Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

November 19, 2001

Ms. Pinkey S. Carr
Director
Department of Law
City of Cleveland
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077

FILE IN DOCKET
FD - 33388
(Sub-No. 91)

Dear Ms. Carr:

Thank you for your letter of October 9, 2001, forwarding the response of Cleveland, Ohio to CSX Transportation Inc.'s (CSX) Fourth Quarterly Environmental Status Report (Status Report). In your letter, you state the City's position that CSX has not fully complied with the June 4, 1998 Settlement Agreement negotiated between CSX and the City, particularly regarding train routing and frequencies and noise walls. Despite the difficulties that have arisen over compliance with the Settlement Agreement and the fact that certain issues such as those relating to information on train routing/frequencies and acceptable materials for construction of noise walls have not been resolved, you note that discussions between the City and CSX continue.

As you know, as part of its efforts to keep the Surface Transportation Board (Board) apprised of its activities addressing outstanding environmental issues raised by communities during the Conrail Oversight proceeding, CSX notified the Board by letter of October 3, 2000, of its plans to provide Status Reports to the Board on a quarterly basis. The Status Reports, I believe, are a good vehicle for providing the Board and communities in Ohio receiving the Status Reports with updated information on CSX's ongoing efforts to reach mutually acceptable resolution of unresolved environmental concerns in Ohio. I also believe that the Status Reports reflect continuing progress in the ongoing community consultation process. As you state in your letter, some issues are still being resolved, and I remain optimistic that the Status Reports will continue to be a useful tool in facilitating dialogue and issue resolution between CSX and local communities in Ohio.

I am pleased to hear that the City intends to continue to pursue further consultation with CSX in an effort to address the concerns that you have raised. I appreciate your keeping me informed as to the progress in addressing these environmental issues, and I also appreciate your efforts to keep CSX informed by forwarding a copy of your letter to CSX's representative, Michael Ruehling. I have placed your letter and my response in the public docket for the Conrail Acquisition proceeding. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Linda J. Morgan

Linda J. Morgan

City of Cleveland
Michael R. White, Mayor

Department of Law
Pinkey S. Carr, Director
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216/664-2800 Fax: 216/664-2663
cclawadm@neobright.net

October 9, 2001

The Honorable Linda Jay Morgan, Chairman
Service Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Response of the City of Cleveland, Ohio to CSX Fourth Quarterly Community Status Report For the Period of May 2001 - July 2001

Dear Chairman Morgan:

Please regard the enclosed submittal as the response by the City of Cleveland, Ohio to the report submitted by CSX pursuant to the Board's order in Decision No. 5 in Finance Docket No. 33388 (Sub-No. 91) [general oversight], slip op. at 33. The specific purpose of this letter is to correct certain misstatements in the CSX Report (attached hereto).

It has long been the City of Cleveland's position that CSX is not in compliance with the terms of the June 4, 1998 Settlement Agreement between CSX and the City in a number of respects. The City and CSX have been involved in various negotiations from December 2000 to the present in an effort to resolve the issues related to CSX's failure to comply with the terms of the Settlement Agreement. Those discussions are ongoing at this time but have not, as of this date, fully resolved the issues.

Sincerely,

Pinkey S. Carr
Director of Law

Enc.

Cc. Mr. Michael J. Ruehling
Vice Chairman William Clyburn, Jr.
Commissioner Wayne O. Burkes
Craig S. Miller, Esq.

October 9, 2001

RESPONSE BY THE CITY OF CLEVELAND, OHIO TO CSX FOURTH QUARTERLY COMMUNITY STATUS REPORT FOR CLEVELAND, OHIO, DATED SEPTEMBER 6, 2001
(for the period May 1, 2001 through July 31, 2001)

1. **Train routing/frequencies.** CSX did submit a Train Frequency Study to the City over 14 months after the date CSX was required by the Settlement Agreement to submit the study. That Frequency Study claimed delays and inefficiencies would result from CSX complying with the frequency requirements on the routes as required in the Settlement Agreement. The City of Cleveland disputes these claims. While CSX offered to provide train count data to the City in response to the City's demand that it do so, CSX has thus far refused to provide such information on other than a biannual basis and has further refused to provide it beyond the first year of the Settlement Agreement rather than for the duration of the Settlement Agreement as demanded by the City. This information is deemed essential by the City to give meaning to the train frequency requirements of the Settlement Agreement.

