplated no physical operations by CP in the shared assets areas. They contemplated joint line service with interchange at the "normal interchange point" of "Albany, New York unless otherwise designated" in the Agreement. § 4.F., p. 2, Exhibit 3 to CSX-167, *supra*.

In return for these commercial benefits, CP agreed to support the Conrail Transaction as presented in the Application insofar as it affected CSX and not to seek conditions against CSX. *Id.*, § 2, at 2 of Exhibit 3, CSX-167, *supra*. CP's position is evidently a one-way street: what is mine is mine, and what is yours is negotiable. If it wanted to seek access to the shared assets areas, it should not have entered into any settlement agreement; it should have continued to oppose the Transaction and made its claim, however farfetched, before the Board. Neither CSX nor NS could give CP that access, beyond the narrow rights CP/D&H already had. That was one of the most fundamental principles of the Conrail Transaction. The Board's policies favor settlements, and where a matter is purely commercial and does not involve substantial lessening of competition, such settlements are in the public interest. Granting the request made by CP would discourage settlements since what the applicants give up in a settlement would be lost forever, but what the protesting party gave up in the settlement might be regained in an oversight proceeding. Given that, why would an applicant settle?

(b) Staten Island Railroad Connection. — In another remarkable passage, CP serves notice that upon the reestablishment of service by SIR under the aegis of a number of public agencies, it would like to be one of the railroads connecting with SIR (pp. 15-16). The presently proposed location for the connection of the SIR with the line-haul railroads is on the former Conrail "Chemical Coast" line, part of the North Jersey Shared Assets Area. Once again, any such access would be completely contrary to a core principle of the Conrail Transaction; that, subject to presently existing rights, the shared assets areas are to

be operated solely by CSX and NS and by their agent, the continuing Conrail. Besides once again violating the CP settlement agreements, the proposal has nothing to do with an oversight proceeding; the SIR was not being operated at the time of the Conrail Transaction.[26] The proposal is in essence an absurdity: a proposal to require physical competitive access to a point which will be served by two major competitive railroads, under the guise of an oversight proceeding. CP seeks to do that instead of filing a "competitive access" petition — itself an unheard-of filing, seeking forced access to insert a third carrier on top of two major, competitive carriers that have paid substantial amounts to acquire the track involved.

Of course the Shared Assets Areas are not open terminal and switching areas; they are simply the means by which the two carriers that paid for and acquired Conrail can both operate in certain very important areas where neither would yield an exclusive right of operation to the other. *See* Submission, CSX-1 at 28-29. The bringing of new carriers into the shared assets areas would be a fundamental restructuring of the Conrail transaction that is condemned by a series of adjudications by the Board in oversight proceedings. Such an incursion would be (like the Oak Island proposal) a clear violation of the principles stated by the Board in *UP/SP*, Decision No. 10, served Dec. 21, 1998, at 3:

> . . . Narrowly tailored merger conditions imposed to address merger-related harm are not considered a taking,

---

[26] However, the SIR was operating in 1979 when the basic arrangements for D&H's use of Conrail's property were finalized. Those arrangements prohibited D&H from making any interchange with SIR.

> but overreaching, disproportionate conditions could become confiscatory, particularly where it is not clear that carriers will be fully compensated for the traffic and revenues they would lose. And once a merger has been consummated, and the carrier can no longer choose to walk away from it, the imposition of disproportionate new conditions becomes increasingly inconsistent with notions of commercial certainty and fairness.

CP will not be without new business opportunities as a result of the revival of SIR. Both CSX and NS compete for business involving movements to, from, or through the North Jersey Shared Assets Area. With the revival of the SIR, they will doubtless compete with one another for joint-line business as a bridge carrier or otherwise, connecting both with SIR and CP, and interchanging with CP at established interchange points, such as, in the case of CSX, Buffalo or Selkirk or other Albany area yards.

(c) East of the Hudson Difficulties. — In a tone of petty complaint, CP briefly and without detail complains that it "still has difficulties with CSXT field personnel," that there are "significant issues" relating to pickup and delivery of CP cars, poor switching service and misrouting of cars (p. 18). CSX believes that it has treated CP fairly and will not counter with its own set of the everyday complaints that it has with respect to the CP relationship.[27] These issues are common where railroads are required to work together.

---

[27] In the early days of CP's service on the East of the Hudson Line, numerous cars were sent by CP to Oak Point Yard without delivery instructions. CSX perceived that the extent of this problem might indicate that the parameters of ordinary human error were exceeded and that an attempt to acquire an informal storage facility at the yard — not provided to CP by the Board because of capacity constraints at Oak Point — might have been involved. CSX sent the undocumented cars back.

On a related point, CP somewhat mysteriously says: "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 grant expressly authorizing CPR direct access to New York and Atlantic at Fresh Pond Junction" (pp. 18-19). CSX is at a loss to understand this. The Board ordered the grant of trackage rights for CP between Oak Point Yard and Fresh Pond in its Decision No. 109, and an instrument was executed among CP, CSX and New York Central Lines LLC in July 1999 providing, among other things, for such rights, including the initial trackage rights fee for the Fresh Pond movement. The Board, in Decision No. 109 at 7 stated that if direct interchange between CP and NY&A took place at Fresh Pond, a further agreement would have to be reached on the compensation payable to CSX for the use of any of its facilities at Fresh Pond to effect interchange, or, failing that, the Board would fix that amount. At the present time, however, all of the interchange facilities at Fresh Pond that are used by CP are proprietary to NY&A. CSX assumes that any arrangements necessary for this use are a matter between CP and NY&A as long as they have no impact on the CSX-NY&A interchange. If any issues arise, CSX will confer with CP and NY&A.

(d) Buffalo Interchange Between CP/D&H and CSX.[28] — Before CP settled with CSX (and also settled with NS), it had four months to study the allocation between CSX and NS of the routes and trackage rights held by Conrail.

---

[28] This issue does not involve Greater New York City issues, but we treat it here since we are treating the rest of CP's Comments here to the extent they are addressed at CSX.

The allocation was set forth in Volume 8B of the Application. Those allocations apparently disenabled CSX from performing an arrangement between Conrail and CP providing for interchange between CP's SK Yard and Conrail's (now CSX's) Frontier Yard, to be implemented on the basis of six months in Frontier Yard, alternating with six months in SK Yard. The Application made it plain that Frontier Yard was allocated to CSX, but that the track segment between Frontier Yard and SK Yard was allocated to NS. If this were important, CP should have concerned itself about this detail before it signed any settlement agreements.

Since trackage rights are sought by CP over NS as its remedy, we assume that NS will make the principal reply here. CSX is not aware of any written agreement for the alternating six months' assignment to move the cars, and what was involved may have been only a local practice. One thing that is clear is that the interchange point between D&H and Conrail was at all pertinent times Frontier Yard, and that, at all pertinent times, including the present time, D&H had and has the right to move between SK Yard and Frontier Yard to effect interchange at Frontier Yard. While CSX would hope that a mutually agreeable arrangement could be worked out, it is prepared to stand on the position implicit in this, namely, that the parties are to effect interchange in Frontier Yard and it is CP/D&H's obligation to reach that yard for that purpose.[29] CSX notes that § 1(e) of a tripartite

[29] CP suggests that CSX must pay it damages for being unable to move D&H cars from SK Yard to Frontier Yard, requiring D&H to move them itself (p. 21 n.12). The suggestion not only ignores the settlement agreement but the provisions of 49 U.S.C. § 11321 which remove all impediments of law from the carrying out of a plan of control or combination approved by the Board. The plan provided CSX no right to use the segment between SK Yard and Frontier Yard. Moreover, the suggestion seems contrary to the tripartite agreement referred to in the text.

agreement among Conrail, CN and D&H dated September 26, 1987, providing for interchange at Frontier Yard between D&H on the one hand and CN and Conrail on the other, provides that "D&H agrees to handle all interchange cars between CN and D&H and between Conrail and D&H in both directions between Frontier Yard and D&H's SK Yard." That agreement was expressly accepted by the present D&H after its acquisition by CP in a letter agreement of November 20, 1990. If the continuation of subsequent informal arrangements becomes impossible, it appears to CSX that the tripartite agreement's express provision would govern the matter.

* * * * *

While CP does not call upon the Board for relief at this time, none of its positions is worthy of any relief against CSX.

2. **New York City Economic Development Corp.** — NYCEDC raises three issues, none of which seem to be appropriate for relief in this proceeding. NYCEDC was a principal proponent of the request, which the Board granted, that an additional carrier be granted overhead trackage rights between the Bronx and Fresh Pond Junction on the one hand and the Albany area on the other, via the "East of the Hudson" route. This request was granted and CP was granted trackage rights by the Board. While CP is apparently operating relatively short trains, and only three nights a week, the CSX service East of the Hudson has greatly increased freight movements over and above that provided by Conrail, with nightly trains each way, many of them in excess of 100 cars, and extra trains some nights. To this story of substantial business growth, achieved through significant marketing

efforts (*see* CSX's June 1 Submission (at 95-104), NYCEDC has nothing to say. It restricts itself to making three complaints:

(a) Service to the Great Atlantic & Pacific Tea Company ("A&P"). — At Hunts Point in the Bronx, which CSX serves directly and to which CP has access through CSX switching, among the many food-oriented enterprises located there on private property owned by NYCEDC, there is a facility currently occupied by A&P. Rail access to that facility involves crossing a major road called "Food Center Drive" which, although on private property, is used by a constant stream of tractor-trailers dealing with the Hunt's Point facility and the various facilities and enterprises located there, as well as by tractor-trailers dealing with other businesses in the area, by Metropolitan Transit Authority Buses, and by general public motorists.[30] The road is a six-lane divided highway. The road makes a sharp turn near the rail crossing. CSX understands that the road and the A&P facility site are owned by NYCEDC.

The facility now occupied by A&P has not employed rail service since some time in the 1980s when the facility was occupied by Daitch Shopwell. At that time, Conrail, under then-prevailing national Class I labor arrangements, conducted switching operations at Hunts Point with three-person crews. That rule was changed in the early 1990s and the present rules contemplate two-person crews, which Conrail adopted in the 1990s and which CSX also follows. Evidently

---

[30] NYCEDC's Comments provide a description of how busy Hunts Point is, at p. 4.

the third crew member was used in the 1980s, when service was rendered to Daitch Shopwell, to carry a flag or placard to stop highway traffic at the grade crossing.

Much has changed at the location in question since the mid-1980s. The vehicular traffic is significantly greater than it was then. Rail service has increased. The economy is much stronger, and this area of the South Bronx has developed accordingly as a major industrial and transportation area, not the least in response to the efforts of NYCEDC in economic development for this area. Under present-day conditions, involving two-person crews who are active in the switching activities and the busier environment about Food Center Drive, CSX's local management believes that the crossing should be equipped with a grade crossing warning system for the safety of the railroad employees and the public, and by way of control of CSX's public liability.

NYCEDC says (p. 5) that the requirements of New York State law do not include any particular form of warning system in a situation such as this. Evidently that is the case; they impose no requirements whatsoever as to trains crossing private roads on shipper facilities, that being left to mutual agreement between railroad and shipper. CSX does not believe that that means that "anything goes." This technically private road is in actuality a very busy highway six lanes wide which is used by the public, and has to be treated as what it is. The risks are physical and are not affected by title to the land. It is unreasonable to expect a single railroad employee to safety flag six lanes of traffic to a stop as part of the normal method of operation across the road.

NYCEDC suggests that there is something anticompetitive in CSX's position, since, because CP can reach the A&P facility only via CSX switch, and since CSX will not serve the A&P facility until an adequate warning system for the grade crossing is provided, CP cannot reach it either.[31] But while CP does not have access to the A&P facility at the present time of disagreement over safety issues, neither does CSX; and when arrangements satisfactory to CSX from a safety standpoint are reached, both CSX and CP (via switch by CSX) will have access to A&P.

CSX regrets that the Board should be drawn into a safety dispute between CSX, which deals with grade-crossing safety issues all the time on the one hand, and NYCEDC, whose exposure to those issues is at best episodic on the other hand. CSX is committed to discussing this matter with NYCEDC and A&P to reach an agreement that will adequately deal with the safety issue before rail service, not furnished to the facility since the 1930s, is restored. CSX has been involved in those discussions since November 1999, desires to serve A&P, and will continue discussions. The current state of discussions leads CSX to believe that there are good prospects for the development of a mutually-satisfactory solution.

(b) Waste Management, Inc. Solid Waste Service. — Without any citation of particulars, NYCEDC claims that CSX's service to Waste Management,

---

[31] The A&P facility is located apart from the other facilities at Hunts Point so that the issues concerning crossing protection does not affect CSX's or CP's service to the other Hunts Point facilities.

We note that CP's Comments do not complain about the A&P situation.

Inc. ("WMI"), which ships commercial waste[32] from New York City to a disposal location in Virginia, "has been unreliable at best" (p. 7) with frequent delays in the pickup of loaded cars and the return of empties to the facility of WMI in the Harlem River Yard. Despite the fact that the movement in question is a joint CSX/NS movement, with the delivery to the landfill in rural Virginia being made by NS, responsibility for the entire movement, including the return of equipment, is placed on CSX. Even NYCEDC acknowledges that service has recently improved; CSX believes that its service has been good at all times, particularly given problems regarding WMI's equipment. Such problems as were encountered related to service since start-up of this operation by CSX were to a large extent related to insufficient equipment on the part of WMI.

To be sure, WMI certainly did experience start-up service problems at its Harlem River Yard facility over the past year. CSX believes that a majority of these problems were the direct result of WMI's providing too few railcars in their fleet to support the level of loadings WMI planned. The situation was compounded by the absence, until February 2000, of a disciplined WMI loading schedule; WMI simply loaded all available empty cars. This approach led to a severe imbalance in the fleet. In an effort to balance the fleet and produce a steady supply of empty cars for loading, CSX analyzed WMI's situation and determined that, based on the time needed to load, unload and transport the limited fleet, CSX

---

[32] Municipal waste is not involved, and accordingly the movements in question are not related to the issues raised by the closing of the City's facility at Fresh Kill on Staten Island.

needed to restrict the number of loads that CSX would accept from WMI daily. Over the past several months, as WMI has increased the number of cars in its fleet and reduced the time needed to load and unload the railcars, CSX has increased the number of daily loads. In fact, by working together to optimize this business, CSX and WMI have more than doubled the number of railcars moved daily.

WMI also experienced problems with lid securement on the their containers. This serious safety concern required WMI to retrofit their fleet to ensure that the container lids would not blow off moving trains. This retrofit took cars out of the available fleet for a period of time in the Winter of 1999-2000, exacerbating the equipment shortage. WMI's equipment problems continue. Recently, FRA inspectors sent 34 of WMI's loaded cars to the shop because WMI had not effected required safety appliance repairs on these cars. Apparently, FRA and NYDOT inspectors may have advised WMI several weeks before that the safety appliance defects needed to be repaired.

As mentioned above, the current routing of WMI cars from Harlem River Yard involves two railroads, CSX and NS, which physically interchange the cars in Virginia. WMI's operations at Harlem River Yard and WMI's contractor at the receiving location also share responsibility for equipment cycle time. In February 2000, the cycle time for WMI traffic was 19 days, of which 9.7 were on CSX. The remaining 9.3 days were either on NS or under WMI control at either end of the movement. Current cycle time is 14 days, of which 8.8 days are on CSX. The remaining 5.2 days, again, are either on NS or under WMI control at either end. Obviously all parties involved are improving their portions of the cycle.

CSX notes two further points:

- CSX transit time (that portion of the cycle time a car spends under CSX control) has been consistently better than the transit times proposed to WMI.
- CSX has provided unit train service for this movement since January 2000, even though WMI has yet to sign a contract for that form of value-added service.

The July 4th service "failure" mentioned by NYCEDC (p. 7) was not in fact a service "failure" but a service success involving scheduled rail maintenance and a traditional holiday vacation for CSX crews. CSX's activities, which had the potential to impact service to WMI, were coordinated with WMI to ensure that there was no adverse impact on WMI's operation. Several weeks before the holiday, CSX advised the WMI that there was a potential for service interruption on July 1, 2000, and worked with WMI to place sufficient empty cars at Harlem River Yard to avoid an interruption in service to WMI. As a result of good communications and effective planning on the part of CSX and WMI, no downtime was incurred by WMI, and their business, and that of their customers, was uninterrupted.

NYCEDC's criticisms of CSX service to WMI seem to be very wide of the mark.

(c) The "George Washington Bridge" Truckers Survey. — NYCEDC (pp. 7-9) complains about the availability and utility of the truckers' survey conducted at points in Northern New Jersey and in Massachusetts under Condition No. 22, Decision at 177. NYCEDC says that "in various meetings, at

various times, NYCEDC staff and consultants have asked the railroads' representatives" for the reports filed under Condition No. 22 (p. 8). NYCEDC says that the response has been that they can be obtained from the staff of the STB. *Id.*

While CSX representatives who generally attend such meetings do not recall "repeated" requests for the reports, the response that CSX likely gave was to suggest that the reports be obtained from the STB. This was because CSX initially was not certain whether the reports were considered public documents; the Board's Condition did not provide for serving or furnishing copies otherwise than to the Board. Decision at 177. Apparently in March 2000, NYCEDC attempted to obtain the reports from the Board. Evidently there was some difficulty in obtaining all of the reports; NYCEDC says that "the results were disappointing"; only one report was found for each of CSX and NS.[33] Without any specification of what might be more useful, the reports are said by NYCEDC not to "provide a great deal of useful information." They are "limited" and the single copy from each railroad that was found "show[s] no trends" (not unusual for a single report in a periodic set of surveys following behavior over time) (p. 8).

