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SEC

SERVICE DATE - AUGUST 28, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 24

Decided: August 27, 1997

NOTICE TO THE PARTIES:

By decision served July 23, 1997, the Board accepted for consideration the primary application and related filings filed June 23, 1997, in the above-entitled proceeding. By that decision, the Board also directed those intending to file responsive (including inconsistent) applications to submit descriptions of those applications by August 22, 1997. In addition, the Board directed that petitions for waiver or clarification by responsive (including inconsistent) applicants be filed by August 22, 1997. Since that decision, and in anticipation of filing responsive applications and/or petitions for waiver or clarification, a number of persons have arranged with the Case Control Unit in the Office of the Secretary to "reserve" sub-numbers under STB Finance Docket 33388 for those anticipated filings.

Recently, several parties submitted descriptions of anticipated responsive applications and/or petition for waiver or clarification under the "reserved" sub-numbers, while other persons filed descriptions and/or waiver or clarification requests under the lead docket.

For administrative convenience, and to avoid confusion, all descriptions of anticipated responsive applications and/or petitions for waiver or clarification received prior to the filing of the applications will be docketed, processed, and filed under STB Finance Docket 33388. (No sub-number will be used.) However, persons who have already reserved sub-numbers may use those sub-numbers in the future on, and in conjunction with the filing of, an application or pleadings filed thereafter.

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SERVICE DATE - LATE RELEASE AUGUST 21, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 22

Decided: August 21, 1997

The protective order that was entered in this proceeding in Decision No. 1¹ generally provides, in pertinent part, that discovery material designated "HIGHLY CONFIDENTIAL" may be disclosed only to an outside counsel or an outside consultant, or to an employee of such outside counsel or outside consultant, who has executed the appropriate confidentiality undertaking. *See* Decision No. 1 at 4 (Protective Order, ¶8) and 7 (the Exhibit B undertaking applicable to highly confidential material).² In Decision No. 15, however, we modified the protective order entered in Decision No. 1 to allow in-house counsel for the United Transportation Union (UTU) to review "highly confidential" material, provided that such in-house counsel executes the appropriate undertaking and otherwise abides by the terms of the protective order.³

The Transportation Communications International Union (TCU), by motion (designated TCU-4) filed August 19, 1997, asks that the protective order be further modified so that its in-house counsel may also review material designated "highly confidential." TCU indicates that its General Counsel has signed the required confidentiality undertaking, but that applicants⁴ have advised that they will not provide TCU's General Counsel access to documents designated "highly confidential" because Decision No. 15 covered only UTU.

Because there is, for present purposes, no material difference between TCU's in-house counsel and UTU's in-house counsel, we will further modify the protective order entered in Decision No. 1 to allow in-house counsel for TCU to review material designated "highly confidential," provided that such in-house counsel executes the Exhibit B undertaking and otherwise abides by the terms of the protective order. *See* Decision No. 15; *see also* BN/SF Dec. No. 12.

¹ That protective order was thereafter revised, in ways not presently relevant, in Decision No. 4. *See* Decision No. 4, slip op. at 8.

² The "highly confidential" designation is reserved for "material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information." *See* Decision No. 1 at 4 (Protective Order, ¶6).

³ We relied, in Decision No. 15, on the precedent established in Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served Mar. 13, 1995) (BN/SF Dec. No. 12) (modifying the protective order in that proceeding to allow in-house counsel for any labor organization or other non-commercial party that was not represented by outside counsel to review material designated "highly confidential").

⁴ CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., and Consolidated Rail Corporation are referred to collectively as applicants.

For the reasons provided by TCU, we are expediting our issuance of this decision.
See TCU-4 at 2.

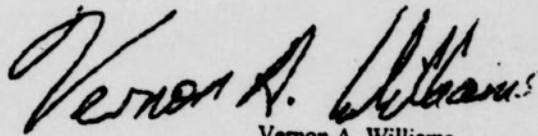
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The protective order entered in Decision No. 1 is further modified to allow TCU's in-house counsel to review "highly confidential" material, provided that such in-house counsel executes the appropriate confidentiality undertaking and otherwise abides by the terms of the protective order.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being the most prominent.

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Records: 302

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SERVICE DATE - LATE RELEASE AUGUST 19, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 21

Decided: August 19, 1997

NOTICE TO THE PARTIES:

The attached service list has been compiled from the notices of intent to participate submitted in accordance with the procedural schedule set forth in Decision No. 6, served May 30, 1997 (62 FR 29387).

All persons actively participating as a Party of Record in this proceeding must, within 10 days of the service date of this Notice, serve a copy of all filings submitted so far in this proceeding on each Party of Record (designated on the attached service list as "Party of Record," not the abbreviation "POR" which was the designation previously used) to the extent such filings have not previously been served upon such other parties. Each Party of Record will also be required to file with the Secretary of the Board, within 10 days of the service date of this Notice, an original plus ten copies of a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this Notice must have its own certificate of service indicating that the Administrative Law Judge Jacob Leventhal and all Parties of Record on the service list have been served with a copy of the filing. Persons designated as "Member of Congress" (Member of the United States Congress), or "Governor" on the service list are not Parties of Record and need not be served with copies of filings, unless any such Member or Governor is designated as a Party of Record.

We will continue to follow our practice regarding the service of Board actions established in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railway Company, Finance Docket No. 32760 (UP/SP). See UP/SP, Decision No. 15 (STB served Feb. 16, 1996), at 2-3. Copies of decisions, orders, and notices will be served only on those persons who are designated as Party of Record, Member of Congress, or Governor on the official service list. All other interested parties are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289-4357.¹

¹ An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3), as recently amended in Railroad Consolidation Procedures--Modification of Fee Policy, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a

(continued...)

By Press Release dated August 18, 1997, Board Chairman Linda J. Morgan announced that the Board has implemented a new policy to simplify the service lists that the Board maintains. Under this policy, only one official representative per party in a proceeding before the Board will be placed on the service list for that proceeding, thereby saving time and expense to the Board in serving its decisions, and saving time and expense to parties in serving their filings on other parties. A copy of the press release is attached to this notice. The attached service list in this merger proceeding follows, in most instances, the new policy of only one official representative per party.

All persons named on the attached service list should review the list and determine whether information about their address and status (as a Party of Record or not a Party of Record), is correct. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4(a) and (d), as recently amended in Railroad Consolidation Procedures--Modification of Fee Policy, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules), and any other requirements set forth in Decision No. 6 and this decision.

Requests to change or correct service list information, or to be deleted from the service list, must be in writing and filed with the Board by August 29, 1997. An original plus 10 copies of such requests should be directed to:

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

In a related matter, the Board has received a request for more time to participate in this proceeding in a letter dated August 8, 1997, signed by Jay Westbrook, President of the Cleveland (OH) City Council. Because of the expedited procedural schedule adopted in this proceeding, this request will not be granted. However, parties may file a motion for leave to late-file a notice of intent to participate certifying that they have served all other Parties of Record on the service list. The Board will address each request on a case-by-case basis.

Vernon A. Williams
Secretary

¹(...continued)

charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

FOR RELEASE:
Monday, August 18, 1997
No. 97-68

Contact: Dennis Watson
(202) 565-1596
TDD (202) 565-1695

**SURFACE TRANSPORTATION BOARD
IMPLEMENTS "ONE PARTY-ONE REPRESENTATIVE" POLICY
FOR SERVICE LISTS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the Board is implementing a new policy to simplify the service lists that the Board maintains with a view to saving time and expense to the Board in serving its decisions, and saving time and expense to parties in serving their filings on other parties. Under this policy, only one official representative per party in a proceeding before the Board will be placed on the service list for that proceeding.

In the past, whenever a person signed and filed a document with the Board on a party's behalf in a case, that person was added to the Board's service list (list of persons to receive documents) maintained for that case. Later, if someone else signed and filed another document on behalf of the same party, that person's name also was added to the service list for the same case. This practice needlessly added names to service lists which, in turn, resulted in increased time, copying, and mailing

--MORE--

costs to the Board, as it served copies of its decisions on multiple representatives of individual parties, and to parties, as they served copies of their filings on other parties on the service list maintained for the proceeding. The Board's new policy is consistent with the principle that a party designate a single person to be its official representative in litigation-type proceedings.

The Board will continue its practice of placing the name of only one official representative per party on a service list when multiple names appear on the filing, even when that party specifically requests the addition of other persons to the service list. The Board also will continue

its practice of providing only one copy of its decisions to each representative on a service list, even when that individual represents more than one party to the proceeding. The Board will designate as the official representative the first person to sign a filing on behalf of a party. However, the Board will be able to change that designation when requested in writing by the party.

The Board will continue to maintain the names of all persons signing filings on behalf of parties because that information helps in the rapid identification and location of filings. In addition, the Board's change in policy regarding service lists will not affect its practice where, in most instances, the signature of an attorney or practitioner (a non-attorney permitted to practice before the Board) acts as a certification of the accuracy and truth of a document's contents under Section 1104.4 of Title 49, Code of Federal Regulations (49 CFR 1104.4).

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1050 SEVENTEENTH STREET N W, SUITE 210
WASHINGTON DC 20036 US

Represents: ALLIED RAIL UNIONS

PARTY OF RECORD
ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45230 US

Represents: EASTERN TRANSPORT AND LOGISTICS

PARTY OF RECORD
DANIEL R. ELLIOTT III ASST GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107 US

PARTY OF RECORD
TERRELL ELLIS
CAEZ WV
P O BOX 176
CLAY WV 25043 US

Represents: CENTRAL APPALACHIA EMPOWERMENT
ZONE OF WEST VIRGINIA

PARTY OF RECORD
ROBERT L. EVANS
OXYCHEM
P O BOX 809050
DALLAS TX 75380 US

Represents: OCCIDENTAL CHEMICAL CORPORATION

PARTY OF RECORD
SARA J FAGNILLI DIRECTOR OF LAW
1250 DETROIT AVENUE
LAKEWOOD OH 44107 US

Represents: CITY OF LAKEWOOD OHIO

PARTY OF RECORD
GERALD W. FAUTH III
G. W. FAUTH & ASSOCIATES, INC.
P. O. BOX 2401
116 SOUTH ROYAL STREET
ALEXANDRIA VA 22314 US

PARTY OF RECORD
CARL FELLER
DEKALB AGRA INC
P. O. BOX 127
4743 COUNTY ROAD 28
WATERLOO IN 46793-0127 US

Represents: DEKALB AGRA INC

PARTY OF RECORD
MICHAEL P. FERRO
MILLENNIUM PETROCHEMICALS, INC.
11500 NORTHLAKE DRIVE
CINCINNATI OH 45249 US

Represents: MILLENNIUM PETROCHEMICALS INC F/K/A
QUANTUM CHEMICAL CORPORATION

PARTY OF RECORD
EDWARD J FISHMAN
OFFENHEIMER WOLFF & DONNELLY
1020 NINETEENTH ST NW STE 400
WASHINGTON DC 20036 US

Represents: NEW JERSEY DEPARTMENT OF
TRANSPORTATION
NEW JERSEY TRANSIT CORPORATION
NORTHERN VIRGINIA TRANSPORTATION
COMMISSION-POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION

PARTY OF RECORD
J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98666-3264 US

Represents: UNITED TRANSPORTATION UNION-GENERAL
COMMITTEE OF ADJUSTMENT GO 386

PARTY OF RECORD
STEPHEN M FONTAINE
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
ONE WILBRAHAM STREET
PALMER MA 01069 US

Represents: MASSACHUSETTS CENTRAL RAILROAD
CORPORATION

GOVERNOR
HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39205 US

MEMBER OF CONGRESS
HONORABLE TILLIE K FOWLER
US HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
GARLAND B GARRETT JR
NC DEPT OF TRANSPORTATION
P O BOX 25201
RALEIGH NC 27611 US

PARTY OF RECORD
MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENSVILLE CTR RD
CLEVELAND OH 44128 US

Represents: BP AMERICA INC

PARTY OF RECORD
RICHARD A GAVRIL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

PARTY OF RECORD
PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

Represents: REGIONAL RAILROADS OF AMERICA'S

PARTY OF RECORD
LOUIS E GIGOMER
BALL JANIK LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

Represents: APL LAND TRANSPORT SERVICES
DELAWARE VALLEY RAILWAY COMPANY INC
HURON AND EASTERN RAILWAY COMPANY INC
RAILAMERICA INC
SAGINAW VALLEY RAILWAY COMPANY INC

MEMBER OF CONGRESS
HONORABLE JOHN GLENN
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200 N HIGH STREET S-600
COLUMBUS OH 43215-2408 US

PARTY OF RECORD
DOUGLAS S GOLDEN
SUITE 200
533 FELLOWSHIP ROAD
MT LAUREL NJ 08054 US

Represents: PENNSYLVANIA SENATE TRANSPORTATION
COMMITTEE

PARTY OF RECORD
ANDREW P. GOLDSTEIN
MCCARTHY, SWEENEY ET AL.
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006 US

Represents: ARCHER DANIELS MIDLAND CO
NATIONAL GRAIN AND FEED ASSOCIATION

PARTY OF RECORD
JOHN GORDON
NATIONAL LIME & STONE COMPANY
P. O. BOX 120
FINDLAY OH 45840 US

Represents: NATIONAL LIME & STONE COMPANY

MEMBER OF CONGRESS
HONORABLE BOB GRAHAM
UNITED STATE SENATE
WASHINGTON DC 20510 US

PARTY OF RECORD
EDWARD D. GREENBERG
GALLAND, KHARASCH, MORSE & GARFINKLE
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

Represents: PROVIDENCE AND WORCESTER RAILROAD
COMPANY
STEEL WAREHOUSE CO INC
THE INTERNATIONAL PAPER COMPANY

PARTY OF RECORD
PETER A. GREENE
THOMPSON HINE FLORY
1920 N STREET N W, SUITE 800
WASHINGTON DC 20036 US

Represents: BAY STATE MILLING COMPANY
BELVIDERE & DELAWARE RIVER RAILWAY
BLACK RIVER & WESTERN RAILROAD
EAST PENN RAILWAY INC
LANCASTER NORTHERN RAILWAY

PARTY OF RECORD
ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

Represents: TOLEDO-LUCAS COUNTY PORT AUTHORITY
TOLEDO-LUCAS COUNTY PORT AUTHORITY

PARTY OF RECORD
DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
400 N CAPITOL ST NW SUITE 852
WASHINGTON DC 20001 US

PARTY OF RECORD
JOHN J GROCKI
GRA INC
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

Represents: GRA INCORPORATED

PARTY OF RECORD
VAUGHN R GROVES
PITTSBURGH COAL COMPANY
PO BOX 5100
LEBANON VA 24266 US

Represents: PITTSBURGH COAL COMPANY

PARTY OF RECORD
JOSEPH GUERRIERI, JR.
GUERRIERI, EDMOND, ET. AL
1331 F STREET N.W., 4TH FLOOR
WASHINGTON DC 20004 US

PARTY OF RECORD
DAVID L HALL
COMMONWEALTH CONSULTING ASSOCIATES
720 NORTH POST OAK ROAD SUITE 330
HOUSTON TX 77024 US

Represents: SHELL CHEMICAL COMPANY
SHELL OIL COMPANY

MEMBER OF CONGRESS
HON. LEE N. HAMILTON
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
MICHAEL P HARMONIS
U S DEPT OF JUSTICE
325 7TH STREET SUITE 500
WASHINGTON DC 20530 US

Represents: U. S. DEPARTMENT OF JUSTICE

PARTY OF RECORD
JAMES W HARRIS
THE METROPOLITAN PLANNING ORGANIZATION
1 WORLD TRADE CENTER STE 82 EAST
NEW YORK NY 10048-0043 US

PARTY OF RECORD
NICOLE HARVEY
THE DOW CHEMICAL COMPANY
2020 DOW CENTER
MIDLAND MI 48674 US

Represents: THE DOW CHEMICAL COMPANY

PARTY OF RECORD
JOHN D. HEFFNER, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

Represents: EMPIRE STATE PASSENGER ASSOCIATION
FORT ORANGE PAPER COMPANY
NEW YORK CROSS HARBOR RAILROAD TERMINAL
CORPORATION
WABASH & WESTERN RAILWAY CO D/B/A MICHIGAN
SOUTHERN RAILROAD

PARTY OF RECORD
R J HENEFELD
PPG INDUSTRIES INC
ONE PPG PLACE
PITTSBURGH PA 15272 US

Represents: PPG INDUSTRIES INC.

PARTY OF RECORD
WILLIAM P HERNAN JR GENERAL CHAIRMAN
P O BOX 180
HILLIARD OH 43026 US

PARTY OF RECORD
CHARLES S HESSE, PRESIDENT
CHARLES HESSE ASSOCIATES
8270 STONEY BROOK DRIVE
CHAGRIN FALLS OH 44023 US

Represents: OHIO STEEL INDUSTRY ADVISORY COUNCIL

PARTY OF RECORD
ERIC M. HOCKY
GOLLATZ, GRIFFIN, EWING
213 WEST MINER STREET
WEST CHESTER PA 19381-0796 US

Represents: ALLEGHENY & EASTERN RAILROAD INC
BETHLEHEM STEEL CORPORATION ET AL
BUFFALO & PITTSBURGH RAILROAD, INC.
PITTSBURGH & SHAWMUT RAILROAD INC
READING BLUE MOUNTAIN & NORTHERN RAILROAD
COMPANY
ROCHESTER & SOUTHERN RAILROAD INC
THE NEW YORK SUSQUEHANNA AND WESTERN
RAILWAY CORPORATION

PARTY OF RECORD
J T HOLLAND
EASTERN SHORE RAILROAD INC
P O BOX 312
CAPE CHARLES VA 23310 US

Represents: EASTERN SHORE RAILROAD INC

PARTY OF RECORD
JAMES E. HOWARD
90 CANAL STREET
BOSTON MA 02114 US

Represents: COALITION OF NORTHEASTERN GOVERNORS
MASSACHUSETTS CENTRAL RAILROAD CORPORATION

PARTY OF RECORD
JOHN HOY
P O BOX 117
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Represents: BALTIMORE AREA TRANSIT ASSOCIATION

PARTY OF RECORD
BRAD F HUSTON
CYPRUS AMAX COAL SALES CORP
400 TECHNECENTER DRIVE STE 320
MILFORD OH 45150 US

PARTY OF RECORD
SHEILA MECK HYDE CITY ATTORNEY
CITY HALL
342 CENTRAL AVENUE
DUNKIRK NY 14048 US

Represents: CITY OF DUNKIRK NEW YORK

PARTY OF RECORD
ERNEST J HERARDI
NIXON HARGRAVE DEVANS DOYLE LLP
PO BOX 1051
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ROCHESTER NY 14603-1051 US

Represents: ROCHESTER GAS AND ELECTRIC
CORPORATION

PARTY OF RECORD
WILLIAM P. JACKSON, JR.
JACKSON & JESSUP, P. C.
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ARLINGTON VA 22210 US

Represents: A T MASSEY COAL COMPANY INC ET AL

PARTY OF RECORD
JAMES R JACOBS
JACOBS INDUSTRIES
2 QUARRY LANE
STONY RIDGE OH 43463 US

Represents: JACOBS INDUSTRIES

GOVERNOR
HONORABLE FOB JAMES, JR
GOVERNOR
STATE OF ALABAMA
MONTGOMERY AL 36130 US

PARTY OF RECORD
DOREEN C JOHNSON CHIEF ANTITRUST SECTION
CHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

PARTY OF RECORD
ERIKA Z. JONES
MAYER, BROWN & PLATT
2000 PENNSYLVANIA AVE N W SUITE 6500
WASHINGTON DC 20006 US

Represents: BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

PARTY OF RECORD
TERRENCE D JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

Represents: NORTH AMERICAN LOGISTIC SERVICES A
DIVISION OF MARS INCORPORATED

PARTY OF RECORD
FRANK N JORGENSEN
THE ELK RIVER RAILROAD INC
P O BOX 460
SUMMERSVILLE WV 26651 US

Represents: THE ELK RIVER RAILROAD INC

PARTY OF RECORD
FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

Represents: MARTIN MARIETTA MATERIALS INC
SHINTECH INC

PARTY OF RECORD
STEVEN J. KALISH
MCARTHY, SWEENEY & HARKAWAY
1750 PENNSYLVANIA AVE NW
WASHINGTON DC 20006-4502 US

Represents: THE TOWN OF HAYMARKET

MEMBER OF CONGRESS
HON MARCY KAPTUR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
LARRY B. KARNES
TRANSPORTATION BUILDING
PO BOX 30050
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LANSING MI 48909 US

Represents: MICHIGAN DEPARTMENT OF TRANSP

PARTY OF RECORD
RICHARD E. KERTH, TRANS. MGR.
CHAMPION INTERNAT'L CORP
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

PARTY OF RECORD
DAVID D KING
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PO BOX 25201
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PARTY OF RECORD
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Represents: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE OF ADJUSTMENT N & W-C

PARTY OF RECORD
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3 RESEARCH PLACE
ROCKVILLE MD 20850 US

Represents: TRANSPORTATION COMMUNICATIONS
INTERNATIONAL UNION

PARTY OF RECORD
HON DENNIS J KUCINICH
UNITED STATES HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

Represents: CITIZENS 10TH CONGRESSIONAL DISTRICT
OF OHIO

PARTY OF RECORD
PAUL H. LAMBOLEY
OFFENHEIMER WOLFF & DONNELLY
1020 19TH STREET, N.W., SUITE 400
WASHINGTON DC 20036 US

Represents: RESOURCES WAREHOUSING &
CONSOLIDATED SERVICES INC
TRANSPORTATION INTERMEDIARIES ASSOCIATION

MEMBER OF CONGRESS
HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

Represents: HEAVY LIFT CARGO SYSTEMS

PARTY OF RECORD
JOHN K. LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-3780 US

Represents: SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

PARTY OF RECORD
SHERRI LEHMAN DIRECTOR OF CONGRESSIONAL
AFFAIRS
CORN REFINERS ASSOC
1701 PA AV NW
WASH DC 20006-5805 US

Represents: CORN REFINERS ASSOCIATION INC

ADMINISTRATIVE LAW JUDGE
JUDGE JACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. STE 11F
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MEMBER OF CONGRESS
HONORABLE WILLIAM O LIPINSKI
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20415 US

PARTY OF RECORD
THOMAS J. LITWILER
OFFENHEIMER WOLFF & DONNELLY
180 N STETSON AVE 45TH FLOOR
CHICAGO IL 60601 US

Represents: FOX VALLEY & WESTERN LTD
ILLINOIS CENTRAL RAILROAD COMPANY CHICAGO
CENTRAL & PACIFIC
RAILROAD COMPANY AND CEDAR RIVER RAILROAD
COMPANY
R J CORMAN PARTIES
R J CORMAN RAILROAD COMPANIES
SAULT STE MARIE BRIDGE COMPANY
TRANSTAR INC AND BESSEMER AND LAKE ERIE
RAILROAD COMPANY
TRANSTAR INC
ELGIN JOLIET AND EASTERN RAILROAD COMPANY
WISCONSIN CENTRAL LTD
WISCONSIN CENTRAL TRANSPORTATION CORPORATION

PARTY OF RECORD
EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

Represents: TRI-STATE TRANSPORTATION CAMPAIGN

PARTY OF RECORD
C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

Represents: CENTERIOR ENERGY CORPORATION
EAST CHICAGO INDIANA-HAMMOND INDIANA-GARY
INDIANA THE FOUR CITY CONSORTIUM
EAST CHICAGO INDIANA-HAMMOND INDIANA-GARY
INDIANA-WHI
POTOMAC ELECTRIC POWER COMPANY
THE DETROIT EDISON COMPANY

PARTY OF RECORD
DENNIS G LYONS
ARNOLD & PORTER
555 12TH STREET NW
WASHINGTON DC 20004-1202 US

Represents: CSX CORPORATION
CSX TRANSPORTATION INC
CSX-NS

PARTY OF RECORD
GORDON P. MACDOUGALL
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WASHINGTON DC 20036 US

Represents: JOSEPH C SZABO

MEMBER OF CONGRESS
HONORABLE CONNIE MACK
UNITED STATES SENATE
WASHINGTON DC 20510-0904 US

PARTY OF RECORD
WILLIAM G. MAHONEY
HIGHS AW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
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PARTY OF RECORD
RON MARQUARDT
LOCAL UNION 1810 UMW
R D #2
RAYLAND OH 43943 US

PARTY OF RECORD
ROBERT E MARTINEZ
VA SECRETARY OF TRANSP
P O BOX 1475
RICHMOND VA 23218 US

Represents: COMMONWEALTH OF VIRGINIA

PARTY OF RECORD
JOHN K. MASER, III
DONELAN, CLEARY, WOOD, MASER
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3934 US