2. **Noise Walls.** One of the key elements of the Settlement Agreement is the installation of noise mitigation structures in a timely manner. While the Settlement Agreement requires Cleveland to consult with CSX and obtain CSX's concurrence with respect to the design of these structures, CSX is required not to unreasonably withhold such concurrence.

The City submitted detailed plans and specifications to CSX in August 2000. After many months of inaction by CSX on the review of the submitted plans, CSX finally committed in April 2001 to a schedule for completing CSX's review of the City's plans.

Nevertheless, delays in the approval process have continued. In its September 6, 2001 submittal to the Board, CSX now claims that the City "... has now proposed to construct the walls out of a nontraditional material – shredded tires – because that material is less expensive." This statement is misleading and erroneous.

The specifications for the noise walls, as stated earlier, were submitted to CSX engineers in August 2000. As the City advised CSX representatives at the April 19, 2001 meeting referred to in the CSX Report, the proposed barrier features tongue and groove modular sections made from a fiberglass-reinforced polymer composite, not shredded tires as CSX now claims. At the request of CSX, the City advised CSX on April 19 that cost of the fiberglass-reinforced polymer system is comparable to concrete barriers, not cheaper.

Furthermore, on May 16, 2001, the City's consultant advised CSX that rubber fill could be eliminated to meet this concern of CSX. To date, CSX has not responded. Furthermore, the City has continually advised CSX that the reason for using the proposed fiberglass-reinforced polymer composite is that due to the particular location of the noise walls, concrete barriers are not feasible. CSX recently raised the issue of warranties as the reason for delay after this long period of continuing delay in its approvals. This pattern of delay by CSX has caused the City to be unable to implement the mitigation measures contemplated by the Settlement Agreement.

STB FD-33388 (SUB 91) 10-31-01 J 203820

203820

ARNOLD & PORTER

Dennis G. Lyons
Dennis_Lyons@aporter.com

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202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

ENTERED
Office of the Secretary

OCT 31 2001

Part of
Public Record

CSX-8

October 31, 2001

BY HAND

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

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

Dear Secretary Williams:

We have received the letter of Michael F. McBride, Esq., counsel for Indianapolis Power & Light Company, dated October 24, 2001, to the Board, relating to the above matter. CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), believe that, given the extensive prior submissions on this matter, only one of the points in the IP&L letter needs response.

As set forth in the Verified Statement of John E. Haselden, filed with CSX-6 on September 12, 2001 (as of September 11, 2001), INRD and IP&L had then agreed "that there should be no further disclosure of the details of their contract negotiations to the Board" in this proceeding. Haselden V.S. at 2. The October 24, 2001, letter from Mr. McBride stating that: "The agreement, by the way, is only for some of the coal to Stout, a fact not mentioned by CSX" appears to CSX to be a violation of the agreement just mentioned. That agreement was the reason the definitive agreement between the parties was not described in any detail in CSX-7, just as the agreement in principle had not been so described in CSX-6.

The tendentious and belittling language in the October 24, 2001, letter that the contract is "only" for "some" of Stout's requirements is an attempt to create a misleading impression as to the extent of the commitments made by the parties to the contract. CSX would like to bring the facts about the commitment of IP&L and INRD to the attention of the Board; but CSX, however, respecting the wishes of INRD that it not describe the details of those commitments, will not do so in this letter. If the Board wishes to see the agreement and judge for itself the extent of the commitment, CSX would have no objection to submitting it under "Highly Confidential" status pursuant to the Protective Order.

Twenty-five copies of this letter and a WordPerfect diskette containing the text of this letter are being filed herewith. Kindly date-stamp the enclosed additional copies of this letter 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

STB FD-33388 (SUB 91) 10-22-01 J 203786

ARNOLD & PORTER

Dennis G. Lyons
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203786

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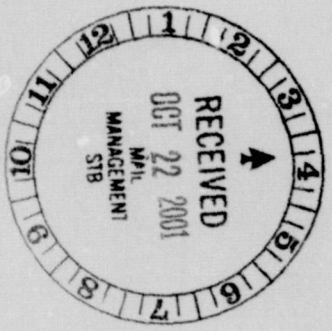
CSX-7



October 22, 2001

BY HAND

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

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

Dear Secretary Williams:

On September 12, 2001, we filed on behalf of CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), the "Reply of Applicants CSX Corporation and CSX Transportation, Inc., to Motion of Indianapolis Power & Light Company to File a Response to August 6, 2001 Replies of CSX and Norfolk Southern to IPL's July 16, 2001 Comments" (CSX-6).

