By correspondence filed June 15, 1998, Wheeling & Lake Erie Railway Company (W&LE) requests clarification of the summary description of conditions adopted at our June 8, 1998 voting conference. W&LE contends that our summary description of conditions relative to its interests and participation in this proceeding, if not clarified at this time, could result in unintended disputes and revenue losses during implementation of the relief intended for W&LE. W&LE asks us specifically to include underlying trackage rights in its haulage rights with respect to Toledo and Lima, OH, impose a 15-year conditional sale in the extension of its Huron Dock lease with NS, and confirm that its access to Ohio aggregate markets will be over both applicants' rail lines.

W&LE's request will be denied. We will not entertain responsive pleadings, including petitions for clarification and similar relief, until our written decision is served on July 23, 1998. Pleadings such as W&LE's clarification request may be filed after our written decision is served, not

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1 In this proceeding, CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc., and Consolidated Rail Corporation (collectively Conrail) seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail by CSX and NS; and (2) the division of Conrail's assets by and between CSX and NS.
before. We will not address any comparable pleadings filed in this proceeding prior to service of our written decision.

We believe that our public vote on June 8, 1998, was sufficiently clear to permit parties, should they choose to do so, to initiate appropriate negotiations in advance of the issuance of the written decision.

This decision is not intended to modify the Board's position with respect to clarification of recommendations contained in the Final Environmental Impact Statement.

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

It is ordered:

1. W&LE’s request for clarification is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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2 See, e.g., Wyandot-6, filed June 16, 1998, by Wyandot Dolomite, Inc.

3 As we said 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 Railroad Company, Finance Docket No. 32760 (STB served Aug. 12, 1996) (slip op. at 13, n.18), parties must await our written decision before seeking clarification or other forms of appellate relief.
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06/22/1998
By motion filed May 22, 1998 (designated CSX/NS-206), applicants' ask us to amend the protective order we approved and issued in Decision No. 1, served April 16, 1997. Applicants request that the protective order be modified to authorize CSX and NS personnel to gain access to information relating to transportation contracts presently in effect between Conrail and Conrail customers. Applicants indicate that the purpose of the request is to permit CSX and NS to begin the lengthy process of allocating the performance of those contracts between them as specified in the CSX/NS/CR transaction agreement.

APL Limited and Eastman Kodak Company (jointly respondents), in a pleading filed May 28, 1998 (designated APL-23/EK C-7), urge us to deny applicants' motion or, in the alternative, hold the motion in abeyance until after our June 8, 1998 public voting conference. In a pleading filed June 9, 1998 (designated APL-24), APL asks us to ensure that, in any decision on the CSX/NS-206 motion, the terms of its contract with Conrail be protected from disclosure to CSX's ocean carrier, water carrier, and intermodal affiliates. APL also asks that, prior to obtaining access to the information, applicants be required to agree with APL on disclosure protection.

Applicants' motion to amend the protective order will be granted. At our June 8, 1998 voting conference, we voted to approve the primary application, including applicants' proposal in section 2.2(c) of the transaction agreement relative to the allocation of Conrail's rail transportation contracts between CSX and NS. As for those contracts with antiassignment clauses, we voted to permit override of antiassignment clauses in what would otherwise be nonassignable shippers.

"Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc., and Consolidated Rail Corporation (collectively Conrail). In this proceeding, applicants seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail by CSX and NS; and (2) the division of Conrail's assets by and between CSX and NS.
contracts for a 180-day period after Day 1\(^2\) and to permit applicants to assume the terms of those contracts during that same time period. The modification is necessary to enable CSX and NS to work out the details of the transaction as early as possible, so as to ensure a smooth transition with respect to rail service. We will also grant APL's requests that the terms of its contract with Conrail be protected from disclosure to CSX's ocean carrier, water carrier, and intermodal affiliates, and that applicants agree with APL on the disclosure protection. We will hold APL to its commitment made in its June 9, 1998 pleading that it will act expeditiously to agree on this disclosure protection with CSX and NS.

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

It is ordered:

1. Applicants' motion is granted. The protective order is amended as indicated in the appendix. In all other respects, the protective order shall remain unchanged and in effect.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

\(^2\) Under the transaction agreement, Day 1 is the closing date on which the division of the operation and use of Conrail's assets will be effected by CSX and NS. See CSX/NS-18 at 11; CSX/NS-25, Volume 8B at 45.
APPENDIX

The Protective Order issued in Decision No. 1 in STB Finance Docket No. 33388, served April 16, 1997, is amended to add the following paragraphs:

19(a). On and after June 11, 1998, Conrail may provide to personnel of CSX and NS, and personnel of CSX and NS may receive, copies of or other information regarding transportation contracts to which Conrail is a party, their historic performance and cost of performance by Conrail, and related operations by Conrail. The authorization set forth in the preceding sentence is subject to the restrictions set forth in Paragraphs 19(b) and 19(c).

19(b). Until August 22, 1998: the contracts or other information mentioned in Paragraph 19(a) may be provided and received solely for the purposes of allocating performance of the contracts between NS and CSX pursuant to Section 2.2(c) of the Transaction Agreement dated as of June 10, 1997 among CSX, NS, and Conrail, placing information about such contracts in the information systems of CSX and NS, testing such systems, and planning and preparation of rail operations, but not for any other business, commercial, or competitive purpose; and the CSX and NS personnel allowed access to such contracts or information shall be limited to those requiring such access in order to carry out such permissible purposes.