Represents: ACME STEEL COMPANY
AK STEEL CORPORATION
CARGILL INCORPORATED
ERIE-NIAGARA RAIL STEERING COMMITTEE
INSTITUTE OF SCRAP RECYCLING INDUSTRIES INC
JOSEPH SMITH & SONS INC
NIAGARA MOHAWK POWER CORPORATION

PARTY OF RECORD
DAVID J MATTY
CITY OF ROCKY RIVER
21012 HILLIARD ROAD
ROCKY RIVER OH 44116-3398 US

Represents: CITY OF ROCKY RIVER OHIO

PARTY OF RECORD
GEORGE W MAYO, JR.
HOGAN & HARTSON
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1161 US

Represents: CANADIAN PACIFIC RAILWAY COMPANY
DELAWARE AND HUDSON RAILWAY COMPANY INC
SOO LINE CORP
ST LAWRENCE & HUDSON RAILWAY COMPANY
LIMITED

PARTY OFF RECORD
MICHAEL F. MCBRIDE
LEBOEUF LAMB GREENE & MACRAE, L. L. P.
1875 CONNECTICUT AVE N W, STE 1200
WASHINGTON DC 20009 US

Represents: AMERICAN ELECTRIC POWER
ATLANTIC CITY ELECTRIC COMPANY
DELMARVA POWER & LIGHT COMPANY
FERTILIZER INSITUTE
SOMERSET RAILROAD CORP
THE OHIO VALLEY COAL COMPANY

PARTY OF RECORD
EDWARD C MCCARTHY
INLAND STEEL INDUSTRIES INC
30 WEST MONROE STREET
CHICAGO IL 60603 US

PARTY OF RECORD
CHRISTOPHER C MCCracken
ULMER & BERNE LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

Represents: ASHTA CHEMICAL INC

PARTY OF RECORD
THOMAS F. MCFARLAND, JR.
MCFARLAND & HERMAN
20 NORTH WACKER DRIVE, SUITE 1330
CHICAGO IL 60606-3101 US

Represents: KOKOMO GRAIN CO INC

PARTY OF RECORD
JAMES F. MCGRATH
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSP.
& CONST.
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

Represents: COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND
CONSTRUCTION

PARTY OF RECORD
FRANCIS G. MCKENNA
ANDERSON & PENDLETON
1700 K ST NW SUITE 1107
WASHINGTON DC 20006 US

Represents: WEST VIRGINIA STATE RAIL AUTHORITY

PARTY OF RECORD
COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

Represents: CUDELL IMPROVEMENT INC

MEMBER OF CONGRESS
HONORABLE MICHAEL MCNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3221 US

PARTY OF RECORD
H DOUGLAS MIDKIFF
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

Represents: GENESEE TRANSPORTATION COUNCIL

MEMBER OF CONGRESS
HONORABLE BARBARA A MIKULSKI
UNITED STATES SENATE
WASHINGTON DC 20510 US

PARTY OF RECORD
CLINTON J MILLER, III, GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

PARTY OF RECORD
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SIDLEY & AUSTIN
1722 EYE STREET NW
WASHINGTON DC 20006 US

Represents: MOATES SIDLEY & AUSTIN

PARTY OF RECORD
C V MONIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET
CLEVELAND OH 44113 US

Represents: BROTHERHOOD OF LOCOMOTIVE
ENGINEERS

PARTY OF RECORD
KARL MORELL
BALL JANIK LLP
1455 F STREET NW SUITE 725
WASHINGTON DC 20005 US

Represents: ANN ARBOR RAILROAD
CHICAGO RAIL LINK LLC
CONNECTICUT SOUTHERN RAILROAD INC
GEORGIA WOODLANDS RAILROAD L L C
INDIANA & OHIO RAILWAY COMPANY
INDIANA SOUTHERN RAILROAD INC
MANUFACTURERS JUNCTION RAILWAY L L C
NEW ENGLAND CENTRAL RAILROAD INC
NEWBURGH & SOUTH SHORE RAILROAD LTD
NORTHERN OHIO & WESTERN RAILWAY L L C
PITTSBURGH INDUSTRIAL RAILROAD INC

PARTY OF RECORD
IAN MUIR
BUNGE CORPORATION
P O BOX 28500
ST LOUIS MO 63146 US

Represents: BUNGE CORPORATION

PARTY OF RECORD
WILLIAM A. MULLINS
TROUTMAN SANDERS LLP
1300 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

Represents: NEW YORK STATE ELECTRIC & GAS

PARTY OF RECORD
JOHN R NADOLNY, VICE PRESIDENT & GENERAL
COUNSEL
BOSTON & MAINE CORPORATION
IRON HORSE PARK
NO BILLERICA MA 01862 US

Represents: BOSTON AND MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

PARTY OF RECORD
S J NASCA
STATE LEGISLATIVE DIRECTOR UTU
35 FULLER ROAD STE 205
ALBANY NY 12205 US

PARTY OF RECORD
GERALD P NORTON
HARKINS CUNNINGHAM
1300 19TH ST NW SUITE 600
WASHINGTON DC 20036 US

PARTY OF RECORD
SANDRA L NUNN
FROST & JACOBS LLP
201 EAST FIFTH STREET
CINCINNATI OH 45202 US

Represents: SOUTHWEST OHIO REGIONAL TRANSIT
AUTHORITY

PARTY OF RECORD
PETER Q. NYCE, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

Represents: U. S. DEPARTMENT OF THE ARMY

PARTY OF RECORD
KEITH G O'BRIEN
REA, CROSS AND AUCHINCLOSS
1920 N STREET NW, STE 420
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Represents: OHIO RAIL DEVELOPMENT COMMISSION
PUBLIC UTILITIES COMMISSION OF OHIO
REDLAND OHIO INC

PARTY OF RECORD
D J O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HAVERFORD PA 19041 US

Represents: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE OF ADJUSTMENT GO-770

PARTY OF RECORD
CHRISTOPHER C OHARA
BRICKFIELD BURCHETTE & RITTS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

Represents: STEEL DYNAMICS INC

PARTY OF RECORD
THOMAS M O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET .5TH FLOOR
COLUMBUS OH 43215 US

Represents: OHIO RAIL DEVELOPMENT COMMISSION

PARTY OF RECORD
JOHN L OBERDORFER
PATTON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

Represents: COMMONWEALTH OF PENNSYLVANIA
GOVERNOR THOMAS J RIDGE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
BYRON D. OLSEN
FELHABER LARSON FENLON & VOGT PA
601 SECOND AVENUE SOUTH 4200 FIRST BANK PLACE
MINNEAPOLIS MN 55402-4302 US

Represents: EASTMAN KODAK COMPANY

PARTY OF RECORD
L JOHN OSBORN
SONNENSCHN NATH & ROSENTHAL
1301 K STREET NW STE 600
WASH DC 20005 US

Represents: CANADIAN NATIONAL RAILWAY COMPANY
GRAND TRUNK WESTERN RAILROAD INCORPORATED

PARTY OF RECORD
WILLIAM L OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

Represents: TENNESSEE VALLEY AUTHORITY

PARTY OF RECORD
MONTY L PARKER
CMC STEEL GROUP
P O BOX 911
SEGUN TX 78156 US

Represents: CMC STEEL GROUP
COMMERCIAL METALS COMPANY

GOVERNOR
HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

PARTY OF RECORD
LAWRENCE PEPPER JR
GRUCCIO PEPPER
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Represents: SOUTH JERSEY TRANSPORTATION
PLANNING ORGANIZATION

PARTY OF RECORD
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Represents: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE OF ADJUSTMENT
CONRAIL WEST & SOUTH/NORFOLK SOUTHERN
RAILWAY CO GO-777

PARTY OF RECORD
PATRICK R PLUMMER
GUERRIERI EDMOND & CLAYMAN PC
1331 F ST NW
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Represents: INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
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NORTH SHORE RAILROAD COMPANY
NORTHWEST PENNSYLVANIA RAIL AUTHORITY
OHI RAIL CORPORATION
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SOUTHWESTERN PENNSYLVANIA REGIONAL PLANNING
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Surface Transportation Board
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NEWS

FOR RELEASE:
Monday, August 18, 1997
No. 97-68

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**SURFACE TRANSPORTATION BOARD
IMPLEMENTS "ONE PARTY-ONE REPRESENTATIVE" POLICY
FOR SERVICE LISTS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the Board is implementing a new policy to simplify the service lists that the Board maintains with a view to saving time and expense to the Board in serving its decisions, and saving time and expense to parties in serving their filings on other parties. Under this policy, only one official representative per party in a proceeding before the Board will be placed on the service list for that proceeding.

In the past, whenever a person signed and filed a document with the Board on a party's behalf in a case, that person was added to the Board's service list (list of persons to receive documents) maintained for that case. Later, if someone else signed and filed another document on behalf of the same party, that person's name also was added to the service list for the same case. This practice needlessly added names to service lists which, in turn, resulted in increased time, copying, and mailing

--MORE--

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SERVICE DATE - AUGUST 15, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

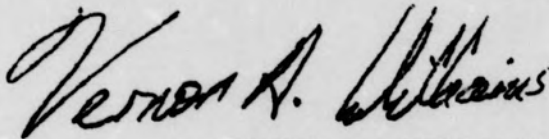
Decision No. 20

Decided: August 13, 1997

The Discovery Guidelines were adopted in this proceeding on June 26, 1997. The parties have now agreed to replace Section F.18 of the Guidelines with the annexed revised Section F.18 Resolution of Disputes. The revision to the Discovery Guidelines is adopted.

This decision is effective on the service date.

By the Board, Jacob Leventhal, Administrative Law Judge.



**VERNON A. WILLIAMS
Secretary**

DISCOVERY GUIDELINES
REVISION TO SECTION F. 18

F. Resolution of Disputes

18. Discovery disputes shall be resolved voluntarily among the parties whenever possible; otherwise, counsel for the party seeking a ruling on a discovery issue shall contact Jennifer Schmidt in ALJ Leventhal's office at (202) 219-2542 by 4:00 p.m. Monday to request a prehearing discovery conference to be held at 9:30 a.m. on Thursday of the same week at a hearing room at 888 1st Street, N.E., Washington, D.C. Written notice specifically identifying the discovery in dispute shall be served by the party requesting the conference by facsimile or hand delivery on all parties on the Restricted Service List; in addition, good faith efforts shall be made to give telephone notice prior to 4:00 p.m. on Monday to the opposing party. The opposing party may file a written response one business day before the conference or may respond orally at the hearing. If the opposing party or any other party submits a written response, that response must be served on the ALJ and all parties on the Restricted Service List no later than 5:00 p.m. on the business day immediately preceding the conference. No later than 5:00 p.m. on the Tuesday immediately preceding the Thursday conference, the primary applicants shall send notice by facsimile to the ALJ and to all parties on the Restricted Service List indicating, based on the status of such settlement discussions as may have been held, whether or not the conference will be held. If there is no request for a conference, there will be no conference. At any discovery conference, those parties seeking and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue. If discovery is ordered, the ALJ shall require it as soon as can practicably be accomplished.

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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 19

Decided: August 6, 1997

By application (variously referred to as the "application" and the "primary application") filed June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)¹ seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. We shall refer to the transaction proposed in the primary application as the CSX/NS/CR transaction.

In Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we accepted for consideration the primary application and various ancillary "related filings" because that application and those filings are "in substantial compliance with the applicable regulations, waivers, and requirements." We specifically added, however, that we were reserving the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter. See Decision No. 12, slip op. at 18 & n.29, 62 FR at 39587 & n.29.

As required by 49 CFR 1180.8(a), applicants submitted with the primary application operating plans that describe the operations of the expanded CSX and NS systems that will exist if we approve the primary application and applicants thereafter carry out the CSX/NS/CR transaction. See CSX/NS-20, Volume 3A at 79-473 (the CSX operating plan), Volume 3B at 68-489 (the NS operating plan). Train schedules for the train movements referred to in the operating plans were not made part of the operating plans submitted with the primary application. Applicants have advised, however, that such schedules can be found in their document depository. See CSX/NS-20, Volume 3A at 177, Volume 3B at 133. See also CSX/NS-28 at 5 (dated July 21, 1997).²

Information respecting the post-transaction train schedules projected by applicants is essential to the evaluation of traffic movements, line density, equipment and terminal utilization, and staffing and employee position relocation requirements. Accordingly, we are now directing that applicants supplement the primary application by filing train schedules with respect to all train service projected to be operated by applicants if the CSX/NS/CR transaction is approved and implemented. We suggest that applicants submit such schedules in a format similar to that used by the applicants in the *BN/SF* proceeding (*Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchafalaya*).

¹ CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

² See also Decision No. 14, slip op. at 3 n.7: "Applicants note that the depository contains, among other things, the CSX and NS train schedules for the train movements referred to in the operating plans."

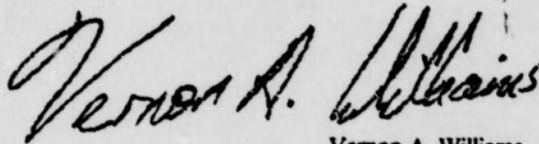
Topeka and Santa Fe Railway Company, Finance Docket No. 32549). See BN/SF-8, Exhibit 13, Attachment 13-B (BN/SF-8, which was Volume II of the BN/SF primary application and which contained, among other things, the BN/SF operating plan, was filed on October 13, 1994, in Finance Docket No. 32549; Attachment 13-B to the BN/SF operating plan, which can be found at BN/SF-8 at 147-250, contains information respecting anticipated post-transaction BN/SF train schedules).

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

It is ordered:

1. Applicants must file, by August 29, 1997, train schedules with respect to all train service projected to be operated by applicants if the CSX/NS/CR transaction is approved and implemented.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is fluid and cursive, with the first name "Vernon" being more prominent.

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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 18

Decided: August 4, 1997

By application filed June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)¹ seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of Conrail's assets by and between CSX and NS.² In Decision No. 12, served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577, we accepted for consideration the primary application and various related filings upon finding that the application and related filings are in substantial compliance with our applicable requirements.

On July 24, 1997, pursuant to 49 CFR 1117.1, Potomac Electric Power Company (PEPCO), a party in the control proceeding,³ filed a petition (PEPC-3) directly with the Board⁴ asking us to modify the protective order entered in the control proceeding in Decision No. 1 (served April 16, 1997), and modified in Decision Nos. 4 (served May 2, 1997) and 15 (served August 1, 1997), to permit PEPCO to use certain confidential and highly confidential information subject to that order in a pending rate complaint case. Specifically, PEPCO seeks an exception from Paragraph 10 of the protective order, which provides that confidential and highly confidential material "may not be used for any purposes other than these proceedings."

PEPCO's petition relates to a rate complaint that it filed on January 3, 1997, in STB Docket No. 41989, *Potomac Electric Power Company v. CSX Transportation, Inc.*,⁵ challenging CSXT's common carrier rates for coal movements to PEPCO's Dickerson, MD, generating station. Arguing that CSXT's common carrier rates exceed a reasonable maximum under the

¹ CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

² We shall refer to the transaction proposed in the primary application as the CSX/NS/CR transaction and to our proceeding where the merits of that transaction are currently under review as the control proceeding.

³ PEPCO filed on June 17, 1997, its notice of intent to participate in the control proceeding (PEPC-01).

⁴ PEPCO has directed its petition to the Board rather than to the Administrative Law Judge assigned to resolve discovery matters in the control proceeding because PEPCO does not consider the relief sought in the nature of a discovery dispute, and because of PEPCO's asserted need for expedited handling of issues beyond the scope of the control proceeding. CSX concurs with PEPCO's suggestion that its petition should be decided in the first instance by the Board.

⁵ PEPCO's rate reasonableness complaint is not related to the CSX/NS/CR transaction.

Board's stand-alone cost (SAC) constraint, PEPCO designed a hypothetical stand-alone railroad (the Dickerson Railroad) replicating a portion of CSXT's lines in northern West Virginia and western Maryland.

In its instant petition, PEPCO argues that information directly relevant to CSXT's criticism of PEPCO's stand-alone traffic group and revenues has been produced by the applicants in the control proceeding. Consequently, to rebut CSXT's criticisms in the rate proceeding, PEPCO requests our permission to use the confidential and highly confidential information produced by the applicants in the control proceeding in its rebuttal due August 11, 1997, in the rate case. PEPCO maintains that this information would be treated as confidential and highly confidential material under the protective order served in the rate case on February 5, 1997.

PEPCO indicates that traffic included in its SAC model includes both: (i) coal and other freight that currently moves over certain lines of CSXT; and (ii) coal that currently moves in single-line Conrail service from mine origins along the former Monongahela Railroad (MGA) in southwestern Pennsylvania to the Port of Baltimore. In particular, PEPCO's model assumes that a substantial volume of the MGA traffic will be diverted from Conrail single-line service to inter-line service, involving the hypothetical Dickerson Railroad as a bridge carrier and CSXT as the terminating carrier. In its opening statement in the rate case, PEPCO bases the volume and revenue associated with this MGA traffic on information derived from the 1995 Waybill Sample.

In its reply filed July 11, 1997, in the rate case, CSXT challenges PEPCO's inclusion of the MGA traffic, arguing, *inter alia*, that diversion of any of this single-line Conrail traffic to a stand-alone bridge carrier would be commercially infeasible, and that, in any event, the projected revenue divisions are both theoretically invalid and inconsistent with actual experience.

PEPCO indicates that, in addition to material that is publicly available in the control proceeding, PEPCO's outside counsel and consultants have obtained confidential and highly confidential documents related to the MGA coal traffic. PEPCO contends that applicants' traffic projections in the control proceeding contradict the projections CSXT has presented in the rate case. To demonstrate the alleged inconsistencies in CSXT's traffic projections, PEPCO seeks permission to use two categories of confidential and highly confidential information contained in the control proceeding's document depository: (1) *forecasted* (Year 2000) export coal and MGA-origin Baltimore coal traffic data for CSXT and NS resulting from the proposed Conrail acquisition; and (2) *actual* base year (1995) export coal and MGA-origin Baltimore coal traffic data for CSXT, NS, and Conrail.

PEPCO maintains that granting its request would not harm the applicants in the control proceeding because the applicants will not be required to produce new evidence or studies, and no new parties or individuals would gain access to the information. PEPCO also contends that the modification will not prejudice CSXT in the rate case. PEPCO asserts that the forecast data it seeks to use only became available with the filing of the control application on June 23, 1997, and that the information was not available for discovery during the evidentiary period in the rate case, nor was it available prior to the submission of PEPCO's opening evidence on May 5, 1997.

CSX, NS, and Conrail filed separate replies on July 29, 1997, opposing PEPCO's request.⁶ Although NS and Conrail are not parties in the rate case, both carriers contend that granting PEPCO's request will adversely affect our ability to control the discovery process in our proceedings generally, and undermine the integrity of the protective order in the control proceeding specifically. NS and Conrail maintain that, because protective orders serve an important beneficial purpose in our proceedings, there should be a strong presumption against

⁶ CSX's reply is designated as CSX-13; NS's reply is designated as NS-10; and Conrail's reply is designated as CR-6.

modifications to existing protective orders. According to NS and Conrail, PEPCO has not made a compelling showing of extraordinary circumstances to justify its request.

CSX contends that the confidential information PEPCO seeks to use to impeach CSX's rate case testimony is neither relevant to, nor inconsistent with, that testimony. According to CSX, its traffic studies of forecasted increases in traffic levels and revenues that PEPCO wants to use in the rate case are intended to measure only the impact of the proposed acquisition of Conrail. CSX indicates that, in contrast, its traffic and revenue projections in the rate case are designed to show the effects of general economic and business conditions unrelated to the acquisition. For that reason, CSX asserts that PEPCO's attempt to compare the projections in the two proceedings is meaningless and that there is no evidentiary inconsistency in the two proceedings.

CSX also maintains that PEPCO does not need access to its actual base year (1995) traffic volumes and revenues for MGA-origin Baltimore and eastern export coal traffic because PEPCO already possesses, as a result of discovery in the rate case, CSXT's 100% traffic and revenue tapes for 1996. CSX states that PEPCO does not need NS's data either because neither NS nor its traffic is at issue in the rate case. CSX submits that PEPCO's request, insofar as it seeks historic traffic information, is designed to obtain Conrail's coal traffic data to include in the SAC traffic grouping challenged by CSXT in the rate case. If that is PEPCO's purpose, CSX contends that the requested modification is an improper attempt belatedly to obtain discovery from a third party. CSX also complains that allowing access to the data at this late stage would deprive it of its right to respond to PEPCO's revised SAC evidence. Finally, CSX requests that, should we grant PEPCO's petition to any extent, we should describe precisely what confidential material from the control proceeding petitioner is permitted to use in the rate case.

DISCUSSION AND CONCLUSIONS

The petition will be denied. PEPCO has failed to show the kind of extraordinary circumstances or compelling need that we believe should be necessary for us to modify a protective order such as this one. PEPCO's proposed relief undermines the very purpose of our protective orders. The protection afforded by protective orders encourages parties to make more specific and forthcoming voluntary submissions, and also gives parties the incentive to respond favorably to evidentiary requests that, absent the protective order, might be resisted. By entering into protective orders and agreeing to their conditions, parties gain access to information that might not otherwise be available. The importance of such access is magnified in a proceeding such as this one, where the applicants have submitted volumes of highly sensitive commercial information in the document depository. We believe that these railroads and their shippers should be able to rely on the assurance that any confidential information subject to the protective order "may not be used for any purposes other than these proceedings."⁷ We have serious concerns that granting PEPCO's request and permitting it to use the control proceeding's information for other purposes would have a chilling effect on the discovery process not only in this case, but in our proceedings generally.

Even apart from these general concerns about the sanctity of the protective order, PEPCO has not shown that it should be permitted to use the materials it seeks to use. PEPCO has failed to demonstrate that it needs to be permitted to use CSXT's actual coal traffic and revenue data derived from the control proceeding. As indicated by CSXT, PEPCO already has CSXT's 100% traffic and revenue tapes for 1996 in the rate case. Furthermore, because NS is not involved in

⁷ As argued by CSX, NS, and Conrail, we note that PEPCO may have already violated the spirit of, if not the explicit terms of, the protective order by filing in the rate complaint proceeding information that is currently subject to the control proceeding protective order, and by including descriptions and comparisons based on that information.

the rate case and none of its traffic figures in PEPCO's stand-alone rate case. PEPCO's request for NS data is clearly unwarranted.

To obtain Conrail's actual traffic and revenue data for use in the rate case, PEPCO could have used available discovery procedures, including third-party discovery, but chose not to do so. The discovery stage in the rate case has long passed. Permitting PEPCO to introduce new data now that could have been discovered much earlier would be an unwarranted reopening of the evidentiary phase of the rate proceeding. We will not allow parties to forgo discovery in formal proceedings (either because of oversight or because of a concern that the discovery may produce evidence that may not support their theory), present their case using information that they deem adequate to support their theory, and then, after reviewing their case and the case made by their opponents, seek to gain access to the confidential information that they elected not to pursue in the first instance. Such gamesmanship is unfair to other parties and would delay the resolution of our cases, contrary to specific Congressional directives.

We note that CSX has demonstrated that its forecasts of increased traffic and revenue as a result of its proposed acquisition of Conrail's assets are totally unrelated to the projections it made in the rate case. Traffic projections in the rate case reflect traffic growth based upon economic considerations such as likely growth in the utilities' use of coal; traffic projections in the control case specifically exclude those economic considerations, and for the most part reflect the fact that certain existing Conrail traffic not currently handled by CSX will be handled by CSX if its acquisition of Conrail lines is approved. Moreover, as CSX has noted, PEPCO has other non-confidential sources of CSXT coal traffic information to enable PEPCO to make the same arguments in the rate case that it advances here, to the extent it believes they are relevant.

Finally, we note that we might be willing to permit a party to use newly available information covered by a protective order in extraordinary circumstances, such as where a party seeks use of confidential information that it can demonstrate impeaches, as untruthful, evidence submitted in another proceeding. Petitioner has not made that showing here. Moreover, we cannot help but note that this issue would not even have arisen but for PEPCO's use of the same lawyers in both cases, a situation that calls for extreme care in the use of this confidential information.

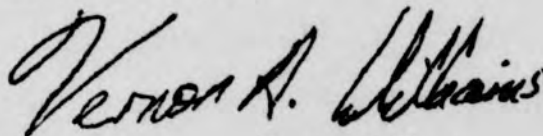
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. PEPCO's petition to modify the protective order to permit use of confidential and highly confidential information from the control proceeding in support of its August 11, 1997 rebuttal evidence in STB Docket No. 41989 is denied.