It is, again, difficult to respond to a Comment such as this that offers no specifics. CSX believes that the reports set forth precisely the information that the Board has required in Condition No. 22 and that the Board staff has informally advised is sufficient to satisfy the Board's Condition. Thus, each CSX report

---

[33] CSX had a check performed during the week of July 24, 2000, and found that all of its reports in the survey were available in the public STB files.

shows, for the CSX intermodal terminals in northern New Jersey acquired as a result of the Conrail transaction (North Bergen and Kearny) or operated by CSX in northern New Jersey before and since that transaction (Little Ferry), the number of inbound or outbound trailers handled, the "East of Hudson" origin or destination of each and the number of trailers using each Hudson River crossing during a six day quarterly survey period. The reports also show the amount of traffic handled at these terminals during each survey period that does not cross the Hudson River, *i.e.*, "West of Hudson" traffic. Similarly, CSX has also submitted quarterly reports showing, for a similar survey period, the extent to which traffic handled at its Massachusetts intermodal terminals (Boston, Worcester and Springfield) either crosses the George Washington Bridge or uses other routings.

The information provided in the reports seems to CSX to be sufficient to meet the purpose for which the reporting was required, namely, to assess "the potential adverse environmental effects that would result from an unexpectedly large merger-related increase in truck traffic through the city and over the George Washington Bridge [and] to permit us to determine the accuracy of our assessment that the transaction will not result in substantially increased traffic over the George Washington Bridge." Decision at 82.

After determining that the STB decided to place the reports in the public files, CSX has now furnished NYCEDC the two reports CSX has filed covering portions of the year 2000. NYCEDC suggests that the reports should be filed monthly and contain "useful" information, but in the absence of any specifics whatsoever as to what further information NYCEDC wants, changes in the

reporting system should not be considered. As part of its normal consultation processes with NYCEDC, CSX will offer to discuss the reports with NYCEDC. At the present time, it does not seem appropriate for the Board to change the requirements of the Condition in question. CSX would be glad to continue furnishing copies of its reports to NYCEDC.

* * * * *

CSX regrets that NYCEDC focuses its comments on issues such as these and not on what CSX has achieved in little more than a year of operations East of the Hudson. Following some service problems in the Summer and early Fall of 1999, service to the Bronx and Queens has vastly improved, and in fact CSX has experienced a 23% increase in freight business in this market. Of particular note in this regard are two aspects of the business which relate to two areas of NYCEDC criticism:

1. The joint UP/CSX Express Lane service for West Coast produce into New York City and Boston. This premium service provides eight-day delivery to New York City, and has resulted in rail delivery of certain fruits and vegetables, which have not moved by rail in decades. As result of this and other marketing and operational efforts, CSXT has increased its traffic base with the Hunts Point Food Distribution center by 18% in the last year.

2. Solid Waste traffic moved out of the Bronx by rail has increased by 45% in the past year.

This is new and increased rail business, not business diverted from another rail carrier. That new rail business reduces truck traffic to the area, a goal much desired by local interests. The increase in CSX rail business east of the Hudson, in

the face of competition from CP, not to mention trucks, is as strong a proof, despite the NYCEDC Comments, of its "commitment to offer quality service to those locations . . ." (p. 10). The railroad's effort ". . . to fully honor its commitment to improving rail service to the New York City market." (*id.*) can best be seen in the response of the railroad's customers.

None of the NYCEDC Comments warrants any action by the Board.

3. State of New York. — The Comments of New York State are relatively brief. In essence the State agrees with CSX's description, in the June 1, 2000, Submission, of its relationship with CP East of the Hudson. No mistreatment of CP by CSX is asserted. At one point, the State seems to be saying that it is part of CSX's responsibility to make CP an effective competitor (p. 7), but CSX cannot take that view of what one competitor owes to another; fair, ethical and equitable dealing and respect for obligations is, in CSX's view, the criterion of the relationship of trackage rights owner to tenant and of the switching which it provides to the recipient of that service.

The State attempts (pp. 8-10) to make it appear that CSXT has caused a significant adverse impact on Metro-North on-time performance. This allegation, however, is contradicted by Met. North's own Comments. South of Poughkeepsie on lines held by Metro-North on a long-term basis, CSX operates one or two freight trains round trip per day in the middle of the night when few, if any, passenger trains operate. The 78 "incidents" of asserted passenger delay presented by New York are in fact merely the dispatch logs of defect detector alarms. Southbound trains pass over a third rail clearance envelope detector before

entering Metro-North third rail territory. When the detector is tripped, CSX stops the train and either corrects the problem immediately or sets out the car that could damage the power rail. The log presented by New York thus documents CSX's compliance with a safety measure designed to protect passenger service, not incidents of delays of Metro-North passenger trains. No statistics are furnished as to which, if any, of the 78 "incidents" affected passenger movements. Metro-North, which has filed Comments (*see* Part IV), does not join in the State's criticism on this account. CSX also notes that on the Amtrak Empire Service which operates between New York and Albany on the involved lines the on-time performance is an outstanding 95.5%.

Nothing in the State's Comments with respect to CSX warrant action by the Board.

4. **Port Authority of New York and New Jersey**. — The comments of the Port Authority are thoughtfully and carefully presented and deal with the very serious issues of capacity in the infrastructure supporting the two competing railroads that serve the commercial Port of New York and New Jersey. While CSX might not agree with the Port Authority's analysis of the economics of the acquisition of Conrail and various other points, the matter of planning for the future activities of the Port and the necessary infrastructure to support a robust rail link at the Port obviously demands concerted attention.

CSX, however, questions the appropriateness of the major action which the Port Authority asks the Board to take. The Board is asked (pp. 9-10) to institute a

capacity study of the North Jersey Shared Assets Area, presumably in a forensic structure, and with data being provided to the Board by CSX and NS, including:

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

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

There are several difficulties with this. In the first place, such a study, based on the rail capacities and rail infrastructure alone, would be incomplete. A major focus of the Port Authority's mission, as its name suggests, is the development of the area as an ocean port. The Port Authority reported a container throughput of 2.45 million TEUs[34] in 1997. Its public projections are 4.7 million TEUs, assuming maintenance of a 45-foot channel, and 5.75 million TEUs with a 50-foot channel for the year 2010; 7.37 million TEUs with a 45-foot channel and 9.47 TEUs with a 50-foot channel for the year 2020; and 12.88 million TEUs with a 45-foot channel and 17.02 million TEUs with a 50-foot channel for the year 2040. The growth rates involved, and the disparities depending on the extent that investment is made to maintain a 50-foot channel as opposed to a 45-foot channel, are such as to complicate attempts by the railroads to predict their own capital budgets to accommodate increased business in the North Jersey Shared Assets

[34] A TEU is a "20-foot equivalent unit," the smallest-sized container currently in commercial service. Thus, a shipment of one 40-foot container counts as two TEUs.

Area. While the rail activities in the North Jersey Shared Assets Area are hardly limited to the transshipment of cargoes handled or to be handled in Atlantic Ocean commerce — the area is a terminus for commodities originating within the United States, Canada and Mexico, as well as coming from across the Pacific, to be consumed in the Greater New York City area — the Atlantic Ocean commerce handled intermodally from the North Jersey Shared Assets Area is a major part of the business of the shared assets area.

The examination of capacity and budgeting for infrastructure improvements should be undertaken as a continuation or extension of the regular conferences presently conducted by the Port Authority and the two rail carriers. Knowledge about the plans of the Port Authority for port improvements and a testing of its projections are necessary to the railroads in developing their own capital budgets. The mixture of financing between private funds and public funds is best discussed in conference with both the Port Authority and the rail carriers involved. One of the attachments to the Port Authority's filing is a paper on rail capital projects jointly developed by the Port Authority and the railroads. That seems to CSX to symbolize the way in which the issues raised by the Port Authority would best be handled. Participation of the Board in this, other than as a part of a very general oversight as to rail competition and operations in the area, seems unnecessary and likely to make forensic a process which should be one of consultation and cooperation.

The question is also raised, if there is a Board-managed study of capacity and infrastructure in the North Jersey Shared Assets Area at the instance of and

with an eye to the requirements of the Port Authority, why should there not be similar studies as to rail capacity, under the Board's retained jurisdiction or otherwise, in respect of other domestic and Atlantic ports — some of them anxious to take business from the Port of New York and New Jersey? Indeed, why should there not be such a Board exercise on behalf of ports in other parts of the country in territories where there recently have been Class I railroad mergers still within the five-year oversight term (a description which would probably include all of the deep water ports in the lower 48 states)? CSX believes that the Port Authority's desire to address and share information on capacity, infrastructure and long-range planning is well-founded and prudent, but believes that a different procedure should be employed, involving a direction to confer and exchange information through the processes of consultation that the Port Authority and the serving rail carriers have already put in place. The Board should not order the new proceeding which the Port Authority suggests but should indicate that the parties should treat of capacity and infrastructure issues in their present program of conferences.

III. PENNSYLVANIA ISSUES

1. **Transportation Committee Chairmen of the Pennsylvania House of Representatives**. — The Chairmen discuss a variety of issues in their concise but detailed filing. While commenting on the problems that were caused by the implementation difficulties, the Chairmen state their belief that "both NS and CSX have made significant progress in the implementation of their acquisition and division of Conrail assets since the conveyance date for this transaction" (p. 2).

While most of the Chairmen's comments and questions are addressed to NS, which acquired the great majority of the Conrail lines in the Commonwealth of Pennsylvania, the comments request CSX to comment on the matter of the proposed double-stack clearance in the Philadelphia area and CSX's commitment to assign car repair work to the Hollidaysburg and Altoona shops, allocated to NS in the Transaction (p. 5).

As to the Philadelphia area clearance, CSX has undertaken a detailed engineering analysis of the work that would be required to obtain greater clearances along its Trenton line. The preliminary estimate of $14 million (developed by Conrail in 1995/6) has now been refined and updated, indicating that the current cost estimate to fully clear this line is closer to $28 million. CSX has been in contact with representatives of the Commonwealth to discuss the prospects for proportional increases in public cost sharing of this project. TEA -21 provided Federal earmarked funds of $10 million, and in previous clearance projects throughout Pennsylvania, the Commonwealth contributed toward the project, and where passenger operations were involved, paid the entirety. CSX remains committed to obtaining increased clearances over this route — which is part of its overall I-95 rail corridor — but the timing and staging of this project are subject to both internal marketing initiatives, and further discussions with the Commonwealth concerning funding shares.

The commitment of CSX to assign major overhaul work on locomotives and rail cars to the historical Conrail facilities in and near Altoona now allocated to NS, is being honored, and active work is going on now. The commitment is

discussed in the Verified Statement of John Orrison, in Volume 3A of the Application, CSX/NS-20 at 71, describing a plan to overhaul 65 locomotives per year at Altoona and approximately 330 rail cars per year for scheduled repair at the Hollidaysburg shop. The contractual arrangements between CSX and NS for the work are set forth in Volume 8C of the Application, CSX/NS-25 at 801-02, and contemplate, over a three-year period, 1000 rail cars for heavy repair and 195 locomotives for scheduled overhaul. The three years that will be involved are the present year, 2001 and 2002. The 65 locomotives to be subject to overhaul this year have been selected and work on a number of them has been completed already. The work includes repair as necessary and fresh painting of the Conrail locomotives in the CSX colors. The quota of 330 boxcars for the present year will be met. The project is on schedule.

The Chairmen's Comments request only information from CSX, and the foregoing provides it.

2. **SEDA-COG Joint Rail Authority**. — This economic development authority, set up by seven Pennsylvania counties, mainly focuses its Comments on issues which it has with NS. It also reports, however, that shippers have stated that "NS-CSX interline service is very poor with an absence of cooperation on rates, interchange points and service between these carriers" (Stover V.S. at 2.). In the absence of greater specificity, CSX cannot comment on these remarks; they are part of a general criticism of NS service in the area to which we assume NS will provide response.

IV. OTHER RAILROADS

The comments of CP have been discussed in Part II above. Four other railroads have made comments which CSX will address in this part.

1. **Canadian National/Illinois Central**. — The brief comments of CN/IC deal entirely with the CSX dispatching on the Leewood-Aulon Line near Memphis, a line segment which is part of the historic CSX system and on which CSX moves to effect interchange with one of the major western carriers, and which CN/IC uses for main-line North-South movements. In Condition No. 36, Decision at 178, CSX was ordered to consult with CN/IC toward reaching a solution to the complaints about switching and report progress to the Board, which it has done. No quantification of the delays asserted by CN/IC is provided. The CN/IC Comments say that there is no question as to CSX's good faith, but that the present "fix" for the dispatching issues still results in delay with "unacceptable frequency" and something more needs to be done. CN/IC supports continued negotiations between the parties, but states that it reserves its right to ask the Board to address these issues if the continued negotiations are not productive. CSX feels that the local arrangements which have been in place for many months have, in fact, worked well and that CN/IC's filing may be intended to "keep alive" this issue. CSX intends to continue to cooperate closely with CN/IC at the local level to facilitate efficient operations. Further, CSX has offered to cooperate with CN/IC to study whether there might be an "engineering solution" whereby additional track might be constructed at CN/IC's expense to expand the capacity of this line segment. CN/IC requests no action from the Board at this time.

2. **Livonia, Avon & Lakeville**. — In Condition No. 56, Decision at 180, the Board granted the application of LAL to the extent necessary to permit it to operate across Conrail's Genessee Junction Yard (allocated to CSX) in order to reach the Rochester & Southern, thus removing a contractual barrier and permitting connectivity between the two shortlines in question. There is no question but that connectivity has been achieved, but LAL raises an issue as to the performance of a contractual obligation to rehabilitate the Genessee Junction Yard which LAL says has not been completed. The Trackage Rights Agreement between CSX and LAL requires that the track to be used by LAL be maintained by CSX "in compliance with FRA Class 1." CSX's engineering staff reports that the track is being maintained to the standards for FRA Class 1. If LAL wishes to have a higher degree of maintenance performed, the parties' agreement provides that on LAL's reasonable request CSX shall perform such maintenance at LAL's expense. No action by the Board is required.

3. **Wheeling & Lake Erie**. — This regional carrier — whose lines, augmented by trackage rights granted in the Conrail transaction, extend to Toledo and Lima, OH, in the west, and to Wheeling, WV, and Pittsburgh and Connellsville, PA, in the east, providing service to numerous cities, including Cleveland, Akron, and Canton — makes a number of assertions in its Comments.

WLE made dire predictions as to its financial health following the Conrail transaction before the Board in 1997-98, and its present Comments have a suggestion of hard times and need about them also. But perusal of a recent article

in "Trains" magazine (August 2000 at 28), based on an interview with WLE's president, should dispel any such notion. The article's theme is:

> During the STB's Conrail hearings, Parsons [President of WLE] predicted that without direct Chicago access to offset its loss of a friendly NS connection at Bellevue, W&LE would lose 16,000 annual carloads and nearly one-third of its revenue, with bankruptcy a likely result. But it hasn't turned out that way. In fact, the Wheeling is doing just fine.

Among the reasons why WLE is said to be "doing just fine" are movements in interchange, as a bridge carrier with CN, using WLE's new trackage rights to Toledo awarded it by the Board, in order to reach a new intermodal and bulk terminal in New Stanton, PA, a relationship said by WLE's president to have "worked out better than we had hoped so far." The article reflects other marketing initiatives that WLE is exploring through its Toledo connection with CN, including a proposed revival of business from the Neomodal Terminal near Canton, OH.

While most of WLE's comments are directed at NS, WLE claims that CSX has not identified any "mutually beneficial arrangements" meeting the terms of Condition No. 68, Decision at 181. Yet the written record reflects that CSX has offered arrangements to WLE involving Petroleum Coke movements from Toledo and Lima to Cresap, WV, and Calcined Petroleum Coke from Cresap to Massena, NY, each involving WLE as a bridge carrier, and various movements of scrap metals from destinations on the former Conrail lines to Canton. While not all of these movements involved the route mentioned in the last sentence of Condition No. 68, CSX views those as being examples of the sort of "mutually beneficial arrangements" that might have worked out, not the exclusive ones.

WLE says in its comments that it will continue negotiations with NS and CSX. CSX will continue, as set forth in its June 1, 2000, Submission, to explore possible "mutually beneficial arrangements" with WLE. No action by the Board with respect to CSX is required.