19(c). For the protection and benefit of APL Limited and its subsidiaries (APL), disclosure protection satisfactory to APL shall be provided by applicants so that neither contracts of Conrail with APL nor any confidential information contained in or touching or concerning such contracts shall be made available to CSX Intermodal, Inc., or Sea-Land Service, Inc., or any of their subsidiaries, officers or employees.
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<td>TIMOTHY G CHELIUS</td>
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<td>JOHN F. MCHUGH</td>
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<td>20 EXCHANGE PLACE 51ST FLOOR</td>
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<td>KAREN E SONGHURST</td>
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<td>MICHAEL E STRICKLAND</td>
<td>NYK LINE (NORTH AMERICA) INC, SENIOR VICE PRE</td>
<td>300 LIGHTING WAY</td>
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<td>LAWRENCE PEPPER, JR</td>
<td>GRUCCIO PEPPER</td>
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HARRISBURG PA 17101 US

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<td>HON ROBERT G TORRICELLI</td>
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<td>HONORABLE MAJOR R. OWENS</td>
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<td>CONG BOB CLEMENT</td>
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<tr>
<td>HONORABLE TOM DAVIS</td>
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</tr>
</tbody>
</table>
SERVICE LIST FOR: 09-jun-1998 STB FD 33388 0
CSX CORPORATION AND CSX TRANSPORTATION

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LEBANON VA 24265 US

06/09/1998
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State</th>
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<tr>
<td>TEPRELL ELLIS</td>
<td>CAEINV P O BOX 176</td>
<td>CLAY WV 25043 US</td>
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<tr>
<td>R K SARGENT</td>
<td>GENERAL CHAIRPERSON UTU 1319 CHESTNUT STREET</td>
<td>KENOVA WV 25530 US</td>
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<tr>
<td>WILLIAM T BRIGHT</td>
<td>P O BOX 149 200 GREENBRIER ROAD</td>
<td>SUMMERSVILLE WV 26651 US</td>
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<tr>
<td>FRANK N JORGENSEN</td>
<td>THE ELK RIVER RAILROAD INC P O BOX 460</td>
<td>SUMMERSVILLE WV 26651 US</td>
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<tr>
<td>SCOTT M SAYLOR</td>
<td>NORTH CAROLINA RAILROAD COMPANY 3200 ATLANTIC AV STE 110</td>
<td>RALEIGH NC 27604-1640 US</td>
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<td>E NORRIS TOLSON</td>
<td>NC DEPT OF TRANSPORTATION P O BOX 25201</td>
<td>RALEIGH NC 27611 US</td>
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<tr>
<td>HONORABLE DAVID M BEASLEY</td>
<td>GOVERNOR P. O. BOX 11369</td>
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<td>J L RODGERS</td>
<td>EASTMAN CHEMICAL COMPANY P O BOX 431</td>
<td>KINGSPORT TN 37662 US</td>
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<td>PHILLIP L BELL</td>
<td>ERIE LACKAWANNA RAILROAD CO PO BOX 1482</td>
<td>TALLAHASSEE FL 32302 US</td>
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<tr>
<td>J T REED</td>
<td>GENERAL CHAIRPERSON UTU 7785 BAYMEADOWS WAY STE 109</td>
<td>JACKSONVILLE FL 32256 US</td>
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<tr>
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<td>KINGSPORT TN 37662 US</td>
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<tr>
<td>WILLIAM T OSTEEN</td>
<td>ASSOC: ATE GENERAL COUNSEL TVA 400 W ST SUMMIT HILL DRIVE KNOXVILLE TN 37902 US</td>
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<tr>
<td>J R BARBEE</td>
<td>GENERAL CHAIRPERSON UTU P O BOX 9539</td>
<td>KNOXVILLE TN 37940 US</td>
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<tr>
<td>HONORABLE KIRK FORDICE, GOVERNOR</td>
<td>STATE OF MISSISSIPPI P O BOX 139</td>
<td>JACKSON MS 39205 US</td>
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<tr>
<td>J R PICKELL</td>
<td>GENERAL CHAIRPERSON UTU 6737 NORTH HIGH ST STE 108</td>
<td>NORWICHING OH 43085 US</td>
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<tr>
<td>WILLIAM P HERNAN JR</td>
<td>GENERAL CHAIRMAN P O BOX 180</td>
<td>HILLIARD OH 43026 US</td>
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<tr>
<td>HONORABLE DEBORAH FRYCE</td>
<td>U. S. HOUSE OF REPRESENTATIVES 500 SOUTH FRONT STREET, ROOM 1130</td>
<td>COLUMBUS OH 43215 US</td>
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<tr>
<td>THOMAS M O'LEARY</td>
<td>OHIO RAIL DEVELOPMENT COMMISSION 50 W BROAD STREET 15TH FLOOR COLUMBUS OH 43215 US</td>
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<tr>
<td>DOREEN C JOHNSON</td>
<td>CHIEF ANTITRUST SECTION OHIO ATTY GENERAL OFFICE 30 E BROAD STREET 16TH FLOOR COLUMBUS OH 43215 US</td>
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<tr>
<td>HONORABLE JOHN GLENN</td>
<td>U. S. SENATE ATTN: DAN EMERINE 200 N HIGH STREET 5-600 COLUMBUS OH 43215-2408 US</td>
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<tr>
<td>JAMES R JACOBS</td>
<td>JACOBS INDUSTRIES 2 QUARRY LANE</td>
<td>STONY RIDGE OH 43463 US</td>
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<td>ROBERT J COOPER</td>
<td>GENERAL CHAIRPERSON UTU 1238 CASS ROAD</td>
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<td>ROBERT E GREENLESE</td>
<td>TOLEDO-LUCAS COUNTY PORT AUTHORITY 1 MARITIME PLAZA SUITE 700 TOLEDO OH 43604 US</td>
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<tr>
<td>DAVID DYSARD</td>
<td>TMACOG PO BOX 9508 300 CENTRAL UNION PLAZA TOLEDO OH 43697-9508 US</td>
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<tr>
<td>Ron Marquard</td>
<td>Local Union 1810 UMWA R D #2 Rayland OH 43943 US</td>
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<tr>
<td>Mayor Vincent M Urban</td>
<td>150-Avon Belden Rd Avon Lake OH 44012 US</td>
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<tr>
<td>Charles S Hesse</td>
<td>Charles Hesse Associates 7777 Bainbridge Road Chagrin Falls OH 44023-2124 US</td>
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<td>Coletta McNamee Sr</td>
<td>Cudell Improvement Inc 11500 Franklin Blvd Ste 104 Cleveland OH 44102 US</td>
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<td>C L Little</td>
<td>United Transportation Union 14600 Detroit Ave Cleveland OH 44107 US</td>
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<td>Charles S Hesse</td>
<td>Charles Hesse Associates 7777 Bainbridge Road Chagrin Falls OH 44023-2124 US</td>
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<td>C V Monin</td>
<td>Brotherhood of Locomotive Engineers 1370 Ontario Street Cleveland OH 44113 US</td>
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<tr>
<td>Christopher C McCracken</td>
<td>Ulmer &amp; Berne LLP 1300 East Ninth Street Suite 900 Cleveland OH 44114 US</td>
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<td>Charles Zumbehr</td>
<td>Roetzel &amp; Andress Co LPA 75 East Market Street Akron OH 44308 US</td>
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<td>Michael J Garrigan</td>
<td>BP Chemicals Inc 4440 Warrensville Ctr Rd Cleveland OH 44128 US</td>
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<td>David J Matty</td>
<td>City of Rocky River 21012 Hilliard Road Rocky River OH 44116-3398 US</td>
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<tr>
<td>Gary E Ebert</td>
<td>City of Bay Village 350 Dover Center Road Bay Village OH 44140 US</td>
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<td>Charles E Allenbaugh Jr</td>
<td>East Ohio Stone Company 2000 W Besson St Alliance OH 44601 US</td>
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<td>Sylvia R Chinn-Levy</td>
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<td>Randall C Hunt</td>
<td>Krugliak, Wilkins, Griffiths &amp; Dougherty Co P O Box 36963 4775 Munson St NW Canton OH 44735-6963 US</td>
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<td>Richard E Kerth</td>
<td>Champion Internat' l Corp 101 Knightsbridge Drive Hamilton OH 45020-0001 US</td>
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<td>D G Strunk Jr</td>
<td>General Chairperson UTU 817 Kilbourne Street Bellevue OH 44811 US</td>
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<tr>
<td>Fay Dupuis</td>
<td>City of Cincinnati 801 Plum Street Cincinnati OH 45202 US</td>
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<td>Brad F Huston</td>
<td>Cyprus Amax Coal Sales Corp 400 Tech center Drive Ste 320 Milford OH 45150 US</td>
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<tr>
<td>Honorable Rob Portman</td>
<td>U S House of Representatives 8044 Montgomery Road, Room 540 Cincinnati OH 45236 US</td>
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<tr>
<td>Robert Edwards</td>
<td>Eastern Transport and Logistics 1103 Lanette Drive Cincinnati OH 45230 US</td>
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<tr>
<td>Thomas R Ryman</td>
<td>President Indian Creek Railroad Company 3905 W 600 North Anderson IN 46011 US</td>
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06/09/1998
SERVICE LIST FOR: 09-jun-1998 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