2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



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SERVICE DATE - AUGUST 1, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 17

Decided: July 31, 1997

By application filed June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail, Inc. (CRR), and Consolidated Rail Corporation (CRC) seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS.¹

American Electric Power, Atlantic City Electric Company, Delmarva Power & Light, and The Ohio Valley Coal Company (collectively referred to as "ACE") filed a petition (ACE, *et al.* - 6) on July 22, 1997, for reconsideration of the decision by the Administrative Law Judge (ALJ) partially denying their request to compel discovery. See Decision No. 11, served July 18, 1997. ACE sought broad discovery from NS, CSX, and Conrail, essentially asking for all documents concerning virtually all shipments of coal, and concerning all negotiations concerning rates for shipment of coal for the last 20 years. The ALJ limited the discovery authorized to shipments of the moving shippers, and to a period of 2 years before and after various mergers that involved the three railroads. The ALJ found that "discovery as limited [] may lead to admissible evidence that may enable the movants to prove that the 'one lump' economic theory does not apply in this proceeding." Decision No. 11, slip op. at 2.

ACE contends that it needs the full data requested to determine whether the applicant railroads set their rates in order to maximize profits. If they do not now do so, then ACE argues that the transaction places the shippers at greater risk that, after the merger, CSX or NS will raise their rates in order to recoup the \$4 to \$5 billion "premium"² they paid for Conrail. Moreover, ACE claims that "applicants' rate-setting practices to any sole-served shipper may demonstrate departures from the Board's theory about those practices." ACE also claims that, in the Burlington Northern/Santa Fe merger,³ the Interstate Commerce Commission (ICC) denied allegations by various shippers because the data they submitted were not sufficiently comprehensive. Essentially, ACE claims that the data it seeks are necessary to make a comprehensive case that rail carriers in general do not price their services to maximize their

¹ CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants. CSXT, NSR, and CRC are referred to collectively as applicant railroads.

² This "premium" refers to the amount above the single-share purchase price that CSX and NS had to pay to purchase all of the shares of Conrail. ACE seems to be arguing that Conrail could not have been that valuable to CSX and NS unless they are able to raise their rates enough to recoup the "premium" amount.

³ See *Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549, Decision No. 38 (ICC served Aug. 23, 1995).

profits, and that, for this reason, the one-lump theory as a general matter is not applicable to rail transportation.

On July 25, 1997, applicants filed a joint reply (CSX/NS-30). Applicants argue that the discovery requested would be extremely burdensome, and that the material ACE seeks is not relevant to a showing that the one-lump theory does not apply to these particular shippers. Applicants also contend that only one of the four ACE shippers would be a bottleneck shipper if the application is approved and consummated, and that the one-lump theory is not relevant to the others. To the extent the one-lump theory is at issue, applicants note, the ALJ's decision permits the shipper to obtain information necessary to show that it received competitive benefits that will not be available after the acquisition. Applicants maintain that petitioners have no viable alternative theory to replace the concept that railroads seek to maximize their profits, and that petitioners have not explained how the data sought would allow them to test the assumptions upon which the one-lump theory is based.

DISCUSSION AND CONCLUSIONS

Appeals from discovery decisions of the ALJ are to be granted only "to correct a clear error of judgment" or to "prevent a manifest injustice." 49 CFR 1115.1(c). Petitioners have clearly not met that stringent standard. The discovery request made here was extremely broad, embracing literally thousands of commercially sensitive files of each of the applicant carriers. Identifying relevant documents in these files and taking appropriate measures to assure the confidentiality of this material would occupy many weeks of effort for numerous employees of each of these carriers. As explained below, given the marginal relevance to this case of the material that ACE seeks, the ALJ properly determined that this extraordinary discovery request was not justified. The ALJ properly exercised his discretion in imposing limits on the requested information.

The ALJ properly tailored discovery to the evidence that might be relevant for these shippers to show that the one-lump theory is for some reason inapplicable to their particular situation. As noted above, the ALJ limited discovery to information concerning movements involving these particular petitioners. To the extent that they are "bottleneck" shippers,⁴ this will permit them to garner evidence relevant to the issue of whether they have received benefits from competition between competing origin or destination carriers in the past that would not be available after the merger.

Nevertheless, ACE claims that it needs data concerning all shippers to make a persuasive case. In this regard, its argument that one-lump rebuttal evidence was rejected by the ICC in the Burlington Northern/Santa Fe merger because it was anecdotal and not comprehensive is simply wrong. That evidence was rejected because it was unpersuasive in light of other evidence that better explained the carriers' actions in that case, which were fully consistent with the one-lump theory.

In reality, ACE is making arguments and requesting evidence here that go well beyond issues of rebutting the one-lump theory.⁵ ACE is asserting that Conrail has some as yet unexercised market power that either CSX or NS will exercise if we permit the acquisition of Conrail's lines. NS and CSX will allegedly raise their rates to attempt to make up for the fact that

⁴ It appears that only one of the four ACE shippers would confront any semblance of an acquisition-related vertical competition issue. See CSX/NX-30 at 15-16.

⁵ See Motion to compel filed by ACE on July 14, 1997 (ACE, *et al.*-5), v.s. Crowley at 4: "The objective of our analysis and the reason we requested the . . . data is to determine if the Railroads involved in the division of Conrail set rates to maximize net revenue subject to regulatory restraints or if the Railroads share the monopoly rents with their customers."

they have made a bad business decision and paid \$4 billion to \$5 billion too much for Conrail's lines

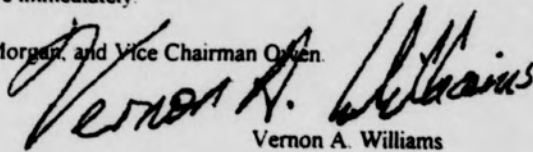
Thus, petitioners are attempting to undermine more than the one-lump theory here. They are challenging a basic principle of economics, that firms will generally attempt to maximize their profits. This is the basic premise the ICC and the Board have long applied, with court approval, when viewing competitive issues in assessing mergers: if carriers have additional market power, they will use it. Petitioners have not suggested a plausible rival economic theory to replace this one. In addition, as Conrail points out, petitioners are in the best position to know what amount of their coal would have been shipped had Conrail attempted to set its rates any higher. Under these circumstances, we are extremely reluctant to authorize the broad discovery of commercially sensitive information that petitioners propose. *Trailways Lines, Inc. v. ICC*, 766 F.2d 1537, 1546 (D.C. Cir. 1985) ("... the Commission was simply not required to allow a dragnet, expensive exercise of discovery into [applicant's] business when that discovery was seen by the agency as most unlikely to affect its decision").

We will address any issues of increased market power in our final decision in this proceeding. We will also address, in that decision, any impact on CSX and NS stemming from their obligations to finance these acquisitions. We are not convinced, however, that the material that ACE seeks would in any way aid our resolution of those issues.

It is ordered:

1. The petition for reconsideration of Decision No. 11 is denied.
2. This decision is effective immediately.

By the Board, Chairman Morgan, and Vice Chairman Owen.



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SERVICE DATE - AUGUST 1, 1997

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STB Finance Docket No. 33388

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

Decision No. 16

Decided: July 31, 1997

In Decision No. 6 (served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387) and again in Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we ordered: that any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; that any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and that any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion. See Decision No. 6, slip op. at 7, 62 FR at 29390; Decision No. 12, slip op. at 21-22, 62 FR at 39589.

A question has arisen respecting determination of "the date" of decisions issued by Judge Leventhal. When a written decision is issued, it is likely to have two dates (the "decided date" and the "service date") and may reference a third date (the date of the hearing at which Judge Leventhal orally announced his decision). See, e.g., Decision No. 11, which has a service date of July 18 and a decided date of July 18, but which is described as "confirming" the oral rulings entered on the record at the hearing held on July 16.

We are issuing this decision to clarify that, with respect to any matter orally ruled on by Judge Leventhal from the bench,¹ the date of the hearing at which Judge Leventhal announces his decision will be regarded as "the date" of that decision, whether or not Judge Leventhal subsequently issues a written decision confirming his oral decision. We are issuing this clarification in order to facilitate expedited review of any appeals to decisions issued by Judge Leventhal.

Because this clarification addresses a matter left ambiguous in our prior decisions, we will apply it only to appeals from oral decisions issued after the date of service of this decision.

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

It is ordered:

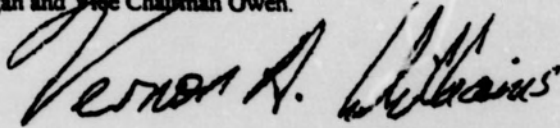
1. For purposes of the requirement that any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date thereof, the date of the hearing at which such decision is announced from the bench shall be regarded as "the date" of such decision.

2. Notwithstanding ordering paragraph 1, the appeal filed July 22, 1997, by American Electric Power, Atlantic City Electric Company, Delmarva Power & Light Company, and The Ohio Valley Coal Company shall be regarded as timely filed.

¹ We understand that Judge Leventhal intends to issue oral rulings from the bench with respect to all disputes brought to him for resolution.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with some loops and flourishes.

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SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 15

Decided: July 31, 1997

The protective order that was entered in this proceeding in Decision No. 1¹ provides, in pertinent part, that discovery material designated "HIGHLY CONFIDENTIAL" may be disclosed only to an outside counsel or an outside consultant, or to an employee of such outside counsel or outside consultant, who has executed the appropriate confidentiality undertaking. *See* Decision No. 1 at 4 (Protective Order, ¶8) and 7 (the Exhibit B undertaking applicable to highly confidential material).²

By motion (not designated) filed July 21, 1997, the United Transportation Union (UTU) seeks to waive, with respect to itself only, the provision in the protective order restricting the production of highly confidential material to outside counsel and outside consultants. UTU claims that it has signed the Exhibit B undertaking and provided that undertaking to applicants,³ but that applicants, citing the protective order, have refused to place UTU on the highly confidential list. UTU, noting that its interests in this case are represented by inside counsel only, and claiming that the highly confidential information produced in this case "is essentially of no value from a commercial standpoint to a union," asks that we allow UTU's inside counsel to be placed on the highly confidential list in this proceeding.⁴

By reply (designated CSX/NS-32) filed July 28, 1997, applicants urge the denial of UTU's motion.

We will modify the protective order entered in Decision No. 1 to allow in-house counsel for UTU to review material designated "highly confidential," provided that such in-house counsel executes the Exhibit B undertaking and otherwise abides by the terms of the protective order. *See Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32549 (ICC served Mar. 13, 1995) (*BN/SF Dec. No. 12*) (modifying the protective order in that proceeding to allow in-house counsel for any labor organization or other non-commercial party that was not represented by outside counsel to review material designated "highly confidential") *Compare BN/SF Dec. No. 21* (served May 3, 1995) (denying a similar

¹ That protective order was thereafter revised, in ways not presently relevant, in Decision No. 4. *See* Decision No. 4, slip op. at 8.

² The "highly confidential" designation is reserved for "material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information." *See* Decision No. 1 at 4 (Protective Order, ¶6).

³ CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., and Consolidated Rail Corporation are referred to collectively as applicants.

⁴ Although UTU states that "UTU has signed" the Exhibit B undertaking, it is clear that the actual signatory was UTU's in-house counsel (Daniel R. Elliott, III).

modification sought by entities with which applicants had "arms-length business relationships" because the sought modification "could adversely affect the primary applicants' future business dealings with those entities"). *Compare also BN/SF Dec. No. 33* (served June 20, 1995).

We are not persuaded by the arguments advanced by applicants in support of a "zero exceptions" policy respecting the outside counsel requirement. Applicants argue that the protective order safeguards highly confidential material produced by parties other than applicants, and that such parties "may be reluctant to fully participate and take certain positions if the protective order does not fully protect their highly confidential materials from disclosure to in-house counsel." CSX/NS-32 at 2 n.3. We have found that experience suggests otherwise; there is no reason to believe that self-censorship of the kind feared by applicants occurred in the *BN/SF* proceeding. Applicants also argue, in essence, that modification of the protective order in the manner in which it was modified in *BN/SF Dec. No. 12* will effectively "reduce the Highly Protective designation to a mere formality with no substantive effect." CSX/NS-32 at 3. We disagree. The contested modification applies only to labor organizations and other non-commercial parties, as indicated in *BN/SF Dec. No. 21*, it does not apply to commercial entities with which applicants have had in the past and are likely to have in the future "arms-length business relationships." Applicants, noting that the modification entered in *BN/SF Dec. No. 12* was agreed to by the *BN/SF* applicants, argue that, as a factual matter, labor organizations do have arms-length business relationships with railroads. This, of course, is true, but, as applicants themselves concede, "the subjects of the negotiations are different." CSX/NS-32 at 3. And, because the subjects are different, the effects of allowing in-house counsel access to highly confidential material are similarly different.

Applicants have not explained, nor do we see, why a protective order modification that caused no difficulties for the applicant railroads in the *BN/SF* proceeding should be expected to cause unacceptable difficulties for the applicant railroads in the present proceeding. Because we see no good reason to depart from the applicable precedent in *BN/SF Dec. No. 12*, we will adhere to that precedent here.

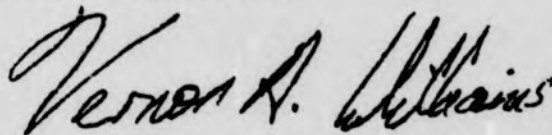
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The protective order entered in Decision No. 1 is modified to allow UTU's in-house counsel to review "highly confidential" material, provided that such in-house counsel executes the appropriate undertaking and otherwise abides by the terms of the protective order.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.



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SERVICE DATE - JULY 29, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 14

Decided: July 28, 1997

By application (variously referred to as the "application" and the "primary application") filed June 23, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC)¹ seek approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. We shall refer to the transaction proposed in the primary application as the CSX/NS/CR transaction.

In Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we accepted for consideration the primary application and various ancillary "related filings" because that application and those filings are "in substantial compliance with the applicable regulations, waivers, and requirements." We specifically added, however, that we were reserving the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter. See Decision No. 13, slip op. at 18 & n.29, 62 FR at ____ & n.29.

In this decision, we address the issues raised in the following pleadings: the "NJT-1, VRE-2, MBTA-1" petition (hereinafter referred to as the NJT-1 petition) filed July 17, 1997, by petitioners New Jersey Transit Corporation (NJT), Virginia Railway Express (VRE),² and Massachusetts Bay Transportation Authority (MBTA); and the CSX/NS-28 reply filed July 21, 1997, by applicants.

¹ CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

² Although VRE is referred to as a "petitioner" in the NJT-1 petition, it is not a party of record in this proceeding. Rather, its two co-owners, Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (political subdivisions of the Commonwealth of Virginia, referred to herein as the Commissions), are the parties of record. See the VRE-1 notice of appearance (filed April 21, 1997, identifying the Commissions as co-owners of VRE and indicating that the Commissions intend to participate in this proceeding as parties of record). See also NJT-1 at 8 (listing counsel for the Commissions but not for VRE). But, because the NJT-1 petition treats VRE as if it were the real party in interest, we will assume, for the purposes of this decision, that VRE is indeed the real party in interest.

BACKGROUND

The NJT-1 Petition. Petitioners, which operate commuter rail passenger trains over certain rail lines also operated over by applicants,³ are concerned that their commuter operations may be adversely affected by the CSX/NS/CR transaction. They acknowledge that applicants have claimed that petitioners will not in fact be adversely affected,⁴ but they argue that applicants' "blanket assertions" that there will be no adverse impact, NJT-1 at 2, are lacking in detail. Petitioners argue that, because details are lacking, they cannot engage in effective and focused discovery within the time allowed by the procedural schedule; and they add that, because they will be unable to engage in effective and focused discovery, they will be unable to evaluate, within the time allowed by the procedural schedule, the impact of the CSX/NS/CR transaction on their commuter rail operations.⁵ Petitioners therefore ask that we direct applicants to file, on or before August 6, 1997, a supplement to the application that would either (a) identify the impact of the CSX/NS/CR transaction on petitioners' commuter rail operations, or (b) provide supporting information for the claim that the CSX/NS/CR transaction will have no adverse impacts on petitioners' commuter rail operations.

The CSX/NS-28 Reply. Applicants, urging denial of the NJT-1 petition, maintain that the application clearly and fully addresses the expected impacts of the CSX/NS/CR transaction on

³ NJT operates approximately 591 trains each weekday, over 972 route miles of rail line. VRE operates 26 trains per weekday, over approximately 90 route miles of rail line. MBTA operates 405 trains per weekday, over approximately 400 route miles of rail line.

⁴ See CSX/NS-20, Volume 3A at 275-80 (the portion of the CSX operating plan discussing the impact of the CSX/NS/CR transaction on commuter operations). See, in particular, CSX/NS-20, Volume 3A at 276-77 (impact on MBTA), 277 (impact on NJT), and 279-80 (impact on VRE). See also CSX/NS-20, Volume 3B at 299-307 (the portion of the NS operating plan discussing the impact of the CSX/NS/CR transaction on commuter operations). See, in particular, CSX/NS-20, Volume 3B at 302-04 (impact on NJT) and 306-07 (impact on VRE). See also CSX/NS-23, Volume 6A at 136-41, 144-45, 173-75, and 180 (Environmental Report). In general, applicants contend that the commuter operations conducted by petitioners will not be adversely affected by the operational impacts of the CSX/NS/CR transaction. Applicants cite, in support of this contention: (1) the fact that some freight traffic will be diverted away from certain lines now operated over by petitioners; (2) the fact that certain lines now operated over by petitioners have sufficient capacity to accommodate anticipated future traffic volume increases; (3) the fact that some of the traffic moving over certain of the lines now operated over by petitioners is local traffic (i.e., traffic originating at or destined to points on these lines), the scheduling of which can be adjusted to accommodate the commuter trains operated by petitioners; and (4) the fact that the contracts pursuant to which commuter train operations are conducted generally contain provisions that protect commuter service from freight operation interference. Petitioners will have an opportunity to comment on the environmental and safety aspects relating to the proposed transaction during the Section of Environmental Analysis' Environmental Impact Statement process.

⁵ Petitioners also suggest: (1) that, as matters now stand, the application will have to be denied on its merits because, as respects the possible impact of the CSX/NS/CR transaction on commuter rail operations, there is not now sufficient evidence of record to support a finding that approval of the application would be in the public interest; and (2) that we erred in accepting the application for consideration because applicants, by omitting sufficient details respecting the impact of the CSX/NS/CR transaction on commuter rail operations, failed to present a *prima facie* case. See 49 CFR 1180.4(c)(8) (the application must present a *prima facie* case) and 1180.8(a)(2) (the operating plan must detail any anticipated impacts respecting commuter services).

commuter rail service.⁶ Applicants add: that their document depository contains additional material that was not included in the application but that might be of interest to petitioners;⁷ that petitioners, if they so choose, can obtain still further information via the formal discovery process,⁸ and that applicants, because they accept the fact that they are "[j]oined [to petitioners] by present and prospective contractual relationships and by present and proposed use of the same routes for freight and passenger service," CSX/NS-28 at 8,⁹ are prepared to engage (and, indeed, have already engaged) in informal consultations with petitioners concerning the succession of CSX and NS to the present Conrail commuter arrangements.¹⁰

DISCUSSION AND CONCLUSIONS

We will deny the NJT-1 petition because we can see no reason to require applicants to supplement the primary application they filed on June 23, 1997.

⁶ Applicants contend that each of the two operating plans prepared separately by CSX and NS describes, with respect to the geographical areas of interest to petitioners, current rail operations, anticipated changes resulting from the proposed transaction, and the expected resulting effect on commuter rail service. Applicants reference, in addition to the references cited above in footnote 4: CSX/NS-20, Volume 3A at 409-13 (Table 13 8-2, "Changes in Trains Per Day on CSX and Conrail Acquired Line Segments with Passenger Service"); and CSX/NS-20, Volume 3B at 459-70 (Figure D 6-1, "Conrail Line Segments - Base Case and Post-Acquisition Case Conrail Train Densities", Figure D 6-2, "NS Line Segments - Base Case and Post-Acquisition Case NS Train Densities"). And, with respect to petitioners' concerns respecting the difficulty of even identifying the CSX and NS personnel with relevant knowledge regarding commuter rail impacts, NJT-1 at 7, applicants insist that those impacts are discussed in the operating plans submitted by CSX and NS, and that "the persons sponsoring those plans are plainly identified in the Application and have made Verified Statements." CSX/NS-28 at 7.

⁷ Applicants note that the depository contains, among other things, the CSX and NS train schedules for the train movements referred to in the operating plans. Applicants add that petitioners' representatives first visited the depository on July 17, the very day petitioners filed their NJT-1 petition. CSX/NS-28 at 5 n 7.

⁸ Applicants indicate that, as of July 21, 1997, petitioner had still not served any discovery requests upon applicants. "[I]t will not do to claim that resort to the discovery process is inadequate, particularly without trying it." CSX/NS-28 at 7.

⁹ Applicants reiterate that the proposed CSX/NS/CR transaction envisions that CSX and NS will succeed to, and be subject to, Conrail's contractual obligations vis-à-vis commuter train operations now conducted on lines operated over by Conrail. See CSX/NS-28 at 6. See also CSX/NS-23, Volume 6A at 128 (emphasis added) ("Passenger services have long coexisted with freight services. The Acquisition would not disturb that relationship. The relationship between the relevant passenger agencies and CSX, NS and Conrail is governed by law and contractual arrangements. *These governing provisions would continue in force after the Acquisition. CSX and NS would assume the rights and responsibilities of Conrail with respect to those Conrail lines allocated to each of them in the Acquisition.* The expanded CSX and NS systems would each accommodate the existing passenger services on lines they own or over which they operate, including on the lines in the Shared Assets Areas. Similarly, it is expected that the passenger agencies would continue to accommodate the existing freight services over lines they own, as provided in their contracts.")

¹⁰ Applicants assert that such consultations have already taken place. See CSX/NS-28 at 7-10.

Our regulations provide that, "[i]f commuter or other passenger services are operated over the lines of applicant carriers," the operating plan submitted as part of the primary application must "detail any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations." See 49 CFR 1180.8(a)(2). As indicated by a review of the references cited above in footnotes 4 and 6, applicants have provided, in their operating plans and also in their environmental report, appropriate information respecting the commuter rail impacts they anticipate.

Our regulations further provide that the primary application must present a *prima facie* case, see 49 CFR 1180.4(c)(8), and we think that, at least as respects commuter rail impacts, the primary application has indeed presented a *prima facie* case. Applicants certainly have not disclosed facts "that, even if construed in their most favorable light, are insufficient to support a finding that the proposal is consistent with the public interest," 49 CFR 1180.4(c)(8)(i); the evidence presented in the primary application, if taken at face value, could support a finding that the CSX/NS/CR transaction will have no adverse impacts vis-à-vis commuter rail services. And, for essentially the same reason, we cannot conclude that applicants have disclosed facts "that affirmatively demonstrate that the proposal is not in the public interest," 49 CFR 1180.4(c)(8)(ii).¹¹

This is not to say that we necessarily endorse the arguments presented and the positions taken in the primary application. At the present stage of this proceeding, we have no occasion to draw conclusions respecting the impacts, if any, that the proposed CSX/NS/CR transaction will have on the commuter rail operations conducted by petitioners. It suffices, for present purposes, merely to observe that, on June 23, 1997, applicants submitted their case-in-chief respecting these matters, and that, on October 21, 1997, petitioners will have an opportunity to submit their evidence respecting these matters.

The tenor of the NJT-1 pleading suggests that petitioners are likely to argue that the CSX/NS/CR transaction will have adverse operational impacts on the commuter rail operations petitioners conduct. We fail to understand why petitioners take the position, in essence, that, unless the application is supplemented, they will be unable to make an evidentiary submission in support of this argument. The primary application itself contains the material referenced above in footnotes 4 and 6, including the CSX and NS operating plans, and applicants' depository contains the CSX and NS train schedules for the train movements referred to in the operating plans,¹² and, using the CSX and NS operating plans and train schedules and using also petitioners' own train schedules, it ought to be relatively easy to determine, at least on paper, whether the freight operations anticipated by applicants will interfere with the passenger operations conducted by petitioners. Petitioners can also ascertain from applicants, either via the formal discovery process or via informal consultations, the names of the CSX and NS personnel responsible for preparing the items on the CSX and NS train schedules that are of particular interest to petitioners.¹³ Petitioners will then be able to take depositions of these persons, and will be able to inquire, at

¹¹ Petitioners are simply wrong in asserting that, as matters now stand, the application will have to be denied on its merits. This argument is a variation on the *prima facie* case argument, and it fails for essentially the same reasons.

¹² Applicants, of course, will be held to their representation that the depository contains these schedules.

¹³ The witnesses that submitted verified statements in connection with the CSX and NS operating plans may not have personal knowledge respecting the minute-by-minute schedules of the CSX and NS trains. See CSX/NS-20, Volume 3A at 1-77 (verified statement of John W. Orrison for CSX), Volume 3B at 1-67 (verified statement of D. Michael Mohan for NS). Petitioners should therefore ask applicants to identify the person or persons who do have such personal knowledge.

these depositions, whether the CSX and NS train schedules are realistic assessments of the future. And, come October 21, 1997, petitioners, by synthesizing the various sources of proof mentioned in this paragraph, should be able to present a comprehensive evidentiary submission in support of whatever argument they choose to make.