Among other things, that filing indicated that an agreement in principle had been reached for a new long-term contract for the transportation and delivery of coal to Indianapolis Power & Light Company's Stout Plant in Indianapolis between the Indiana Rail Road ("INRD") and Indianapolis Power & Light ("IP&L"). In that filing CSX undertook to advise the Board when a definitive agreement had been executed between the parties.

We are now pleased to advise the Board that on October 19, 2001, a definitive agreement for the long-term transportation and delivery of coal to the Stout Plant was executed and delivered between IP&L and INRD.

Twenty-five copies of this letter, and a WordPerfect diskette containing the text of this letter are being filed herewith. Kindly date-stamp the enclosed additional copies of this letter 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

STB FD-33388 (SUB 91) 8-28-01 J 203280

203280

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August 28, 2001

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Seventh Floor
Washington, D.C. 20423

Re: Finance Docket No. 33388 (Sub-No. 91), CSX Corporation, et al.,
(General Oversight)

Dear Secretary Williams:

We received a letter from Mr. Lyons regarding Indianapolis Power & Light Company's ("IPL") Motion and Response filed in the above-referenced proceeding on August 22, 2001. It was our intention to serve the filings on CSX and NS via facsimile as well as first-class mail, as we have before (such as our July 16, 2001 Comments), but we did not due to a miscommunication within our office. We apologize to CSX and NS for the oversight. In the circumstances, we have no objection to CSX filing its Reply to IPL's Motion for Leave to File on or before September 11, 2001.