F RONALDS WALKER
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MCHALE, COOK & WELCH
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J PATRICK LATZ
HEAVY LIFT CARGO SYSTEM
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06/09/1998
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CHICAGO IL 60611-5504 US

SCOTT A RONEY
ARCHER DANIELS MIDLAND COMPANY
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4666 FARIES PARKWAY
DECATUR IL 62525 US

R A GRICE
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LONG BEACH CA 90802 US

Record: 357
By petition filed June 3, 1998, the Brotherhood of Maintenance of Way Employees, Transport Workers Union of America, and Brotherhood of Locomotive Engineers, American Train Dispatchers Department (jointly petitioners), request the Board to postpone its June 8, 1998 voting conference in this proceeding. Petitioners raise questions about the constitution of the Board and request reopening of the evidentiary phase of the proceeding and postponement until issues they raise are resolved to their satisfaction.

The petition presents no good cause or basis for postponement. Accordingly, the petition for postponement will be denied.

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

It is ordered:

1. The petition for postponement is denied.

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1 By pleading filed June 4, 1998 (designated TCU-17), Transportation Communications International Union joins in the petition for postponement.

2 In this proceeding, CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc., and Consolidated Rail Corporation (collectively Conrail) seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail by CSX and NS; and (2) the division of Conrail's assets by and between CSX and NS. CSX, NS and Conrail are collectively referred to as applicants in this decision.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary
SERVICE LIST FOR: 06-jun-1998 STB FD 33388 0  CSX CORPORATION AND CSX TRANSPORTATION

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<td>One World Trade Center</td>
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<tr>
<td>Samuel J. Masca</td>
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<td>Albany, NY 12205 US</td>
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<td>810 Abbott Road Suite 200</td>
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WASHINGTON DC 20515 US

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U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON CAROLYN B. MALONEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON NITA L. LOWEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HON MAURICE HINCHey
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE PAUL GILMORE
U. S. HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE CHIP PICKERING
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE JESSE L. JACKSON, JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE LUIS GUTIERREZ
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US
<table>
<thead>
<tr>
<th>Service List for: 06-Jun-1998 STB FD 33388 0 CSX Corporation and CSX Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Honorables</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
</tr>
<tr>
<td><strong>Honorable Danny K. Davis</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
</tr>
<tr>
<td><strong>Honorable Sherrod Brown</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable Ed Towns</strong></td>
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<tr>
<td>U.S. House of Representatives</td>
</tr>
<tr>
<td>Washington DC 20515 US</td>
</tr>
<tr>
<td><strong>Honorable Charles Schumer</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable Michael Forbes</strong></td>
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<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
</tr>
<tr>
<td><strong>Honorable Eliot L. Engel</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable Jerrold Nadler</strong></td>
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<td>U.S. House of Representatives</td>
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<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable Vic Fazio</strong></td>
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<tr>
<td>United States House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable Major R. Owens</strong></td>
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<td>United States House of Representatives</td>
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<tr>
<td>Washington DC 20515 US</td>
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<tr>
<td><strong>Honorable James A. Barcia</strong></td>
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<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515-2205 US</td>
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<tr>
<td><strong>Honorable Richard Burr</strong></td>
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<td>U.S. House of Representatives</td>
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<td>Washington DC 20515-3305 US</td>
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<td><strong>Cong. Bob Clement</strong></td>
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<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515-4205 US</td>
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<tr>
<td><strong>Honorable Bobby L. Rush</strong></td>
</tr>
<tr>
<td>U.S. House of Representatives</td>
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<tr>
<td>Washington DC 20515-9997 US</td>
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<tr>
<td>Name</td>
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<tr>
<td>PAUL SAMUEL SMITH</td>
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<td>DAVID O ABRAHAM</td>
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<td>JOHN N ROBINSON</td>
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<td>JOHN HOY</td>
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<td>JOHN ROY</td>
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<td>JOSEPH R. POMPORIO</td>
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<td>MITCHELL M. KRAUS</td>
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<td>WILLIAM W WHITENURST JR</td>
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<td>ROBERT J WILL</td>
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<td>LINDA A JANEY J D</td>
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<tr>
<td>GARRETT G SMITH</td>
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<tr>
<td>WILLIAM P. JACKSON, JR.</td>
</tr>
<tr>
<td>GERALD W FAUTH III</td>
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<tr>
<td>ROBERT E MARTINEZ</td>
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<td>L P KING JR</td>
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<td>VAUGHN R GROVES</td>
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<td>R K SARGENT</td>
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SERVICE LIST FOR: 08-jun-1998 STF FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