4. Wisconsin Central. — As mentioned above, WC's comments generally agree that "Chicago is currently working well from an operating standpoint" (p. 2). WC also commends CSX and NS for good faith activities toward operational coordination in Chicago and for maintaining the neutral orientation of the IHB (p. 3). WC suggests that the presence of the Board's oversight is keeping the two carriers on their best behavior and that if the oversight were removed, various undescribed evils would result (*id.*). CSX states in response that it is committed to good faith coordination in Chicago, and to the fair treatment of all carriers there, and notes that there are numerous railroads of varying sizes in Chicago which would be quick to object if there was any departure from those standards. No action by the Board is requested by WC.

5. Indiana Southern Railroad. — ISRR's Comments support requests made by Indianapolis Power & Light and their collective requests are discussed in Part I.

V. PASSENGER INTERESTS

1. State of Maryland. — The State of Maryland reports (as CSX did in the June 1 report) that there has been a significant and unacceptable decline in on-time performance ("OTP") of MARC trains on the Camden Line (CSXT's Capital

Subdivision) and to a lesser extent on the Brunswick Line (CSXT's Metropolitan Subdivision) since the Split Date, but does not ask for the imposition of any conditions at this time.

MARC asserts that this decline in OTP occurred despite the fact that MARC reduced the frequency of its service since the Split Date. CSX disputes this factual assertion. There has been no decline in the frequency of MARC service since June 1, 1999. As the operator of the MARC service, CSXT has detailed records as to the number of MARC trains operated each day since the inception of the service, but the Board need only refer to MARC's own current schedule (Exhibit 1 hereto), which states that it has been effective since May 19, 1999, to see that service has not been reduced since June 1, 1999.

Moreover, CSX is surprised by MARC's assertion that it is "somewhat baffled by the CSX reference to MARC trains as 'daily conflicts'" on the Camden Line. The "daily conflicts" referred to in CSX's June 1 Report (at 59) are the meetings of a northbound MARC train and a southbound MARC train on the Camden Line. These conflicts were not anticipated in the CSX Operating Plan. The CSX Operating Plan's prediction of sufficient capacity was based on the assumption that Maryland would follow through on its commitment to construct the "Penn Connection" between Amtrak's Northeast Corridor and Camden Station on the Camden Line. This connection would have allowed MARC trains to operate over the Camden Line in one direction only. During the morning commute, it was anticipated that MARC trains would return to Camden Station in Baltimore from Union Station in Washington, D.C. via the Northeast Corridor

rather than the Camden Line. Similarly, during the evening commute, it was anticipated that MARC trains would return to Union Station via the Northeast Corridor rather than the Camden Line.

The construction of the Penn Connection, and a number of other important capital projects, are important issues in the ongoing contract negotiations between CSXT and MARC. CSXT concurs with the State of Maryland that these negotiations should be permitted to proceed without intervention by the Board.[35]

2. **Metro-North Commuter Railroad Company**. — Metro-North seeks the Board's assistance in directing Conrail to execute an assignment of its rights and obligations under its 1983 Trackage Rights Agreement with Metro-North (and its parent MTA and the Connecticut Department of Transportation) to New York Central Lines LLC and CSXT on the one hand and to Pennsylvania Lines LLC and Norfolk Southern Railway Company on the other hand. When Metro-North presented its proposed assignment to CSXT and NS last year, CSXT and NS took the position that an assignment is unnecessary as the Decision (Ordering Paragraph No. 9, at 175) effectively "splits" the Conrail Trackage Rights Agreement into two parts. The legal analysis is presented in the NS Reply Comments as to the "split"

---

[35] The Transit Riders League of Metropolitan Baltimore, an organization formed in 1999 with the stated purpose of improving public transit in metropolitan Baltimore through informed citizen action, also reported to the Board on MARC's poor on-time performance. As part of their negotiations, CSX and MARC are contemplating the establishment of a Joint Corridor Improvement Committee. CSX will see to it that the points raised by the League are brought to the attention of the Committee. Further, CSX is pleased to report that MARC service has been improving with a 91% overall on-time performance in July 2000.

of the pertinent agreement between New York Central Lines/CSXT and Pennsylvania Lines LLC/NS.

CSXT is willing to execute a document that would simply acknowledge the effect of the Board's order. Such a document should satisfy Metro-North's desire for formality while making it clear that the rights and obligations of New York Central Lines LLC/CSXT are now separate and distinct from those of Pennsylvania Lines LLC/NS. CSXT will confer with Metro-North and NS about the form of such an agreement in an effort to resolve this issue.

With respect to CSX, Metro-North notes CSX's report of some operating problems and states that it is "aware of the efforts being made by CSXT to bring its equipment into compliance with the clearance envelope and is working with CSXT to eliminate the problems." Metro-North Comments at 11. Metro-North states that "the primary impact of these problems has been to delay CSXT's freight trains" and characterizes the resulting passenger delays as "minor." *Id.* Metro-North does not seek the Board's assistance with respect to these clearance issues.[36]

When considering the effect of the Transaction on passenger service in New York, the Board should be aware that north of Poughkeepsie, CSXT has been dispatching 26 Amtrak Empire Service trains daily, with on-time performance standing at an outstanding 95.5% (which exceeds Amtrak's performance on its own Northeast Corridor).

---

[36] Certain of the Comments of the State of New York, discussed in Part II, relate to passenger service.

VI. OTHER ENVIRONMENTAL AND SAFETY ISSUES

1. **City of Cleveland**. CSX entered into a Settlement Agreement with the City of Cleveland on June 4, 1998, which resolved all of Cleveland's requests for conditions in the Conrail control proceeding. Pursuant to that Settlement Agreement, CSX has to date paid $4,280,000 of the $10,700,000 it pledged to pay for a Community Impacts Fund ("CIF"), with the balance to be paid in annual installments in the next three years. The Settlement Agreement provides (Subsection 1B) that the City may use the CIF to mitigate adverse environmental impacts resulting from the Conrail transaction, including, but not limited to those in the areas of "noise and vibration, noise mitigation structures and landscaping, emergency response and vehicular delay, hazardous materials transport and response, hazmat responder training and emergency vehicle access, pedestrian and vehicular safety, grade crossing maintenance, and cultural preservation." CSX also agreed (Subsection 1E) to expend an additional $2,400,000 over a five-year period "for fencing, landscaping or other improvements to limit access to railroad property, and for the cost of installation of landscaping related to noise mitigation measures." In addition to these funds, CSX committed to make capital improvements estimated to cost $38,200,000 on the Short Line and at Collinwood Yard, including the installation on the Short Line of continuous welded rail and additional ballast including surfacing of the track which reduces noise and vibration impacts, and made numerous other commitments for the benefit of the City of Cleveland. The parties expressly agreed (Subsection 1D) that the Community Impacts Fund and the other commitments in the Settlement Agreement

would be the "sole mitigation for environmental impacts within the City of Cleveland resulting from this transaction" (emphasis added).

(a) Asserted Violations of the Settlement Agreement. Cleveland asserts that CSX is not meeting four of its obligations under the Settlement Agreement and seeks the Board's assistance in remedying these asserted violations. CSX opposes this request for relief. CSX acknowledged in its June 1 report that it had not provided to Cleveland the Lakeshore Line traffic study required by Subsection 11 of the Settlement Agreement, but Cleveland has not been prejudiced by the delay and there is no need for any intervention by the Board with respect to this study. CSX disagrees with Cleveland's assertion that it has failed to meet its obligations in any other way. CSX has either implemented or is in the process of timely implementing all of the obligations imposed on CSX by the Board in the Environmental Conditions applicable to the Greater Cleveland Area (Environmental Conditions 26(A), 26(B), 26(C) and 26(D)) and in the Settlement Agreement. There is no basis for any Board enforcement with respect to any of these matters.

(i) Lakeshore Line Study. The CSX Operating Plan contemplated routing through Cleveland approximately 44 through trains over the CSXT Short Line on an average daily basis and approximately 12 through trains over the NS Lakeshore Line on an average daily basis via trackage rights. Subsection 11 of the Settlement Agreement required CSX to conduct a study within six months from the Closing Date (by December 1, 1999) to determine whether two additional through trains "can be operated over the Lakeshore in a

safe and efficient manner, without interference with CSX and NS main line train operations, and with schedules that satisfy customer requirements."

Cleveland correctly reports that CSXT prepared a draft report and provided the draft to NS for comment. In response to comments of NS, and upon further internal review at CSXT, it was concluded that the draft report did not adequately address the question. It was determined that a reliable answer can not yet be provided because critical information is lacking. First, CSXT traffic volumes through Cleveland have not yet reached the 56 through trains contemplated in the Settlement Agreement, and CSXT has not yet had an operational need to operate 12 through trains over the Lakeshore Line. CSXT and NS thus do not have the real-world operational experience required to answer the question whether 14 CSXT through trains could feasibly be operated over the Lakeshore Line in addition to the NS traffic. Second, the experience of the operational difficulties that followed the Split Date tended to show that not even 12 through trains, let alone 14 through trains, could feasibly be operated over the Lakeshore Line and crossed at grade at Berea. CSXT and NS need more experience before they will be able to provide a meaningful answer. Because CSXT has not yet even met the Settlement Agreement's projected traffic levels (44 through trains over the Short Line and then 12 through trains over the Lakeshore Line), Cleveland has not been prejudiced by the lack of the study.

CSXT admittedly could have communicated the status of the study to Cleveland outside of this formal oversight proceeding, but the further review of the draft report occurred in conjunction with the review processes for the oversight

proceeding. CSXT will initiate discussions with Cleveland, through the CSXT community liaison process, concerning the timing and methodology of a study that will provide a reliable answer to the question whether 14 CSXT trains feasibly may be operated over the Lakeshore Line. It should be noted that Cleveland's complaints relating to horn noise and the blocking of grade crossings suggest that adding two additional trains to the Lakeshore Line would be problematic, as the Lakeshore Line has a number of grade crossings and the Short Line is entirely grade separated through Cleveland. There is no need for intervention by the Board at this time.

(ii) Fencing and Landscaping. As Cleveland recites, the Settlement agreement (Subsection 1E) requires CSX to "expend $2.4 million over a five year period for fencing, landscaping or other improvements to limit access to railroad property, and for the cost of installation of landscaping related to noise mitigation measures" (emphasis added). CSXT has provided its plan for the year 2000 to Cleveland. By the end of 2000, CSXT plans to have expended about $780,000 of that amount. It will provide its 2001 plan to Cleveland when that plan is completed. No requirement of the Settlement Agreement requires a different approach. Indeed, CSXT could not provide a comprehensive five-year plan even if the Settlement Agreement contemplated such a plan, which it does not, because Cleveland has not yet revealed its plan for the construction of noise walls.

The City's complaint that no part of the $2.4 million may be used for trash and debris removal is similarly without merit. Debris (such as cars, appliances, furniture, tires, etc.) must be removed to provide a level and straight run for

installation of fencing. The debris removal conducted in advance of installation of fencing is thus fairly chargeable under the Settlement Agreement to the $2.4 million account. Although CSXT believes that it is Cleveland, not CSXT, which is trying to obtain more than was bargained for, CSXT will continue to consult with the City on this issue.

(iii) Job Opportunities for City Residents. — CSX has informed Cleveland that three of the four permanent (managerial) employees at Collinwood Yard are Cleveland residents, more than fulfilling its hiring target for Cleveland residents of 40% of permanent positions (Settlement Agreement Subsection 8). Consistent with CSX and industry practice for the intermodal business, the remaining 38 positions at Collinwood are contractor employees or independent owner-operator truckers rather than permanent positions. CSX provided Cleveland with the contact information for the primary contractor at Collinwood, but to our knowledge Cleveland has not followed up with the contractor. Although CSX has no obligation to do so, CSX is willing to work with the City to determine the residency of the persons presently filling these 38 positions, recognizing that these individuals are not CSX employees.

(iv) Community Advisory Committee. — CSX can only register its disappointment that Cleveland has chosen to utilize the Board's formal oversight process publicly to express its displeasure with the CSX community liaison to Cleveland who has worked so diligently to address community concerns. To the extent that some answers were not immediately provided at meetings, it is because the questions could not reasonably have been anticipated. CSX believes

that it is in full compliance with Subsection 7 of the Settlement Agreement (providing for the establishment of a Community Advisory Committee) and Environmental Condition 26(D)(d) (requiring the appointment of a community liaison).[37]

The Board should note that, at the request of the community liaison, CSXT has made voluntary contributions (nearly $50,000 in 1999) to a number of Cleveland community programs and activities above and beyond the substantial financial investments required by Environmental Condition 26 and by the Settlement Agreement. We are disappointed that this effort by the community liaison, over and beyond what is required, has been met with so little appreciation. In any event, this is not a matter into which the Board need inject itself. CSXT will of course continue to consult with the City and community leaders regarding the issues presented in the Comments and other issues of concern.

(b) Assertion of Increased Train Traffic. Cleveland asserts, without any supporting data, that traffic over the Short Line has been close to an average of 56 trains per day, a 25% increase over the projected 44 through trains per day. Cleveland then uses this assertion as its basis for asking the Board to award mitigation for environmental impacts above and beyond what it agreed to in the Settlement Agreement. At the outset, it should be noted at the outset that CSX did not in Cleveland or anywhere else agree to cap the amount of traffic routed over

---

[37] CSXT could offer testimonials from numerous members of the community to that effect. Despite its strong desire to set the record straight, however, CSXT does not wish to put individual community leaders and citizens in the difficult position of contradicting a formal filing by the City of Cleveland.

the Short Line or any other line, and the Board's precedents are clear that it will not impose train caps.

> [W]hile railroads do their best to predict the amount of post-transaction traffic likely to move over a given line, railroads need flexibility because the amount of traffic that actually moves over a particular line depends upon shipper demand. Indeed, a traffic cap could well interfere with applicants' ability to carry out their statutory obligation to provide common carrier service upon reasonable request. Therefore, neither we nor the ICC has imposed permanent caps on the number of trains the railroads can operate or specified that existing freight must be transported by a specific route. Rather, as SEA explained in the Final EIS (Vol. 3, at 5-69 to 5-71), railroads must be permitted to decide on a continuous and ongoing basis which routes are most efficient to meet their customers' needs.

Decision No. 96 at 22 (served Oct 19, 1998) (footnote omitted).

The Board need not consider at this time whether it would be appropriate to order additional environmental mitigation for Cleveland if CSXT were to operate 56 or more through trains over the Short Line on an average daily basis because Cleveland's factual assertion is simply erroneous. CSXT's records indicate that CSXT has not exceeded the projection of 44 through trains per day over the Short Line on an average daily basis since the Split Date. We would have anticipated that Cleveland would have raised this question through the community liaison process and revealed the evidentiary basis for its belief that CSXT was operating more trains than projected over the Short Line. We hope that Cleveland will do so in the future if this remains a real concern. If it does, we will work with Cleveland to explain the discrepancy between its data and ours. Because Cleveland has in its Comments provided nothing more than a bald assertion, however, there is no basis

for any consideration by the Board of Cleveland's complaint of increased traffic on the Short Line.

(c) Request to Reopen the Environmental Review Process.

Without providing any specific information about asserted impacts, Cleveland asks the Board to undertake a new environmental review of horn noise and vibrations from moving trains and of noise and air emissions from idling trains. CSX opposes this request on three separate grounds

First, CSX's Settlement Agreement with the City of Cleveland precludes Cleveland from invoking the Board's environmental review processes in this way. As noted above, the parties expressly agreed (Subsection 1D) that the Community Impacts Fund and the other commitments in the Settlement Agreement would be the "sole mitigation for environmental impacts within the City of Cleveland resulting from this transaction." CSX agreed to pay Cleveland $10,700,000 and made numerous other commitments to mitigate environmental impacts, expressly including, but not limited to, "noise and vibration." The Board has often stated its strong preference for resolution of disputes through negotiated agreements. *See, e.g.*, Decision at 153. But if the Board were to hold a railroad to its obligations, while allowing a community to come back to the Board for additional rights, it is unlikely that the Board would ever see another negotiated agreement. Moreover, CSXT is surprised that Cleveland is coming back to the Board seeking additional mitigation for noise when its program for noise mitigation funded under the Settlement Agreement is still in the planning stage. CSXT has fully cooperated in the studies required to design the noise mitigation, as is evident from the fact that

Cleveland did not charge CSX with any violation of the Settlement Agreement in this regard; any delay in implementation is thus attributable to Cleveland.

Second, even apart from the Settlement Agreement, it is far too late in the day to reopen the scope of the Environmental Impact Statement ("EIS"). Potential environmental impacts in the areas of horn noise, vibration and air emissions were raised during the public scoping process on the EIS that the Board conducted prior to preparation of the Draft EIS[38] and during the commenting process on the Draft EIS.[39] The Board already considered and rejected them in determining the scope of the Final EIS and imposing conditions. The Board has repeatedly stated that it will not restrict the sounding of horns by trains. For example, the Board explained in the Draft EIS:

> Unlike other potentially adverse environmental impacts, rail horn noise is a deliberately created annoyance imposed to enhance safety. The Board has consistently declined to mitigate noise caused by horns on [these] grounds, stating that "any attempt to significantly reduce [train horn] noise levels at grade crossings would jeopardize safety, which we consider to be of paramount importance." [Finance Docket No. 32760, Union Pacific Railroad-Control-Southern Pacific Railroad; Decision No. 44, served August 12, 1996.] Reducing loudness below certain levels could increase train-vehicle accidents. As the Board has found, reducing the duration of the horn could result in similar negative impacts on safety.