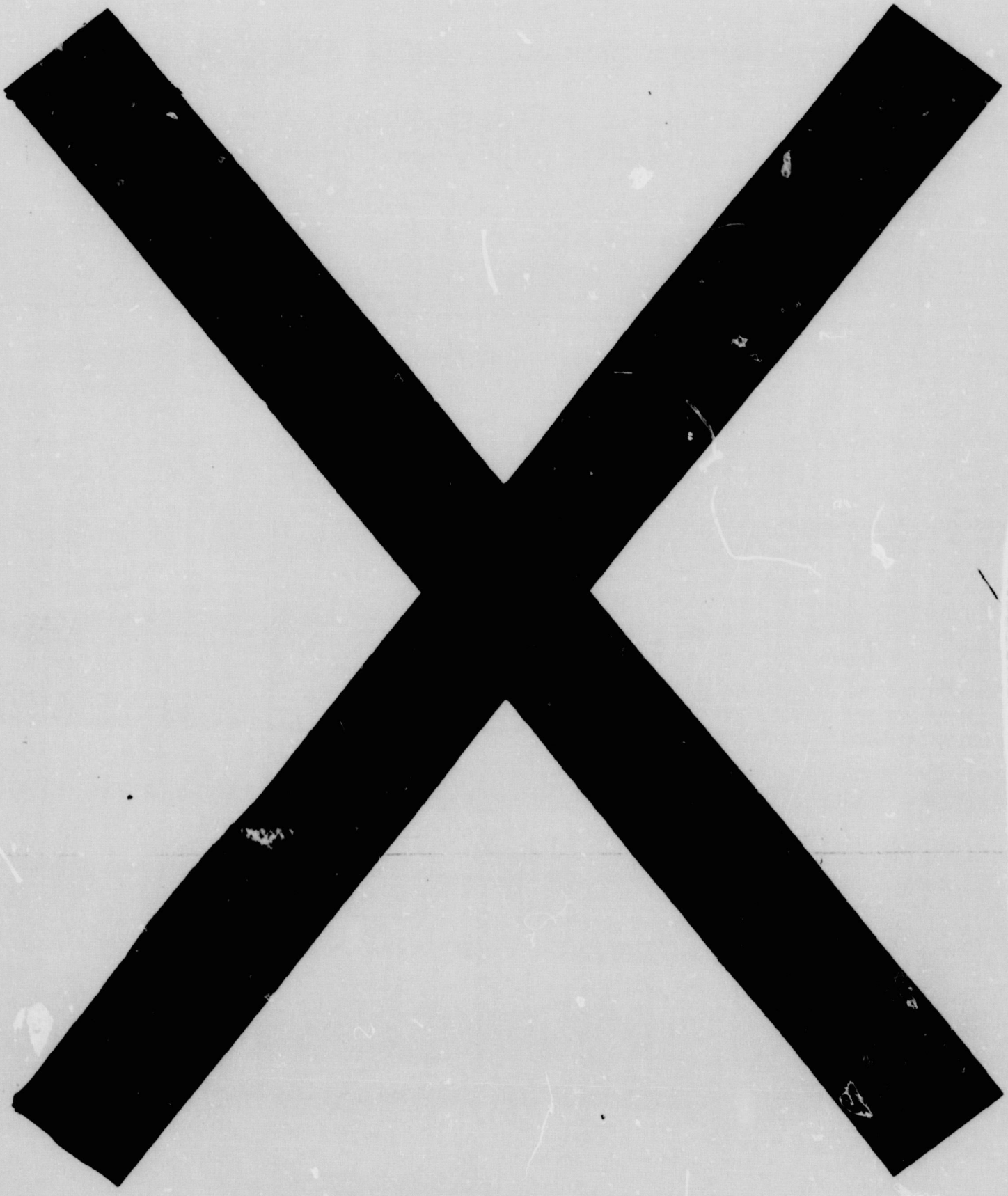
Respectfully submitted,

Michael F. McBride

Michael F. McBride
Bruce W. Neely

Attorneys for Indianapolis Power & Light Company

cc: Richard A. Allen, Esq. (Via Facsimile)
Michael P. Harmonis, Esq.
Dennis G. Lyons, Esq. (Via Facsimile)
Karl Morrell, Esq.
Paul Samuel Smith, Esq.



PAUL S. SARBANES
MARYLAND

309 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
202-224-4524

United States Senate

WASHINGTON, DC 20510-2002

August 2, 2000

Honorable Linda Morgan
Chairman
Surface Transportation Board
Mercury Building, 1925 K Street, N.W.
Washington, D.C. 20423

Dear Madame Chairman:

We are writing in response to Finance Docket No. 33388 (Sub.No.91) and to express our continuing concerns about the deterioration of MARC passenger rail service since the acquisition of Conrail by CSX Transportation and Norfolk Southern.

Over the past 13 months, since the June 1999 takeover of Conrail, our offices have received numerous and persistent complaints about major and recurring delays to MARC trains operating over the CSXT Camden and Brunswick lines. In fact, we have had more complaints about passenger rail service during this period than we can recall at any other time during our service in the Congress. The most frequently cited reason for the delays was the heavy level of freight traffic and a consistent pattern of operating slower moving freight trains ahead of the MARC trains. Many passengers noted waiting at the platform or being stalled on the tracks for more than an hour while preference was given to freight traffic. Others said that their commuting times have increased threefold due to the delays. Several commuters told us that they were fearful of losing their jobs because they were so consistently late to work because of the unreliable service.

Prior to the June 1 acquisition of Conrail, MARC on-time performance averaged 95%. Since then performance plummeted, dropping as low as 58% in March 2000 on the Camden line. While it has recovered somewhat since then, it is still at unacceptable levels, forcing some commuters to abandon the service and return to their cars. The reduction in service reliability is particularly disturbing in light of commitments made by CSX to the Surface Transportation Board and Maryland in its proposed operating plan. In its Railroad Control Application before the Board CSX clearly stated that the increase in traffic due to the Conrail takeover would have *no adverse impact* on MARC Service. CSXT also stated that the CSXT Capital Subdivision (MARC Camden Line) and Metropolitan Subdivision (MARC Brunswick Line) have sufficient capacity to accommodate the increased freight traffic because these lines are double tracked with Centralized Train Control bidirectional signaling.

Earlier this year we asked Maryland DOT Secretary John Porcari to schedule joint town meetings with CSXT officials along both the Camden and Brunswick lines to enable MARC customers to voice their concerns. We also wrote to the Chairman of CSX Corporation to express our own concerns about these delays.

Three years ago, during contract negotiations between the CSXT and the State of Maryland, CSXT issued a special message to MARC commuters outlining basic principals for allowing MARC use of CSX tracks for passenger service. Included in that message was the following statement: "**Service must be reliable.** We are committed to offering the best rail service to users of our tracks. For shippers, that means on-time delivery of goods by rail. For you, it means MARC providing on-time commuter service. Neither should be adversely impacted by the other." We believe that this statement should continue to be the guiding principle for continued monitoring and oversight by the Surface Transportation Board.

Your attention to this matter is greatly appreciated.

With best regards,

Sincerely,

Barbara A. Mikulski
United States Senator

Paul S. Sarbanes
United States Senator

199395

LeBoeuf, Lamb, Greene & MacRae

L.L.P.