WILLIAM T BRIGHT
P O BOX 119
200 GREENBRIER ROAD
SUMMERSVILLE WV 26651 US

SCOTT M SAYLOR
NORTH CAROLINA RAILROAD COMPANY
3200 ATLANTIC AV STE 110
RALEIGH NC 27604-1640 US

HONORABLE DAVID N BEASLEY
GOVERNOR
P O BOX 11369
COLUMBIA SC 29211 US

J T REED
GENERAL CHAIRPERSON UTU
7705 BAYMEADOWS WAY STE 109
JACKSONVILLE FL 32256 US

HONORABLE LAMONT CHILES
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE FL 32399-0001 US

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

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

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

THOMAS R O'LEARY
OHIO RAIL DEVELOPMENT COMMISSION
50 W BROAD STREET 15TH FLOOR
COLUMBUS OH 43215 US

HONORABLE DEBORAH PRYCE
U S HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

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

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

RDN MARQUARDT
LOCAL UNION 1810 UMWA
R D #2
RAYLAND OH 43943 US

FRANK N JORGENSEN - 
THE ELK RIVER RAILROAD INC
P O BOX 660
SUMMERSVILLE WV 26651 US

E NORRIS TOLSON
NC DEPT OF TRANSPORTATION
P O BOX 25201
1 S WILLOING STREET
RALEIGH NC 27611 US

J L RODGERS
GENERAL CHAIRMAN UTU
480 OSCEOLA AVENUE
JACKSONVILLE FL 32250 US

PHILLIP L BELL
ERIE LACKAWANNA RAILROAD CO
PO BOX 1-82
TALLAHASSEE FL 32302 US

JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPOINT TN 37662 US

J R BARBEE
GENERAL CHAIRPERSON UTU
P.O. BOX 9599
KNOXVILLE TN 37940 US

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

F R PICKELL
GENERAL CHAIRPERSON UTU
6797 NORTH HIGH ST STE 108
WORTHINGTON OH 43085 US

DOREEN C JOHNSON, CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

HONORABLE JOHN GLENN
U. S. SENATE ATTN: DAN EMERINE
200 N HIGH STREET STE 500
COLUMBUS OH 43215-2408 US

ROBERT J COOPER
GENERAL CHAIRPERSON UTU
1238 CASS ROAD
MAUMEE OH 43537 US

DAVID DYSARD
TRACOG
PO BOX 9508
300 CENTRAL UNION PLAZA
TOLEDO OH 43697-9508 US

MAYOR VINCENT N URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

06/08/1998 Page 11
SERVICE LIST FOR: 06-jun-1998 STB FD 33388 O CSX CORPORATION AND CSX TRANSPORTATION

CHARLES S HESSE
CHARLES HESSE ASSOCIATES
7777 BAINBRIDGE ROAD
CHAGrin FALLS OH 44023-2124 US

ANITA R BRINDZA
THE ONE FIFTEEN HUNDRED BUILDING
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

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

MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENsville CTR RD
CLEVELAND OH 44128 US

RANDALL C HUNT
KRUGLIAC, W. KINS, GRIFFITHS & DOUGHERTY CO.
P O BOX 36963
4775 HUNSON ST NW
CANTON OH 44735-6963 US

RICHARD E KERTH
CHAMPION INTERNA\'T Corp
101 KNIGHTSBRIDGE DRIVE
HAMILTON OH 45020-0001 US

FAY D DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

HONORABLE ROB PORTMAN
U. S. HOUSE OF REPRESENTATIVES
8044 MONTGOMERY ROAD, ROOM 540
CINCINNATI OH 45236 US

F RONALD WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US

COLETTA MCMAHON SR
CUDELL IMPROVEMENT INC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

C L LITTLE
UNITED TRANSPORTATION UNION
14600 DETROIT AVE
CLEVELAND OH 44107 US

C V RONIN
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 OHIO STREET
CLEVELAND OH 44113 US

DAVID GOLDSMITH AND ROLLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

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

C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44132 US

CHARLES ZUMKEHR
ROETZEL & ANDREWS CO LPA
75 EAST MARKET STREET
AKRON OH 44308 US

CHARLES E ALLENBAUGH JR
EAST OHIO ONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US

D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 PLEABOURNE STREET
BELLEVUE OH 44811 US