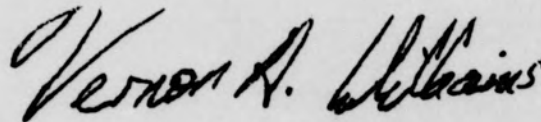
We are similarly unconvinced by petitioners' assertion that, unless the application is supplemented, they will be unable to file, by August 22, 1997, descriptions of any responsive applications they may have in mind to file on October 21, 1997. See NJT-1 at 7. The commuter rail operations conducted by petitioners are such that any rail lines that are likely to be of interest to petitioners are necessarily located within relatively narrow geographical areas; although the CSX/NS/CR transaction as a whole affects the entire Eastern United States, the lines of interest to petitioners are located within the more limited areas within which petitioners conduct their commuter rail operations. It should not be particularly difficult to file, by August 22, 1997, a brief description of the conditions petitioners may seek (e.g., trackage rights) and of the lines with respect to which such conditions may be sought (e.g., with respect to NJT, Conrail lines in the so-called North Jersey Shared Assets Area).

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

It is ordered:

1. The NJT-1 petition is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
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SERVICE DATE - LATE RELEASE JULY 25, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 13

Decided: July 25, 1997

By motion (not designated) filed July 21, 1997, the United Transportation Union (UTU) seeks to waive, with respect to itself only, the provision in the protective order restricting the production of highly confidential competitive information to outside counsel and outside consultants.¹ By petition (designated ARU-6) filed July 18, 1997, the Allied Rail Unions (ARU) seek a declaratory order to the effect that, on or about June 2, 1997, and in violation of 40 U.S.C. 11323, CSX and NS acquired control of Conrail without the prior approval and authorization of the Board.²

In Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we ordered that "any reply to *any motion* filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion." See Decision No. 12, slip op. at 21, 62 FR at 39589 (emphasis added).

By letter (designated CSX/NS-29) filed July 23, 1997, applicants indicate: that they understand that the 3-day rule applies to motions that are procedural in nature; that they are, however, under the impression that the 3-day rule does not apply to motions that are not procedural in nature;³ and that they believe that the UTU motion and the ARU petition are not procedural in nature.

We will treat the CSX/NS-29 letter as a request for clarification of Decision No. 12, and we hereby clarify that the 3-day rule should be accorded the literal reading provided in Decision No. 12: it is applicable to any reply to *any motion* filed with the Board itself in the first instance, whether that motion is or is not procedural in nature, and whether that motion is or is not styled as a "motion."⁴ Given the expedited schedule that governs this proceeding, the more leisurely

¹ The protective order applicable to this proceeding was adopted in Decision No. 1 (served April 16, 1997) and was modified in Decision No. 4 (served May 2, 1997).

² CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT), and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR), and their wholly owned subsidiaries, are referred to collectively as NS. Conrail Inc. (CRR) and Consolidated Rail Corporation (CRC), and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

³ As applicants correctly note, the wording of the 3-day rule in Decision No. 6 (served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387) was that "any reply to *any procedural motion* filed with the Board itself in the first instance must also be filed within 3 working days of the date the motion is filed." See Decision No. 6, slip op. at 7, 62 FR at 29390 (emphasis added).

⁴ We also think it appropriate to clarify that, for purposes of the 3-day rule, a "working
(continued...)

20-day reply period that applicants would prefer, *see CSX/NS-29 at 2* (first full paragraph), is simply unworkable. And, given the delays that would be occasioned if we were required to make motion-by-motion determinations as to whether any particular motion was or was not procedural in nature, the distinction sought by applicants is equally unworkable.⁵

Applicants argue, in essence, that they cannot reasonably be expected to file replies to such pleadings as the UTU motion and the ARU-6 petition within the 3 working days allowed by the 3-day rule. Our experience with prior railroad control proceedings indicates otherwise.

We do not mean to suggest, however, that the 3-day rule is utterly inflexible. We are prepared to consider, on a motion-by-motion basis, requests (such as the requests contained in CSX/NS-29 at 2) to extend the deadline for filing replies.

As respects the motion filed by the United Transportation Union, we cannot understand why applicants should require even 3 working days to reply to a pleading that contains less than 1 full page of text, that cites no cases, and that asks only that UTU's inside counsel have access to highly confidential information that the protective order restricts to outside counsel. Nevertheless, under the circumstances, we will require that applicants reply to this motion no later than July 28, 1997 (which is 3 working days after the service date of Decision No. 12).

As respects the ARU-6 petition filed by the Allied Rail Unions, we can understand why applicants might require more than 3 working days to reply to this pleading, but if 3 working days might not be sufficient, 6 working days (which, in this instance, amounts to 10 calendar days) should be more than sufficient. We will therefore require that applicants reply to the ARU-6 petition no later than July 28, 1997.

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

It is ordered:

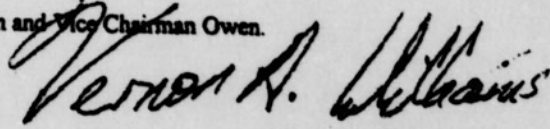
1. As previously indicated in Decision No. 12, and as clarified in this decision: Except as otherwise provided by the Board with respect to any particular motion, any reply to *any motion* filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.
2. Any reply to the motion filed July 21, 1997, by the United Transportation Union is due by July 28, 1997.
3. Any reply to the ARU-6 petition filed July 18, 1997, by the Allied Rail Unions is due by July 28, 1997.

⁴(...continued)
day" is any day that is not a Saturday, a Sunday, or a legal holiday in the District of Columbia.

⁵ Applicants' implausible characterization of the UTU motion as not procedural in nature proves this point.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in dark ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style with some capitalization.

Vernon A. Williams
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SERVICE DATE - JULY 23, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388

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

AGENCY: Surface Transportation Board.

ACTION: Decision No. 12; Notice of Acceptance of Primary Application and Related Filings; Notice of Related Abandonments Proposed By Applicants.¹

SUMMARY: The Board is accepting for consideration the primary application and related filings filed June 23, 1997, by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).² The primary application seeks Board approval and authorization under 49 U.S.C. 11321-25 for: (1) the acquisition by CSX and NS of control of Conrail, and (2) the division of the assets of Conrail by and between CSX and NS. The related filings, which include (among other things) two abandonment petitions and three abandonment notices, seek related relief contingent upon approval of the primary application.

DATES: The effective date of this decision is July 23, 1997. Any person who wishes to participate in this proceeding as a party of record must file, no later than August 7, 1997, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 22, 1997. Responsive (including inconsistent) applications, written comments (including comments of the U.S. Secretary of Transportation and the U.S. Attorney General), protests, requests for conditions, and any other opposition evidence and argument must be filed by October 21, 1997. For further information respecting dates, see Appendix B.

ADDRESSES: An original and 25 copies of all documents must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001.³

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

Furthermore, one copy of each document filed in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2538; FAX: (202) 219-3289] and to each of applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and (3) Paul A.

¹ This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33388 lead docket; and (ii) the 39 related filings (1 application, 16 petitions, and 22 notices), which were filed in the 40 embraced dockets listed in Appendix A (one related filing, respecting the proposed abandonment in Edgar and Vermilion Counties, IL, was filed in two dockets).

² CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

³ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what we expect to become a voluminous record.

Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The transaction for which approval is sought in the primary application involves: the purchase by CSX and NS, by and through their subsidiaries, of all of the stock of CRR; the operation or use of some of Conrail's lines and assets by CSX and NS separately; and the operation or use of the remainder of Conrail's lines and assets by CSX and NS jointly.

THE APPLICANTS. CSX operates approximately 18,504 route miles and 31,961 track miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada. Of that total, approximately 1,607 miles are operated under trackage rights while the remaining mileage is either owned by CSX or operated by CSX under contract or lease. CSX has principal routes to, and serves, virtually every major metropolitan area east of the Mississippi River, from Chicago, IL, St. Louis, MO, Memphis, TN, and New Orleans, LA, on the West to Miami, FL, Jacksonville, FL, Charleston, SC, Norfolk, VA, Washington, D.C., and Philadelphia, PA, on the East. Other major metropolitan areas served by CSX include Atlanta, GA, Nashville, TN, Cincinnati, OH, Detroit, MI, Pittsburgh, PA, Baltimore, MD, Charlotte, NC, Birmingham, AL, and Louisville, KY. CSX interchanges traffic with other railroads at virtually all of the aforementioned locations and at numerous other points on its railroad system.

NS operates approximately 14,282 route miles and 25,236 track miles of railroad in 20 states, primarily in the South and the Midwest, and in Ontario, Canada. Of that total, approximately 1,520 miles are operated under trackage rights while the remaining mileage is either owned by NS or operated by NS under contract or lease. NS has routes to, and serves, virtually every major market in an area that stretches from Kansas City, MO, in the Midwest to Norfolk, VA, in the East, to Chicago, IL, and Buffalo, NY, in the North, and to New Orleans, LA, and Jacksonville, FL, in the South. These markets include Memphis, Chattanooga and Knoxville, TN; St. Louis, MO; Fort Wayne, IN; Detroit, MI; Toledo, Cincinnati, Columbus, and Cleveland, OH; Louisville and Lexington, KY; Bluefield, WV; Alexandria, Roanoke, Lynchburg, and Richmond, VA; Winston-Salem, Raleigh, Durham, Charlotte, and Morehead City, NC; Greenville, Spartanburg, Columbia, and Charleston, SC; Atlanta, Macon, Valdosta, and Savannah, GA; Bessemer, Birmingham, Montgomery, and Mobile, AL; Des Moines, IA; and Peoria, Springfield, and Decatur, IL. NS interchanges traffic with other railroads at virtually all of the locations mentioned above and at numerous other locations on its railroad system.

Conrail operates approximately 10,500 miles of railroad in the Northeast and Midwest, and its primary network forms an "X" connecting Chicago (via the Chicago Line) and East St. Louis (via the St. Louis and Indianapolis Lines) in the West, with Boston, MA, New York, NY, and Northern New Jersey (via the Chicago Line and other main lines), and with Pittsburgh, Harrisburg, PA, Philadelphia, Baltimore, and Washington, DC (via the Pittsburgh Line and other main lines) in the East. The "hub" of the "X" is located in, and about, Cleveland, OH.

Conrail's Chicago Line extends between Chicago and the Albany, NY, area and connects there (through the Selkirk Branch) with the River Line (serving North Jersey via the west shore of the Hudson River), the Hudson Line (through which Conrail reaches New York City and Long Island), and the Boston Line (which extends to Boston and via which Conrail serves New England). Other important routes contiguous to the Chicago Line include the Detroit Line (between Detroit and a connection with the Chicago Line at Toledo), the Michigan Line (the portion between Detroit and Kalamazoo), and the Kalamazoo Secondary and Branch (between Kalamazoo, MI, and Elkhart, IN, on the Chicago Line), the Montreal Secondary (between Syracuse, NY, and Adirondack Junction, Quebec), and the Southern Tier (between Buffalo, NY, and Croton, NJ).

Conrail's St. Louis Line extends between East St. Louis, IL, and Indianapolis, IN, connecting there with the Indianapolis Line which, in turn, extends between Indianapolis and the Cleveland area (connection with the Chicago Line). Conrail's Cincinnati Line (between Cincinnati and Columbus, OH) and its Columbus Line (between Columbus and Galion, OH, on the Indianapolis Line) and the Scottsbluff Secondary Track (between Columbus and Ridgeway, OH, on the Indianapolis Line) all accommodate traffic flows between other parts of the Conrail system and Cincinnati, Columbus and/or Conrail points served via the West Virginia Secondary Track between Columbus and the Kanawha Valley of West Virginia.

Conrail's principal interchange points are in Chicago, East St. Louis and Salem, IL, via Union Pacific Railroad Company (UPRR) trackage rights between Salem and St. Elmo on the St. Louis Line; Streator, IL; Cincinnati; Hagerstown, MD; and Washington, D.C. Other important interchange points include Effingham, IL; Fort Wayne, IN; Toledo and Columbus, OH; Buffalo and Niagara Falls, NY; Montreal, Quebec; Rotterdam Junction, NY; and Worcester (including Barbers), MA.

THE PROPOSED TRANSACTION. The transaction for which approval is sought in the primary application involves the joint acquisition of control by CSX and NS of CRR and its subsidiaries (the Control Transaction), and the division between CSX and NS of the operation and use of Conrail's assets (the Division). The Control Transaction and the Division are governed principally by an agreement (the Transaction Agreement) dated as of June 10, 1997, between CSXC, CSXT, NSC, NSR, CRR, CRC, and CRR Holdings LLC (CRR Holdings, a recently created limited liability company jointly owned by CSXC and NSC). See CSX/NS-25, Volumes 8B & 8C (the Transaction Agreement, including various schedules and exhibits). The Control Transaction and the Division are also governed by a letter agreement (the CSX/NS Letter Agreement) dated as of April 8, 1997, between CSXC and NSC, but only to the extent such CSX/NS Letter Agreement has not been superseded either by the Transaction Agreement or by the agreement (the CRR Holdings Agreement) that governs CRR Holdings. See CSX/NS-25, Volume 8A at 350-99 (the CSX/NS Letter Agreement) and at 400-36 (the CRR Holdings Agreement).

ACQUISITION OF CONTROL OF CONRAIL. CSX and NS have already acquired 100% of the common stock of CRR in a series of transactions that included a CSX tender offer that was consummated on November 20, 1996, a NS tender offer that was consummated on February 4, 1997, a joint CSX/NS tender offer that was consummated on May 23, 1997, and a merger that was consummated on June 2, 1997. In the aftermath of this series of transactions: CRC remains a direct wholly owned subsidiary of CRR; CRR has become a direct wholly owned subsidiary of Green Acquisition Corp. (Tender Sub); Tender Sub is now a direct wholly owned subsidiary of CRR Holdings; and CRR Holdings is jointly owned by CSXC and NSC (CSXC holds a direct 50% voting interest and a 42% equity interest in CRR Holdings; NSC holds a direct 50% voting interest and a 58% equity interest in CRR Holdings). The merger that was consummated on June 2, 1997 (the Merger), involved the merger of Green Merger Corp. (Merger Sub, a direct wholly owned subsidiary of Tender Sub) into CRR, with CRR being the surviving corporation; and, in connection with the Merger: (i) each remaining outstanding share of CRR common stock not held by CSX, NS, or their affiliates was converted into the right to receive \$115 in cash, without interest; and (ii) the shares of Merger Sub, all of which were then owned by Tender Sub, were converted into 100 newly issued shares of CRR, all of which were placed into a voting trust (the CSX/NS Voting Trust) to prevent CSXC and NSC, and their respective affiliates, from exercising control of CRC and its carrier subsidiaries pending review by the Board of the primary application. See CSX/NS-25, Volume 8A at 323-49 (the agreement that governs the CSX/NS Voting Trust).

At the present time, the affairs of CRR and CRC are under the control of their independent boards of directors. The Transaction Agreement provides that, following the effective date of the Board's approval of the primary application (the Control Date), CRR and CRC will each be managed by a board of directors consisting of six directors divided into two classes, each class having three directors. On each board, CSXC will have the right to designate three directors and NSC will likewise have the right to designate three directors; and actions that require the approval of either board will require approval both by a majority of the directors on that board designated by CSX and by a majority of the directors on that board designated by NS.

DIVISION OF CONRAIL. The Transaction Agreement provides that, if the primary application is approved, the division of the operation and use of Conrail's assets will be effected on the Closing Date, which is defined as the third business day following the date on which certain conditions precedent (including the effectiveness of a final Board order and, where necessary, sufficient labor implementing agreements) shall have been satisfied or waived, or such other date as may be agreed upon. See CSX/NS-18 at 11; CSX/NS-25, Volume 8B at 45. It is anticipated that, during the period beginning on the Control Date and ending on the Closing Date, CSX and NS will exercise joint control of Conrail as a separately functioning rail system.

Formation of NYC and PRR. To effect the Division, CRC will form two wholly owned subsidiaries (referred to collectively as the Subsidiaries): New York Central Lines LLC (NYC) and Pennsylvania Lines LLC (PRR). CSXC will have exclusive authority to appoint the officers and directors of NYC; NSC will likewise have exclusive authority to appoint the officers and

directors of PRR; and CRC, as the sole member of the Subsidiaries, will (with certain exceptions) follow CSX's and NSC's directions with respect to the management and operation of NYC and PRR, respectively.

Allocation of Conrail Assets and Liabilities. On the date of the Division, CRC will assign to NYC and PRR certain of CRC's assets. NYC will be assigned those CRC assets designated to be operated as part of CSX's rail system (the NYC-Allocated Assets), and PRR will be assigned those CRC assets designated to be operated as part of NS's rail system (the PRR-Allocated Assets). These assets will include, among other things, certain lines and facilities currently operated by CRC, whether owned by CRC or operated by CRC under trackage rights. Certain additional assets (referred to as the Retained Assets) will continue to be held by CRR and CRC (or their subsidiaries other than NYC and PRR) and will be operated by them for the benefit of CSX and NS. In addition, on the date of the Division: the former Conrail line now owned by NS that runs from Fort Wayne, IN, to Chicago, IL (the Fort Wayne Line), will be transferred to CRC in a like-kind exchange for CRC's Chicago South/Illinois Lines (the Streator Line); and CRC will assign the Fort Wayne line to NYC, to be operated together with the other Conrail lines to be assigned to NYC and used by CSX as part of CSX's rail system.

Assets Allocated to NYC. The NYC-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

- (1) NY/NJ Area to Cleveland (New York Central Railroad route), including (a) line segments from North NJ Terminal to Albany (Selkirk), (b) Albany to Poughkeepsie, NY, (c) Poughkeepsie to New York City (TR), (d) New York City to White Plains (TR), (e) Albany to Cleveland via Syracuse, Buffalo and Ashtabula, OH, (f) Boston to Albany, (g) Syracuse to Adirondack Jct., PQ, (h) Adirondack Jct. to Montreal (TR), (i) Woodard, NY, to Oswego, NY, (j) Syracuse to Hawk, NY, (k) Hawk to Port of Oswego (TR), (l) Buffalo Terminal to Niagara Falls/Lockport, (m) Lockport to West Somerset (TR), (n) Syracuse to NYSW/FL connections, NY, (o) Albany/Boston Line to Massachusetts branch lines, (p) Albany/Boston Line to Massachusetts branch lines (TR), (q) New York City to Connecticut branch lines (TR), (r) Connecticut branch lines (TR), (s) Connecticut Branch lines, (t) Churchville, NY, to Wayneport, NY, (u) Mortimer, NY, to Avon, NY, and (v) Rochester Branch, NY;
- (2) Crestline, OH, to Chicago (Pennsylvania Railroad route), including (a) Crestline to Dunkirk, OH, (b) Dunkirk to Ft. Wayne, IN, (c) Ft. Wayne to Warsaw, IN, (d) Warsaw to Chicago Terminal (Clarke Jct.), IN, and (e) Adams, IN, to Decatur, IN;
- (3) Berea to E. St. Louis, including (a) Cleveland Terminal to Crestline, (b) Crestline to E. St. Louis via Galion, OH, Ridgeway, OH, Indianapolis, IN, Terre Haute, IN, Effingham, IL, and St. Elmo, IL, (c) Anderson, IN, to Emporia, IN, (d) Columbus to Galion, (e) Terre Haute to Danville, IL, (f) Danville to Olin, IN, (g) Indianapolis to Rock Island, IN, (h) Indianapolis to Crawfordsville, (i) Indianapolis to Shelbyville, IN, (j) HN Cabin, IL, to Valley Jct., IL, (k) St. Elmo to Salem, IL (TR), (l) Muncie (Walnut Street), IN, to New Castle RT, IN (TR), and (m) New Castle RT, IN;
- (4) Columbus to Toledo, including (a) Columbus to Toledo via Ridgeway, (b) Toledo Terminal to Woodville, and (c) Toledo Terminal to Stonyridge, OH;
- (5) Bowie to Woodzell, MD, including (a) Bowie to Morgantown, and (b) Brandywine to Chalk Point;
- (6) NY/NJ to Philadelphia (West Trenton Line), including Philadelphia to North NJ Terminal;
- (7) Washington, D.C., to Landover, MD;
- (8) Quakertown Branch, line segment from Philadelphia Terminal to Quakertown, PA (TR), and
- (9) Chicago Area, line segment from Porter, IN, to the westernmost point of Conrail ownership in Indiana.

Along with these lines, CSXT will operate certain yards and shops, as well as the Conrail Philadelphia Headquarters and Philadelphia area information technology facilities.

Assets Allocated to PRR. The PRR-Allocated Assets will include the following primary routes currently operated by Conrail (routes over which Conrail operates pursuant to trackage rights are designated "TR"):

- (1) NJ Terminal to Crestline (Pennsylvania Railroad route), including (a) North NJ Terminal to Allentown, PA, via Somerville, NJ, (b) Little Falls, NJ, to Dover, NJ (TR), (c) Orange, NJ, to Denville, NJ (TR), (d) Dover to Rockport (TR), (e) Rockport to E. Stroudsburg via Phillipsburg, NJ, (f) Allentown Terminal, (g) Orange to NJ Terminal (TR), (h) NJ Terminal to Little Falls (TR), (i) Bound Brook to Ludlow, NJ (TR), (j) Allentown, PA, to Harrisburg via Reading, (k) Harrisburg Terminal, (l) Harrisburg to Pittsburgh, (m) Conemaugh Line via Saltsburg, PA, (n) Pittsburgh to W. Brownsville, PA, (o) Central City, PA, to South Fork, PA, (p) Pittsburgh Terminal, (q) Monongahela, PA, to Marianna, PA, (r) Pittsburgh to Alliance, OH, via Salem, (s) Beaver Falls, PA, to Wampum, PA, (t) Alliance to Cleveland Terminal, (u) Mantua, OH, to Cleveland Terminal, (v) Alliance to Crestline, (w) Alliance to Omal, OH, (x) Rochester, PA, to Yellow Creek, OH, (y) E. Steubenville, WV, to Weirton, WV, (z) Steubenville Branches Bridge, OH, (aa) Pittsburgh Branches, (bb) Ashtabula to Youngstown, OH, (cc) Ashtabula Harbor to Ashtabula, (dd) Niles, OH, to Latimer, OH, (ee) Alliance, OH, to Youngstown, (ff) Youngstown to Rochester, (gg) Allentown to Hazelton, PA, (hh) CP Harris, PA, to Cloe, PA (TR), (ii) Cloe to Shelocta, PA, (jj) Tyrone, PA, to Lock Haven, PA (TR), (kk) Creekside, PA, to Homer City, PA, (ll) Monongahela Railroad, (mm) portion of Kinsman Connection in Cleveland, (nn) portion of 44 Ind. Track including Dock 20 Lead, and (oo) Gem Ind. Track-Lordstown, OH;
- (2) Cleveland to Chicago (New York Central Railroad route), including (a) Cleveland Terminal to Toledo Terminal, (b) Elyria, OH, to Lorain, OH, (c) Toledo Terminal to Sylvania, OH, (d) Toledo Terminal to Goshen, IN, (e) Elkhart, IN, to Goshen, and (f) Elkhart to Porter, IN;
- (3) Philadelphia to Washington (Amtrak's Northeast Corridor, referred to as NEC), including (a) Philadelphia Terminal to Perryville, MD (TR), (b) Wilmington Terminal, DE, (c) Perryville to Baltimore (TR), (d) Baltimore Terminal, (e) Baltimore Bay View to Landover, MD (TR), (f) Baltimore to Cockeysville, MD, (g) Pocomoke, MD, to New Castle Jct., DE, (h) Harrington, DE, to Frankford/Indian River, DE, (i) Newark, DE, to Porter, DE, (j) Claremont R.T., (k) Loneys Lane Lead, and (l) Grays Yard (TR);
- (4) Michigan Operations (excluding the Detroit Shared Assets Area), including (a) Toledo Terminal to Detroit Terminal, (b) Detroit Terminal to Jackson, MI, (c) Jackson to Kalamazoo, MI, (d) Kalamazoo to Elkhart, IN, (e) Jackson to Lansing, MI, (f) Kalamazoo to Grand Rapids, (g) Kalamazoo to Porter, IN (TR), (h) Kalamazoo Ind. Track, and (i) Cornstock Ind. Track;
- (5) Eastern Pennsylvania lines, including (a) Philadelphia Terminal to Reading, (b) Reading Terminal, (c) Thorndale, PA, to Woodbourne, PA, (d) Leola/Chesterbrook, PA, lines, (e) Philadelphia Terminal to Lancaster, PA (TR), (f) Lancaster to Royalton, PA (TR), (g) Lancaster to Lititz/Columbia, PA, (h) portion of Stony Creek Branch, (i) West Falls Yard, and (j) Venice Ind. Track;
- (6) Indiana lines, including (a) Anderson to Goshen via Warsaw, (b) Marion to Red Key, IN, and (c) Lafayette Ind. Track;
- (7) Buffalo to NY/NJ Terminal, including (a) NJ/NY Jct. to Suffern, NY (TR), (b) Suffern to Port Jervis, NY, (c) Port Jervis to Binghamton, (d) Binghamton to Waverly, (e) NJ/NY Jct. to Spring Valley, NY (TR), (f) Paterson Jct., NJ, to Ridgewood, NJ (TR), (g) Waverly to Buffalo, (h) Waverly to Mehoopany, PA, (i) Sayre, PA, to Ludlowville, NY, (j) Lyons, NY, to Himrods Jct., NY, (k) Corning, NY, to Himrods Jct., NY, (l) North Jersey Terminal to Paterson Jct., NJ (TR), (m) Paterson Jct. to North Newark, NJ, and (n) NJ/NY Jct. to North Jersey Terminal (TR);
- (8) Buffalo to Harrisburg and South, including (a) Perryville, MD, to Harrisburg, PA, (b) Carlisle, PA, to Harrisburg, (c) Wago, PA, to York (area), PA, (d) Harrisburg to Shocks, PA, (e) Williamsport, MD, to Buffalo via Harrisburg, PA, (f) Watsonstown, PA, to Strawberry Ridge, PA, (g) Ebenezer Jct., NY, to Lackawanna, NY, (h) Hornell, NY, to Corry, PA, (i) Corry to Erie, PA (TR), and (j) Youngstown to Oil City, PA;

(9) Cincinnati to Columbus to Charleston, WV, including (a) Columbus to Cincinnati, (b) Cincinnati Terminal, (c) Columbus Terminal to Truro, OH, (d) Truro to Charleston, WV, (e) Charleston to Cornelia, WV, and (f) Charleston to Morris Fork, WV;

(10) Chicago South/Illinois operations, including (a) Osborne, IN, to Chicago Heights, IL, via Hartsdale, (b) Hartsdale to Schneider, IN, (c) Schneider to Hennepin, IL, (d) Keensburg, IL, to Carol, IL, and (e) Schneider to Wheatfield, IN; and

(11) Chicago Market, including (a) Western Ave. Operations/Loop to Cicero/Elsdon, IL, (b) Chicago to Porter, IN, (c) Clarke Jct., IN, to CP 501, IN, (d) CP 509 to Calumet Park, IL, (e) Western Ave. Ind. Track, (f) Old Western Ave. Ind. Track, (g) North Joint Tracks, (h) Elevator Lead & Tri-River Dock, (i) CR&I Branch, (j) 49th Street Ind. Track, (k) 75th Street to 51st Street (TR), (l) Port of Indiana, IN, and (m) CP 502, IN, to Osborne, IN.