Draft EIS, Vol. 1 at 3-36.

---

[38] Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Comments on Proposed EIS Scope (served July 3, 1997); Notice of Final Scope of Environmental Impact Statement (issued October 1, 1997).

[39] Draft Environmental Impact Statement (served December 12, 1997).

The Board also expressly rejected the City of Cleveland's request that the Final EIS include a study of increased vibration. Final EIS, Vol. 3 at 5-309 (served May 1998).

Finally, the Board expressly rejected comments that its analysis of air quality impacts, including within the City of Cleveland, was inadequate. Final EIS, Vol. 3 at 5292 to 5300. Among other reasons, the Board explained that emissions from the increased traffic "would be offset by locomotive emissions decreases resulting from EPA's new rule to control such emissions from new and rebuilt locomotive engines." *Id.* at 5-297.

Even if Cleveland could somehow show that these impacts were not fully considered and rejected in the Board's environmental review, Cleveland has not demonstrated the kind of material changes or new circumstances that are required to persuade the Board to prepare a supplemental EIS under the standard of the Board's environmental regulations at 49 C.F.R. § 1105.10(a)(5) (a supplemental EIS may be prepared "where necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information").

Third, we do not understand how the City's complaints of these particular additional environmental impacts could fairly apply to the Short Line (other than vibrations from moving trains which the Board has concluded have no significant environmental impact). Because there are no grade crossings on the Short Line within Cleveland, the only time a CSXT engineer would blow a horn on the Short Line would be to warn a trespasser to clear the tracks. We do not understand the

City to be suggesting that it disfavors the use of train horns to protect the lives of its citizens. Further, it is not CSXT operating practice to idle trains on the Short Line and no specific complaints of idling trains on the Short Line have been presented to the CSXT community liaison in any of the frequent communications from the City of Cleveland since Split Date. To the extent that Cleveland is complaining about environmental impacts from CSXT trains operating over the Lakeshore Line, which does have a number of grade crossings, Cleveland cannot fairly have it both ways. Cleveland sought CSXT's agreement to operate some trains on the Lakeshore Line in order to reduce environmental impacts on the Short Line.

(d) Trash and Debris Removal. — Cleveland also seeks the Board's assistance in removing trash and debris illegally dumped on the Short Line right-of-way. When CSXT succeeded to Conrail's operating rights over the Short Line through Cleveland, CSXT also inherited years of accumulated trash and debris (cars, appliances, furniture, tires, etc.) illegally dumped by trespassers. CSXT has focused its cleanup efforts on those areas requested by the City. Unfortunately, without a pledge from the City of substantially increased enforcement of its anti-trespassing and anti-littering ordinances, which pledge has not been made, CSXT's cleanup efforts will never be fully effective. CSXT will continue to conduct trash and debris removal as it continues with its fencing and landscaping program, with the hoped-for result of a right-of-way that will be more attractive than it was prior to the Transaction. However, that can be achieved only

through the efforts of all to reduce illegal dumping on the right-of-way. Cleveland presents no justification for the Board to inject itself into this issue.

2. **Congressman Dennis Kucinich**. — Congressman Kucinich reports that he is generally pleased with the progress CSX and NS are making in the communities of Ohio's 10th Congressional District. Congressman Kucinich raises one issue with respect to environmental mitigation in Brooklyn, Ohio. CSXT has complied with all Environmental Conditions imposed on it for the benefit of Brooklyn, Ohio (a community in the Greater Cleveland Area). Brooklyn has not demonstrated any material change in circumstances that would warrant reexamination by the Board of the Environmental Conditions it imposed, and CSXT is aware of no such circumstances. CSX would be happy to respond directly to the Congressman on this matter.

3. **Four City Consortium**. — In its Comments, the Four City Consortium (the Cities of East Chicago, Gary, Hammond and Whiting) renews its request previously made during the Conrail proceeding for an absolute cap on the number of trains that may traverse the B&OCT line through the Four City area of northwestern Indiana (the Pine Junction to State Line Tower segment of the Barr Subdivision). As CSX acknowledged in its June 1 Submission, CSXT experienced operational difficulties following Split Date that extended in the Four City area into February 2000. Those operational difficulties unfortunately resulted in increased blockage of crossings by trains in East Chicago and Hammond during that period. However, the situation in the Four Cities has greatly improved since March 2000 even without the benefit of all the capital improvements that CSXT

continues to make within the Four Cities and throughout the Chicago area. The Board in Decision No. 89 imposed a number of Environmental Conditions on CSXT for the benefit of the Four Cities. These Conditions were subsequently incorporated, with minor modification, into a Settlement Agreement between the Four City Consortium and CSXT dated October 26, 1998, and CSXT made additional financial and operational commitments to the Four City Consortium in that Settlement Agreement. CSXT has been working diligently in good faith to implement the commitments it made in the Settlement Agreement, and we do not understand the Four City Consortium to argue to the contrary. The Four Cities' complaint is that the actions agreed to in the Settlement Agreement have not produced the desired results as quickly as they hoped. However, there is no reason at this time to doubt that these planned capital improvements will effectively compensate for any increased train traffic through the Four Cities area which results from the Conrail Transaction, and there is no basis for any imposition of additional conditions.

(a) Capital Improvements, Not Train Caps, Are the Solution for Motor Vehicle Delay in the Four City Area. — As explained in Decision No. 96 and the Final Environmental Impact Statement, the Board will not impose permanent caps on the number of trains traveling on a specific rail line segment. Decision No. 96 at 22; Final EIS, Vol. 3 at 5-69 to 5-71, 5-252. The local train caps sought by the Four City Consortium are inherently inconsistent with the national transportation policy of promoting freight transportation by rail and with the common carrier obligations of railroads; they seriously impede efficient train

operations not just locally but throughout an integrated rail network. The Board accordingly employs other approaches to address crossing delay. With respect to the Four Cities, the Board concluded that CSX's program of capital improvements was the best approach. Nothing is presented which demonstrates that the Board should change its approach in the Four City area at this time. The Board should permit CSXT to proceed with its program of capital improvements[40] and defer all requests for the imposition of additional conditions until those capital improvements are given a chance to produce the expected operational improvements. The Board can continue to monitor the progress of those capital improvements.

In its Comments and previous submissions to the Board, the Four City Consortium has properly pointed to the six rail/rail interlockings on the B&OCT line between Pine Junction and Barr Yard as the primary causes of the stoppage and slow speed of trains on this line segment (a rail configuration which of course existed for decades prior to the Conrail Acquisition). From east to west, these interlockings are Clarke Junction, Calumet Tower, Republic, Columbia, State Line Tower and Calumet Park. In one of the early meetings with CSXT, representatives of the Four Cities recommended that CSXT strive for more centralized control of these interlockings. CSXT has made excellent progress in implementing this recommendation. One interlocking (Columbia Avenue) was entirely removed and

---

[40] The status of CSX's capital improvement projects are described in detail in CSX's June 1 Submission at 13-19, 63-71, and 121-24.

the connection traffic with the CSS&SB relocated to Barr Yard, west of the Four City area. In addition, four interlockings (Clarke Junction, Calumet Tower, Republic and Calumet Park) have been modernized through installation of new current technology signals, power crossovers and/or dispatcher control. The B&OCT train dispatcher now directly controls B&OCT train movements through the Clarke Junction, Republic and Calumet Park interlockings. At Calumet Tower, the B&OCT train dispatcher now controls the B&OCT routes and signals, although the IHB Calumet Tower Operator still controls the IHB and EJ&E routes and must release the B&OCT routes to the B&OCT train dispatcher for operation through the interlocking.[41] Moreover, the CSXT and IHB dispatchers have been co-located in Calumet City, further improving coordination in the Four City area. The full benefit of these projects has not yet been achieved, however, because a number of other significant projects in the Chicago area are still in progress, in particular the modernization of the State Line interlocking and the construction of the Third Main around Barr Yard.[42]

The last of the six interlockings between Pine Junction and Barr Yard — State Line interlocking — is still manually operated and controlled by the IHB

---

[41] The new arrangement at Calumet Tower has reduced the communications required between the B&OCT train dispatcher and the IHB Calumet Tower Operator. In order to further improve coordination of train movements through the interlocking, CSXT has proposed to the IHB and EJ&E that Calumet Tower be eliminated and that the control of cross-traffic presently exercised by the IHB Calumet Tower Operator be transferred to the IHB train dispatcher. Negotiations relating to this project are now in progress.

[42] As reported in the NS Reply Submission, NS is also working to modernize interlockings in the Four City Area and to improve coordination with other railroads.

State Line Tower Operator. The IHB has scheduled it for modernization this month.[43] This project will complete the upgrade to TCS operation between Pine Junction and Blue Island Junction, further improving train operating flexibility and speed on the Barr Subdivision, including through the crossings in East Chicago and Hammond that are of concern to the Four Cities. Prior to CSXT's recent signalling work on the B&OCT, CSXT's method of operation was "current (direction) of traffic/block signals" — trains moved west on the northern track and east on the southern track. A train could operate east on the northern track and west on the southern track only with special verbal authority and reduced speeds, with delays caused by using hand-thrown switches to cross over tracks. With TCS method of operation, trains may move in either direction on either track based on the railroad signals at track speed, a major improvement over the former method of operation. In addition, CSXT will be able to increase the authorized speed on the Barr Subdivision to 40 mph. Once the State Line interlocking is incorporated into the TCS signaling system, the IHB dispatcher will be able to view the status of all interlockings on the B&OCT corridor, greatly decreasing the likelihood that a train will stop on the priority crossings in East Chicago and Hammond because of a blocked interlocking.[44]

---

[43] CSXT reported in the CSX Submission (at 122) that the State Line interlocking was scheduled for modernization in June 2000. The IHB subsequently rescheduled the work until August 2000.

[44] In order to reduce blocking crossings on the B&OCT in East Chicago and Hammond, CSXT issued instructions that westbound trains should not proceed through Calumet Tower until the State Line interlocking is clear and that eastbound trains should not proceed through State Line until the Calumet Tower interlocking is clear. However, when an interlocking is manually operated, a

[Footnote continued on next page]

The delay in the completion of the Third Main around Barr Yard because of the continued delay in obtaining a small easement from the Forest Preserve District of Cook County has contributed to the slower than expected operating speeds on the Pine Junction to Barr Yard line segment of the B&OCT. CSXT is working diligently to resolve this impasse which has prevented completion of the last 150 feet of track. Completion of the Third Main, along with the other projects, should have a significant positive impact on CSXT's ability to maneuver through the Four Cities in the next year.

(b) The Four Cities' Presentation of Increased Traffic Delay Is Misleading and Does Not Justify the Imposition of New Conditions. — The Four Cities' claim of greatly increased motor vehicle delay is misleading. The Four Cities' Comments do not clearly differentiate between the poor situation through February 2000 and the improved situation since March 2000. The positive trend since Split Date, with improvement yet to come as the benefits from capital improvements are achieved, argues against the imposition of any additional conditions by the Board at this time.

The Four Cities' claim of greatly increased motor vehicle delay is based primarily on a comparison between CSXT's reported average train speed of 9 mph between Pine Junction and State Line Tower since the Split Date (reported in

---

[Footnote continued from previous page]
telephone call must be made to the interlocking operator to determine its status, a procedure that takes longer and increases the likelihood of miscommunication as compared to the computer display made available to dispatchers when the interlocking is automated. The modernization of the State Line and Calumet Tower interlockings should eliminate a significant cause of blocked crossings in East Chicago and Hammond.

weekly reports provided to the Four Cities under the Settlement Agreement)[45] and a reported average train speed of 12 mph between Pine Junction and Barr Yard in 1995 (reported in a system-wide report of average train speeds provided to the Four Cities in discovery in 1997). CSX disputes the Four Cities' claim that the present level of traffic delay is worse than it was prior to Split Date for the following reasons.

First, consistent with the Settlement Agreement, CSXT has upgraded the grade crossing warning systems in East Chicago and Hammond by installing constant warning time circuits at Sheffield Avenue, Hohman Avenue, Calumet Avenue, Columbia Avenue, Indianapolis Boulevard, Railroad Avenue and Kennedy Avenue and by installing motion sensor circuits at the remaining crossings between Pine Junction and State Line. These devices significantly reduce the amount of time that the warning systems are activated. The reduction in motor vehicle delay afforded by these improvements is not reflected in the Four Cities' calculations. It should be noted that the Four Cities has presented no actual measurements of vehicle delay at these crossings prior to the Split and since these upgrades were installed.

Second, CSX does not believe that the 9 mph (or 9.8 mph) average train speed for the Pine Junction to State Line Tower line segment provides an accurate description of train speeds across the grade crossings in East Chicago and

---

[45] The report for the quarter ending July 21, 2000, is included as Exhibit 2 hereto. The average train speed for the last quarter was 9.8 mph, indicating an upward trend in average speed over the line segment.

Hammond. It is CSXT policy and practice to hold westbound trains east of Calumet Tower — in a position where they are not blocking grade crossings — until they can proceed apace through State Line Tower. Thus, the clock is activated on a westbound train when it crosses Pine Junction and continues ticking while the train dwells east of Calumet Tower awaiting clearance. Travel time over the line segment is measured at State Line Tower. The average speed over the segment is thus reduced by the dwell time east of Calumet Tower, even though the train stoppage was done to accomplish the goal of reducing crossing blockage. This is seen in the speed statistics CSXT provides to the Four Cities. During the quarter ending July 21, 2000, the average speed of westbound trains (7.0 mph) was only 53% of the average speed of eastbound trains (13.2 mph).

In response to the Comments of the Four Cities, CSXT checked the actual speed of 61 trains with a radar gun as they crossed Indianapolis Boulevard and Hohman Avenue, two major crossings in East Chicago and Hammond respectively, on July 23, 24 and 25, 2000. During this three-day period, local CSXT personnel manned these crossings whenever they could be spared from their ordinary duties. The speed of each train is presented on the report entitled "*CSXT Radar Study of B&OCT Train Speeds*" attached hereto as Exhibit 3. That study showed that the average speed of the 61 trains was 23.7 mph at the Indianapolis Boulevard crossing and 20.1 mph at the Hohman Avenue crossing, substantially higher than the 9-10 mph average speed reported for the entire segment. These measured speeds are consistent with CSXT's statistics for the CSXT Chicago Division. During the last three months, the average velocity of CSXT's Chicago

Division reached an all-time high of 21 mph. The improved operation of through trains on the Division is also reflected in the lowest number of recrewed trains per day in recent history (meaning that trains reach destination points in the Chicago Area without stopping at intermediate points in the Four Cities Area to be re-crewed). These statistics indicate that the Chicago area as a whole is now operating better than it did prior to the Split. With these excellent Division statistics, it is difficult to believe the Four Cities' claim that the Pine Junction to State Line Tower line segment is now experiencing slower train speeds than immediately prior to the Split.

Third, the Four Cities offer data that they say indicate increased delay, but there are many reasons why the reality is not as the Four Cities suggest. The Four Cities appear to be mixing apples and oranges. The reported average train speed in 1995 on the CSX line segment from Pine Junction to Barr Yard cannot readily be compared to the statistics now being provided to the Four Cities. *First*, the western endpoint of the segment is different (Barr Yard vs. State Line Tower). In order to comply with the Settlement Agreement, CSXT had to install new equipment at State Line Tower to measure the travel time to and from Pine Junction. This system only became operational as of the Split Date. There is thus no directly comparable pre-Split data for this segment. *Second*, numerous changes in Chicago area railroad operations occurred from 1995 to the present that affect the measure of average speed over the B&OCT completely unrelated to the Conrail Transaction. *Third*, CSXT never endorsed the Four City Consortium's use of the 12 mph average speed figure as the absolute baseline against which it would be

determined whether conditions had improved or worsened in the Four City area. CSXT merely accepted the use of that figure in the Conrail proceeding to illustrate the point that a modest speed increase would offset the traffic delay from an increased number of trains on the B&OCT. Grade Crossing Delay Analysis in the Four City Consortium Area, prepared by ICF Kaiser (May 8, 1998). As explained above, the actual speed of the trains over grade crossings provides a more accurate perspective of the railroad's operations and effect on vehicular traffic.

Despite the fact that representatives of CSXT and the Four Cities are in frequent communication, the Four Cities never presented the 9 mph/12 mph comparison to CSXT as evidence of increased traffic delay in the Four Cities. Indeed, CSXT understood from these discussions that the Four Cities representatives perceived that traffic delay had greatly improved in recent months. CSXT was thus quite surprised when the Four Cities in their Comments asserted a three-fold worsening in traffic delay based primarily on an arithmetic extrapolation. As the Board is well aware, useful metrics are sometimes difficult to define. CSX expected that an issue like this one would have been discussed among the parties in the periodic meetings mandated by Environmental Condition 21 and CSX's Settlement Agreement with the Four City Consortium, or in the ongoing informal communications between the parties, rather than presented for the first time in a formal filing before the Board as to which CSXT is afforded a short time for reply.