BRAD F HUSTON
CYPRUS AMAX COAL SALES CORP
400 TECHCENCMER DRIVE STE 320
MILFORD OH 45150 US

ROBERT EDWARDS
EASTERN TRANSPORT AND LOGISTICS
1109 LAMETTE DRIVE
CINCINNATI OH 45230 US

THOMAS R RYDMAN PRESIDENT
INDIAN CREEK RAILROAD COMPANY
3905 W 600 NORTH
ANDERSON IN 46011 US

FAY C DUPUIS
CITY OF CINCINNATI
801 PLUM STREET
CINCINNATI OH 45202 US

HONORABLE ROB PORTMAN
U. S. HOUSE OF REPRESENTATIVES
8044 MONTGOMERY ROAD, ROOM 540
CINCINNATI OH 45236 US

F RONALD WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202-1393 US
<table>
<thead>
<tr>
<th>Name</th>
<th>Company/Position</th>
<th>Address</th>
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<tbody>
<tr>
<td>HONORABLE DAN COATS</td>
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<td>UNITED STATES SENATE 1180 MARKET TOWER, 10 WEST MARKET STREET INDIANAPOLIS IN 46204 US</td>
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<tr>
<td>J PATRICK LATZ</td>
<td>HEAVY LIFT CARGO SYSTEM</td>
<td>PO BOX 51451 INDIANAPOLIS IN 46251-0451 US</td>
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<tr>
<td>MICHAEL CONNELLY</td>
<td>CITY OF EAST CHICAGO</td>
<td>4525 INDIANAPOLIS BLVD EAST CHICAGO IN 46312 US</td>
</tr>
<tr>
<td>HAMILTON L CARMOUCHE,</td>
<td>CORPORATION COUNSEL</td>
<td>CITY OF GARY 401 BROADWAY 4TH FLOOR GARY IN 46402 US</td>
</tr>
<tr>
<td>NICOLE HARVEY</td>
<td>THE DOM CHEMICAL COMPANY</td>
<td>2020 DOM CENTER MIDLAND MI 48674 US</td>
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<tr>
<td>LARRY B. KARNES</td>
<td>TRANSPORTATION BUILDING</td>
<td>PO BOX 30050 425 WEST OTTAWA LANSING MI 48909 US</td>
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<tr>
<td>JAMES E SHEPHERD</td>
<td>TUSCOLA &amp; SAGINAW BAY</td>
<td>PO BOX 550 OWOSSE MI 48867-0550 US</td>
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<tr>
<td>CHRISTOPHER J BURGER</td>
<td>CENTRAL RAILROAD COMPANY OF INDIANAPOLIS</td>
<td>PO BOX 554 KOKOMO IN 46903-0554 US</td>
</tr>
<tr>
<td>WILLIAM A. BOHB</td>
<td>GENERAL COUNSEL</td>
<td>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES 26555 EVERGREEN ROAD SUITE 200 SOUTHFIELD MI 48076 US</td>
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<tr>
<td>MICHAEL CONNELLY</td>
<td>CITY OF EAST CHICAGO</td>
<td>4525 INDIANAPOLIS BLVD EAST CHICAGO IN 46312 US</td>
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<td>JAMES E SHEPHERD</td>
<td>TUSCOLA &amp; SAGINAW BAY</td>
<td>PO BOX 550 OWOSSE MI 48867-0550 US</td>
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<tr>
<td>LEO J WASCHESCHI</td>
<td>GOLD MEDAL DIVISION - GENERAL MILLS OPERATION</td>
<td>P.O. BOX 1113 NUMBER ONE GENERAL MILLS BULEVARD MINNEAPOLIS MN 55440 US</td>
</tr>
<tr>
<td>WILLIAM F. COTTRELL</td>
<td>ASST. ATTORNEY GENERAL</td>
<td>100 W RANDOLPH ST - 12TH FLOOR CHICAGO IL 60601 US</td>
</tr>
<tr>
<td>WILLIAM C SIPPEL</td>
<td>IL ASSISTANT ATTORNEY GENERAL</td>
<td>100 W RANDOLPH ST 13TH FLOOR CHICAGO IL 60601 US</td>
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<td>WILLIAM C SIPPEL</td>
<td>IL ASSISTANT ATTORNEY GENERAL</td>
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<tr>
<td>RICHARD A. SERPE</td>
<td>INDANA HARBOR BELT RR</td>
<td>175 WEST JACKSON BOULEVARD SUITE 1460 CHICAGO IL 60604 US</td>
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SERVICE LIST FOR: 06-jun-1998 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

SANDRA J. DEARDEN
NDCO CONSULTANTS, INC.
407 SOUTH DEARBORN, SUITE 1260
CHICAGO IL 60605 US

THOMAS F. MCFAIRLAND JR
MCFAIRLAND & HERMAN
20 NORTH WACKER DRIVE, SUITE 1330
CHICAGO IL 60606-3101 US

CHARLES O. BOLAN
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

MERRILL L. TRAVIS
ILLINOIS DEPT. OF TRANSPORTATION
2300 S. DREKSEN PARKWAY, RN 302
SPRINGFIELD IL 62703-4558 US

IAN HUIR
BUNGE CORPORATION
P O BOX 25300
ST LOUIS MO 63146 US

HENRY T DART
PLAINTIFF MANAGEMENT COMMITTEE
3748 NORTH CAUSEWAY BLVD SUITE 301
METAIRIE LA 70002 US

DENNIS A. GUTH
WEST LAKE GROUP
2801 POST OAK BLVD
HOUSTON TX 77056 US

MICHAEL P. FERRO
MILLENIUM PETROCHEMICALS, INC.
P O BOX 2583
1221 MCKINNEY STREET SUITE 1600
HOUSTON TX 77252-2583 US

MONTY L PARKER
CNC STEEL GROUP
P O BOX 911
SEGUIN TX 78156 US

J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVRGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

SHELDON A. ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

MYLES L. TOBIN
ILLINOIS CENTRAL RAILROAD
455 NORTH CITYFRONT PLAZA DRIVE
CHICAGO IL 60611-3504 US

SCOTT A. RONEY
ARCHER DANIELS MIDLAND COMPANY
P O BOX 1470
4666 FARIRES PARKWAY
DECATURE IL 62525 US

R A GRICE
GENERAL CHAIRPERSON UTU
11017-F GRAVIOIS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

JOHN JAY ROSACKER
KS, DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

MIKE SPANIS
FINA OIL & CHEMICAL CO.
6350 NORTH CENTRAL EXPRESSWAY, STE. 1620
DALLAS TX 75206 US

DAVID L. HALL
COMMONWEALTH CONSULTING ASSOCIATES
13103 FN 1960 WEST, SUITE 204
HOUSTON TX 77065-4069 US

STEVE M. COULTER
EXXON COMPANY USA
PO BOX 3272
HOUSTON TX 77253-3272 US

STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
110 WEST OCEAN BLVD STE C
LONG BEACH CA 90802 US

Records: 357
HEARING GUIDELINES

1. The list of witnesses is attached.

2. The Chairman will announce the time for the lunch break. During the lunch break, the Hearing Room and the Brick Room will be secured, and personal items may be left there. Please retain your admission badges during the lunch break, and re-enter the building using the same 20th Street entrance. Please be advised that the 20th Street entrance will open at 8:00 am for the oral argument and at 12:00 pm for the voting conference, and will close at 7:00 pm.