Along with these lines, the abandoned Conrail line from Danville to Schneider, IL, will also be a PRR-Allocated Asset.

Allocated Assets: Other Aspects. Certain equipment will be included in the NYC-Allocated Assets and the PRR-Allocated Assets and will be made available to CSXT and NSR pursuant to a CSXT Equipment Agreement and a NSR Equipment Agreement, respectively. Much of the locomotive equipment and rolling stock equipment, however, will not be included in the NYC- and PRR-Allocated Assets but will be included, instead, in the Retained Assets (discussed below), and will be leased by CRC or its affiliates to NYC or PRR pursuant to equipment agreements to be negotiated by the parties.

CRC currently holds certain trackage rights over CSXT and NSR. In general (though there are exceptions), CRC will assign the trackage rights that it holds over CSXT to PRR (to be operated by NSR), and it will assign the trackage rights that it holds over NSR to NYC (to be operated by CSXT).

The shares currently owned by Conrail in TTX Company (TTX, formerly known as Trailer Train) will be allocated to NYC and PRR. Applicants' current ownership interest in TTX is: CSX, 9.345%; NS, 7.788%; CRC, 21.807%. Following approval of the primary application, the ownership of TTX by applicants and their subsidiaries will be as follows: CSX, 9.345%; NYC, 10.125%; NS, 7.788%; PRR, 11.682%.

Conrail's 50% interest in Triple Crown Services Company will be allocated to PRR.

Certain additional special treatments are provided in particular areas within the allocated assets. A description of the areas in which special arrangements are made is set forth below under the caption "Other Areas with Special Treatments."

Applicants indicate that they have taken steps to ensure that all of the existing contractual commitments of Conrail to its shippers will be fulfilled. The Transaction Agreement provides that all transportation contracts of CRC in effect as of the Closing Date (referred to as Existing Transportation Contracts) will remain in effect through their respective stated terms and will be allocated as NYC-Allocated Assets and PRR-Allocated Assets, and that the obligations under them shall be carried out after the Closing Date by CSXT, utilizing NYC-Allocated Assets, and by NSR, using PRR-Allocated Assets, or pursuant to the Shared Assets Areas Agreements, as the case may be. The Transaction Agreement further provides, with respect to the Existing Transportation Contracts: that CSXT and NSR will allocate the responsibilities to serve customers under these contracts; and that CSXT and NSR shall cooperate as necessary to assure shippers under these contracts all benefits, such as volume pricing, volume refunds, and the like, to which they are contractually entitled.

Retained Assets. The Retained Assets include assets contained within three Shared Assets Areas (the Detroit Shared Assets Area, the North Jersey Shared Assets Area, and the South Jersey/Philadelphia Shared Assets Area) that are more fully described below.

⁴ The Transaction Agreement also contemplates that certain CRC facilities currently used for the benefit of the entire Conrail system: will be operated, during a transition period following the Closing Date, for the joint benefit of CSX and NS; and will be operated, after such transition period, for the party to whom they have been allocated. See CSX/NS-18 at 11 (lines 14-18) and 12 (line 1 & n.3).

The Retained Assets also include Conrail's System Support Operations (SSO) facilities, including equipment and other assets associated with such facilities, currently used by Conrail to provide support functions benefitting its system as a whole, including Conrail's: (1) customer service center in Pittsburgh, PA; (2) crew management facility in Dearborn, MI; (3) system maintenance-of-way equipment center in Canton, OH; (4) signal repair center in Columbus, OH; (5) system freight claims facility in Buffalo, NY; (6) system non-revenue billing facility at Bethlehem, PA; (7) system rail welding plant at Lucknow (Harrisburg), PA; (8) system road foreman/engineer training center at Philadelphia and Conway, PA; (9) police operations center at Mt. Laurel, NJ; (10) the Philadelphia Division headquarters building and offices located at Mount Laurel, NJ; and (11) other SSO facilities identified by CSX and NS prior to the Closing Date. Each SSO Facility will be operated by Conrail for the benefit of CSXT/NYC and NSR/PRR, and the costs of operating each SSO Facility will be retained by Conrail as "Corporate Level Liabilities" and will be shared between CSX and NS.⁵

Liabilities. In general: NYC will assume all liabilities arising on or after the Closing Date that relate predominantly to the NYC-Allocated Assets; PRR will assume all such liabilities that relate predominantly to the PRR-Allocated Assets; CRC will be responsible for all such liabilities that do not relate predominantly to the NYC- or PRR-Allocated Assets; and CRC will also be responsible for certain liabilities arising prior to the Closing Date.

Separation Costs (as defined in the Transaction Agreement, *see* CSX/NS-25, Volume 8B at 20) incurred following the Control Date in connection with Conrail agreement employees now working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while Separation Costs incurred in connection with Conrail agreement employees now working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS. Separation Costs incurred in connection with Conrail agreement employees working jobs at or in respect of Retained Assets will be shared by CSX and NS. Separation Costs incurred following the Control Date for Conrail agreement employees at Conrail's Altoona and Hollidaysburg shops will be the responsibility of NS, and Separation Costs incurred following the Control Date in connection with agreement employees at Conrail's Philadelphia headquarters and technology center and Conrail's Pittsburgh customer service center will be the responsibility of CSX. Separation Costs for eligible Conrail non-agreement employees will be shared by CSX and NS.

After the Closing Date, compensation and other expenses (excluding Separation Costs) for agreement employees (other than certain Conrail employees performing general and administrative functions) working jobs at or in respect of NYC-Allocated Assets will be the sole responsibility of CSX, while such expenses for such agreement employees working jobs at or in respect of PRR-Allocated Assets will be the sole responsibility of NS.

Operation of Assets. Applicants indicate: that CSXT and NYC will enter into the CSXT Operating Agreement, which provides for CSXT's use and operation of the NYC-Allocated Assets; that NSR and PRR will enter into the NSR Operating Agreement, which provides for NSR's use and operation of the PRR-Allocated Assets; and that CRC, NYC, PRR, CSXT and/or NSR will enter into Shared Assets Areas Operating Agreements, which provide for the operation of certain Shared Assets Areas for the benefit of both CSXT and NSR.

CSXT and NSR Operating Agreements. The CSXT Operating Agreement and the NSR Operating Agreement (collectively, the Allocated Assets Operating Agreements) provide that CSXT and NSR will each have the right, for an initial term of 25 years, to use and operate, as part of their respective systems, the NYC-Allocated Assets and the PRR-Allocated Assets. Those agreements will require CSXT and NSR each to bear the responsibility for and the cost of operating and maintaining their respective Allocated Assets. CSXT and NSR will each receive for its own benefit and in its own name all revenues and profits arising from or associated with the operation of its Allocated Assets.

CSXT will pay NYC an operating fee based on the fair market rental value of the NYC-Allocated Assets. NSR will similarly pay PRR an operating fee based on the fair market rental value of the PRR-Allocated Assets. CSXT and NSR will have the right to receive the benefits of NYC and PRR, respectively, under any contract or agreement included in the NYC-Allocated Assets or the PRR-Allocated Assets, respectively, and, with the consent of NYC and PRR, respectively, to modify or amend any such contract or agreement on behalf of NYC and PRR.

⁵ At least some of the SSO Facilities will apparently be operated for the joint benefit of CSX and NS "for a short period" only. *See* CSX/NS-18 at 12 (lines 2-5).

CSXT and NSR will each have the right to renew its Allocated Assets Operating Agreement for two additional terms of ten years each. The Allocated Assets Operating Agreements contemplate that, upon termination of the agreements, CSXT and NSR will be deemed to have returned their Allocated Assets to NYC or PRR, subject to any regulatory requirements.

Shared Assets Areas and Operating Agreements. Both CSXT and NSR will be permitted to serve shipper facilities located within the three Shared Assets Areas (North Jersey, South Jersey/Philadelphia, and Detroit), which will be owned, operated, and maintained by CRC for the exclusive benefit of CSX and NS. CSXT and NSR will enter into a Shared Assets Area Operating Agreement with CRC in connection with each of the Shared Assets Areas, and CRC will grant to CSXT and NSR the right to operate their respective trains, with their own crews and equipment and at their own expense, over any tracks included in the Shared Assets Areas. CSXT and NSR will each have exclusive and independent authority to establish all rates, charges, service terms, routes, and divisions, and to collect all freight revenues, relating to freight traffic transported for its account within the Shared Assets Areas. Other carriers that previously had access to points within the Shared Assets Areas will continue to have the same access as before.

(1) The North Jersey Shared Assets Area encompasses all northern New Jersey trackage east of and including the NEC, and also (a) certain line segments north of the NEC as it turns East to enter the tunnel under the Hudson River, (b) the CRC Lehigh line west to Port Reading Junction, (c) the rights of CRC on the New Jersey Transit Raritan line, (d) the CRC Port Reading Secondary line west to Bound Brook, (e) the CRC Perth Amboy Secondary line west to South Plainfield, and (f) the NEC local service south to the Trenton area.

(2) The South Jersey/Philadelphia Shared Assets Area encompasses all CRC "Philadelphia" stations and stations within the Philadelphia City limits, industries located on the CRC Chester Industrial and Chester Secondary tracks, all CRC trackage in Southern New Jersey, CRC's rights on the NEC north from Zoo Tower in Philadelphia to Trenton, NJ, and the Ameriport intermodal terminal and any replacement of such terminal built substantially through public funding.

(3) The Detroit Shared Assets Area encompasses all CRC trackage and access rights east of the CP-Townline (Michigan Line MP 7.4) and south to and including Trenton (Detroit Line MP 20).⁶

Other Areas with Special Treatments. A number of other areas, though not referred to as Shared Assets Areas, are nevertheless subject to special arrangements that provide for a sharing of routes or facilities to a certain extent.

(1) Monongahela Area: Although the CRC lines formerly a part of the Monongahela Railway will be operated by NSR, CSXT will have equal access for 25 years, subject to renewal, to all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern.

(2) Chicago Area: Both CSXT and NSR will have access to CRC's rights concerning access to and use of the Willow Springs Yard of The Burlington Northern and Santa Fe Railway Company (BNSF); applicants will enter into an agreement concerning their respective rights as successors to Conrail and as parties controlling the controlling shareholder in the Indiana Harbor Belt Railway (IHB), a 51%-owned subsidiary of CRC (the stock of IHB will be a CRC-retained asset); certain trackage rights of CRC over IHB will be assigned or made available to NYC to be operated by CSXT or to PRR to be operated by NSR; CSXT and NSR will enter into an agreement to permit each of them to maintain current access and trackage rights enjoyed by them over terminal railroads in the Chicago area; and CSX will be granted an option, exercisable if CSXT and BNSF come under common control, to purchase the Streator Line from Osborne, IN, to Streator, IL.

(3) Ashtabula Harbor Area: NSR will have the right to operate and control CRC's Ashtabula Harbor facilities, with CSXT receiving use and access, up to a proportion of the total ground storage, throughput, and tonnage capacity of 42%.

⁶ For a more complete description of the three Shared Assets Areas, see CSX/NS-18 at 46-49 (and references there cited).

- (4) Buffalo Area: CSXT will operate Seneca Yard, and NSR will receive access to yard tracks in that yard.
- (5) Cleveland Area: CRC's switching yard at Collinwood will be operated by CSXT and its Rockport Yard will be operated by NSR.
- (6) Columbus, OH: NSR will operate CRC's Buckeye Hump Yard, and CSXT will operate the former Local Yard and intermodal terminal at Buckeye.
- (7) Erie, PA: Norfolk and Western Railway Company (NW, a wholly owned NSR subsidiary) will have a permanent easement and the right to build a track on the easement along the CRC right of way through Erie, PA, to be operated by CSXT. NW will have trackage rights in Erie to connect its route from Corry to its existing Buffalo-Cleveland line if such connection can be achieved without using the CRC Buffalo-Cleveland line to be operated by CSXT.
- (8) Fort Wayne, IN: CSX will operate the line between Fort Wayne and Chicago, currently owned by NSR.
- (9) Indianapolis, IN: NSR will have overhead trackage rights from Lafayette and Muncie to Hawthorne Yard to serve, via CSXT switch, shippers that presently receive service from two railroads.
- (10) Toledo, OH: CRC's Stanley Yard will be operated by CSXT, and its Airline Junction Yard will be operated by NSR.
- (11) Washington, D.C.: CRC's Landover Line from Washington, D.C., to Landover, MD, will be allocated to NYC, and NSR will be given overhead trackage rights.

(12) Allocation of Rights with Respect to Freight Operations Over Amtrak's NEC: CRC's NEC overhead trackage rights north of New York (Penn Station) will be assigned to NYC. Both NYC and PRR will have overhead rights to operate trains between Washington, D.C., and New York (Penn Station), subject to certain limitations. From Zoo Tower, Philadelphia, to Penn Station, NY, CRC's NEC rights to serve local customers will be part of the Retained Assets and CRC will assign those rights to NYC and PRR, with NYC and PRR having equal access to all local customers and facilities. Between Washington, D.C., and Zoo Tower, Philadelphia, CRC's NEC rights to serve local customers will be assigned to PRR. The right to serve local customers on the NEC north of New York (Penn Station) will be assigned to NYC.⁷

SUCCESSION TO CONRAIL ACTIVITIES. Applicants intend that the Allocated Assets conveyed to NYC and PRR will be operated for them by CSXT and NSR, respectively, and that both the Allocated Assets conveyed to NYC and PRR as well as the Retained Assets made available by CRC to CSXT or NSR or both will be enjoyed and used by CSXT and NSR (subject to the terms of the governing agreements) as if the carrier in question were itself CRC. Applicants similarly intend that the Shared Assets Areas will be used, enjoyed, and operated as fully by CSXT and NSR as if each of them were CRC.

THE CONTINUING CONRAIL ACTIVITIES. From the Closing Date forward, CSXT and NSR will be responsible for all of the operating expenses and new liabilities attributable to the assets which they are operating. It is expected, however, that most of the pre-Closing Date liabilities of CRC, CRR, and their subsidiaries will remain in place. It is contemplated that CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants expect that such payments will be sufficient to permit CRC and its subsidiaries (1) to cover their operating, maintenance, and other expenses, (2) to pay all of their obligations as they mature, (3) to provide dividends to CRR sufficient to permit it to discharge its debts and obligations as they mature, and (4) to receive a fair return for the operation, use, and enjoyment by CSXT and NSR of the Allocated Assets and Shared Assets Areas. Applicants add, however, that if for any reason these sources of funds to CRC and CRR prove insufficient to permit them to pay and discharge their obligations, CSX and NS have agreed that CRR Holdings shall provide the necessary funds, which it will obtain from CSXC and NSC.

⁷ For a more complete description of the areas addressed here under the heading "Other Areas with Special Treatments," see CSX/NS-18 at 49-54 (and references there cited).

Applicants anticipate that, following the Division of Conrail, approximately 350 employees will be employed by Conrail in the Philadelphia area (where the headquarters of CRR and CRC are now located). These employees will include Conrail employees managing and operating trains for CSX and NS, the employees in the local Shared Assets Area, and the management personnel for the continuing Conrail functions. In addition, each of CSX and NS anticipates establishing a regional headquarters-type function in Philadelphia at which an undetermined number of additional personnel will be employed.

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

"2-to-1" SITUATIONS. Applicants claim: that the division of Conrail proposed in the primary application has enabled applicants to avoid, "wherever possible," situations where shippers will see their rail options decline from two carriers to one; and that in "virtually all of the few" 2-to-1 situations that the division proposed in the primary application would otherwise have entailed, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two rail carrier service. *See CSX/NS-18 at 4. See also CSX/NS-18 at 74-75* (CSX will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by CSX) and 80 (NS will provide trackage or haulage rights that will allow for alternative rail service to facilities that otherwise would be, as a result of the transaction proposed in the primary application, rail-served solely by NS).

LABOR IMPACT. Applicants have provided three Labor Impact Exhibits, each using a different base line in calculating the impacts that the transactions proposed in the primary application and the related filings will have on rail carrier employees. *See CSX/NS-26* (filed July 7, 1997), which: (a) corrects the single Labor Impact Exhibit filed with the primary application itself on June 23, 1997, *see CSX/NS-18 at 24-25; CSX/NS-20, Volume 3A at 485-546; and CSX/NS-20, Volume 3B at 493-526; and* (b) adds two additional Labor Impact Exhibits. *See also* Decision No. 7, served May 30, 1997, slip op. at 8-9 (we required applicants to use the year 1995 as the base line for setting forth the impacts the proposed transactions will have on rail carrier employees, but we added that applicants, if they were so inclined, would be allowed to supplement 1995 data with data demonstrating employment reductions in 1996 and/or 1997).

Applicants' 1996/97 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,090 jobs and the creation of 1,109 jobs (for a net loss of 1,981 jobs), and will also result in the transfer of an additional 2,323 jobs. *See CSX/NS-26, 1996/97 Exhibit at 13.* The 1996/97 Exhibit is based on an April 1, 1997 nonagreement employee count and a November 1996 agreement employee count.

Applicants' 1996 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 3,822 jobs and the creation of 1,152 jobs (for a net loss of 2,670 jobs), and will also result in the transfer of an additional 2,323 jobs. *See CSX/NS-26, 1996 Exhibit at 16.* The 1996 Exhibit is based on calendar year 1996 average monthly employment levels.⁴

Applicants' 1995 Labor Impact Exhibit projects, with respect to both the CSX and NS expanded systems, that the proposed transactions will result in the abolition of 6,654 jobs and the creation of 1,699 jobs (for a net loss of 4,955 jobs), and will also result in the transfer of an additional 2,288 jobs. *See CSX/NS-26, 1995 Exhibit at 33.* The 1995 Exhibit is based on calendar year 1995 average monthly employment levels. *But see CSX/NS-26, Peifer/Spenski V.S. at 1 n.1* (1995 data is incomplete).

Applicants emphasize that the projections contained in their Labor Impact Exhibits are short term projections; applicants maintain that, in the long term, the transactions proposed in the

⁴ The 1996 Labor Impact Exhibit submitted with the CSX/NS-26 filing on July 7, 1997, is a slightly corrected version of the Labor Impact Exhibit submitted with the primary application itself on June 23, 1997.

primary application and the related filings will provide opportunities for rail transportation growth and, therefore, new jobs. Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filings, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. See CSX/NS-18 at 25.

RELIEF REQUESTED IN THE PRIMARY APPLICATION. In the STB Finance Docket No. 33388 lead docket, applicants seek: approval of the transaction proposed in the primary application (in paragraph 1 below); approval of certain "elements" of that transaction, referred to as Transaction Elements (in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 below); and a "fairness determination" respecting the terms under which CSX and NS have acquired all of the common stock of CRR (in paragraph 12 below).

(1) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by CSXC and NSC (each a noncarrier corporation controlling one or more rail carriers) of joint control of, and the power to exercise joint control over, CRR (also a noncarrier corporation controlling one or more rail carriers). See 49 U.S.C. 11323(a)(5).⁹

(2) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the acquisition by NYC and PRR of, and of the operation by CSXT and NSR over, the CRC lines and other assets, including without limitation trackage and other rights, that will be allocated to NYC and PRR, respectively. Applicants also ask that we expressly provide that, pursuant to the sought approval and authorization under 49 U.S.C. 11323 and 11324, and notwithstanding any purported limitations on assignability, NYC and PRR each will have the same right, title, and interest in the CRC lines and other assets forming its part of the Allocated Assets as CRC itself now has, including the power to pass the use and enjoyment of those lines and other assets to CSXT and NSR.¹⁰

(3) Applicants request a declaratory order that 49 U.S.C. 10901 does not apply to the transfer of the Allocated Assets to NYC and PRR.¹¹ Applicants concede that, because NYC and PRR are not now carriers, an argument can be made that authority under 49 U.S.C. 10901 is required for the transfer; applicants maintain, however, that the transfer should be viewed in context as simply a part of a larger transaction involving the operation by CSX and NS of the assets to be transferred to NYC and PRR, respectively; and applicants claim that the transfer, when viewed in context, requires authorization not under 49 U.S.C. 10901 but rather under 49 U.S.C. 11323 and 11324. In the event we do not issue the sought declaratory order, applicants seek authorization for the transfer of the CRC assets to NYC and PRR: under 49 U.S.C. 10901; and, in order to bring the transfer within the scope of the immunizing power of 49 U.S.C. 11321(a), also under 49 U.S.C. 11323 and 11324.

(4) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (i) for CSXT and NSR to enter into the Allocated Assets Operating Agreements and to operate the assets held by NYC and PRR, respectively; (ii) for CSXT, NSR, and CRC to enter into the three Shared Assets Areas Operating Agreements and to operate the assets in such areas; and (iii) for CSX and NS to use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts). See 49 U.S.C. 11323(a)(2). See also 49 U.S.C. 11323(a)(6).

⁹ As applicants note, although joint control by CSXC and NSC of Conrail as a separately functioning rail system will last only until the Division is effected, such joint control, even though transitory, requires approval and authorization under 49 U.S.C. 11323(a)(5). See CSX/NS-18 at 90 & n.14.

¹⁰ The CRC lines and other assets to be allocated to NYC and PRR include both: (i) those owned by CRC; and also (ii) those not owned by CRC but operated by CRC under leases, trackage rights, and similar arrangements (such arrangements are hereinafter referred to as "Trackage Agreements"). Because applicants are concerned that CRC's interests under some of these Trackage Agreements may be subject to limitations on assignability, approval and authorization under 49 U.S.C. 11323 and 11324 has been sought in order to bring these Trackage Agreements within the scope of the immunizing power of 49 U.S.C. 11321(a). See *Norfolk & Western Ry. Co. v. American Train Dispatchers' Ass'n*, 499 U.S. 117 (1991).

¹¹ As applicants note, the immunizing power of 49 U.S.C. 11321(a) does not extend to an authorization under 49 U.S.C. 10901.