The Four Cities also point to the reported increase in the number of trains operating over the B&OCT (36[46] rather than the 32 projected in the Operating Plan) as secondary evidence of the asserted increase in traffic delay. It should first be noted that the reported average of 36 trains includes both through and local trains, whereas the projection of 32 trains included only through trains. Second, it is unclear what the longer-term trend in traffic will be. CSXT has only just completed the first year of operations under the new CSXT system. And completely unrelated to the Transaction, the economy has been stronger since June 1, 1999 than anyone predicted in 1997. In any event, this relatively small deviation from projections does not warrant any reconsideration by the Board of the approach it took in the control proceeding.

Finally, the Four Cities rely on the number of tickets East Chicago and Hammond have issued to CSXT for blocked grade crossings as evidence of the increased traffic delay on the B&OCT. This reliance is similarly misleading. First, the Four Cities do not report the downward trend in the issuance of the tickets. The rate of ticketing has greatly declined since March 2000. While the tickets are indicative of the unfortunate operating situation through February 2000, which CSXT has acknowledged, CSXT does not believe that they are probative of the current situation and does not believe that they indicate the need for present action by the Board. Second, CSXT disputes the factual validity of many of these tickets. Third, the number of tickets issued greatly overstates the number of

---

[46] Exhibit 2 shows 35 trains per day on average operating over the B&OCT for the quarter ending July 21, 2000.

stopped trains. It has been the practice of East Chicago and Hammond to issue a separate ticket for each grade crossing blocked for each five-minute period. In addition, separate tickets are sometimes issued for municipal and state violations for the same blocking event. Thus, a single stopped train may garner dozens of tickets. Fourth, East Chicago and Hammond greatly stepped up their enforcement since the Split Date, which precludes a valid comparison with the pre-Split situation.

Despite the fact that CSX believes that the asserted authority of East Chicago and Hammond to ticket its trains is unconstitutional, CSXT has been negotiating with the Four Cities in good faith to resolve the disputes over the tickets, as the Mayors acknowledge in their joint verified statement (at 8). Resolution appeared to be within reach at the time the Four Cities filed its Comments. CSX remains hopeful that the ticketing dispute can be resolved without the need for protracted litigation.

More broadly, CSX remains hopeful that it will be able to resolve all of the outstanding issues with the Four City Consortium regarding vehicle traffic delay. CSX has been working hard to improve operations in the Chicago area, both for its own benefit and for the benefit of the communities through which it operates. CSX believes that the Board's oversight is the appropriate mechanism to ensure that CSX delivers on its commitments. No additional conditions are warranted at this time.

4. **Ohio Rail Development Commission**. ORDC confirms that CSX has complied or is in the process of complying with the numerous Environmental

Conditions imposed by the Board for the benefit of Ohio communities. The Board imposed this extensive mitigation after exhaustive analysis of potential environmental impacts in the State of Ohio.[47] It should also be noted that CSX has complied with the obligations undertaken in negotiated agreements with state agencies and a large number of Ohio communities. Based on letters it solicited from Ohio communities, however, ORDC asserts that the Board's Environmental Conditions did not adequately address the environmental impacts of the Conrail Acquisition, particularly in the area of grade separations. ORDC asks the Board to reopen the environmental review process, apparently to conduct a wholesale reassessment of all environmental impacts in the State of Ohio. This request should be denied. To the extent that ORDC disagrees with the Board's methodologies for assessing environmental impacts and determining whether to order mitigation, its recourse was to challenge Decision No. 89 in federal court, which it did not do. ORDC has not demonstrated the kind of material changes or new circumstances that are required to prepare a supplemental EIS under 49 C.F.R. § 1105.10(a)(5). ORDC provides no evidence that the situation in Ohio is materially different from that anticipated by the STB when it conducted its environmental analysis and imposed the Environmental Conditions.

ORDC identifies grade separations as its primary concern, but also presents the solution to the problem. To its credit, Ohio, after lengthy discussions with

---

[47] *See, e.g.*, Draft EIS, Vol. 3B at OH-1 to OH-154; Final EIS, Vol. 2 at 4-111 to 4-143; Final EIS, Vol. 3 at 5-232 to 5-367; Final EIS, Vol. 6C, Appendix N; Final EIS, Addendum.

CSXT and NS has established a $200 million Rail Grade Separation Program, to which CSXT and NS have agreed to provide substantial financial and technical support.[48] ORDC estimates that the program will be able to build about 40 grade separations. It is currently in the process of developing its priority list. The Rail Grade Separation Program is not limited to lines affected by the Conrail Transaction, but may include projects on all rail lines in Ohio. If grade separations are truly justified in the communities mentioned in the ORDC filing, because of increased traffic resulting from the Conrail Transaction or otherwise, they will surely be included among the top 40 projects for construction. No basis is presented for any involvement by the Board in this process.

We do not believe that any of the specific local issues raised by the Ohio communities presents a reasoned basis for intervention by the Board. Because of the Board's particular interest in the City of Fostoria, however, as demonstrated by the number of Environmental Conditions imposed by the Board for the benefit of Fostoria, we will address the letter submitted by Fostoria.

Fostoria confirms that CSX has complied with the Environmental Conditions imposed upon it for the benefit of Fostoria, with the exception of the real-time train monitoring system required by Environmental Condition 31(A)

---

[48] Although not acknowledged by ORDC in its Comments, CSXT has in fact made a substantial contribution toward grade separations in the State of Ohio by reconfiguring the connection at Greenwich at its own expense to utilize the WLE separated crossing rather that the Conrail at-grade crossing, and by funding a substantial share of a grade separation at Section Line 30 Road in Huron County at the west end of Willard Yard. In negotiated agreements, CSXT also committed to contribute to the funding of two underpasses in Berea, a grade separation in Brook Park and a grade separation at Olmsted Falls/Olmsted Township.

which is scheduled for the third quarter of 2000. Software programming for this system is now in progress. A draft agreement has been prepared and will be reviewed with the City of Fostoria in the near future. We disagree with the suggestion that the direct voice hotline installed pursuant to Environmental Condition 31(C) is unreliable Fostoria does not assert that the telephone is not answered, but that it sometimes is answered after five to seven rings. That in our view is not an unreasonably slow response time for the busy F Tower operator. To the contrary, Fostoria has confirmed that the system is working as planned.

CSX takes issue with two factual assertions made by Fostoria in its letter to the ORDC. First, Fostoria reports that traffic on the B&O is running at 97 trains per day rather than the 54 predicted in the Operating Plan. This report is simply erroneous. CSX reviewed traffic records for the four line segments in Fostoria for the months of May and June 2000. The highest daily average on all the line segments was 63 trains per day on the Deshler-Fostoria line segment of the B&O in June. Second, Fostoria appears to suggest that the entire city is inaccessible 19 hours per day because of blocked rail crossings. This is a gross exaggeration. Underpasses provide routes for major thoroughfares under the railroad lines in the City of Fostoria. The grade separations permit access to most sections of Fostoria even when some at-grade crossings are blocked.

The sections that can be cut off by trains are known as the "Iron Triangles." After exhaustive analysis, the Board ordered mitigation particularly for the benefit

of the Iron Triangles.[49] CSXT is well aware of the concerns relating to the Iron Triangles. CSXT has made significant track and signaling improvements in Fostoria and will continue its efforts, in consultation with the City of Fostoria, to implement operating procedures that will minimize the blockage of those sections. If Fostoria desires more accessibility than that afforded by CSXT's capital improvements and the Board's conditions, Fostoria should seek grade separations through the state Rail Grade Separation Program, and in fact it will do so. It is premature to revisit the extensive package of mitigation imposed by the Board for the benefit of Fostoria.

5. **U.S. Department of Transportation**. As two parties with a special interest in rail safety, DuPont and the American Chemistry Council, have filed comments in this proceeding praising the safe manner in which the Conrail system has been absorbed by CSX and NS. DuPont states that it is "extremely pleased with the safe manner in which the merger implementation was executed" and proceeds to credit the Board's Safety Integration Plan process (p. 2-3). Similarly, American Chemistry Council commends the railroads, the Board and FRA "for the safe manner in which the Conrail transaction has been implemented" (p. 4). CSX's excellent post-transaction safety record supports the conclusions of these parties.

DOT's Comments refer to a June 23, 2000 FRA report covering the period May through December 1999 that concludes that the Applicants' post Split-Date safety record is "excellent." It also identifies several areas that FRA concluded

---

[49] *See* Final EIS, Vol. 3 at 5-345 to 5-346; Final EIS, Vol. 6B at G-5 to G-8.

warranted further attention (p. 3). CSX has given each of those areas attention and continues to work with FRA to keep that agency fully apprised of its substantial safety efforts. Safety remains a primary focus of CSX's senior management and CSX is devoting unprecedented resources to ensuring that the railroad retains its excellent safety record. Further, as noted in our opening Submission, CSX continues to implement the SIP filed with the Board and is nearing the completion of its obligations under that integration plan. CSX also understands that FRA will shortly submit to the Board a more updated report on the safety status of the integration process.

CONCLUSION

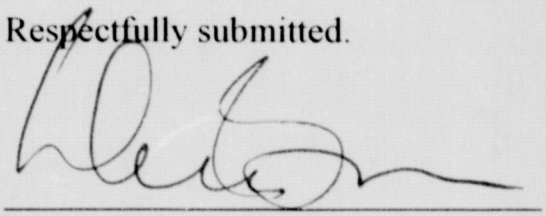
As set forth in the replies to the individual Comments, no invasive action by the Board appears necessary or advisable with respect to any matter concerning CSX. In some cases in response to particular Comments, we have suggested alternative action by the Board of a more measured nature than that proposed.

The issue arises as to "what now" in this proceeding, with the present filing date of August 3, 2000, being the last that the Board has established. In general oversight proceedings as to prior transactions, the Board has scheduled annual general reporting requirements, similar to that of the June 1 Submission, July 14 comments and August 3 replies ordered for the year 2000.

CSX's view is that, given the other periodic operational monitoring reports ordered by the Board (Decision at 162-65), the continual monitoring program of the Board's Office of Compliance and Enforcement, and the special Buffalo

projects (the Rate Study in Sub-No. 90 and the Infrastructure Study in Sub-No. 93), the requirement of general oversight reports, comments and replies, should be no more frequent than annual. The Board may, indeed, in the light of these other initiatives, wish to consider whether a longer interval between cycles than one year is appropriate, since parties who feel grieved by actions of the applicants or have complaints concerning the operations of the conditions may submit appropriate petitions at any time during the five-year period.

Respectfully submitted.



Dennis G. Lyons
Mary Gabrielle Sprague
Sharon L. Taylor
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

Samuel M. Sipe, Jr.
David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Counsel for Applicants
***CSX Corporation** and*
CSX Transportation, Inc.

Of Counsel:
Mark G. Aron
Peter J. Shudtz
CSX CORPORATION
One James Center
901 East Cary Street
Richmond, VA 23219

Paul R. Hitchcock
CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, FL 32202

Dated: August 3, 2000

Exhibit 1

MARC

MONDAY through FRIDAY

EFFECTIVE MAY 17, 1999

MTA MARYLAND TRANSIT ADMINISTRATION

	TRAIN NUMBER	AR/DP	841 S	843	845 S	847	849	851 S	421	871 S	873	875 S	877 P	853 S	879	881 P/S	883 S	855	885	857 S	887	859	RIDE ON
	CITY / AM – PM		AM	AM	AM	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	PM	
CAMDEN LINE	BALTIMORE CAMDEN STATION	DP	5:25	5:50	6:25	6:45	7:31	8:05	b10:38	–	–	–	–	4:00	–	–	–	5:00	–	5:35	–	6:25	
	ST. DENIS	DP	5:36	–	–	6:56	–	f8:16	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
	DORSEY	DP	5:43	6:08	6:43	7:03	7:49	8:23	–	–	–	–		4:18	–	–	–	5:18	–	5:53	–	6:43	
	JESSUP	DP	5:47	–	–	7:07	–	8:27	–	–	–	–	–	–	–	–	–	5:22		5:57	–	6:47	
	SAVAGE	DP	5:51	6:14	6:49	7:11	7:55	8:31	–	–	–	–	–	4:24	–	–	–	5:26	–	6:01	–	6:51	
	LAUREL RACETRACK	DP	–	–	–	–	–	–	–	–	–	–	–	4:29	–	–	–	5:31	–	–	–	6:56	
	LAUREL	DP	5:56	6:19	6:55	7:17	8:00	8:38	–	–	–	–	–	4:32	–	–	–	5:35	–	6:06	–	7:00	
	MUIRKIRK	DP	6:01	6:24	7:01	7:22	8:05	8:43	–	–	–	–	–	4:37	–	–	–	5:40	–	6:11	–	7:05	
	GREENBELT	DP	6:07	–	7:06	7:27	–	8:48	–	–	–	–	–	4:41	–	–	–	5:46	–	6:16	–	7:10	
	COLLEGE PARK	DP	–	–	7:09	7:31	–	8:52	m	–	–	–	–	–	–	–	–	f5:51	–	f6:20	–	f7:15	
	RIVERDALE	DP	6:11	–	7:12	7:35	–	8:55	–	–	–	–	–	–	–	–	–	5:54	–	f6:24	–	f7:18	
	WASHINGTON	AR	6:28	6:47	7:31	7:53	8:29	9:13	11:49	–	–	–	–	5:03	–	–	–	6:08	–	6:42	–	7:32	
BRUNSWICK LINE	WASHINGTON	DP	–	–	–	–	–	–	–	2:00	3:35	4:25	4:55	–	5:10	5:30	6:00	–	6:30	–	7:20	–	
	SILVER SPRING	DP	–	–	–	–	–	–	–	2:13	3:48	4:38	5:09	–	5:24	5:44	6:13	–	6:43	–	7:33	–	
	KENSINGTON	DP	–	–	–	–	–	–	–	f2:18	–	4:44	–	–	5:30	5:49	6:19	–	6:48	–	f7:38	–	
	GARRETT PARK	DP	–	–	–	–	–	–	–	f2:21	–	–	–	–	5:34	5:53	6:23	–	6:52	–	f7:41	–	
	ROCKVILLE	DP	–	–	–	–	–	–	–	2:27	3:58	4:53	5:21	–	5:39	5:59	6:28	–	6:58	–	7:45	–	
	WASHINGTON GROVE	DP	–	–	–	–	–	–	–	f2:32	–	–	–	–	5:44	–	f6:35	–	d7:03	–	f7:50	–	RIDE ON
	GAITHERSBURG	DP	–	–	–	–	–	–	–	2:35	4:06	5:01	–	–	5:47	6:06	6:38	–	7:07	–	7:53	–	RIDE ON
	METROPOLITAN GROVE	DP	–	–	–	–	–	–	–	f2:39	4:10	5:05	–	–	5:51	6:10	6:42	–	7:11	–	f7:57	–	RIDE ON
	GERMANTOWN	DP	–	–	–	–	–	–	–	2:43	4:15	5:10	–	–	5:57	6:16	6:48	–	7:15	–	8:01	–	RIDE ON
	BOYDS	DP	–	–	–	–	–	–	–	d2:47	–	–	–	–	L6:02	–	d6:52	–	–	–	d8:05	–	
	BARNESVILLE	DP	–	–	–	–	–	–	–	d2:53	d4:23	L5:19	–	–	L6:08	L6:25	d6:58	–	d7:23		d8:10	–	
	DICKERSON	DP	–	–	–	–	–	–	–	d2:56	–	–	–	–	d6:11	–	d7:02	–	–	–	d8:14	–	
	POINT OF ROCKS	DP	–	–	–	–	–	–	–	L3:06	L4:34	L5:31	d5:47	–	L6:20	L6:38	L7:09	–	L7:33	–	L8:26	–	
	BRUNSWICK, MD.	DP	–	–	–	–	–	–	–	3:22	4:50	5:50	L6:02	–	6:38	L6:50	7:24	–	L7:44	–	8:41	–	
	HARPERS FERRY, W.V.	DP	–	–	–	–	–	–	–	–	–	–	L6:12	–	–	L7:00	–	–	L7:55	–	–	–	
	DUFFIELDS	DP	–	–	–	–	–	–	–	–	–	–	L6:24	–	–	L7:12	–	–	L8:06	–	–	–	
	MARTINSBURG, W.V.	AR	–	–	–	–	–	–	–	–	–	–	6:44	–	–	7:30	–	–	8:29	–	–	–	