3. Afternoon breaks will be called at the Chairman’s discretion.

4. This is a non-smoking building.

5. No food or drinks are allowed in the Hearing Room or the Brick Room.

6. There will be limited seating in the Hearing Room and all seats will be filled. Briefcases, overcoats, etc., should be placed under the benches to maximize seating.

7. When leaving the Hearing Room for the day, please turn in your badge. During the day, new members of the public will be admitted to the Brick Room and the Hearing Room, based upon availability of seats, upon a first come, first served basis.

8. The use of cellular telephones or beepers is not permitted in the Hearing Room.
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

MEMBERS OF CONGRESS

SCHEDULE OF APPEARANCES

Wednesday, June 3, 1998:

MEMBERS OF CONGRESS

PRIMARY APPLICANTS

* Norfolk Southern Corporation, Norfolk Southern Railroad Company
  David R. Goode, Chairman and CEO of NS
  Richard A. Allen, Counsel for NS
  TIME ALLOTTED
  60 minutes
  4 minutes
  26 minutes

* CSX Corporation, CSX Transportation, Inc.,
  John Snow, Chairman and CEO of CSX
  Betty Jo Christian, Counsel for CSX
  Dennis G. Lyons, Counsel for CSX
  TIME ALLOTTED
  11 minutes
  8 minutes
  11 minutes

FEDERAL GOVERNMENT PARTIES

U.S. Department of Justice
  Michael Harmonis
  TIME
  10 minutes

U.S. Department of Transportation
  Paul Samuel Smith
  TIME
  15 minutes

  Total
  25 minutes

*Using visual aids.
BROAD SHIPPER INTERESTS
The National Industrial Transportation League
Nicholas J. DiMichael

*The Fertilizer Institute
Michael MCBride

Chemical Manufacturers Association
Scott N. Stone
Thomas E. Schick

Society of the Plastics Industry, Inc.
Scott N. Stone
Thomas E. Schick

Total

SPECIFIC SHIPPER INTERESTS
ARCO Chemicals Company
Martin W. Bercovici

AK Steel Corporation
Frederic L. Wood

*ASHTA Chemical
Inajo Davis Chappell

Eastman Kodak Company

*Joseph Smith & Sons, Inc
Jeffery O. Moreno

Millennium Petrochemicals Inc.

Total

COAL
Centerior Energy Corporation [First Energy Corp.]

Total
Consumers Energy Company  
   Kelvin J. Dowd  
5 minutes

*Eighty-Four Mining Company  
   Martin W. Bercovici  
5 minutes

Niagara Mohawk Power Corporation  
   John K. Maser III  
5 minutes

Orange and Rockland Utilities, Inc.  
   John M. Cutler, Jr  
5 minutes

*American Electric Power Service Corporation  
   Michael F. McBride  
3 minutes

Total  
33 minutes

PASSENGER AND COMMUTER INTERESTS

American Public Transit Association  
   William W. Millar  
5 minutes

Northern Virginia Transportation Commission & Potomac  
   and Rappahannock Transportation Commission (VRE)  
   Kevin M. Sheys  
5 minutes

Metro-North Commuter Railroad  
   Walter E. Zullig Jr.  
5 minutes

Southeastern Pennsylvania Transportation Authority  
5 minutes

Total  
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**OTHER RAILROADS**

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<td>Ann Arbor Railroad</td>
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<tr>
<td>Karl Morell</td>
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<tr>
<td>New England Central Railroad, Inc.</td>
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<td>Karl Morell</td>
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<td>Bessemer &amp; Lake Erie Railroad Company</td>
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<td>William Sippel</td>
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<td>Housatonic Railroad Company</td>
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<td>Kevin M. Sheys</td>
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<tr>
<td>Philadelphia Belt Line Railroad Company</td>
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<td>Charles A. Spitulnik</td>
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<tr>
<td>Reading, Blue Mountain &amp; Northern Railroad Company</td>
<td>5 min</td>
</tr>
<tr>
<td>Eric Hocky</td>
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<td>New York &amp; Atlantic Railway</td>
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<tr>
<td>Mark H. Sidman</td>
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<tr>
<td>Gateway Western Railway Company</td>
<td>3 min</td>
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<td>William Mullins</td>
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**Total**  
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**NEW YORK/NEW JERSEY**

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<td>William L. Slover</td>
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<td>New York City Economic Development Corporation</td>
<td>5 min</td>
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<td>Charles A. Spitulnik</td>
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<td>Erie-Niagara Rail Steering Committee</td>
<td>5 min</td>
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<tr>
<td>John K. Maser III</td>
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<td>Genesee Transportation Council</td>
<td>4 min</td>
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<tr>
<td>Doug Midiff</td>
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Southern Tier West Regional Planning and Development Board 2 minutes

Total 31 minutes

CHICAGO
Wisconsin Central, Ltd.
Robert Wheeler 5 minutes

Elgin, Joliet & Eastern Railway Company, Transtar, Inc.,
and I&M Rail Link
William Sippel 5 minutes

Illinois International Port District
Richard F. Friedman 5 minutes

Total 15 minutes
STB Finance Docket No. 33388

June 2, 1998 (5:40PM)

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

Thursday, June 4, 1998:

MEMBERS OF CONGRESS

INDIANAPOLIS
City of Indianapolis, Indiana
Michael P. Maxwell, Jr.

Indiana Southern Railroad
Karl Morel

*Indianapolis Power & Light Company
Michael F. McBride

TIME
ALLOTTED

5 minutes

5 minutes

5 minutes

Total

15 minutes

*Using visual aids.
**OHIO**

*The Attorney General, State of Ohio, The Ohio Rail Development Commission, and The Public Utilities Commission of Ohio
Keith G. O'Brien

*Wheeling & Lake Erie Railway Company
Keith G. O'Brien

*Wyandot Dolomite, Inc.
Robert Wimbish

Stark Development Board
Randall Hunt

Martin Marietta Materials, Inc.
Fritz R. Kahn

*National Lime & Stone Company

Total

**OTHER STATE GOVERNMENTS**

Delaware Department of Transportation

State of Vermont
Karen E. Songhurst

Total

**ENVIRONMENTAL AND SAFETY ISSUES**

Four City Consortium--(The Cities of East Chicago, IN; Hammond, IN; Gary, IN; and Whiting, IN)
C. Michael Loftus