Applicants also request a declaratory order, or a declaration to the same effect as a declaratory order: (a) that, by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS will have the authority to conduct operations over the routes of CRC covered by the Trackage Agreements as fully and to the same extent as CRC itself could, whether or not such routes are listed in CSX/NS-18, Appendix L (CSX/NS-18 at 216-24), and notwithstanding any clause in any such agreement purporting to limit or prohibit unilateral assignment by CRC of its rights thereunder; and (b) that, also by virtue of the immunizing power of 49 U.S.C. 11321(a), CSX and NS may use, operate, perform, and enjoy the Allocated Assets and the assets in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts) as fully and to the same extent as CRC itself could.

(5) For the period following the transfer of CRC assets to NYC and PRR, applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: (a) for CSXC, NSC, and CRR to continue to control NYC and PRR; and (b) for the common control, by CSXC, CSXT, NSC, NSR, CRR, and CRC of (i) NYC and PRR, and (ii) the carriers currently controlled by CSXC, CSXT, NSC, NSR, CRR, and CRC. Such authorization and approval will be necessary because, as applicants note: CRC, NYC, and PRR will not be part of a "single system" of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.

(6) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324: for the acquisition by CSXT of certain trackage rights over PRR; and for the acquisition by NSR of certain trackage rights over NYC. See 49 U.S.C. 11323(a)(6). The lines over which these trackage rights will run are listed in items 1.B and 1.A, respectively, of Schedule 4 to the Transaction Agreement. See CSX/NS-25, Volume 8B at 110-21.¹²

(7) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of the trackage rights provided to CSXT, see CSX/NS-25, Volume 8C at 715-57, to access all current and future facilities located on or accessed from the former Monongahela Railway, including the Waynesburg Southern. See 49 U.S.C. 11323(a)(6).¹³

(8) The trackage rights covered by paragraph 6 include, among many other such trackage rights, certain trackage rights to be acquired by NSR over the NYC Bound Brook, NJ-Woodbourne, PA line. See CSX/NS-25, Volume 8B at 112 (item 20). These particular trackage rights, however, are intended to be temporary in duration, and will expire, by their terms, at the end of 3 years. Applicants therefore seek authorization, pursuant to 49 U.S.C. 10903, for NSR to discontinue the Bound Brook-Woodbourne trackage rights in accordance with the terms thereof.¹⁴

(9) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, of certain incidental trackage rights granted in connection with operations within the Shared

¹² The trackage rights identified in Schedule 4 to the Transaction Agreement, see CSX/NS-25, Volume 8B at 110-21, fall into three categories: existing trackage rights held by CRC over other carriers, which are covered in paragraph 4 above; new trackage rights to be held by CSXT over PRR and by NSR over NYC, which are covered in this paragraph 6; and certain additional new trackage rights provided for in the related filings in STB Finance Docket No. 33388 (Sub-Nos. 25, 27, 28, 29, 30, 32, 33, & 34), which are covered in the "Related Filings" discussion below. See CSX/NS-18 at 96 n.17.

¹³ Applicants indicate, see CSX/NS-18 at 96 (lines 9-10), that the rights referenced in paragraphs 6 and 7 fall under 49 U.S.C. 11323(a)(2) (approval and authorization required for a "purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers"). The rights referenced in paragraphs 6 and 7, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6) (approval and authorization required for the acquisition "by a rail carrier of trackage rights over, . . . or joint use of, a railroad line . . . owned or operated by another rail carrier").

¹⁴ Applicants indicate that, in due course, NSR will "abandon" its Bound Brook-Woodbourne trackage rights. See CSX/NS-18 at 96-97 (item e) and 103 (item e). We think it would be more accurate to say that NSR will "discontinue" these trackage rights.

Assets Areas. These trackage rights include: (i) trackage rights granted by CSXT to NSR and CRC; and (ii) trackage rights granted by NSR to CSXT and CRC. *See CSX/NS-18 at 97-98. See also CSX/NS-25, Volume 8C at 76, 115-16, and 156.*¹⁵

(10) To the extent that any matter concerning either (i) the joint ownership by CSX and NS of CRR, CRC, NYC, and/or PRR, or (ii) the Transaction Agreement and the Ancillary Agreements referred to therein,¹⁶ including the provision for handling Existing Transportation Contracts, might be deemed to be a pooling or division by CSX and NS of traffic or services or of any part of their earnings, applicants request approval for such pooling or division under 49 U.S.C. 11322.¹⁷

(11) Applicants seek approval and authorization, pursuant to 49 U.S.C. 11323 and 11324, for the transfer of CRC's Streator Line from CRC to NSR/NW.¹⁸

(12) Applicants seek a determination that the terms under which CSX and NS, both individually and jointly, have acquired all of the common stock of CRR are fair and reasonable to the stockholders of CSXC, the stockholders of NSC, and the stockholders of CRR. *See Schwabacher v. United States*, 334 U.S. 192 (1948).

RELATED FILINGS. In STB Finance Docket No. 33388 (Sub-No. 1), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Crestline, OH, a connection track in the northwest quadrant of the intersection of CRC's North-South line between Greenwich, OH, and Indianapolis, IN, and CRC's East-West line between Pittsburgh, PA, and Ft. Wayne, IN. The connection will extend approximately 1,507 feet between approximately MP 75.4 on the North-South line and approximately MP 188.8 on the East-West line.¹⁹

In STB Finance Docket No. 33388 (Sub-No. 2), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Willow Creek, IN, a connection track in the southeast quadrant of the intersection between

¹⁵ Applicants indicate, *see CSX/NS-18 at 98 (lines 1-2)*, that the rights referenced in paragraph 9 fall under 49 U.S.C. 11323(a)(2). The rights referenced in paragraph 9, however, appear to be trackage rights, and we therefore believe that these rights fall under 49 U.S.C. 11323(a)(6).

¹⁶ As used in the Transaction Agreement, the term "Ancillary Agreements" means the Equipment Agreements, the CSXT Operating Agreement, the NSR Operating Agreement, the NYC LLC Agreement, the PRR LLC Agreement, the CRR Holdings LLC Agreement, the Trackage Rights Agreements, the CSXT/NSR Haulage Agreements, the Tax Allocation Agreement, the Shared Assets Agreements, and the Other Operating Agreements. *See CSX/NS-25, Volume 8B at 10.*

¹⁷ Such approval under 49 U.S.C. 11322 is sought because, as applicants note, payments with respect to the rights granted in connection with both the Allocated Assets and the Shared Assets Areas, as well as payments for the services performed by CRC in connection with the Shared Assets Areas, are to be made by CSXT and NSR to entities (CRC or its subsidiaries) in which both CSX and NS will have economic interests.

¹⁸ *See Decision No. 4 (served May 2, 1997), slip op. at 7 n.16:* "The transfer of the Streator line from CRC to NSR will be considered in the lead docket because this transfer, like all aspects of the division of CRC assets between CSX and NS, is integral to, and an inseparable part of, the control transaction." *See also CSX/NS-22 at 446*, defining the Streator Line as the CRC line running: (i) between MP 6.3 at Osborn, IN, and MP 33.2 at Schneider, IN; and (ii) between MP 56.4 at Wheatfield, IN, and MP 186.0 at Moronts, IL.

¹⁹ In accordance with the waiver granted in Decision No. 9, served June 12, 1997, and as indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline connection track, if authorized, will be examined in the context of the environmental impact statement (EIS) that will be prepared by our Section of Environmental Analysis (SEA).

CSXT's line between Garrett, IN, and Chicago, IL, and CRC's line between Porter, IN, and Gibson Yard, IN (outside Chicago). The connection will extend approximately 2,800 feet between approximately MP BI-236.5 on the CSXT line and approximately MP 248.8²⁰ on the CRC line.²¹

In STB Finance Docket No. 33388 (Sub-No. 3), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, in Greenwich, OH, connection tracks in the northwest and southeast quadrants of the intersection between the CSXT line between Chicago and Pittsburgh and the CRC line between Cleveland and Cincinnati. The connection in the northwest quadrant, a portion of which will be constructed utilizing existing trackage and/or right-of-way of the Wheeling & Lake Erie Railway Company, will extend approximately 4,600 feet between approximately MP BG-193.1 on the CSXT line and approximately MP 54.1 on the CRC line. The connection in the southeast quadrant will extend approximately 1,044 feet between approximately MP BG-192.5 on the CSXT line and approximately MP 54.6 on the CRC line.²²

In STB Finance Docket No. 33388 (Sub-No. 4), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney Junction, OH, a connection track in the southeast quadrant of the intersection between the CSXT line between Cincinnati, OH, and Toledo, OH, and the CRC line between Cleveland, OH, and Indianapolis, IN. The connection will extend approximately 3,263 feet between approximately MP BE-96.5 on the CSXT line and approximately MP 163.5 on the CRC line.²³

In STB Finance Docket No. 33388 (Sub-No. 5), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Sidney, IL, a connection track between the UPRR north-south line between Chicago, IL, and St. Louis, MO, and the NW east-west line between Decatur, IL, and Tilton, IL. The connection, which will

²⁰ We question the MP 248.8 designation, *see* CSX/NS-22 at 106 (line 1); our review of CRC's timetable for its Porter Branch suggests that the correct designation may be MP 246.8. We also question CSXT's assertion that the Sub-No. 2 connection track will provide a direct link between CRC and CSXT tracks "and the parallel IHB line at Willow Creek," *see* CSX/NS-22 at 106 (lines 16-17); our review of CRC's timetable for its Porter Branch suggests that the link with IHB may be at Ivanhoe, not at Willow Creek.

²¹ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 2) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Willow Creek connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²² In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Greenwich connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-No. 3) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Greenwich connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²³ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney Junction connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 4) embraced docket; and (ii) operation thereover by CSXT. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney Junction connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

be in the southwest quadrant of the intersection of the two lines, will be approximately 3,256 feet in length.²⁴

In STB Finance Docket No. 33388 (Sub-No. 6), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Alexandria, IN, a connection track between the CRC line between Anderson, IN, and Goshen, IN, and the NW line between Muncie, IN, and Frankfort, IN. The connection, which will be in the northeast quadrant of the intersection of the two lines, will be approximately 970 feet in length.²⁵

In STB Finance Docket No. 33388 (Sub-No. 7), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Bucyrus, OH, a connection track between NW's Bellevue, OH-Columbus, OH line and CRC's Ft. Wayne, IN-Crestline, OH line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 2,467 feet in length.²⁶

In STB Finance Docket No. 33388 (Sub-No. 8), CSXT has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Little Ferry, NJ, two connection tracks between the CRC Selkirk-North Bergen line and the New York, Susquehanna and Western Railway (NYS&W) Paterson-Croton line. The first connection will extend approximately 480 feet between approximately MP 5.75 on the CRC line and approximately MP 5.65 on the NYS&W line. The second connection will extend approximately 600 feet between approximately MP 4.04 on the CRC line and approximately MP 4.15 on the NYS&W line.

In STB Finance Docket No. 33388 (Sub-No. 9), CSXT and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSXT subsidiary) have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of 75th Street SW, Chicago, IL, in the southwest quadrant of the intersection of the lines of B&OCT and The Belt Railway Company of Chicago (BRC). The connection will extend approximately 1,640 feet between approximately MP DC-22.43 on B&OCT's North-South line between Cleveland and Brighton Park, and approximately MP 12.95 on BRC's East-West line between Bedford Park Yard and South Chicago Yard.

In STB Finance Docket No. 33388 (Sub-No. 10), CSXT has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate a connection track in Exermont, IL, in the northwest quadrant of the intersection between CSXT's Cincinnati-East St. Louis line and CRC's Cleveland-East St. Louis line. The connection will

²⁴ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Sidney connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 5) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Sidney connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁵ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Alexandria connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 6) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Alexandria connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

²⁶ In accordance with the waiver granted in Decision No. 9, and as indicated in the notice published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Bucyrus connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 7) embraced docket; and (ii) operation thereover by NW. The operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Bucyrus connection track, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

extend approximately 3,590 feet between approximately MP BC-327.9 on the CSXT line and approximately MP 231.4 on the CRC line.

In STB Finance Docket No. 33388 (Sub-No. 11), CSXT and B&OCT have filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track in the vicinity of Lincoln Avenue in Chicago, IL, in the northeast quadrant of the intersection of the lines of B&OCT and IHB. The connection will extend approximately 840 feet between approximately MP DC-9.5 on B&OCT's line between Cleveland and Barr Yard, and approximately MP 10.43 on IHB's line between Gibson Yard and Blue Island Jct.

In STB Finance Docket No. 33388 (Sub-No. 12), NSR has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Kankakee, IL, a connection track between the Illinois Central Railroad Company (ICR) Chicago, IL-Gibson City, IL north-south line, over which NSR has trackage rights, and the CRC Sreator, IL-Schneider, IN east-west line. The connection, which will be in the southeast quadrant of the intersection of the two lines, will be approximately 1,082 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 13), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolono, IL, in the southeast quadrant of the intersection of the ICR line between Chicago, IL, and Centralia, IL, and the NW line between Decatur, IL, and Tilton, IL. The connection will be about 1,600 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 14), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Butler, IN, a connection track between NW's Detroit, MI-Fort Wayne, IN line and CRC's Elkhart, IN-Toledo, OH line. The connection, which will be in the northwest quadrant of the intersection of the two lines, will be approximately 1,750 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 15), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Tolleston, IN. This track, which will connect a NW line and a CRC line, will be about 930 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 16), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a double track connection at Hagerstown, MD. This track, which will connect a NW line and a CRC line, will be about 800 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 17), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate a connection track at Ecorse Junction (Detroit), MI. This track, which will connect a NW line and a CRC line, will be about 400 feet in length.

In STB Finance Docket No. 33388 (Sub-No. 18), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Blasdell (Buffalo), NY, a connecting track approximately 2,500 feet in length between NW's Erie, PA-Buffalo, NY Line and CRC's Buffalo, NY-Harrisburg, PA Line.

In STB Finance Docket No. 33388 (Sub-No. 19), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Gardenville Junction (Buffalo), NY, a connecting track approximately 1,700 feet in length between CRC's Buffalo, NY-Harrisburg, PA Line and CRC's Ebenezer Secondary Track.

In STB Finance Docket No. 33388 (Sub-No. 20), NW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Columbus, OH, a NW-CRC connecting track approximately 1,423 feet in length. See CSX/NS-22 at 315 (map).

In STB Finance Docket No. 33388 (Sub-No. 21), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Oak Harbor, OH, a connecting track approximately 4,965 feet in length between, and in the northwest quadrant of the intersection of, NW's Toledo, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 22), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10901 to construct and operate, at Vermilion, OH, a connecting track approximately 5,398 feet in length between NW's Cleveland, OH-Bellevue, OH line and CRC's Toledo, OH-Cleveland, OH line.

In STB Finance Docket No. 33388 (Sub-No. 23), NW has filed a notice of exemption under 49 CFR 1180.2(d)(5) regarding a joint project involving relocation of NW's rail line running down 19th Street in Erie, PA (a distance of approximately 6.1 miles, between approximately MP B-85.10 near Downing Avenue and approximately MP B-91.25 west of Pittsburgh Avenue) to a parallel railroad right-of-way currently owned and operated by CRC that will be allocated to CSXT in connection with the primary application.

In STB Finance Docket No. 33388 (Sub-No. 24), CRC and NW have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25 regarding the acquisition by CRC (or by NYC) of the Fort Wayne Line, between MP 441.8 at Fort Wayne, IN, and MP 319.2 at Tolleston (Gary), IN. *See* CSX/NS-22 at 446 and 449 (indicating that the mileposts are as stated in the preceding sentence). *But see* CSX/NS-22 at 461-62 (indicating that the mileposts are MP 441.8 at Tolleston and MP 319.2 at Fort Wayne).

In STB Finance Docket No. 33388 (Sub-No. 25), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over approximately 32.7 miles of a CSXT line between Lima, OH (Erie Junction), at or near CSXT MP BE-129.2, and Sidney, OH, at or near CSXT MP BE-96.5. The trackage rights to be acquired by NW include overhead trackage rights between Lima and Sidney and local trackage rights that will allow NW to serve 2-to-1 shippers at Sidney.

In STB Finance Docket No. 33388 (Sub-No. 26), CSXC, CSXT, and The Lakefront Dock and Railroad Terminal Company (LD&RT) have filed an application seeking approval and authorization under 49 U.S.C. 11323-25 for the acquisition and exercise by CSXC and CSXT of control of LD&RT, and the common control of LD&RT and CSXT and the other rail carriers controlled by CSXT and/or CSXC. LD&RT, a Class III railroad in which CSXT and CRC each currently owns a 50% voting stock interest, operates approximately 17 miles of yard tracks at Oregon, OH.

In STB Finance Docket No. 33388 (Sub-No. 27), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 5 to 6 miles of a CSXT line between Columbus, OH (Parsons Yard), at or near CSXT MP CJ 71.5, and Scioto, OH, at or near CSXT MP CK 2.5.

In STB Finance Docket No. 33388 (Sub-No. 28), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 2.02 miles of a NW line between Columbus, OH (Watkins Yard), at or near NW MP N-696.7, and Bannock, OH, at or near NW MP N-698.72.

In STB Finance Docket No. 33388 (Sub-No. 29), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 1.4 miles of a NW line between Erie Junction (Delray), MI, at or near MP D4.4, and Ecorse Junction, MI, at or near MP D5.8.

In STB Finance Docket No. 33388 (Sub-No. 30), NW and CSXT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage rights over approximately 1.7 miles of a CSXT line between the connection of two CSXT lines near Washington Street at or near MP 123.7, and the connection of two CSXT lines at Pine at or near MP 122.0, in Indianapolis, IN.

In STB Finance Docket No. 33388 (Sub-No. 31), CSXC and CSXT have filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 11323-25, to the extent those provisions may apply, regarding the acquisition by CSXC and CSXT of control of Albany Port Railroad Corporation (APR). APR, which operates approximately 16.5 miles of track at the Port of Albany, NY, is owned in equal 50% shares by CRC and D&H Corporation (D&H, an affiliate of Canadian Pacific Limited); and, if the primary application is approved, CRC's 50% interest in APR will be allocated to CSXT in the Division.²⁷

In STB Finance Docket No. 33388 (Sub-No. 32), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of overhead trackage

²⁷ Implicit in the Sub-No. 31 docket is a request for a determination that acquisition by CSXC and CSXT of a 50% interest in APR will not enable CSXC and CSXT to "control" APR within the meaning of 49 U.S.C. 11323.

rights over approximately 9.8 miles of the IHB McCook Branch between the connection of IHB and B&OCT at McCook, IL, at or near MP 28.5, and the connection of IHB and Canadian Pacific Rail System at Franklin Park, IL, at MP 39.3.²⁸

In STB Finance Docket No. 33388 (Sub-No. 33), NW and B&OCT have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by NW of trackage rights over B&OCT's Barr Subdivision between the connection of the NSR Chicago Line and the B&OCT line at Pine Junction, IN (CP 497) and: (i) the connection with B&OCT's McCook Subdivision at Blue Island Junction, IL, at or near MP DC 14.9, a distance of approximately 14.9 miles; and beyond to (ii) the B&OCT/IHB connection at McCook, IL, at or near MP 28.5, a distance of approximately 13.6 miles.

In STB Finance Docket No. 33388 (Sub-No. 34), CSXT and NW have filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding the acquisition by CSXT of overhead trackage rights over approximately 45.5 miles of a NW line between Bucyrus, OH, at or near NW MP S-63.0, and Sandusky, OH, at or near NW MP S-108.5. The trackage rights to be acquired by CSXT, although described as "overhead" trackage rights, will allow CSXT to access 2-to-1 shippers at Sandusky.

In STB Docket Nos. AB-167 (Sub-No. 1181X) and AB-55 (Sub-No. 551X), CRC and CSXT, respectively, have filed a notice of exemption under 49 CFR 1152.50 to abandon an approximately 29-mile portion of the Danville Secondary Track between MP 93.00± at Paris, IL, and MP 122.00± at Danville, IL, in Edgar and Vermilion Counties, IL. The line, which is presently owned and operated by CRC and which is proposed to be operated by CSXT pursuant to the authority sought in the primary application, traverses United States Postal Service Zip Codes 61346, 61870, 61883, 61924, and 61944.

In STB Docket No. AB-290 (Sub-No. 194X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon a line between MP SK-2.5 near South Bend, IN, and MP SK-24.0 near Dillon Junction, IN, a distance of approximately 21.5 miles in St. Joseph and La Porte Counties, IN. The line traverses or adjoins United States Postal Service Zip Codes 46613, 46614, 46619, 46536, 46554, and 46365.

In STB Docket No. AB-290 (Sub-No. 195X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP I-137.3 near Dillon Junction, IN, and MP I-158.8 near Michigan City, IN, a distance of approximately 21.5 miles in La Porte County, IN. The line traverses or adjoins United States Postal Service Zip Codes 46350 and 46360.

In STB Docket No. AB-290 (Sub-No. 196X), NW has filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line between MP TM-5.0 in Toledo, OH, and MP TM-12.5 near Maumee, OH, a distance of approximately 7.5 miles in Lucas County, OH. The line traverses or adjoins United States Postal Service Zip Codes 43612, 43613, 43606, 43607, 43609, and 43614.

In STB Docket No. AB-290 (Sub-No. 197X), NW has filed a notice of exemption under 49 CFR 1152.50 to abandon the Toledo Pivot Bridge extending between MP CS-2.8 and MP CS-3.0 near Toledo, OH, a distance of approximately 0.2 miles in Lucas County, OH. The line traverses or adjoins either United States Postal Service Zip Code 42611 or United States Postal Service Zip Code 43611 (see CSX/NS-22 at 84-86).

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers, and requirements. See 49 U.S.C. 11321-25; 49 CFR part 1180. We are also accepting for consideration all of the related filings, which are also in substantial compliance with the applicable regulations, waivers, and requirements.²⁹

²⁸ Applicants indicate that the Sub-No. 32 trackage rights run for approximately 9.8 miles. See CSX/NS-22 at 420 and 425. By our calculations, however, these trackage rights would appear to run for approximately 10.8 miles.

²⁹ We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

PUBLIC INSPECTION. The primary application and all related filings, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

PROCEDURAL SCHEDULE. In Decision No. 6, served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387, we adopted a procedural schedule.³⁰ To provide further notice to interested persons, we have attached that schedule to this decision as Appendix B and have filled in all of the dates.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives.

We will serve, as soon as practicable after August 7, 1997, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record will also be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Leventhal and all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs) and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a POR.

As noted in Decision No. 6, slip op. at 5, 62 FR at 29389, we will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289-4357.³¹

³⁰ In Decision No. 9, we added to the procedural schedule adopted in Decision No. 6 by requiring applicants to file, by September 5, 1997, Preliminary Draft Environmental Assessments for the construction projects referenced in the STB Finance Docket No. 33388 (Sub-Nos. 1, 2, 3, 4, 5, 6, and 7) embraced dockets. As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket; and (ii) operation thereover by CSXT. As indicated in the notices published in the *Federal Register* concurrently herewith, we will consider on an expedited basis, in advance of our consideration of the primary application: (i) the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively; and (ii) operation thereover by applicants. As further indicated in the notice published on July 11, 1997, and in the notices published concurrently herewith, the operational implications of the transactions proposed in the primary application and in the related filings as a whole, including proposed operations over the Crestline, Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, if authorized, will be examined in the context of the EIS that will be prepared by SEA.

³¹ An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures--Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim (continued...))

DESCRIPTIONS OF, AND PETITIONS RESPECTING, RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS. Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180),³¹ railroads intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 22, 1997. The description must state that the commenting railroad intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 22, 1997. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding. Parties should contact the Office of the Secretary, Case Control Unit, at 202-565-1681 to obtain docket numbers for their responsive (including inconsistent) applications.

Any responsive (including inconsistent) applicant must file, by October 1, 1997, either: (1) a verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application. See Decision No. 6, slip op. at 3-4, 62 FR at 29388-89.

RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS, COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT. Any interested persons, including the U.S. Secretary of Transportation and the U.S. Attorney General, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997. This deadline applies to comments, etc., addressing either the primary application or any of the related filings submitted with the primary application. An original and 25 copies of such comments, etc., must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, as previously noted, parties are also requested to submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Secretary of Transportation, the U.S. Attorney General, Judge Leventhal, applicants' representatives, and all other parties of record.