See opposite side for footnotes

MARC

MONDAY through FRIDAY

EFFECTIVE MAY 17, 1999

MTA MASS TRANSIT ADMINISTRATION

	TRAIN NUMBER	AR/ DP	870 S	840 S	872	842	874 P/S	876	844 S	878 P	880 S	882 S	410	412	412	846 S	848	850 S	852	854	856 S	858
	CITY / AM – PM		AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	PM	PM	PM	PM	PM	PM	PM	PM	PM
BRUNSWICK LINE	MARTINSBURG, W.V.	DP	–	–	–	–	5:30	–	–	–	6:35	–	WILL NOT OPERATE ON TUESDAYS	–	–	–	–	–	–	–	–	–
	DUFFIELDS	DP	–	–	–	–	5:46	–	–	–	6:51	–		–	–	–	–	–	–	–	–	–
	HARPERS FERRY, W.V.	DP	–	–	–	–	5:56	–	–	–	7:01	–		–	–	–	–	–	–	–	–	–
	BRUNSWICK, MD.	DP	5:15	–	5:35	–	6:07	6:22	–	6:43	7:12	7:35		–	–	–	–	–	–	–	–	–
	POINT OF ROCKS	DP	5:25	–	5:45	–	6:18	6:33	–	6:54	7:23	7:46		–	–	–	–	–	–	–	–	–
	DICKERSON	DP	–	–	5:53	–	–	–	–	7:01	–	7:53		–	–	–	–	–	–	–	–	–
	BARNESVILLE	DP	5:36	–	5:57	–	6:29	6:44	–	7:05	–	7:57		–	–	–	–	–	–	–	–	–
	BOYDS	DP	–	–	f6:04	–	–	–	–	7:11	–	8:03		–	–	–	–	–	–	–	–	–
	GERMANTOWN	DP	5:45	–	6:08	–	6:38	6:53	–	7:15	7:40	8:08		–	–	–	–	–	–	–	–	–
	METROPOLITAN GROVE	DP	5:49	–	6:12	–	6:43	6:57	–	7:20	7:45	8:12		–	–	–	–	–	–	–	–	–
	GAITHERSBURG	DP	5:54	–	6:16	–	6:47	7:02	–	7:25	7:50	8:16		–	–	–	–	–	–	–	–	–
	WASHINGTON GROVE	DP	–	–	6:19	–	–	–	–	7:28	–	8:19		–	–	–	–	–	–	–	–	–
	ROCKVILLE	DP	6:02	–	6:24	–	6:53	7:09	–	7:34	7:57	8:24		–	–	–	–	–	–	–	–	–
	GARRETT PARK	DP	6:07	–	–	–	–	7:15	–	7:40	–	8:30		–	–	–	–	–	–	–	–	–
	KENSINGTON	DP	6:10	–	6:31	–	S	7:19	–	7:44	S	8:34		–	–	–	–	–	–	–	–	–
	SILVER SPRING	DP	6:16	–	6:37	–	7:03	7:25	–	7:50	8:07	8:40		–	–	–	–	–	–	–	–	–
	WASHINGTON	AR	6:35	–	7:00	–	7:25	7:45	–	8:10	8:25	8:59		–	–	–	–	–	–	–	–	–
CAMDEN LINE	WASHINGTON	DP	–	6:47	–	7:10	–	–	8:05	–	–	–	11:20	12:20	12:20	4:18	4:45	5:23	5:51	6:25	7:10	7:50
	RIVERDALE	DP	–	6:57	–	7:20	–	–	–	–	–	–	–	–	–	–	4:55	5:33	–	6:36	7:20	f8:00
	COLLEGE PARK	DP	–	7:00	–	7:23	–	–	–	–	–	–	–	–	–	–	4:58	5:36	–	6:39	–	f8:03
	GREENBELT	DP	–	7:02	–	7:25	–	–	–	–	–	–	–	–	–	–	5:01	5:39	–	6:42	7:25	8:06
	MUIRKIRK	DP	–	7:09	–	7:32	–	–	8:23	–	–	–	–		–	4:35	5:07	5:45	6:08	6:48	7:31	8:12
	LAUREL	DP	–	7:14	–	7:37	–	–	8:28	–	–	–	–	c1:12	–	4:41	5:13	5:51	6:14	6:54	7:37	8:18
	LAUREL RACETRACK	DP	–	–	–	–	–	–	–	–	–	–	c12:10	c1:15	–	–	–	–	–	–	–	–
	SAVAGE	DP	–	7:19	–	7:42	–	–	8:33	–	–	–	FOR LAUREL RACETRACK INFORMATION, CALL (301) 725-0400	c1:25	–	4:47	5:20	5:57	6:21	7:01	7:42	8:24
	JESSUP	DP	–	f7:23	–	f7:47	–	–	–	–	–	–		–	–	–	5:25	6:01	–	7:05	–	f8:28
	DORSEY	DP	–	7:27	–	7:51	–	–	8:39	–	–	–		c1:40	–	4:54	5:29	6:05	6:28	7:09	7:49	8:32
	ST. DENIS	DP	–	–	–	–	–	–	–	–	–	–		–	–	–	5:35	6:12	–	7:16	–	d8:39
	BALTIMORE CAMDEN STATION	AR	–	7:51	–	8:19	–	–	9:04	–	–	–		–	b1:20	5:18	5:55	6:31	6:52	7:32	8:13	8:59

FOR ADDITIONAL INFORMATION 1-800-325-RAIL
TTY INFORMATION 1-410-539-3497
www.mtamaryland.com

f Flag stop at this station: trains will pick up passengers standing on platform and visible to engineer. Trains will discharge passengers at this station if passengers have notified conductor upon boarding.

d Train will stop to discharge passengers only. Passengers must notify conductor upon boarding. Train may leave ahead of scheduled departure time when passengers have been discharged.

L Train receives and discharges passengers at this station. Train may leave this station up to five minutes in advance of scheduled departure time.

S SPECIAL SERVICE – **ONLY** trains designated with an S at the top of the page will operate on Martin Luther King, Presidents, Columbus, Veterans Day and the Friday following Thanksgiving. On these days only trains 874 and 880 will also stop at Kensington at 7:00 am and 8:03 am. On days of heavy snowfall or other severe weather conditions MARC will operate this schedule. Under severe weather conditions these trains will make all station stops. There is no MARC train service on New Year's, Memorial, Independence, Labor, Thanksgiving and Christmas days.

P Parlor car service is available on this train. Individual, rotating, reclining seats are available by reservation at an extra charge. Call 1-410-859-7420 for reservations. Snack and beverage service available to all passengers.

b Connecting bus. Passengers change to/from Penn Line train at BWI Rail station. Will not operate on holidays.

c Connecting bus. Passengers change from Penn Line MARC train at Odenton station. Passengers not carried locally between points served by bus. Will not operate on holidays.

For accessible lift equipped bus service on bus route call 410-859-7420 before 1 pm on the business day prior to travel.

Meet-the MARC bus service available to Frederick. Call 301-694-2065.

m Connecting University of Maryland shuttle bus available from New Carrollton Penn Line station. Call 301-314-2255 for details.

Ride On buses offer frequent evening connecting service from the Shady Grove Metrorail station honoring MARC monthly and weekly tickets. Call 240-777-7433 for detailed schedule information.

Four Cities Consortium

CSXT Post Transaction Performance Measures

For Week Ending: 7/21/00

Barr Subdivision (M5) Pine Junction to State Line Tower

Finance Docket No. 33388

Week Ending	Last													
Measure	13-Wks	4/28	5/5	5/12	5/19	5/26	6/2	6/9	6/16	6/23	6/30	7/7	7/14	7/21
Westbound Trains														
Number	16	16	16	16	16	18	16	16	16	16	18	14	17	16
Average Speed/Hr	7.0	6.5	5.9	5.0	5.7	6.6	8.7	6.8	7.7	6.8	6.9	7.9	8.3	8.5
Eastbound Trains														
Number	19	20	19	19	20	20	19	19	19	20	21	17	18	19
Average Speed/Hr	13.2	13.4	12.3	12.1	11.4	12.4	15.6	14.5	12.0	12.5	13.4	14.5	14.1	13.4
Total Trains														
Average Number	35	36	35	35	36	38	35	35	35	35	39	31	35	35
Average Speed/Hr	9.8	9.6	8.9	7.6	8.2	9.1	11.9	10.1	9.8	10.0	9.5	10.8	10.9	10.7

CSX will report a daily average basis (calculated monthly) on the average speed of trains per day (run through and local) operated in both (and separately in each) direction through the Barr SD, Pine Jct. To State Line Tower. Speed will be calculated on average miles per hour.

CSX will report a daily average (calculated monthly) on the number of trains per day (run through and local) operated in both (and separately in each) direction through the Barr SD, Pine Jct. to State Line Tower.

Exhibit 2

Four Cities Consortium

CSXT Post Transaction Performance Measures

Barr Subdivision (M5) Pine Junction to State Line Tower
Report Details

Date		Train ID	Time	Speed
3/3/00		Avg - 42	0.7	8.6
3/10/00		Avg - 34	0.7	8.6
3/17/00		Avg - 36	0.6	9.3
3/24/00		Avg - 36	0.7	8.1
3/31/00		Avg - 36	0.7	9.1
4/7/00		Avg - 36	0.7	9.1
4/14/00		Avg - 35	0.8	7.4
4/21/00		Avg - 36	0.6	9.5
4/28/00		Avg - 36	0.6	9.6
5/5/00		Avg - 35	0.7	8.9
5/12/00		Avg - 35	0.8	7.6
5/19/00		Avg - 36	0.7	8.2
5/26/00		Avg - 38	0.7	9.1
5/26/00		Avg - 35	0.5	11.9
6/2/00		Avg - 35	0.5	11.1
6/9/00		Avg - 35	0.6	10.1
6/16/00		Avg - 35	0.6	9.8
6/23/00		Avg - 35	0.6	10.0
6/30/00		Avg - 39	0.6	9.5
7/7/00		Avg - 31	0.6	10.8
7/14/00		Avg - 35	0.5	10.9
7/21/00		Avg - 35	0.5	10.7

Four Cities Consortium

CSXT Post Transaction Performance Measures

Finance Docket No. 33388

Fort Wayne Subdivision (FW) - Tolleston to Clarke Junction
Line Segment: C-024

Hobart to State Line (Norfolk Southern Territory)
Line Segment: C-025

Fort Wayne Subdivision (FW) - Tolleston to Hobart
Line Segment: C-026

EXHIBIT 3

CSXT Radar Study of B&OCT Train Speeds

Train ID	Direction	Track	Date	Time	Indianapolis Blvd.	Hohman Ave.
Y-12523	East	2	7/23/00	1225	NA[1]	20
Q-13023	East	2	7/23/00	1607	25	21.8
Q-39023	East	2	7/23/00	1715	22.2	15
Q-13423	East	2	7/23/00	1905	23.5	20.7
Q-38823	East	2	7/23/00	2000	26.3	NA
J-70123	East	2	7/23/00	2015	28.5	24
L-16223	East	2	7/24/00	200	25.1	23.1
X-54424	East	2	7/24/00	214	24.4	24
Q-13624	East	2	7/24/00	309	29.5	24
Q-15624	East	2	7/24/00	1205	26.7	24.5
Q-38624	East	2	7/24/00	1240	Rest. Spd.[2]	20
K-18824	East	2	7/24/00	1325	26	15
Y-17324	East	2	7/24/00	1340	23	17.8
Q-38024	East	2	7/24/00	1506	24	20
Q-69124	East	2	7/24/00	1725	25	25
Q-50124	East	2	7/24/00	1910	27.2	NA
Q-11224	East	2	7/24/00	1955	15.4	18
Q-13424	East	2	7/24/00	2010	16.1	16
Q-32624	East	2	7/24/00	2050	24.1	17
Q-39024	East	2	7/24/00	2325	29.6	24
Q-14624	East	2	7/25/00	105	14.9	NA
Q-16224	East	2	7/25/00	120	28.4	23
X-00323	East	2	7/25/00	135	25.3	25
X-53424	East	2	7/25/00	147	27.2	24
Q-16425	East	2	7/25/00	245	23.4	21
Q-11825	East	2	7/25/00	755	27	23
Q-11025	East	2	7/25/00	815	30	23
Q-38425	East	2	7/25/00	910	24	19
N-95624	East	2	7/25/00	927	20	11
Y-12525	East	2	7/25/00	948	NA	14
Q-13025	East	2	7/25/00	1653	20	11
Q-38825	East	2	7/25/00	1708	24	19
Q-69125	East	2	7/25/00	1722	24.6	19
Q-32625	East	2	7/25/00	1754	21.3	15
Q-11225	East	2	7/25/00	1849	26	15
Q-11322	West	1	7/23/00	1215	15	17
Q-50022	West	1	7/23/00	1510	19.4	25
Q-15921	West	1	7/23/00	1520	26.8	25
L-14623	West	1	7/23/00	1702	26	23
Q-35122	West	1	7/23/00	1710	19.6	17
X-14723	West	1	7/23/00	1723	21	20.8
Q-38722	West	1	7/23/00	1855	18.3	15.4

EXHIBIT 3

Train ID	Direction	Track	Date	Time	Indianapolis Blvd.	Hohman Ave.
Q-13322	West	1	7/23/00	1955	27.9	25
L-16122	West	1	7/24/00	254	21	19.3
Q-16522	West	1	7/24/00	358	22.7	19.8
S-35123	West	1	7/24/00	436	19.9	18
Q-16424	West	2	7/24/00	515	25.7	22
Q-15922	West	1	7/24/00	549	29.5	24
P.O. Spec	West	1	7/24/00	1200	29.9	20
X-00223	West	1	7/24/00	1320	Rest. Spd.	18
S-38723	West	1	7/24/00	1310	14.6	15
Q-35123	West	1	7/24/00	1347	29.3	25
W-00124	West	1	7/24/00	1457	25	23
X-00423	West	1	7/24/00	1735	28	24
Q-38324	West	1	7/24/00	1845	23	21.3
Q-38723	West	1	7/24/00	2135	24.9	21
J-70124	West	1	7/24/00	2205	24.9	24
X-00524	West	1	7/24/00	2213	13.5	19
X-00323	West	1	7/24/00	2230	24.7	22
Q-38923	West	1	7/24/00	2324	23.9	20
Q-14925	West	1	7/25/00	957	17	9

Averages			
	All Trains	23.7	20.1
	Westbound	22.9	20.5
	Eastbound	24.3	19.7

[1] "NA": Radar speed not available.

[2] "Rest. Spd.": Operating rule restricts speed not to exceed 20 mph.

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
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)

VERIFIED STATEMENT OF THOMAS G. HOBACK

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
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)

VERIFIED STATEMENT OF THOMAS G. HOBACK[1]

1. I am Thomas G. Hoback. I am the president of The Indiana Rail Road Company ("INRD") and the owner of 11% of the common stock of Midland United Corporation, the owner of 100% of the common stock of INRD. I am submitting this verified statement in response to the "Response of Indianapolis Power & Light Company" filed July 14, 2000 in this proceeding.

TRACKAGE RIGHTS CHARGE

2. Pursuant to Decision No. 115 entered in F.D. 33388, CSX directed INRD to grant trackage rights to NS to permit NS to move trains over INRD's line between the

[1] The version of this verified statement that contains highly confidential material has that material **bolded** and enclosed in brackets **[. . . .]**. That material is omitted from the public version.

Indianapolis Belt and the Wye track leading to IP&L's Stout Plant, and headroom south of the Wye track needed to move trains into Stout Plant. This is a distance of approximately 3.29 miles. INRD granted trackage rights to NS pursuant to the Board's order and CSX's direction (the "Grant"). The trackage rights charge included in the Grant is $0.35 per car mile, a figure which is to be adjusted annually by RCAF(U).

3. The trackage rights charge of $0.35 per car-mile is non-compensatory to INRD on any basis.

Out-of-Pocket Costs

4. The trackage rights charge of $0.35 per car-mile almost certainly does not fully compensate INRD even for the out-of-pocket costs it will incur for the 3.29 miles. Assuming that all of Stout Plant's 1.5 million ton annual coal requirement is shifted to an ISRR-NS routing, approximately 15,000 carloads would move over the trackage right segment. (INRD's own traffic over the segment is small. Historically it had been fewer than 5,000 cars per year, though INRD hopes to increase the volumes this year.) At $0.35 per car mile, the 15,000 cars would generate $34,545 in trackage rights revenue for INRD. INRD's average annual system maintenance expense per mile averaged over four years is approximately $12,000 per mile, or $40,000 when applied to the 3.29 mile trackage rights segment.

5. If all the Stout Plant traffic is shifted to an ISRR-NS routing, the traffic density in ton-miles per track mile over the trackage rights segment would approximate the average traffic density in gross ton-miles per track mile on INRD. Over the past two years the average density on the railroad has been 2.9 million gross ton-miles per track mile. If all the

Stout Plant traffic is moved to the trackage rights segment, the traffic density in gross ton-miles per track mile would be approximately 3 million, of which about 2.5 million or 83% would be attributable to the Stout Plant traffic

6. In fact, however, actual maintenance costs on the trackage rights segment would likely exceed $40,000 per year by a considerable amount. The rail on the trackage rights segment is old 90-pound rail and simply moving heavy coal trains over it will cause severe maintenance problems, this is particularly the case on the first half-mile after leaving the Belt which has a curving steep grade which at places exceeds 3%. Braking coal trains on the curving grade will further aggravate the maintenance problem.