City of Cleveland, Ohio
Mayor Michael R. White
Charles A. Sptiulnik

The Cities of Bay Village, Rocky River and Lakewood, Ohio

Wellington, Ohio Village Council
Kenneth E. Siegel

Tri-State Transportation Campaign

Total
American Trucking Associations
Kenneth E. Siegel

Labor
Allied Rail Unions, Transportation Communications
United Transportation Union
Clinton J. Miller III
Brotherhood of Locomotive Engineers—Consolidated Rail Corporation—General Committee of Adjustment
Robert W. Godwin
Brotherhood of Locomotive Engineers, Division 227
Angelo Chick
New York State Legislative Board, United Transportation Union
Union
Retirees—Former Employees of Conrail

Schedule Change
APL LIMITED
Louis Gitomer
The Port Authority of New York and New Jersey
Paul M. Donovan

Primary Applicants
Norfolk Southern Corporation, Norfolk Southern Railway Company
Richard A. Allen Counsel for NS
CSX Corporation, CSX Transportation
Dennis Lyons, Counsel for CSX
Mary Gay Sprague
Samuel Sipes
Total Time Allocated

540 minutes
The oral argument and the voting conference in this proceeding have been scheduled for June 3, 4, and 8, 1998, in the Surface Transportation Board Hearing Room (Suite 760) at 1925 K Street, N.W., Washington, D.C. The Board will provide an overflow room (the Brick Room) on the first floor of the building with a closed-circuit telecast of the entire proceeding.

**ORAL ARGUMENT**

All participants in the oral argument must notify the Board’s Office of the Secretary of the name of the speaker for the oral argument. The participants must notify the Secretary’s Information Officer, Bettye Uzzle at 202/565-1650 by noon, June 2, 1998, of the speaker’s name. Ms. Uzzle will also accept the requested information by fax at 202/565-9004.

**VOTING CONFERENCE**

Given the large number of persons likely to attend the voting conference, the Board requests that all persons attending the hearing use the building’s entrance located on 20th Street between K and L Streets. For security reasons, upon entering the 20th Street entrance, all persons should be prepared to produce photo identification (such as a driver’s license), pass through a metal detector, and submit to an inspection of all briefcases, handbags and any other bags.

To effectively conduct the voting conference, the Board must limit access to the hearing room. Each applicant (Conrail, Inc., CSX Corporation and Norfolk Southern Corporation) will be allotted five admission badges. The balance of the seating in the hearing room for the voting conference will be on a first come, first served basis. Only eighty admission badges for the voting conference will be available and those badges will be available at the Board’s 20th Street entrance beginning at 9:00 am on June 8, 1998, the day of the conference. The admission badges for the voting conference will be disbursed one per person, on a first come, first served basis.
Once all 80 badges have been given out, the 20th street doors will be closed. These doors will reopen at 12:00 p.m. Upon clearing security at the 20th Street entrance, the holders of admission badges for the hearing room will be escorted to the seventh floor hearing room. Only holders of hearing room or media badges will be admitted to the seventh floor hearing room. All those without badges will be admitted to the overflow room for the voting conference, and 135 seats will be available for the proceeding. No admission badge will be required to view the voting conference in the overflow room. The voting conference will be video-taped, and the Board will make arrangements to have the tapes duplicated, at cost, if there is a public demand for copies of the tapes.

At the conclusion of the voting conference and all Board business on June 8, 1998, the hearing room will be made available to participants in the proceeding for the purpose of speaking to the press. Those who wish to use the hearing room for such a press conference should contact Media Officer Dennis Watson at 202/565-1596 by June 2, 1998, to register to use the hearing room.

Comments or questions concerning this decision should be directed to Bettye Uzzle, the Information Officer for the Office of the Secretary at 202/565-1650.

It is ordered:

1. Admittance to the Surface Transportation Board proceedings on June 8, 1998, will be upon the conditions set forth above.

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

By the Board, Vernon A. Williams, Secretary.
SERVICE LIST FOR: 05/27/1998 STB FD 33388 CSX CORPORATION AND CSX TRANSPORTATION

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GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

D. J. O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HARRISBURG PA 19041 US

05/27/1998
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<td>MARY GABRIELLE SPRAGUE</td>
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<td>EDMARO WYT KIND, EXECUTIVE DIRECTOR</td>
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<td>L. JOHN OSBORN</td>
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<td>KARL MORELL</td>
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<td>TROUTMAN SANDERS LLP</td>
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<td>FRITZ R. KAHN</td>
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<td>NICHOLAS J. DIMICHAEL</td>
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<td>1750 PENNSYLVANIA AVE NW, STE 1105</td>
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<tr>
<td>RICHARD A. ALLEN</td>
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<tr>
<td>988 17TH STREET NW STE 600</td>
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<tr>
<td>John L Oberdorfer</td>
<td>Patton Boggs LLP 2550 M St NW</td>
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<tr>
<td>Keith A Klimdorff</td>
<td>U S Dept of Agriculture P O Box 96456</td>
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<tr>
<td>Arvid E Roach II</td>
<td>Covington &amp; Burling PO Box 7566</td>
</tr>
<tr>
<td>Thomas A. O'Brien</td>
<td>US Department of Agriculture P O Box 965456</td>
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<tr>
<td>Eileen S Stommes</td>
<td>Director T&amp;M Division Agricultural Marketing Service USDA P O Box 96456</td>
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<tr>
<td>Judge Jacob Leventhal</td>
<td>Office of Hearings Federal Energy Regulatory Commission 888 - 1ST ST, N.E. STE 11F</td>
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<tr>
<td>Hon John Glenn</td>
<td>United States Senate</td>
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<tr>
<td>Hon. Dan Coats</td>
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Records: 348
SURFACE TRANSPORTATION BOARD

Board Voting Conference

TIME & DATE: 1:00 p.m., Monday, June 8, 1998
PLACE: Hearing Room, Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423
STATUS: The Board will meet to discuss among themselves
the agenda item listed below. Although the
conference is open for public observation, no
public participation is permitted.

MATTERS TO BE DISCUSSED:

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.