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July 27, 2000

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, DC 20423

Re: Finance Docket 33388 (Sub-No. 91)(Oversight);
CSX Corporation and CSX Transportation, Inc., et al.

Dear Secretary Williams:

On July 14, 2000, Indianapolis Power & Light Company ("IPL") filed Comments in the above-referenced proceeding in response to the June 1, 2000 Reports of Norfolk Southern and CSX, together with a Verified Statement and supporting Exhibits.

We have just received a letter from counsel for CSX, Dennis G. Lyons, Esq., to the Second Circuit, in the proceedings to review the Board's Decision in Finance Docket No. 33388, in response to a letter I wrote the Second Circuit about Decision No. 2 in this proceeding and about CSX's June 1, 2000 Report herein. A copy of Mr. Lyons' letter is enclosed.

I hereby request that the Board treat Mr. Lyons' July 24, 2000 letter as a supplement to IPL's July 14 filing herein, and therefore as part of the record. Obviously, good cause exists for doing so, because the letter just became available to IPL. I further request that the Board consider the representations made in Mr. Lyons' letter about the agreement between NS and Indiana Rail Road Company in light of the discussion in Decision No. 125 (at 3-5) in Finance Docket No. 33388 about the trackage rights agreements into the Stout Plant. We trust the Board to draw the appropriate conclusion, in light of the fact that the NS/INRD agreement apparently was not even final until May 26, 2000, more than one year after Decision No. 125 was issued. IPL believes that Mr. Lyons' letter only corroborates the concerns it has expressed to the

Board in relying on NS to offer competitive and efficient transportation service for coal from Indiana to its E. W. Stout Plant. If, for example, NS had truly intended to serve IPL, IPL believes that it would have finalized its trackage rights agreement before the Board's Decision No. 125 was issued, not more than one year later.

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Bruce W. Neely

Attorneys for Indianapolis Power
& Light Company

Enclosure

cc (w/encl.): Dennis Lyons, Esq.
Richard Allen, Esq.
Karl Morell, Esq.
Michael Harmonis, Esq.
Paul S. Smith, Esq.

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July 24, 2000

VIA FEDERAL EXRESS

Hon. Karen Greve Milton, Clerk
U.S. Court of Appeals for the Second Circuit
United States Court House
40 Foley Square
New York, NY 10007

Attention: Mr. Michael Adranga, Deputy Clerk

Re: *Erie-Niagara Rail v. Surface Transportation Board, et al.*
No. 98-4725 (L) and Consolidated Cases

Dear Ms. Milton:

We are counsel for CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), Respondents in the above consolidated cases. We have received a copy of a letter to you dated July 18, 2000, from Michael F. McBride, Esq., Attorney for Indiana Power & Light Company, a Petitioner in the above cases ("IPL"), submitted to the Court under FRAP 28(j). We can confirm IPL's assertion that the Surface Transportation Board ("STB") has ordered production of the trackage rights agreements between CSX Transportation, Inc., and Norfolk Southern Railway Company ("NS"), and between Indiana Rail Road Company and NS. Those trackage rights agreements have been produced to IPL. It appears to CSX that this production moots the Petition for Review filed by IPL insofar as it seeks to review the action of the STB in declining to order production earlier, in the proceedings pursuant to the STB's retained jurisdiction which occurred in 1999.

IPL's letter raises some issues concerning the difference between trackage rights fees between those charged for the portion of the movement on CSX Transportation, Inc., and those charged for the portion of the movement on Indiana Rail Road Company. The trackage rights fees charged by CSX Transportation, Inc., was 29 cents per car mile as set forth as being the CSX fee in our brief (p. 38 n.28). While Indiana Rail Road Company's Board of Directors granted NS trackage rights in 1999, the trackage rights agreement between Indiana Rail Road Company and NS was not completely negotiated and executed until May 26, 2000, and it was not available at the time CSX's brief was submitted. That

agreement provided for a fee of 35 cents per car mile. Since a movement of 3.29 miles is involved, the six-cent difference amounts to 19.7 cents per car (39.5 cents including the return movement).

We also advise the Court that on July 14, 2000, IPL filed, in a continuing General Oversight proceeding as to the Conrail matter before the STB, a submission of some 30 pages of argument and sworn testimony, plus exhibits, renewing IPL's request that Indiana Southern Railroad be allowed to serve IPL's Stout and Perry K Plants directly. It was the refusal of that request as premature by the Board in May 1999 that is the other basis of IPL's Petition for Review before this Court.