Capital Costs

7. The trackage rights charge does not compensate INRD for any share of the capital tied up in the trackage right segment. I have been advised that in determining the trackage rights charge for trackage rights arising as a result of merger conditions, the Board (i) assigns solely related costs to the traffic that causes them, (ii) allocates the maintenance cost of the segment on a usage basis, and (iii) determines an interest rental cost based on application of the railroad industry cost of capital to the value of the trackage rights segment, and allocates the interest rental on a usage basis.

8. For the purposes of establishing an interest rental for the trackage rights segment, the best estimate of the value of INRD is one that values it at the same multiple of revenues as Conrail was valued in the transaction that led to this proceeding. In that transaction, Conrail was valued at approximately three times revenues. At a multiple of three times its 1999

revenues INRD would be valued at approximately $50 million.

9. The fair market value of the equipment and property of INRD (other than right of way, track structure, and signaling system) is approximately $5 million. INRD also has some surplus real estate which has a fair market value of less than $1 million. Valuing the INRD on a multiple of revenues basis and subtracting from that value the estimated fair market value of the non-right-of-way related property of INRD, and the estimated fair market value of the surplus real estate results in a value for the right-of-way, track and signaling of approximately $44 million. Allocating this evenly over INRD's 155 route miles gives an approximate value per route mile of $285,000. An 11% interest rental would result in an annual interest rental per route mile of $31,000.

10. Assuming that all of IP&L's coal requirements are moved over the trackage rights segment, the traffic would generate approximately 2.5 million gross ton-miles per mile on the trackage rights segment. INRD's 1999 traffic generated at most 500,000 gross ton-miles, thus the IP&L traffic would bear approximately 83% of the interest rental, or $26,000 per mile. Dividing this by the 30,000 cars that would be involved in handling the Stout Plant traffic results in a trackage rights charge of $0.86 per car-mile simply to pay for the interest rental expense.

Efficient Component Pricing Rule

11. I have been advised that an alternative way of determining a reasonable trackage rights charge is to use the Efficient Component Pricing Rule ("ECPR"). Under the ECPR, as it has been explained to me, an appropriate trackage rights charge is determined by

rights. In this case it would mean subtracting from the gross revenues INRD derives from the IP&L Stout Plant traffic the variable costs INRD incurs in serving that traffic. Thus, applying the ECPR, a trackage rights charge for NS's use of the 3.29 mile segment in question would be equal to the gross revenues that INRD would derive from carrying the Stout Plant traffic, less INRD's variable costs of carrying that traffic.

12. INRD's cost accounting system does not routinely generate the variable costs of carrying specific traffic on the railroad. However, some idea of those costs can be obtained by looking at the operating ratio for INRD, which, in 1999, was 67.53%, and using the operating ratio as an approximation for the variable costs of handling all the traffic. On that basis, an appropriate trackage rights charge for the trackage rights segment would be [

[2]]. It should be noted that the costs included in the operating ratio include many costs that are not variable and in setting a trackage rights charge using the ECPR it would be necessary to refine this approach to eliminate the non-variable costs included in operating costs and to determine more precisely the actual variable costs of moving the Stout Plant traffic.

13. The $0.35 per car mile trackage rights charge is not compensatory to INRD on any basis of calculation.

14. The difference in total transportation cost for ISRR - NS routed coal to Stout Plant resulting from a $0.29 per car-mile trackage rights charge instead of a $0.35 per car-

---

[2] [

]

mile charge would be $0.40 per car (loaded in and empty out), or $0.004 per delivered ton. Based on my six years of coal transportation marketing experience with Illinois Central and TECO Transport and Trade, as well as 14 years experience with INRD, I can state that a transportation cost difference of less than ½ cent per delivered ton will not adversely affect the competitiveness of an ISRR - NS routing.

EFFECTS ON INRD OF GRANTING ISRR SUBSIDIZED ACCESS TO STOUT PLANT

15. Over the course of the past four years, INRD has invested $13 million in upgrading its line between Indianapolis and Linton, IN. A good part of the money has been spent on re-railing the line, replacing the old, worn-out 90-pound rail with fit 112-pound or heavier rail. The vast majority of the traffic on this line is coal destined for IP&L's Stout Plant. In 1999, 336,895,000 gross ton-miles were generated on this line of which 252,601,000 gross ton-miles (75%) were generated by Stout Plant traffic. Without the Stout Plant traffic the line is not economically viable and INRD would have to seriously consider abandoning it.

16. The financial impact of the loss of Stout Plant traffic on INRD would be severe. The total gross ton-miles generated on the railroad in 1999 were 460,549,000. The Stout Plant traffic, generated 252,601,000 gross ton-miles, or 55% of the total. The revenues from the Stout Plant traffic represented [ ] of the railroad's total revenues.

EFFICIENCY OF NORFOLK SOUTHERN OPERATIONS IN INDIANAPOLIS

17. IP&L contends that NS cannot efficiently provide service to Stout Plant

EFFICIENCY OF NORFOLK SOUTHERN OPERATIONS IN INDIANAPOLIS

17. IP&L contends that NS cannot efficiently provide service to Stout Plant because NS will be required to move engines and crews from Lafayette, IN to move a train in to Stout Plant and to move empties out. IP&L also contends that INRD will discriminate against NS trains going to Stout Plant to degrade service.

NS Engine Movements Required

18. IP&L's assertion that NS will have to bring an engine from Lafayette specially to handle each movement into and out of Stout Plant is wrong. There are at least three options.

19. First, NS has locomotives in Indianapolis six days a week. It would not be difficult to arrange for a set of NS locomotives to do the relatively small amount of work involved in moving a train from Crawford Yard into Stout Plant and moving empties from Stout Plant back to Crawford Yard. Even if this requires that NS transport a crew to Indianapolis to make the actual move, ISRR is in the same position. ISRR has no operations in Indianapolis and it is highly unlikely that it can move a train from the mine in southern Indiana to Indianapolis and into Stout Plant with a single crew. Thus, ISRR would have to move an extra crew to the Indianapolis area to move the train into Stout Plant. In the case of ISRR, the extra crew would have to travel from Petersburg, IN, a distance of 126 miles, more than twice the distance a NS crew would have to travel from Lafayette, IN.

20. Second, NS could use ISRR's locomotives to provide the service. IP&L contends that this cannot be done because NS's collective bargaining agreements require on-

board toilets and ISRR's locomotives are not so equipped. This is not correct. INRD services certain ISRR locomotives and on that basis we know that they are equipped with toilets. However, we have received a recent report that ISRR is beginning to remove the toilets from its locomotives, thus itself causing the problem Mr. Weaver points to. In any event, the distances involved are small. It is approximately 8 miles from Crawford Yard to Stout Plant. NS could negotiate a local exception to its collective bargaining agreements that permitted this service to be performed in a locomotive not equipped with an on-board toilet. Alternatively, for a very modest investment ISRR could equip any unequipped locomotives it wants to use for the Stout Plant service with on board facilities.

21. Third, INRD has agreed with NS to switch ISRR trains from the INRD interchange with the Belt to Stout Plant and empties in the other direction. The agreed switching rate is [ ] per car, the same rate INRD charged Conrail.

Dispatching

22. INRD could not discriminate against the ISRR - NS service even if it wanted to. INRD simply does not have enough traffic on the trackage rights segment to permit this. In the absence of INRD traffic, any failure of INRD dispatching to move the Stout Plant traffic over the trackage rights segment would be immediately obvious.

DECLARATION PURSUANT TO 28 U.S.C. 1746

I 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 August 2, 2000.

Thomas G. Hoback

Thomas G. Hoback

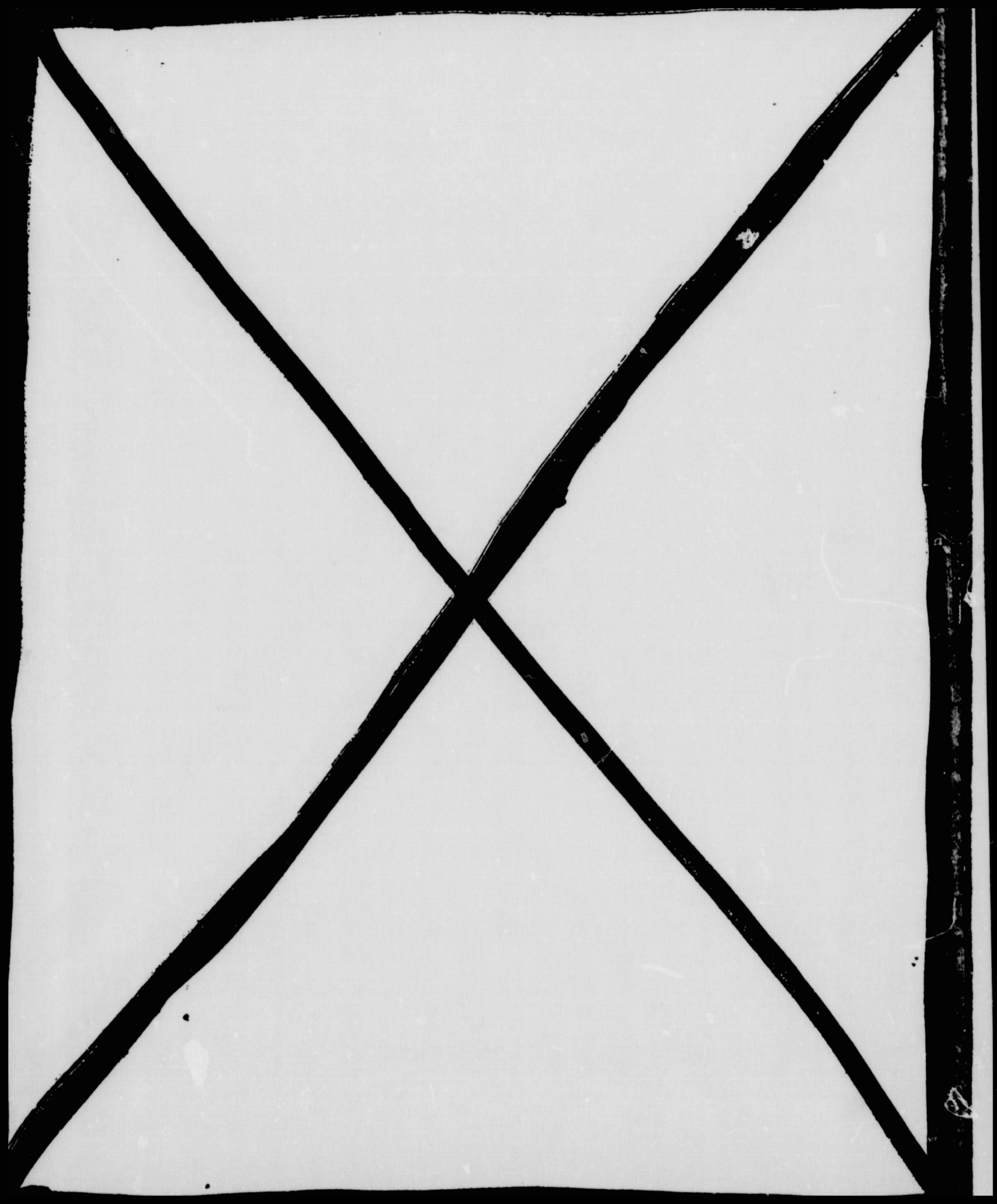
CERTIFICATE OF SERVICE

The undersigned counsel for CSX Corporation and CSX Transportation, Inc. hereby certifies that on this 3rd day of August, 2000, a copy of the foregoing "Reply Comments of Applicants CSX Corporation and CSX Transportation, Inc., to Comments Made on Their First Submission" and of the Public Version of the Verified Statement of Thomas G. Hoback were served on all parties of record by first-class mail, postage prepaid, or more expedited method.

Copies of the Highly Confidential Version of the Verified Statement of Thomas G. Hoback will be made available to representatives of parties of record on written request to the undersigned, which should contain a representation of the requesting individual that he or she has executed the Highly Confidential Undertaking under the Protective Order in Finance Docket No. 33388 which the Board has made applicable to the present Oversight proceeding.

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

Counsel for CSX Corporation and CSX Transportation, Inc.



199429

U.S. Department of Transportation
Office of the Secretary of Transportation

GENERAL COUNSEL

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

August 3, 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 Reply Comments of the United States Department of Transportation (DOT-2). Enclosed herewith as well is a computer diskette containing these Reply Comments, convertible into WordPerfect 7.0.

Respectfully submitted,

Paul Samuel Smith

Paul Samuel Smith
Senior Trial Attorney

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

Enclosures

199429

DOT-2

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/ Agreements -- Conrail, Inc. and Consolidated Rail Corp. (GENERAL OVERSIGHT)	)	Fin. Dkt. No. 33388 (Sub- No. 91)

Reply Comments of the
United States Department of Transportation

Introduction

The Surface Transportation Board ("STB" or "Board") 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. The proceeding focuses upon "the progress of implementation" of the transaction, and the efficacy of the conditions imposed thereon. Id. at 1. The United States Department of Transportation ("DOT" or "Department") in its initial comments offered some preliminary observations as well as its views on the subject of safety. DOT-1 (filed July 14, 2000). DOT wishes to emphasize in this regard that the Federal Railroad Administration will continue to monitor and work closely with the Applicants to ensure that their implementation of this transaction is a safe one. Our initial comments also indicated that, consistent with past practice, we would review the submissions of other parties before presenting more substantive comments for the record. Id. We have now

completed this process and our reply comments follow. [1]

Although it is clear that many parties have suffered from the service difficulties that arose once NS and CSX began to operate over their respective portions of the Conrail system, the Department remains of the view that too little time has passed since the Split Date to reach any definitive conclusions concerning all of the lasting consequences of this complicated transaction. Some of the initial comments, however, do support consideration by the Board as to whether additional conditions are necessary to address circumstances that were either unforeseen during the course of the consolidation proceeding, or that have caused greater or different impacts than first anticipated. [2]

Rail Service Deterioration

It is not surprising that shippers, small rail carriers, and communities have all reported that rail service deteriorated following the Split Date. *See* initial comments of the New York City Economic Development Corporation, I.E. DuPont deNemours, Inc., AES Eastern Energy, and SEDA-COG Joint Rail Authority. The Applicants do not dispute this, but both assert that improvements are in place and will continue. NS-1 at 5; CSX-1 at 12-13. DOT trusts that this is so.

Whether it is or not, it is important to recognize (as we explained in Ex Parte No. 582 (Sub-No. 1)) that post-acquisition consequences can be either short-term or long-term in nature, and that the difference between the two is crucial. It

---

[1]/ DOT has not been able to obtain the initial submissions of all of the parties reported to have made comments. We therefore offer no views on issues not specifically addressed herein.

[2]/ One party in western New York has complained that its rail rates have recently increased by approximately 50 percent. Initial comments of AES Eastern Energy. DOT considers that such issues deserve careful attention, but notes that there appears to be another forum that is more appropriate to examine this particular matter. Finance Docket No. 33388 (Sub-No. 90) (Buffalo Rate Study).

is unfortunately now commonplace that the consolidation of major railroads can usher in a lingering period of widespread operational difficulties. The severe post-merger Union Pacific/Southern Pacific service difficulties are well known, but they ultimately ended with the assistance of the Board. CSX and NS have also experienced congestion and delays as they absorb their respective portions of Conrail, but this is apparently now improving. Our point is that transitional problems call for, at best, transitional remedies. [3] To the extent the harmful circumstances reported by the various parties are manifestations of short-term difficulties that the Applicants are now correcting, there is less reason to consider new conditions. To the extent they continue, they are more likely to represent longer-term operational changes flowing from the transaction. It is entirely appropriate for the Board to consider conditions to protect the environment, affected communities, and others from the adverse affects of such changes. [4]

Short Line Railroads

Several short line railroads registered their complaints about poor service from NS and CSX since the Split Date, and to this we repeat that the Board must determine the true temporal dimensions of the problem. *See* initial comments of Growth Resources of Wellsboro Foundation, Rochester & Southern Railroad, and Buffalo & Pittsburgh Railroad.

But a group of small rail carriers in Pennsylvania has also raised a very different concern that deserves the STB's attention. They report that in order to win their support for the underlying transaction, the NS promised to allow them to interchange with the Canadian Pacific. Initial comments of North Shore

---

[3]/ Declining to impose conditions, of course, should not shield the Applicants from any liability to shippers or others for the consequences of even their transitional problems.

[4]/ The Board should, of course, continue to encourage negotiated agreements between the affected parties and the Applicants.

Railroad Co., Juniata Valley Railroad Co., Nittany & Bald Eagle Railroad Co., Lycoming Valley Railroad Co., *et al.* Now, however, they allege that NS is attempting to impose restrictions on this interchange, and they point out that the Board required the Applicants to adhere to all their representations made during the course of the proceeding. Id. The Department is without knowledge of the details surrounding the original settlement agreement at issue or of NS's subsequent conduct. We consider this a serious issue that the Board should investigate.