Written comments, etc., shall include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

-OTHER DATES. The procedural schedule adopted in Decision No. 6 further provides: (1) that rebuttal in support of the primary application, or in support of any of the related filings,

³¹(...continued)

rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

³² See Decision No. 2, served April 21, 1997, and published that day in the *Federal Register* at 62 FR 19390.

must be filed by December 15, 1997; (2) that responses to any responsive (including inconsistent) applications, as well as responses to all comments, protests, requests for conditions, and other opposition evidence and argument, must also be filed by December 15, 1997; (3) that rebuttal in support of any responsive (including inconsistent) applications must be filed by January 14, 1998; (4) that briefs may be filed by February 23, 1998; (5) that oral argument will be heard on April 9, 1998; (6) that, at the discretion of the Board, a voting conference will be held on April 14, 1998; and (7) that the final written decision, addressing the primary application and the related filings, and also addressing any responsive (including inconsistent) applications, will be served on June 8, 1998.

DATES RESPECTING ABANDONMENTS. We will process the abandonments proposed by applicants in accordance with the overall procedural schedule, rather than applying the procedural schedules required by 49 U.S.C. 10904 and our 49 CFR part 1152 abandonment regulations.³³ Therefore, with respect to each related abandonment proposal: (1) in order to be designated a party of record (POR), a person must file with the Secretary of the Board, no later than August 7, 1997, an original plus 25 copies of a notice of intent to participate along with a certificate of service indicating that the notice has been properly served on Judge Leventhal and on applicants' representatives; (2) opposition submissions, requests for public use conditions,³⁴ and/or Trails Act requests³⁵ must be filed by October 21, 1997; (3) rebuttal in support of the abandonment proposals, and/or responses to any requests for public use conditions and Trails Act requests, must be filed by December 15, 1997; (4) as with the primary application and all related matters, briefs may be filed by February 23, 1998, oral argument will be held on April 9, 1998, and a voting conference will be held, at the Board's discretion, on April 14, 1998; and (5) if, in the final decision served on June 8, 1998, we approve the primary application, we shall also address, in that final decision, each of the abandonment proposals, and all matters (including requests for public use conditions and Trails Act requests) relative thereto; and if we exempt any of the abandonment proposals, we shall require interested persons to file, no later than 10 days after the date of service of the final decision, offers of financial assistance³⁶ with respect to any of the exempted abandonments.

DISCOVERY. In Decision No. 1, served April 16, 1997, this proceeding was assigned to Judge Leventhal for the handling of all discovery matters and the initial resolution of all discovery disputes. In Decision No. 10, served June 27, 1997, Judge Leventhal adopted discovery guidelines to govern the conduct of discovery in this proceeding.

DEADLINES APPLICABLE TO APPEALS AND REPLIES. As noted in Decision No. 6, slip op. at 7, 62 FR at 29390: any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision; any response to any such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

ENVIRONMENTAL REVIEW PROCESS: SCOPE. By notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332, the Board's Section of Environmental Analysis (SEA): (a) provided notice to interested persons that, to evaluate and consider the potential environmental impacts that may result from the transactions proposed in the primary application and in the related filings, SEA intends to prepare an environmental impact statement (EIS); (b) set out the draft scope of the EIS that SEA intends to prepare; (c) directed that written comments respecting the draft scope be filed by August 6, 1997; and (d) set forth projected time frames for conducting the EIS process.

ELECTRONIC SUBMISSIONS. In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes

³³ All references herein to our 49 CFR part 1152 abandonment regulations are to our new regulations, which took effect on January 23, 1997. See *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903*, STB Ex Parte No. 537, 61 FR 67876 (Dec. 24, 1996), 62 FR 34669 (June 27, 1997).

³⁴ See 49 CFR 1152.28 (61 FR at 67894).

³⁵ See 49 CFR 1152.29 (61 FR at 67894-96).

³⁶ See 49 CFR 1152.27 (61 FR at 67891-94).

(3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or convertible into, WordPerfect 7.0. Spreadsheets must be in, or convertible into, Lotus 1-2-3 Version 7.¹⁷ Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.¹⁸

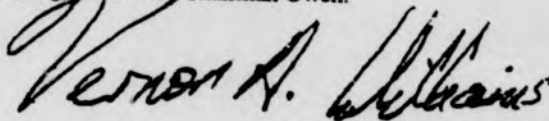
This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 33388, and the related filings in the various embraced dockets listed in Appendix A, are accepted for consideration.
2. The parties shall comply with the procedural requirements described in this decision.
3. Any appeal to a decision issued by Judge Leventhal must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.
4. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.
5. This decision is effective on July 23, 1997.

Decided: July 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams,
Secretary

¹⁷ Parties intending to submit spreadsheets in formats other than Lotus 1-2-3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible into Lotus 1-2-3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565-1613.

¹⁸ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

APPENDIX A: EMBRACED PROCEEDINGS

This decision covers both the STB Finance Docket No. 33388 lead proceeding and the following embraced proceedings:

- STB Finance Docket No. 33388 (Sub-No. 1), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Crestline, OH;*
- STB Finance Docket No. 33388 (Sub-No. 2), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Willow Creek, IN;*
- STB Finance Docket No. 33388 (Sub-No. 3), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Tracks at Greenwich, OH;*
- STB Finance Docket No. 33388 (Sub-No. 4), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Sidney Junction, OH;*
- STB Finance Docket No. 33388 (Sub-No. 5), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Union Pacific Railroad Company at Sidney, IL;*
- STB Finance Docket No. 33388 (Sub-No. 6), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Alexandria, IN;*
- STB Finance Docket No. 33388 (Sub-No. 7), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Bucyrus, OH;*
- STB Finance Docket No. 33388 (Sub-No. 8), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Little Ferry, NJ;*
- STB Finance Docket No. 33388 (Sub-No. 9), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at 75th Street SW, Chicago, IL;*
- STB Finance Docket No. 33388 (Sub-No. 10), *CSX Transportation, Inc.--Construction and Operation Exemption--Connection Track at Exermont, IL;*
- STB Finance Docket No. 33388 (Sub-No. 11), *CSX Transportation, Inc. and The Baltimore and Ohio Chicago Terminal Railroad Company--Construction and Operation Exemption--Connection Track at Lincoln Avenue, Chicago, IL;*
- STB Finance Docket No. 33388 (Sub-No. 12), *Norfolk Southern Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Kankakee, IL;*
- STB Finance Docket No. 33388 (Sub-No. 13), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Illinois Central Railroad Company at Tolono, IL;*
- STB Finance Docket No. 33388 (Sub-No. 14), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Butler, IN;*
- STB Finance Docket No. 33388 (Sub-No. 15), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Tolleston, IN;*
- STB Finance Docket No. 33388 (Sub-No. 16), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Hagerstown, MD;*

- STB Finance Docket No. 33388 (Sub-No. 17), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Ecorse Junction (Detroit), MI;*
- STB Finance Docket No. 33388 (Sub-No. 18), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Blasdell (Buffalo), NY;*
- STB Finance Docket No. 33388 (Sub-No. 19), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Gardenville Junction (Buffalo), NY;*
- STB Finance Docket No. 33388 (Sub-No. 20), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Columbus, OH;*
- STB Finance Docket No. 33388 (Sub-No. 21), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Oak Harbor, OH;*
- STB Finance Docket No. 33388 (Sub-No. 22), *Norfolk and Western Railway Company--Construction and Operation Exemption--Connecting Track With Consolidated Rail Corporation at Vermilion, OH;*
- STB Finance Docket No. 33388 (Sub-No. 23), *Norfolk and Western Railway Company--Joint Relocation Project Exemption--Over CSX Transportation, Inc. (Currently Consolidated Rail Corporation) at Erie, PA;*
- STB Finance Docket No. 33388 (Sub-No. 24), *Consolidated Rail Corporation--Acquisition Exemption--Line Between Fort Wayne, IN, and Tolleston (Gary), IN;*
- STB Finance Docket No. 33388 (Sub-No. 25), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*
- STB Finance Docket No. 33388 (Sub-No. 26), *CSX Corporation and CSX Transportation, Inc.--Control--The Lakefront Dock and Railroad Terminal Company;*
- STB Finance Docket No. 33388 (Sub-No. 27), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*
- STB Finance Docket No. 33388 (Sub-No. 28), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*
- STB Finance Docket No. 33388 (Sub-No. 29), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*
- STB Finance Docket No. 33388 (Sub-No. 30), *Norfolk and Western Railway Company--Trackage Rights Exemption--CSX Transportation, Inc.;*
- STB Finance Docket No. 33388 (Sub-No. 31), *CSX Corporation and CSX Transportation, Inc.--Control Exemption--Albany Port Railroad Corporation;*
- STB Finance Docket No. 33388 (Sub-No. 32), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company;*
- STB Finance Docket No. 33388 (Sub-No. 33), *Norfolk and Western Railway Company--Trackage Rights Exemption--The Baltimore and Ohio Chicago Terminal Railroad Company;*
- STB Finance Docket No. 33388 (Sub-No. 34), *CSX Transportation, Inc.--Trackage Rights Exemption--Norfolk and Western Railway Company;*
- STB Docket No. AB-167 (Sub-No. 1181X), *Consolidated Rail Corporation--Abandonment Exemption--In Edgar and Vermilion Counties, IL;*

STB Docket No. AB-55 (Sub-No. 551X), *CSX Transportation, Inc.--Abandonment Exemption--In Edgar and Vermilion Counties, IL;*

STB Docket No. AB-290 (Sub-No. 194X), *Norfolk and Western Railway Company--Abandonment Exemption--Between South Bend and Dillon Junction in St. Joseph and La Porte Counties, IN;*

STB Docket No. AB-290 (Sub-No. 195X), *Norfolk and Western Railway Company--Abandonment Exemption--Between Dillon Junction and Michigan City in La Porte County, IN;*

STB Docket No. AB-290 (Sub-No. 196X), *Norfolk and Western Railway Company--Abandonment Exemption--Between Toledo and Maumee in Lucas County, OH; and*

STB Docket No. AB-290 (Sub-No. 197X), *Norfolk and Western Railway Company--Abandonment Exemption--Toledo Pivot Bridge in Lucas County, OH.*

APPENDIX B: PROCEDURAL SCHEDULE

May 16, 1997	Preliminary Environmental Report filed.
June 23, 1997	Primary application and related filings filed. Environmental Report filed.
July 23, 1997	Publication in the <i>Federal Register</i> , by this date, of: notice of acceptance of primary application and related filings; and notice of the five related abandonment filings.
August 6, 1997	Comments on the draft scope of the Environmental Impact Statement due. ³⁹
August 7, 1997	Notice of intent to participate in proceeding due.
August 22, 1997	Description of anticipated responsive (including inconsistent) applications due; petitions for waiver or clarification due with respect to such applications.
September 5, 1997	Preliminary Draft Environmental Assessments for the construction projects referenced in Decision No. 9 due.
October 1, 1997	Responsive Environmental Report and Environmental Verified Statements of responsive (including inconsistent) applicants due.
October 21, 1997	Responsive (including inconsistent) applications due. All comments, protests, and requests for conditions, and any other opposition evidence and argument, due. ⁴⁰ Comments of the U.S. Secretary of Transportation and the U.S. Attorney General due. With respect to all related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
November 20, 1997	Notice of acceptance (if required) of responsive (including inconsistent) applications published in the <i>Federal Register</i> .
December 15, 1997	Response to responsive (including inconsistent) applications due. Response to comments, protests, requested conditions, and other opposition evidence and argument due. Rebuttal in support of primary application and related filings due. With respect to all related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
January 14, 1998	Rebuttal in support of responsive (including inconsistent) applications due.
February 23, 1998	Briefs due, all parties (not to exceed 50 pages).
April 9, 1998	Oral argument (close of record).

³⁹ See the notice served July 3, 1997, and published in the *Federal Register* on July 7, 1997, at 62 FR 36332. As indicated in that notice, slip op. at 3, 62 FR at 36333, it is not necessary to be a party of record to file comments on the draft scope of the EIS and/or to participate in the environmental review process.

⁴⁰ As indicated in the notice published in the *Federal Register* on July 11, 1997 (62 FR 37331), petitions for reconsideration with respect to the physical construction of the Crestline connection track, as proposed in the STB Finance Docket No. 33388 (Sub-No. 1) embraced docket, and/or operation thereover by CSXT, are due by July 31, 1997. As indicated in the notices published in the *Federal Register* concurrently herewith, comments respecting the physical construction of the Willow Creek, Greenwich, Sidney Junction, Sidney, Alexandria, and Bucyrus connection tracks, as proposed in the STB Finance Docket No. 33388 (Sub-Nos. 2, 3, 4, 5, 6, and 7) embraced dockets, respectively, and/or operation thereover by applicants, are due by August 22, 1997.

April 14, 1998 Voting conference (at Board's discretion).

June 8, 1998 Date of service of final decision.

With respect to any exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

NOTES: Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents, subject to protective order, will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Discovery on responsive (including inconsistent) applications will begin immediately upon their filing.

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SERVICE DATE - JULY 18, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No. 11

Decided: July 18, 1997

A discovery conference was held on July 16, 1997 to hear oral argument on a motion to compel responses to discovery by CSX Corporation and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), and Conrail, Inc. and Consolidated Rail Corporation (Conrail).¹

The motion sought an order to compel responses to three Document Requests and six Interrogatories. Since the respondents had until July 19, 1997 to respond to the Interrogatories, action on the Interrogatories is being held in abeyance until the respondents reply. If a dispute arises, the movants will renew their motion.

After hearing argument, rulings on each of the requests were made on the record. The arguments of the parties are set forth in the moving papers and the responses thereto filed by NS, CSX and Conrail as well as advanced orally by counsel for each of the parties. All the arguments have been considered and the basis for the rulings made have been expressed by the Presiding Judge on the Record. This is a confirming decision.²

The following rulings are common to all of the document requests.

¹American Electric Power Service Corporation, by letter dated July 15, 1997, joined this proceeding as a movant.

²If there is an inconsistency with regard to any ruling between this confirming decision and the record of the Oral Argument, the Record ruling prevails.

I find that the discovery as limited below may lead to admissible evidence that may enable the movants to prove that the "one lump" economic theory does not apply in this proceeding. Balancing the burden asserted by the respondent against the need of the movants to know, I find that the need to know outweighs the burden, subject to the limitations described below. The discovery ordered below is necessary for the movants to establish their premise.

The information ordered produced shall be for the years 1995 through the second quarter of 1997, and with respect to each of the Documents Requests as follows: CSX, the years 1978 through 1982; NS, the years 1980 through 1984; and Conrail, the years 1988 through 1992.

The information ordered is limited to those destinations at which the movants receive service from the respondents.³

Discovery Request No. 1. Identify and produce all documents, in the department(s) for the carriage of coal by unit train or trainload movement, to every destination served by each of the respondents at which 100,000 tons or more of coal was consumed for the years 1987-97.

Ruling. Granted with the limitations set forth above.

Document Request No. 2. Identify and produce all files, of the department(s) responsible for establishing or negotiating rates for the carriage of coal, that relate to the bid documents responsive to Document No.1, including subsequent or prior correspondence or analyses.

Ruling. Granted subject to the limitations set forth above.

Document Request No. 3. Produce 100% traffic tapes from 1978 through second quarter 1997. We request that Conrail furnish these traffic tapes in computer readable form, where available, including all necessary record layouts field descriptions and documentation. For each carload handled by Conrail provide the information set forth in Motion to Compel.

See letter dated July 16, 1997 annexed to this decision. In accordance with request from counsel for the movants, the term "Conrail destinations" include the coal delivered by Conrail to the Monongahela River and then by barge to plants of American Electric Power Service Corporation and the coal produced by Ohio Valley Coal Company delivered to the Conrail served plants of Centerior Energy at Eastlake and Ashtabula.

Ruling. Conrail and NS have until July 19, 1997 to respond. Therefore, as to these respondents, the motion to compel is held in abeyance subject to renewal by the movants after that date.

The motion is granted as to CSX limited to the years set forth above and limited to traffic tapes of coal.

This decision is effective on the service date.

By the Board, Jacob Leventhal, Administrative Law Judge.

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SERVICE DATE - JULY 3, 1997

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation.

AGENCY: Surface Transportation Board

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Comments on Proposed EIS Scope.

SUMMARY: On June 23, 1997, CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Corporation, and Norfolk Southern Railway Company (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail) filed an application (primary application) with the Surface Transportation Board (Board) under 49 U.S.C. 11323-25. NS, CSX, and Conrail are jointly seeking authority for NS and CSX to acquire control of Conrail and for the subsequent division of Conrail's assets. The proposed transaction involves over 44,000 miles of rail lines and related facilities covering a large portion of the eastern United States. To evaluate and consider the potential environmental impacts that may result from the proposed transaction, the Board's Section of Environmental Analysis (SEA) will prepare an environmental impact statement (EIS). The Board has determined that an EIS is warranted due to the nature and scope of environmental issues (e.g., intercity passenger service and commuter rail service) that may arise. As part of their primary application to the Board, CSX, NS, and Conrail (collectively, Applicants), have filed a detailed operating plan and prepared an Environmental Report (ER). The ER describes the physical and operational changes that would be associated with the proposed transaction and discusses the potential environmental impacts of those changes.

Dates: Written comments on the draft scope are due August 6, 1997.

Address: Office of the Secretary
Case Control Unit
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

For Further Information Contact: Mr. Michael Dalton, SEA Project Manager, Conrail Control Transaction, (202) 565-1530; or Ms. Dana White, SEA Environmental Specialist at (202) 565-1552. (TDD for the hearing impaired: (202) 565-1695).

SUPPLEMENTARY INFORMATION

Background: The proposed transaction would result in certain existing Conrail facilities and operations being assigned individually to either CSX or NS through operating agreements or other mechanisms, and certain other existing Conrail facilities and operations being shared by, and operated for the benefit of, both CSX and NS. The result would be an expanded CSX rail system, an expanded NS rail system, and certain areas of joint ownership and operations. CSX and NS would continue to compete with each other in the provision of rail freight services and would expand their competition to areas in which Conrail is currently the only major rail carrier. Each of the two railroads would utilize its existing lines, would operate certain Conrail lines independent of the other, and would jointly operate certain Conrail lines.

Applicants anticipate that the proposed transaction would provide for benefits that include: reduced energy usage, enhanced safety, reduced highway congestion, reduced system-wide air pollutant emissions, expanded competition, and a more efficient rail transportation system. The proposed transaction, also referred to as the proposed action, is detailed in the primary application and in the operating plan and ER that accompanied it. The proposed transaction includes changes in railroad operations such as increases and decreases in train traffic, changes in activity at rail yards and intermodal facilities, and rail line abandonment and construction projects.

Applicants served the ER concurrently on appropriate federal, state, and local agencies. Federal agencies included: U.S. Army Corps of Engineers, U.S. Department of Agriculture (Forest Service and Natural Resources Conservation Service), U.S. Department of Interior (Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Office of Environmental Project Review, Fish and Wildlife Service), U.S. Department of Transportation (Federal Railroad Administration, Federal Highway Administration, Federal Transit Administration, U.S. Coast Guard), and U.S. Environmental Protection Agency (EPA). State agencies included clearinghouses, state departments of transportation, public service commissions, and historic preservation offices, in the States of AL, CT, DE, FL, GA, IL, IN, KY, LA, MA, MD, MI, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TN, VA, WV, and the District of Columbia. Applicants also served the ER on cities with populations of over 50,000, as well as counties and regional planning organizations that could be affected.

Environmental Review Process and Alternatives: The Board's environmental staff, SEA, is soliciting information and comments on the scope of environmental issues to be addressed in the EIS for the proposed transaction. The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposed action is made. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS and their potential for significance.

Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. Under the NEPA process, SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to the proposed transaction. SEA will not consider environmental impacts relating to existing rail operations and existing railroad facilities.¹ In making its decision in this proceeding, the Board will consider the EIS, the public comments, and the environmental analysis and recommendations, including any environmental mitigation proposed by SEA. Alternatives to be considered in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.² Other parties may file "inconsistent or responsive" applications requesting modifications to the proposed transaction, such as requests for trackage rights or the acquisition of particular rail lines. Potential environmental impacts and rail system changes proposed in the inconsistent and responsive applications will be evaluated in the EIS.

¹ In merger and control cases, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy preexisting conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the merger (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

² The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless. To survive judicial review, the record must support the imposition of the condition at issue. Moreover, there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable. See *United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

Related Activities: NS and CSX requested, and the Board allowed, the proposed construction of seven small rail line connections (Seven Connections) totaling approximately 4 miles, to be filed and reviewed separately from the primary application. This separate environmental review process will address only the potential environmental impacts of the physical construction of these Seven Connections and Applicants' proposed operations over these lines. The operational implications of the transaction as a whole, including proposed operations over these Seven Connections, if authorized, will be examined in the context of the EIS that is being prepared for the proposed transaction.³

Filing Environmental Comments: SEA encourages broad participation in the EIS process during scoping and review of the Draft EIS (DEIS). Interested agencies and persons are invited to participate in the scoping phase by reviewing the draft scope of the EIS. Due to the broad geographic scope of the proposed transaction, SEA does not plan to conduct public scoping meetings. Written comments on the draft scope of the EIS may be submitted to the Board within the 30-day comment period, as described below, no later than August 6, 1997. It is not necessary to be a Party of Record (as detailed below) to file comments on the draft scope of the EIS and participate in the environmental review process. You need only submit a signed original and 10 copies of your comments to:

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

To ensure proper handling of your comments, you must mark your submission:

Attention: Elaine K. Kaiser
Chief, Section of Environmental Analysis
Environmental Filing

By following this procedure, your comments will be placed in the formal Public Record for this case. In addition, SEA will add your name to its mailing list for distribution of the final scope of the EIS, the DEIS, and Final EIS (FEIS). However, as stated in Board Decision No. 6⁴ in this case, copies of Board decisions, orders, and notices will be served only on persons designated as Parties of Record, Members of Congress, and Governors on the official service list. All other interested persons who wish to receive copies of Board decisions, orders, and notices served in this proceeding are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc., at (202) 289-4357.

Parties of Record: If you wish to become a Party of Record (POR) in this case, you must comply with the more rigorous filing and service requirements explained in Decision No. 6. Specifically, you must notify the Board by August 7, 1997, or 45 days after the primary application was filed, of your intent to participate actively in this proceeding by submitting to the Office of the Secretary, at the above address, an original plus 25 copies of a Notice of Intent to Participate accompanied by a

³ Board Decision No. 9 in this proceeding, issued June 12, 1997, granted Applicants' petition for waiver related to the Seven Connections and explained what the environmental review process for those projects would be. Specifically, SEA intends to prepare a separate Environmental Assessment for each of these small construction projects. However, if SEA determines that any one of the construction proposals could potentially cause, or contribute to, significant environmental impacts then the project will be incorporated into the EIS for the overall proposed transaction, and will not be separately considered. Also, no rail operations can begin over these Seven Connections until completion of the EIS process, and issuance of a further decision.

⁴ Board Decision No. 6 was issued May 30, 1997, and published at 62 FR 29387-29391.

certificate of service. The Notice must demonstrate compliance with the service requirements set forth in the section of Decision No. 6 entitled ADDRESSES. Thereafter, each POR will receive a copy of the official service list that contains the names and addresses of all PORs, upon whom all subsequent filings must be served.

For Additional Information: Contact Mr. Michael Dalton, SEA Project Manager, Conrail Control Transaction, (202) 565-1530; or Ms. Dana White, SEA Environmental Specialist, at (202) 565-1552 (TDD for the hearing impaired: (202) 565-1695). Summary information about the proposed transaction and draft scope of the EIS can be found at the following Internet web site: <http://www.conrailmerger.com>. Requests for summary information on the control transaction and EIS scope can be made through SEA's toll-free Environmental Hotline at (888) 869-1997.

ENVIRONMENTAL REVIEW SCHEDULE

The Board has adopted a 350-day procedural schedule for the proposed transaction proceeding,⁵ and has determined that preparation of an EIS is warranted in this case. The 350-day schedule will permit SEA to undertake an EIS that fully considers the environmental consequences of this proposed action. Below is a discussion of how SEA plans to conduct the environmental review process in this case.

On June 23, 1997, Applicants filed an ER containing the information specified in the Board's environmental rules at 49 CFR 1105.7(e), as part of the primary application. The ER was concurrently served on the agencies listed in the Board's environmental rules at 49 CFR 1105.7(b), and other appropriate entities. The ER describes the physical and operational changes in the rail systems and facilities anticipated as a result of the proposed transaction. In the ER, Applicants also discuss the potential environmental impacts that would be associated with the anticipated changes.

The next step in the environmental review process is scoping. Based on the Council on Environmental Quality's (CEQ) regulations, the Board's environmental rules at 49 CFR 1105, the ER, and all other information available to date, SEA has prepared this draft scope of the EIS. Written public comments on the draft scope of the EIS are invited, and are due August 6, 1997. After SEA considers all comments submitted by the comment deadline, SEA will prepare a final scope of the EIS. SEA intends to issue the final scope of the EIS in September 1997. This final scope of the EIS will be distributed to all PORs, commenters, and appropriate agencies.