This letter is submitted under FRAP 28(j) in response to IPL's letter and to advise the Court of the July 14, 2000, IPL filing with the STB.

We enclose 10 copies of this letter and of the cover page and table of contents page of IPL's filing with the STB, for filing herein.

Kindly date-stamp and return one copy of this letter in the enclosed, stamped, self-addressed envelope. If there are any questions, do not hesitate to call at (202) 942-5858.

Respectfully yours,

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

rjm
Enclosures
cc All Parties of Record

PUBLIC VERSION -- PROTECTED MATERIAL REDACTED

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
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)

RESPONSE OF INDIANAPOLIS POWER & LIGHT COMPANY TO "FIRST SUBMISSION BY APPLICANTS CSX CORPORATION AND CSX TRANSPORTATION, INC." AND "FIRST GENERAL OVERSIGHT REPORT OF NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY"

Michael F. McBride
Bruce W. Neely
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Ave., N.W., Suite 1200
Washington, D.C. 20009-5728
(202)986-8050 (Telephone)
(202)986-8102 (Facsimile)

Attorneys for Indianapolis Power & Light Company

Due Date: July 14, 2000
Dated: July 14, 2000

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OF COUNSEL
GEORGE N. LEIGHTON
EARL J. BARNES

July 24, 2000

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

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

Dear Mr. Williams:

On June 23, 2000, the Illinois International Port District (the Port of Chicago) filed its notice of intention to participant in the above-proceeding.

After deliberation, the Port of Chicago has determined that it is more appropriate to file its requests for relief in another form of proceeding before the Surface Transportation Board. Accordingly, the Port of Chicago has not filed, and does not intend to file, the comments with respect to the above proceeding that had been due July 14, 2000.

In order to remain current with the current proceeding, the Port of Chicago desires to remain on the service list.

Very truly yours,

Richard F. Friedman

RFF:cm
cc: Richard A. Allen

S:\clients\PORT\Norfok&Southern\Ltr\WILLIAMS.LTR3.wpd

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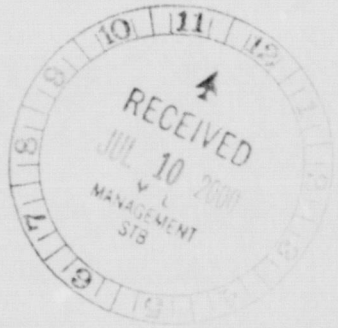

June 30, 2000

BY HAND

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

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

Dear Mr. Pfohl:

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

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

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

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

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

> As specified in Finance Docket No. 33388, CSX shall provide the Four City Consortium with reports on a monthly basis providing the information described by the Board in Decision No. 96 pertaining to condition 21(i). However, the parties have mutually agreed to not have CSX report average train speeds and have also agreed to limit the reporting requirements or both train traffic volumes to the following information:
>
> Throughout the Board's five (5) year oversight period in Finance Docket No. 33388, CSX shall report, on a daily average basis (calculated monthly), the number of trains per day operated in both (and separately in each) direction over the following rail line segments:
>
> -- The Pine Junction-to-State Line Tower portion of the Pine Junction-to-Barr Yard line segment (C-023);
>
> -- Tolleston-to-Clarke Junction rail line (C-024); and
>
> -- The Tolleston-to-Hobart portion of the Warsaw-to-Tolleston line segment (C-026)

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

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

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

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

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

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

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

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

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

With kind regards.

Sincerely yours,

Dennis G. Lyons
Counsel for CSX Transportation, Inc.

rjm
cc Hon. Vernon A. Williams
Richard A. Allen, Esq.

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June 30, 2000

BY HAND

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

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

Dear Mr. Pfohl:

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

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

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

Peter A. Pfohl, Esq.

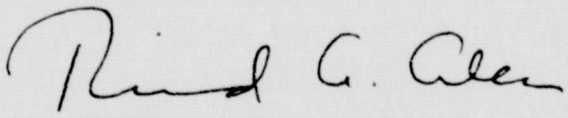
fact that the Four Cities found it necessary to ask for responses to its requests in a mere seven days (as compared to the 15 day response time under 49 C.F.R. § 1114.26(a) and under the discovery guidelines adopted in Decision No. 10, served June 27, 1997, in the main proceeding in this case), assertedly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

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

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

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

Sincerely,



Richard A. Allen

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