Environmental and Community Impact Issues

The Board ordered the preparation of an Environmental Impact Statement ("EIS") in this case because of the prospect that this large, complicated transaction would have substantial consequences for the environment, including many communities. Finance Docket No. 33388, Decision No. 89 (served July 23, 1998) (slip opinion) at 149-50. The EIS was based in significant measure on the operating plans and related information submitted by the Applicants, which were subject to the scrutiny of interested parties. Id. at 150-52. Through this process a record was created that estimated train movements over various line segments, truck traffic to and from intermodal terminals, and other impacts from post-acquisition railroad operations. These figures, in turn, were used to project, among other things, the noise, air, and congestion effects of the operations planned by NS and CSX after the Split Date. Id. The Board imposed numerous conditions in order to mitigate these anticipated effects. Id. at 150, 160. Similarly, communities that were thought likely to be adversely affected were encouraged to negotiate with the Applicants to identify and agree upon mitigation measures that would minimize the negative impacts of the transaction on those communities. Id. at 152-53.

The STB concluded that overall it had put in place "appropriate safeguards to ... protect the environment and the quality of life in affected

communities to the extent practicable[.]" Id. at 160. It also noted that, through oversight proceedings, additional conditions could be imposed if necessary "to address unforseen harms caused by the transaction." Id. Several parties have indicated through their initial comments that actual rail operations have proven very different from those anticipated in the operating plans and the EIS, and they seek new or revised conditions tailored to mitigate those "unforseen harms."

The Department believes that in exercising its oversight of environmental impacts of transactions, the STB should be guided by reality. If forecasts of traffic levels, train speeds, or other matters were wrong, then the environmental impacts of such factors should be assessed on the basis of the traffic levels, speeds, and so forth that have actually resulted – assuming they are not simply transitional in nature.

A significant number of communities have complained of impacts resulting from higher traffic levels and slower operating speeds than forecast. *See* the initial comments of the Four Cities Consortium and of Sandusky, Ohio. These communities have asked the STB to consider new environmental mitigation in light of these changed conditions. The Department fully supports this approach. We also believe that the Applicants should also be encouraged to reach agreements promptly with the communities to avoid the need for the STB to order specific remediation measures.

Considering that these impacts are not prospective but rather are currently being endured by the citizens of these communities, the STB should immediately investigate the claims of these communities and either impose mitigating conditions or issue orders to the Applicants to encourage rapid resolution. DOT cautions that as a general rule post-acquisition traffic levels and other factors should not be limited, say, to those specified in operating plans. But there are circumstances in which such an approach is at least temporarily appropriate. For example, the STB included a condition in its approval of the Union Pacific/Southern Pacific merger that limited rail operations through the

communities of Reno, Nevada, and Wichita, Kansas, in order to preserve the *status quo* while mitigation measures were studied. Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 515-18 (1996). This stimulated the affected parties to reach an agreement that avoided the need for additional Board-imposed conditions. We believe that a similar approach here could likewise provide an effective incentive.

Finally, it is critical that the Board respond expeditiously. This would of course more quickly ameliorate the harm that these communities have suffered and that they continue to endure. But it is also true that now, in the first year after the Split Date, it is far more likely that the operational changes causing the problems can be traced to the underlying transaction. In the future, other, external factors are apt to arise that will change the environment in which railroads, like other businesses, operate. Factories close, mines open, major purchases of grain for export are placed - or not. As time passes, it will likely prove more difficult to attribute traffic levels to changes wrought by a regulatory event as opposed to the ongoing interplay of market forces

These same communities and others also complain about the negative impacts caused by stopped trains blocking crossings. *See* Initial comments of Cleveland and the Ohio Rail Development Commission. This issue was not addressed in the EIS at all, but based on the record to date communities are suffering serious disruption due to parked trains. Parked trains not only affect traffic, and generate additional pollution (including their own, if they are idling), they also endanger citizens' lives and property by delaying emergency response vehicles. The Department presumes that the problem of blocked crossings results primarily from the overall service and integration problems that have plagued the Applicants since the Split Date. If so, such practices should disappear as service improves. However, parked trains are a serious matter. If the Applicants are unable to eliminate the problem, and soon, the STB should consider measures to ameliorate the situation.

Commuter Rail Operations

Metro North is the only commuter railroad of which DOT is aware that has filed comments in this proceeding. [5] Metro North is concerned about its ability to increase traffic on the Port Jervis line, now controlled by NS, and it raises operational issues with CSX on Metro North lines east of the Hudson. Metro North believes that its bargaining position with both Applicants has been weakened by the split of Conrail operations. Although the Department is not in a position to comment on the specific issues raised by Metro North, we note that there is a vital public interest in balancing safe, efficient, and economical commuter rail service with efficient freight operations. [6] DOT urges the Applicants and Metro North to continue to negotiate to resolve their differences. If satisfactory agreements cannot be reached, the STB may need to take a more active role. The Board should in any event continue to monitor commuter rail service

Conclusion

The still-evolving effects of this transaction call for continued oversight. Beyond the widespread service deterioration following the Split Date, which is reportedly improving, the Board should examine whether there are long-term adverse impacts that were not originally forseen or accurately measured.

---

[5]/ Amtrak noted only that its on-time performance on lines now owned by CSX has suffered, but that it continues to work with the Applicants.

[6]/ The Board recognized this broad principle even as it declined to impose conditions not directly related to the transaction. Decision No. 89 at 96-97.

Railroads need operational flexibility to deal with a changing business environment, but harmful impacts arising from operational changes made possible or necessary by the transaction should be mitigated whether or not they were identified initially. DOT will continue to participate in the oversight process.

Respectfully submitted,

Thomas W. Herlihy
Acting Deputy General Counsel

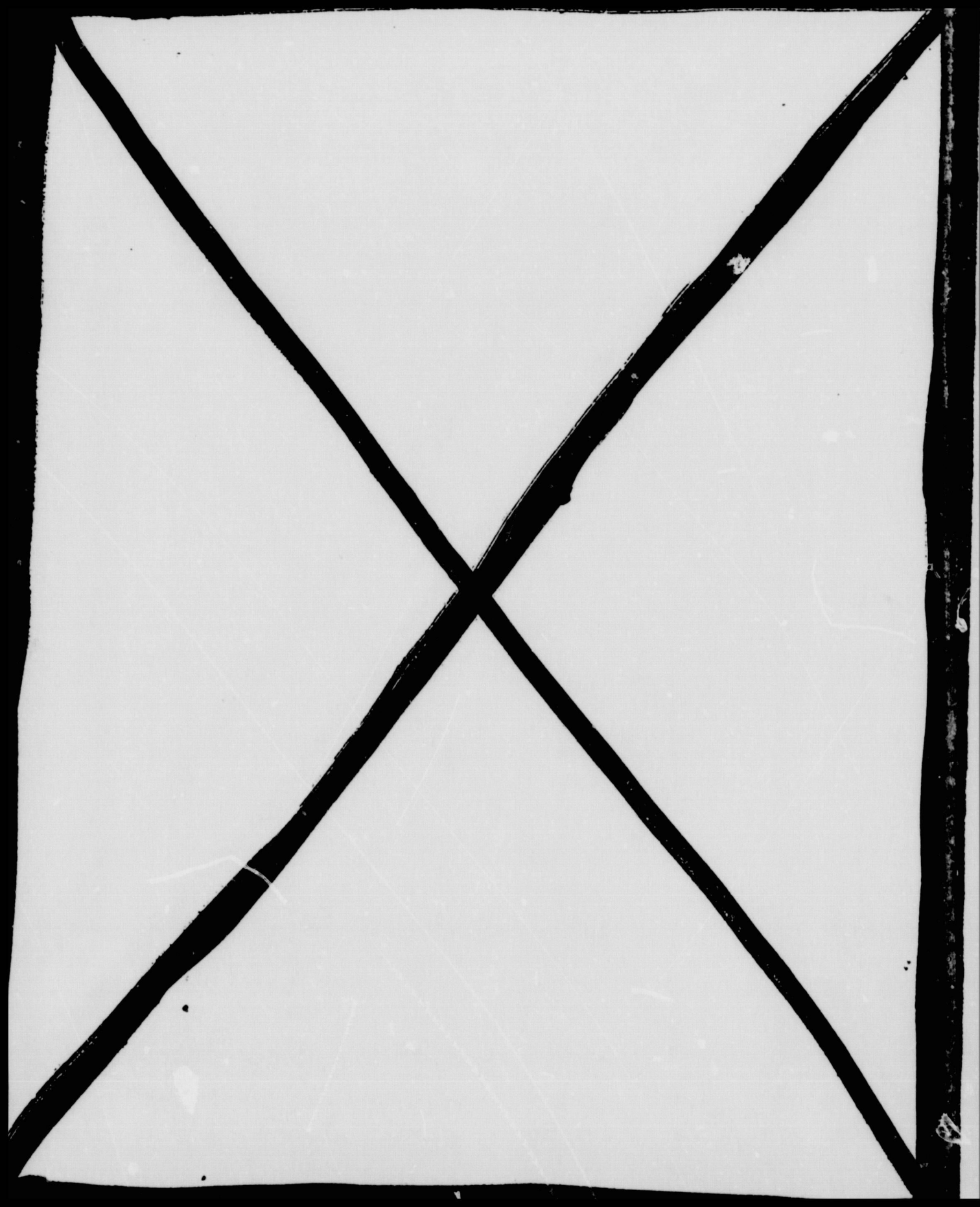
August 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the foregoing Reply 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.

Paul Samuel Smith

August 3, 2000



19426

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

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

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

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

DELAWARE COUNTY
CONFERENCE FACILITY:
205 N. MONROE STREET
MEDIA, PA 19063
(610) 565-6040

WILMINGTON OFFICE:
1901 SUPERFINE LANE
SUITE 2
WILMINGTON, DE 19802
(302) 428-3761

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

ERIC M. HOCKY
emhocky@ggelaw.com

August 2, 2000

By FEDEX

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

Re: STB Finance Docket No. 33388 (Sub-No. 91)
CSX and Norfolk Southern-Control and
Operating Leases-Conrail (General Oversight)
Reply of Reading Blue Mountain & Northern Railroad Company (RBMN-3)

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Reply of Reading Blue Mountain & Northern Railroad Company (RBMN-3), along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 7.0.

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

Very truly yours,

Eric M. Hocky

Enclosures
cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
All parties of record in Sub-No. 91

EMH/e
H:\WPDATA\TRANS\RBMN\Conrail (Sub-91)\STB03.wpd

RBMN-3

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)

REPLY OF READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

In accordance with the procedures established in *Sub-No. 91, Dec. No. 1*, Reading Blue Mountain & Northern Railroad Company ("RBMN") and other parties filed comments with the Board in this General Oversight Proceeding. RBMN is now filing this Reply to respond to the initial comments filed by other parties.

RBMN's Comments (RBMN-2) were filed to express its views (1) about how the CSX/NS/CR[1] transaction changed RBMN's relationship with its major Class I connection (previously Conrail and now NS) so as to take away the benefits RBMN was to receive from its purchase of the Lehigh Line, (2) about how the specific condition imposed by the Board for RBMN's benefit is not being adhered to, and (3) to request that the Board use the jurisdiction it retained to impose additional conditions. Specifically, RBMN requested that the Board impose the following conditions:

---

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

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

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

RBMN's Comments and the relief it requested were supported in great detail by the Verified Statements of Wayne Michel (formerly of Conrail and now a consultant to the industry) and Andrew Muller (RBMN's President).

RBMN is filing this Reply to point out that the relief it requested is consistent with, and would satisfy, the relief sought by two other parties in their respective comments (as such relief related to RBMN).

ISG Resources, Inc. ISG Resources, Inc. ("ISG") points out in its comments how the split of Conrail between NS and CSX has affected fly ash traffic that it moves from Connecticut to Good Springs, PA, a point on RBMN's Reading Cluster. *See* ISGR-2. As ISG notes, despite various attempts by NS to put together a new joint route to replace the former Conrail single line route, NS has not been able to come close to duplicating the service times for the moves. Only after the failure of these attempts did NS reluctantly grant the waivers necessary for the traffic to be handled by Canadian Pacific ("CP")[2] directly to RBMN at Taylor Yard. While the waivers granted by NS for this traffic continue until June 1, 2001 (by far the longest NS has granted to any RBMN customer), ISG rightfully worries about what will happen when

---

[2] References to CP inculde references to Delaware and Hudson Railway Company, Inc., the carrier that physically connects with RBMN at Taylor Yard.

the waivers expire. RBMN, having been told by NS that no more waivers will be granted or extended, shares this worry.[3] If RBMN were granted the relief it has requested, ISG would be able to continue to have its traffic handled in the current manner.[4] Additionally, NS would be free to continue to attempt to put together a competitive package of rates and service.

As noted by ISG, the continued availability of the CP-RBMN route will ensure that ISG as a shipper affected by a loss of Conrail single-line service continues to receive adequate service. ISGR-2 at 7. The relief requested by RBMN will ensure just that.

Canadian Pacific. Under CP's settlement with NS, traffic to and from NS-served shortlines is interchanged to NS which handles the traffic to the shortlines for a fixed amount. With respect to RBMN, the CP settlement requires that the traffic, instead of being interchanged directly between CP and RBMN at Taylor Yard be routed over a longer route, with an additional interchange, that requires use of NS's main line and one (Harrisburg) and sometimes two (Allentown) NS yards. *See* RBMN-2 at 10-11; Michel V.S. at 16-17. In addition to the circuity and additional handling that this routing necessarily requires, because of NS service failures starting on the Split Date, the access afforded to CP under the settlement agreement was not working. CP Comments at 6. In certain cases NS allowed traffic to be interchanged directly between CP and RBMN in Taylor Yard without the application of the contractual restrictions imposed on RBMN. CP Comments at 6, 14. CP in its Comments requests that, for traffic

---

[3] *See* RBMN-2 at 11-12; Michel V.S. at 20-21.

[4] ISG focuses only on the waiver that RBMN needs to use the trackage rights between the Reading Cluster and the Lehigh Line. Although the additional consideration provisions of the Lehigh Purchase Agreement were not designed with Reading Cluster traffic in mind, the Board needs either to confirm this to prevent NS from taking a contrary position, or to eliminate the additional consideration provisions as requested by RBMN.

covered by the NS/CP settlement agreement, CP be given the right to interchange directly with RBMN without the application of any contractual restrictions and without the need to interchange the traffic to NS at some artificial, inconvenient location. CP Comments at 14-15. The relief requested by RBMN, although broader than that requested by CP, is consistent with and would encompass a direct connection with CP at Taylor Yard for traffic covered by the NS/CP settlement. This connection would allow shippers the benefit of the most efficient routings, and would have little or no adverse economic impact on NS.[5]

Conclusion

For the foregoing reasons and the reasons set forth in its initial Comments, RBMN requests that the Board grant the relief described in its initial Comments.

Respectfully submitted,

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

Dated: August 2, 2000

Attorneys for Reading Blue Mountain & Northern Railroad Company

[5] As noted above, there likely would be operational benefits to NS by eliminating short haul traffic from NS's main line and the Harrisburg and Allentown Yards.

CERTIFICATE OF SERVICE

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

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

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

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

Dated: August 2, 2000

ERIC M. HOCKY

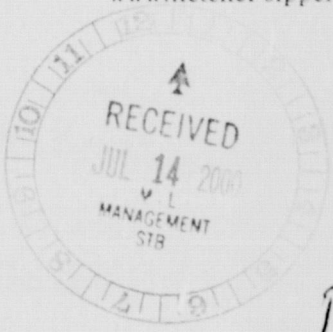
STB FD-33388 (SUB 91) 7-14-00 D 199279

199279

FLETCHER & SIPPEL LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721

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

July 13, 2000



VIA FEDERAL EXPRESS

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

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

Dear Secretary Williams:

Illinois Central Railroad Company ("IC") submits this reply to the "First Submission" of applicant CSX Transportation, Inc. ("CSXT") in this oversight proceeding, and specifically to CSXT's cursory report regarding dispatching of the Leewood-Aulon line in Memphis, Tennessee. CSX-1 at 107. CSXT's claims that it has "complied with" the Board's condition regarding the Leewood-Aulon line and that "[t]he solution that was introduced on a trial basis is still being employed" are somewhat misleading.

The parties are currently engaged in certain trial procedures on the Leewood-Aulon line -- the latest in a number of efforts to address the serious interference and delays caused by CSXT's dispatching and operation of the line. Delays continue to occur with unacceptable frequency, however, and it seems apparent that something more will be needed. It is not accurate to characterize the current trial procedures as a "solution" to the problems that the Board identified and sought to remedy.

IC does not question the good faith nature of CSXT's efforts to date to address this matter. IC believes that negotiations between the parties and implementation of potential new remedies will continue. IC reserves its right, however, to have the Board address these issues if such negotiations are not productive and delays on the Leewood-Aulon line continue.

Twenty-five copies of this letter are enclosed for filing at the Board. One extra copy of this letter is included as well. I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. Finally, a 3.5-inch computer diskette, containing the text of this letter in WordPerfect 5.1 format, is enclosed.

I certify that a copy of this letter has been served by overnight delivery on counsel for the applicants herein. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Illinois Central
Railroad Company

TJL:tl

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Myles L. Tobin, Esq.