Based on SEA's independent environmental analysis, review of all information available to date, and consultations with appropriate agencies, SEA then will prepare a DEIS. The DEIS will address relevant environmental concerns, as described in the final scope of the EIS, and recommend appropriate environmental mitigation. In addition, the DEIS will address environmental impacts associated with any inconsistent or responsive applications or settlement agreements.⁶ SEA intends to serve the DEIS in November 1997, approximately 5 months after the primary application was filed in this proceeding. SEA will serve the DEIS on all Parties of Record to this proceeding, commenters who comply with the above-mentioned filing procedures, and appropriate federal, state, and local government agencies. Also, EPA will publish a notice of the availability of the DEIS in

⁵ See Decision No. 6. This schedule is based on the filing date (F) of the primary application, which was June 23, 1997.

⁶ Under the procedural schedule previously established for this proceeding (Decision No. 6), inconsistent and responsive applicants must provide a description of the proposed inconsistent or responsive application by day F + 60. Inconsistent and responsive applicants must file Responsive Environmental Reports or verified statements by day F + 100, indicating that there are no potentially significant environmental impacts. They must file inconsistent and responsive applications by day F + 120. SEA anticipates that the issues addressed in the final scope of the EIS will be similar to issues that may be raised in any subsequent filing of inconsistent or responsive applications.

the *Federal Register*. The DEIS will have a comment period of 45 days, as required by CEQ regulations at 40 CFR 1506.10(c).

After considering comments on the DEIS, SEA will issue a FEIS. The FEIS will address comments to the DEIS and will include SEA's final recommendations, including appropriate environmental mitigation. SEA will serve the FEIS in late March or early April, prior to the Board's voting conference, which currently is scheduled to be held April 14, 1998. At the voting conference, the Board will announce whether it will grant the application, deny the application, or grant it with appropriate conditions, including environmental mitigation conditions. The Board intends to serve a written decision in this case by June 8, 1998. In that decision, the Board will address both environmental and transportation issues and impose any conditions found to be appropriate.

Parties that wish to file an administrative appeal of the Board's written decision (including any environmental conditions that might be imposed) may do so within 20 days from the service date of the Board's decision, as provided in the Board's rules. Any interested party will have approximately 2 months to consider the FEIS prior to commencement of the aforementioned period for filing administrative appeals. The schedule will provide adequate time to pursue administrative review of the Board's June 1998 decision after it is issued. Any administrative appeals will be addressed in a subsequent decision. This process is consistent with CEQ rules (40 CFR 1506.10 (b)).

Projected Schedule⁷

• Preliminary Environmental Report ⁸ submitted to SEA. (F-30) ⁹	May 16, 1997
• Primary Application and Environmental Report filed. (F)	June 23, 1997
• Notice of Intent to Prepare an Environmental Impact Statement and Environmental Impact Statement Scoping Notice issued. (Federal Register Notice).	July 7, 1997
• Comments on the Draft Scope of the Environmental Impact Statement due (end of 30-day comment period).	August 6, 1997
• Descriptions of Inconsistent and Responsive Applications filed. (F + 60).	August 22, 1997
• Last day to file Preliminary Draft Environmental Assessments for the Seven Separate Construction Projects referenced in Decision No. 9.	September 5, 1997
• Final Scope of the Environmental Impact Statement issued.	September, 1997
• Responsive Environmental Reports and Verified Environmental Statements due. (F + 100).	October 1, 1997
• Inconsistent and Responsive Applications due. (F + 120).	October 21, 1997
• Draft Environmental Impact Statement served.	November, 1997
• Draft Environmental Impact Statement comments due (end of 45-day comment period).	January, 1998
• Final Environmental Impact Statement served.	Late March or Early April, 1998
• Oral Argument.	April 9, 1998
• Voting Conference.	April 14, 1998
• Final Decision served.	June 8, 1998
• Administrative Appeals Filing Deadline	June 29, 1998

⁷ Actual dates may vary slightly. These are the dates that will apply if the Board accepts the primary application as filed on June 23, 1997.

⁸ The Preliminary Environmental Report contained preliminary, descriptive information on the proposed transaction.

⁹ "F" is the filing date of the primary application. The Board established the time periods related to the filing date in the procedural schedule set out in Decision No. 6 in this proceeding.

Draft Scope of the EIS:

Proposed Action and Definition of Alternatives:

The proposed action is Applicant's proposed acquisition and control, jointly or individually, of Conrail's rail lines and facilities, as explained in the primary application's operating plan and ER. The proposed transaction includes changes in railroad operations such as increases and decreases in train traffic on rail lines, changes in activity at rail yards and intermodal facilities, and rail line abandonment and construction projects.

Reasonable or feasible alternatives that will be evaluated in the EIS are (1) the proposed action, (2) the no-action alternative, and (3) the proposed action with conditions, including environmental mitigation conditions. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (e.g., an increase in average trains per day) for those rail line segments which meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7. In cases where the Board's environmental rules do not provide a threshold, the EIS generally will use increases of eight (8) trains per day or more as the threshold for addressing environmental impacts. Where appropriate, available system-wide data will be used.
2. Proposed rail line abandonments.
3. Proposed changes in activity at rail yards and intermodal facilities to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.
4. Proposed requests for trackage rights or rail line acquisitions that may be included in inconsistent and responsive applications.
5. Proposed physical construction of rail line segments other than the Seven Connections discussed above and in Decision No. 9.¹⁰ Subsequent references to construction projects in this scoping document do not include these Seven Connections. Alternatives to construction could include feasible alternate alignments that may be environmentally preferable.

Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects directly related to physical changes in the environment, environmental justice, and cultural and historic resources, as described below.

1. Safety.

¹⁰ As noted in Decision No. 9, in reviewing the Seven Connections separately, the Board will consider the regulatory and environmental aspects of these proposed constructions and Applicants' proposed operations over these lines together in the context of whether to authorize each individual physical construction project. The operational implications of the proposed transaction as a whole, including operations over the 4 or so miles embraced in the Seven Connections will be examined in the context of the EIS for the overall control transaction.

The EIS will:

- A. Address rail highway grade crossing safety factors, as appropriate.
- B. Consider increased probability of train accidents, derailments, and other incidents, as appropriate.
- C. Address potential effects of increased freight traffic on commuter and intercity passenger service operations.
- D. Discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:
 - (1) Changes in the types of hazardous materials and quantities transported or re-routed;
 - (2) Nature of the hazardous materials being transported;
 - (3) Applicants' safety practices and protocols;
 - (4) Applicants' safety record (to the extent available) on derailments, accidents and hazardous materials spills;
 - (5) Any existing contingency plans to address accidental spills;
 - (6) Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements; and
 - (7) Location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed construction or rail line abandonment site.

2. Transportation System.

The EIS will:

- A. Describe system-wide effects of the proposed operational changes, constructions, and rail line abandonments and evaluate potential environmental impacts on commuter rail service and interstate passenger service.
- B. Discuss potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.
- C. Address, as appropriate, vehicular delays at rail crossings and intermodal facilities due to increases in rail related operations. A range of typical rail operations and traffic conditions will be defined for purposes of evaluating the impacts of potential vehicular delays. Transportation impacts at grade crossings will be evaluated for those crossings having average daily vehicle trips of 5,000 or more.¹¹

3. Land Use.

The EIS will:

- A. Describe whether the proposed rail line construction and abandonment activities are consistent with existing land use plans.

¹¹ Crossings with average daily vehicle trips of fewer than 5,000 vehicles per day typically do not experience serious delays.

- B. Describe environmental impacts associated with the proposed construction of new rail lines or expansion of facilities as to acres of prime farmland potentially removed from production.
- C. Discuss consistency of proposed rail line construction and abandonment activities with applicable coastal zone requirements.

4. **Energy.**

The EIS will:

- A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities to the extent such information is available.
- B. Discuss the overall increase or decrease in energy efficiency (fuel use) from truck-to-rail diversions, based on estimates of such diversions subject to the Board's thresholds in 49 CFR 1105.7 (e)(4)(iv), for diversions of 1,000 rail carloads per year, or fifty (50) rail carloads per mile per year for any line segment.
- C. Discuss estimated changes in energy efficiency of rail-to-truck diversions that exceed the Board's environmental thresholds in 49 CFR 1105.7 (e)(4)(iv).

5. **Air Quality.**

The EIS will:

- A. Evaluate air emissions increases that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), in an air quality attainment or maintenance area as designated under the Clean Air Act as it existed on the date the primary application was filed.¹² The thresholds are as follows:
 - (1) A 100 percent increase in rail traffic or an increase of eight (8) trains a day on any segment of rail line affected by the proposal; or
 - (2) An increase in rail yard activity of at least 100 percent or more; or
 - (3) An increase in truck traffic of more than ten (10) percent of the average daily traffic or fifty (50) vehicles a day.
- B. Evaluate emissions increases, if the proposed transaction affects a Class I or non-attainment area as designated under the Clean Air Act as of the date the application was filed. Thresholds for Class I and non-attainment areas are as follows:
 - (1) An increase in rail traffic of at least fifty (50) percent or an increase of three (3) trains a day or more; or
 - (2) An increase in rail yard activity of at least twenty (20) percent; or
 - (3) An increase in truck traffic of more than ten (10) percent of the average daily traffic or fifty (50) vehicles a day.
- C. Discuss the net increase in emissions from increased railroad operations associated with the proposed transaction.

¹²

Air quality attainment areas are areas which comply with national ambient air quality standards for particulate matter, sulfur dioxide, nitrogen oxides, ozone, carbon monoxide, and lead. Non-attainment areas are areas which do not comply with one or more ambient air quality standards. Maintenance areas are areas which were non-attainment in the past but have air quality which complies with standards at present. These areas are designated by EPA.

- D. Evaluate potential air quality benefits of system-wide emission reductions that would result from projected truck-to-rail diversions. Net increases, less any estimated reductions due to truck-to-rail diversions, will be compared to the entire emission inventory for affected non-attainment areas. This discussion will be based on emission inventory data provided by the appropriate state agency.
- E. Identify the following information for the anticipated transportation of ozone depleting materials (such as nitrogen oxide and freon):
- (1) Materials and quantity;
 - (2) Applicants' safety practices;
 - (3) Applicants' safety record (to the extent available) on derailments, accidents, and spills;
 - (4) Contingency plans to address accidental spills; and
 - (5) Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.
- F. Discuss potential air emissions increases from vehicle delays at rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above in Section 5A for attainment and maintenance areas and in Section 5B for Class I and non-attainment areas, and which have an average daily vehicle traffic level above 5,000. Such increases will be factored into the net emissions estimates for the affected area.

The EIS will not:

Address ambient impacts of net increases or decreases of emissions related to rail operations changes, traffic delay analysis, and truck to rail diversions, due to the infeasibility of incorporating such analysis into local and regional air quality impacts analyses, emissions databases, and air quality modeling protocols for a project that involves over 44,000 miles of rail lines and related facilities covering a large portion of the eastern half of the United States. Given the broad geographical scope of the proposed transaction, it is not feasible to do in any reasonable amount of time the thousands of modeling analyses that would be required to assess such impacts.

6. Noise.

The EIS will:

- A. Describe potential noise impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in Section 5A of the Air Quality discussion.
- B. Identify whether the proposed transaction will cause:
- (1) An incremental increase in noise levels of three decibels L_{dn} or more; or
 - (2) An increase to a noise level of 65 decibels L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools, libraries, hospitals, residences) within such areas will be made based on census data or other available information. Such receptors will be estimated for the area that may increase to 65 decibels L_{dn} due to proposed transaction-related activities.

7. Biological Resources.

The EIS will:

- A. Discuss potential environmental impacts from proposed rail line construction and abandonment projects on federal endangered or threatened species or designated critical habitats.
- B. Discuss the effects of proposed rail line construction and abandonment projects on wildlife sanctuaries or refuges, and national or state parks or forests.

8. Water Resources.

The EIS will:

- A. Discuss whether potential impacts from proposed rail line construction and abandonment projects may be inconsistent with applicable federal or state water quality standards.
- B. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed rail line construction and abandonment projects and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

9. Socioeconomic Issues.

The EIS will address socioeconomic issues shown to be directly related to changes in the physical environment as a result of the proposed transaction.

10. Environmental Justice.

The EIS will:

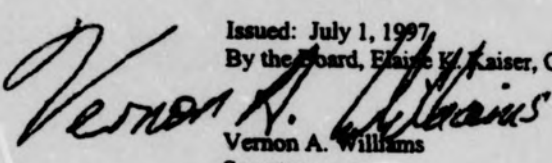
- (1) Report on the demographics in the immediate vicinity of any area where major activity such as an abandonment or construction is proposed;
- (2) Evaluate whether such activities potentially have a disproportionately high and adverse health effect or environmental impact on any minority or low-income group.

11. Cultural and Historic Resources.

The EIS will address potential impacts from proposed rail line construction and abandonment projects on cultural and historic resources that are on, or immediately adjacent to, a railroad right-of-way.

Issued: July 1, 1997

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.


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Secretary

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SERVICE DATE: JUNE 27, 1997

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

Decision No.10

Decided: June 26, 1997

The merging parties filed a motion on June 5, 1997, requesting that a conference be convened to consider the setting of discovery guidelines.

At the conference held on June 17, 1997, the parties agreed upon revised discovery guidelines which include changes to the original proposal submitted by the Applicants and either agreed to by the parties present at the conference or ordered by me at the conference.¹

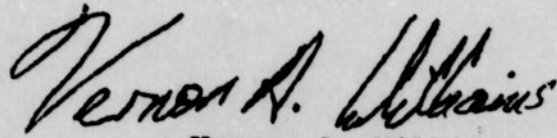
At the conference, counsel for Canadian National Railway Company stated that its discovery dispute with Conrail had been resolved. Consequently, its Motion to Compel Discovery Responses by Conrail, which had been previously filed, was withdrawn. Tr. at p. 14.

The Discovery Guidelines, attached to this Decision, is adopted.

This decision is effective on the service date.

¹Paragraph 13 of the guidelines includes a revision not considered at the conference but which the Applicants represent is not opposed by the parties present at the conference.

By the Board, Jacob Leventhal, Administrative Law Judge.

A handwritten signature in cursive script, reading "Vernon A. Williams". The signature is written in dark ink and is positioned above the printed name and title.

Vernon A. Williams
Secretary

DISCOVERY GUIDELINES

A. General

1. In consideration of the expedited procedural schedule governing this proceeding, all discovery requests must be tailored to be consistent with the procedural schedule adopted in the proceeding. The parties shall avoid any duplicative discovery requests.

2. The Board's discovery rules set forth at 49 C.F.R. pt. 1114 will apply to this proceeding except as modified by Board decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by agreement between any two or more parties (except if such a variance would adversely affect any third party). The Administrative Law Judge (the "ALJ") may vary any discovery guideline contained herein for good cause.

3. Persons wishing to engage in discovery in this proceeding must complete and fax to Zuckert, Scoutt & Rasenberger, L.L.P., Attention: Patricia Bruce at 202-342-1608 the attached Request to be Placed on the Restricted Service List ("Request") no later than 45 days following the date of filing of the primary application. On July 8, 1997 and each Tuesday thereafter through August 12, 1997, Zuckert Scoutt & Rasenberger, L.L.P. shall provide the Restricted Service List to persons thereon reflecting the Requests received through the prior Friday.

4. Discovery requests, objections, motions to compel and responses shall be labeled and numbered in a manner consistent

with the labeling/numbering requirement for filings (e.g., CSX/NS-1).

5. All workpapers and documents produced in response to a discovery request will be numbered such that each page can be uniquely identified and will include the acronym the producing party has chosen pursuant to 49 C.F.R. § 1180.4(a)(2) (e.g., CSX/NS or CSX or NS or CR) and alpha digits which correspond to the level of confidentiality assigned to the document ("P" meaning not confidential and public, "CO" meaning confidential, and "HC" meaning highly confidential).

6. Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (i.e., workpapers supporting the filing and documents relied upon by the witnesses), other than documents that are privileged or otherwise protected from discovery, in a depository open to all parties. Norfolk Southern, CSX, and Conrail shall maintain a joint depository located at the offices of Arnold & Porter, 555 12th Street, N.W., Washington, D.C., with reference to all evidentiary filings.

7. Parties maintaining depositories shall provide suitable indices which identify the general classes of documents in their depositories and which identify documents relating to each witness statement contained in their evidentiary filings. Such indices shall be made available to any party utilizing the depository. When a party responds to a discovery request by referring to documents in a document depository, the responding

party must provide a description of the document's location within the depository that is reasonable under the circumstances.

8. All depositories shall be maintained in the Washington, D.C. area, unless a party requests and receives written permission from the ALJ, after notice to all other parties and for good cause shown, to maintain its depository outside of the Washington, D.C. area. All depositories shall be open to any other party during normal business hours on weekdays and, on notice of a request to visit, Saturdays, and the party operating the depository shall provide staffing assistance reasonable under the circumstances. The party maintaining the depository shall establish reasonable procedures for the operation of the document depository, which may include requirements that notice be provided in advance of a planned visit and must provide that persons reviewing documents marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" first execute an appropriate undertaking pursuant to the protective order entered in Finance Docket No. 33388. Parties' depositories shall provide services for the making of copies of all documents contained therein, may charge a reasonable amount for reimbursement of duplication expenses, and shall use their best efforts to provide copies of depository documents within two (2) business days of receiving a request from a party for such documents.

9. Any discovery response containing confidential information or data as defined in the protective order issued in Finance Docket No. 33388 shall be designated and stamped

"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and shall be handled pursuant to the procedures contained in the applicable protective order. Discovery responses (other than with respect to documents which are placed in the document depository) which contain information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be served only in redacted form on parties who have not represented on the Request to be Placed on the Restricted Service List that they have executed the relevant protective order.

B. Discovery Requests

10. On or after the thirtieth day following the filing of the primary application, the ALJ will hold a further discovery hearing to consider whether specific limitations on the number of discovery requests permitted to be made by one party against another party are needed.

C. Depositions

11. A person who has submitted written testimony in this proceeding shall be made available for deposition upon request. A person who has not submitted written testimony in this proceeding shall be deposed on notice in accordance with 49 C.F.R. 1114.22, which notice shall identify the specific subject matter relevant to the issues raised in this proceeding on which that witness' testimony is sought. Any party seeking a ruling as to a deposition shall follow the procedures set forth in Paragraph 18 below.

12. Absent agreement among all interested parties or prior approval from the ALJ, all depositions of persons submitting verified statements shall be conducted in the Washington, D.C. area. Absent agreement among all interested parties or prior approval from the ALJ for good cause shown, (1) no witness shall be deposed more than one time as to any written initial statements or more than one time as to any written rebuttal statements submitted by that witness in this proceeding, and (2) no other person shall be deposed more than one time. Parties

...e their best efforts to complete depositions as promptly as practicable, and if possible within two days.

3. Any party wishing to depose a witness shall, at least two weeks prior to the scheduled deposition, and five business days prior to the party with whom that witness is affiliated, at the party will depose the witness. Any other party who wishes to depose the witness shall, at least two business days prior to the scheduled deposition, confirm with counsel to the party with whom that witness is affiliated that the party will participate in the deposition. To the extent reasonably practicable, at least twenty-four hours or one business day, whichever is greater, prior to the scheduled deposition, the party deposing the witness shall advise the counsel to the party with whom the witness is affiliated of the identity of the documents (including Bates numbers, where applicable) about which the witness will be questioned. Any party who, after giving the notice required by these guidelines, decides not to depose that witness, shall submit a written notice of such decision to counsel for the party with whom that witness is affiliated and to all persons on the Restricted Service List.

D. Service

14. All discovery requests, objections and motions to compel shall be served (a) in the most expeditious manner possible, by hand delivery in the Washington, D.C. area and by overnight mail outside the Washington D.C. area, or by facsimile,

shall use their best efforts to complete depositions as promptly as practicable, and if possible within two days.

13. Any party wishing to depose a witness shall, at least two weeks prior to the scheduled deposition, and five business days if the deposition is to be after October 21, 1997, notify the counsel to the party with whom that witness is affiliated that the party will depose the witness. Any other party who wishes to depose the witness shall, at least two business days prior to the scheduled deposition, confirm with counsel to the party with whom that witness is affiliated that the party will participate in the deposition. To the extent reasonably practicable, at least twenty-four hours or one business day, whichever is greater, prior to the scheduled deposition, the party deposing the witness shall advise the counsel to the party with whom the witness is affiliated of the identity of the documents (including Bates numbers, where applicable) about which the witness will be questioned. Any party who, after giving the notice required by these guidelines, decides not to depose that witness, shall submit a written notice of such decision to counsel for the party with whom that witness is affiliated and to all persons on the Restricted Service List.

D. Service

14. All discovery requests, objections and motions to compel shall be served (a) in the most expeditious manner possible, by hand delivery in the Washington, D.C. area and by overnight mail outside the Washington D.C. area, or by facsimile,

on the party to which the requests, objections or motions are directed, and (b) by mail on other parties on the Restricted Service List.

15. Discovery responses shall be served only on the party that propounded the discovery and any party requesting copies of such responses in writing, except that the documents produced by a party in response to a discovery request shall be placed in the depository in lieu of being served. All discovery responses shall be immediately placed in the depository of the responding party (and in the case of any of the Applicants, in the joint depository), and that party shall simultaneously provide written notice to all parties on the Restricted Service List that it has responded to a particular discovery request of another party (which shall be identified in the notice) and that it has placed its responses in its depository. The party propounding the discovery or any other party may request copies, which shall be supplied at a reasonable cost.

E. Responses

16. A responding party shall, within five business days after receipt of service, serve a response stating all its objections to any discovery request as to which the responding party has then decided that it will be providing no affirmative response (i.e., no information or documents), so that disputes as to such requests may be resolved as quickly as possible. Responding parties shall, within fifteen days after receipt of service, answer or object to all other discovery requests.

17. The responding party shall endeavor, to the greatest extent possible, to produce documents by placing those documents in its document depository within the fifteen-day response period. If the responding party is not able to produce such documents within the fifteen-day period, it shall contact the propounding party at the earliest possible time within the fifteen-day period and indicate its best judgment as to the date the documents will be provided. Upon request by the propounding party, the responding party shall produce, whenever reasonable, documents on an "as-available" basis rather than in a lump-sum production.

F. Resolution of Disputes

18. Discovery disputes shall be resolved voluntarily among the parties whenever possible; otherwise, counsel for the party seeking a ruling on a discovery issue shall contact Jennifer Schmidt in ALJ Leventhal's office at (202) 219-2542 by 4:00 p.m. Monday to request a prehearing discovery conference to be held at 9:30 a.m. on Wednesday of the same week at a hearing room at 888 1st Street, N.E., Washington, D.C. Written notice specifically identifying the discovery in dispute shall be served by the party requesting the conference by facsimile or hand delivery on all parties on the Restricted Service List; in addition, good faith efforts shall be made to give telephone notice prior to 4:00 p.m. on Monday to the opposing party. The opposing party may file a written response one business day before the conference or may respond orally at the hearing. If the opposing party or any

other party submits a written response, that response must be served on the ALJ and all parties on the Restricted Service List no later than 5:00 p.m. on the business day immediately preceding the conference. No later than 5:00 p.m. on the business day immediately preceding the conference, the primary applicants shall send notice by facsimile to the ALJ and to all parties on the Restricted Service List indicating, based on the status of such settlement discussions as may have been held, whether or not the conference will be held. If there is no request for a conference, there will be no conference. At any discovery conference, those parties seeking and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue. If discovery is ordered, the ALJ shall require it as soon as can practicably be accomplished.

G. DISCOVERY MORATORIUM

19. No discovery may be served on any party between October 6, 1997 and October 21, 1997. All discovery served prior to that period shall be completed by October 21, 1997.

REQUEST TO BE PLACED ON
THE RESTRICTED SERVICE LIST

NOTE: ALL INFORMATION MUST BE PROVIDED -- Please print

The following persons should be placed on the Restricted
Service List in Finance Docket No. 33388:

Name/Address:	Affiliation:	Protective	Order Signed?
_____	_____	_____	_____
_____	_____	_____	_____

Confidential	Telephone Number:	_____	Highly
_____	_____	_____	_____
_____	Facsimile Number:	Confidential	_____
_____	_____	_____	_____

Name/Address:	Affiliation:	Protective	Order Signed?
_____	_____	_____	_____
_____	_____	_____	_____

Confidential	Telephone Number:	_____	Highly
_____	_____	_____	_____
_____	Facsimile Number:	Confidential	_____
_____	_____	_____	_____

Name/Address:	Affiliation:	Protective	Order Signed?
_____	_____	_____	_____
_____	_____	_____	_____

Confidential	Telephone Number:	_____	Highly
_____	_____	_____	_____
_____	Facsimile Number:	Confidential	_____
_____	_____	_____	_____

Date: _____

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