CONTACT PERSONS FOR MORE INFORMATION:

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Vernon A. Williams
Secretary
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Records: 7
This decision addresses the motion by CSX¹ (designated as CSX-147) for leave to file the verified statement of Michael C. Sandifer (Sandifer verified statement) concerning the incidence of antiassignment clauses in Conrail's rail transportation contracts.² CSX's motion, filed May 15, 1998, is opposed by APL Limited (APL) and Eastman Kodak Company (EKC) (See APL-22/EKC-6, filed May 20, 1998) and by Chemical Manufacturers Association (CMA) and The Society of Plastics Industry, Inc. (SPI) (See CMA-20, filed May 20, 1998). For the reasons discussed below, the motion will be denied.

In this proceeding, applicants have proposed that clauses in Conrail's rail transportation contracts that purport to limit or prohibit Conrail's assignment of its rights under those contracts (i.e., so-called antiassignment clauses) be overridden by the Board. See Application, Prayer for Relief 1.c., CSX/NS-18, Vol. I at 102-03. In connection with their override request, applicants refer to section 2.2(c) of their agreement to acquire the assets of Conrail (referred to herein as the Transaction Agreement) that provides for the succession of CSX and/or NS to the rail transportation contracts of Conrail, where both the shipper and the succeeding carrier will remain bound by the existing terms of the contract. In support of its motion, CSX maintains that it was only after the simultaneous filing of briefs on February 23, 1998, that the issue of the extent of antiassignment clauses in Conrail's rail transportation contracts came into focus in the case and became significant. According to CSX, the evidence it seeks to submit is merely quantitative, not judgmental or

¹ CSX refers to CSX Corporation and CSX Transportation, Inc. In this proceeding, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) and CSX seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS. CSX, NS and Conrail are collectively referred to as applicants in this decision.

² CSX attached the Sandifer verified statement (designated as CSX-148) to its motion.
qualitative, and that no party would be prejudiced by the introduction of its study of the prevalence of such clauses in Conrail's contracts.

APL, EKC, CMA, and SPI (opponents) argue that CSX's motion is in blatant disregard of the procedural schedule which required all evidence and rebuttal in support of the primary application to be filed by December 15, 1997. Opponents contend that, contrary to CSX's claim, the issue of antiassignment clauses was raised as early as June 23, 1997, when applicants filed their application and requested that such contract provisions be overridden. Opponents insist that accepting CSX's statement at this late date will seriously prejudice them by eliminating their opportunity to reopen discovery and evaluate the foundation of CSX's study. If we permit CSX to submit its statement, opponents maintain that the current schedule for oral argument and the voting conference must be extended to allow for substantive responses to CSX's belated filing.

CSX's motion will be denied. Opponents are correct that the issue of whether we should override antiassignment clauses in Conrail's rail transportation contracts was a matter of record at an early stage in this proceeding. As an applicant, CSX has always had the burden of justifying the application's contract override requests, and it presents no valid reason why it could not have submitted the proffered evidence in a more timely manner. Accepting the evidence at this late stage would seriously deviate from the well-established procedural schedule in this case. It would also prejudice the opponents who have consistently challenged, in one manner or another, an override of antiassignment clauses and/or section 2.2(c) of the Transaction Agreement.

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

It is ordered:

1. CSX's motion in CSX-147, for leave to file the Sandifer verified statement, is denied. The Sandifer verified statement (CSX-148) is rejected.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary
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BELNAP FREEMAN
BELNAP FREEMAN
119 HICKORY LANE
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05/29/1998  Standing selected: 'ALJ', 'GOV', 'MOC', 'POR'  Page 2
<table>
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<th>Name</th>
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<td>O J O'Connell</td>
<td>GENERAL CHAIRPERSON UTU 410 LANCASHTE AVE STE 5 HAVERFORD PA 19041 US</td>
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<tr>
<td>Harry C. Barber</td>
<td>BARBIN LAFUER &amp; O'CONNELL 608 HUNTINGDON PIKE ROCKLEDGE PA 19046 US</td>
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<tr>
<td>William R. Thompson</td>
<td>CITY OF PHILADELPHIA LAW DEPT 1600 ARCH ST 10TH FLOOR PHILADELPA 19103 US</td>
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<tr>
<td>David Berger</td>
<td>BERGER AND MONTAGUE, P. C. 1622 LOCUST ST PHILADELPA 19103-6505 US</td>
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<td>John K. Leary, General Manager</td>
<td>SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTH 1234 MARKET STREET 5TH FLOOR PHILADELPA 19107-3780 US</td>
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<tr>
<td>Hon. Joseph R. Biden, Jr.</td>
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<tr>
<td>E. C. Wright</td>
<td>RAIL TRANSPORTATION PROCUREMENT MANAGER 1007 MARKET STREET DUPONT BLDG 3100 WILMINGTON DE 19898 US</td>
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<tr>
<td>Terrence D. Jones</td>
<td>KELLER &amp; HECKMAN 1001 G ST NW STE 500 WEST WASHINGTON DC 20001 US</td>
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<td>Peter A. Gilbertson</td>
<td>REGIONAL RRS OF AMERICA 122 C ST NW STE 650 WASHINGTON DC 20001 US</td>
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<td>Bruce Knight</td>
<td>NATIONAL CORN GROWERS ASSOCIATION 122 C ST NW SUITE 510 WASHINGTON DC 20001-2109 US</td>
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<tr>
<td>Donald F. Griffin</td>
<td>BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES 10 G STREET N.W. STE 460 WASH DC 20002 US</td>
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<tr>
<td>Patrick R. Plummer</td>
<td>GUERRIERI, EDMOND &amp; CLAYMAN PC 1331 F ST NW WASHINGTON DC 20004 US</td>
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<td>Drew A. Harker</td>
<td>ARNOLD &amp; PORTER 555 TWELFTH STREET NW WASHINGTON DC 20004 US</td>
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<td>John J. Grocki</td>
<td>GRA INC 115 WEST AV ONE JENKINTOWN STA JENKINTOWN PA 19046 US</td>
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<td>G. Craig Schelter</td>
<td>PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION 2600 CENTRE SQUARE WEST 500 MARKET ST PHILADELPA 19102 US</td>
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<td>John J. Ehlinger Jr.</td>
<td>OBERMAYER REBMAN MAXWELL &amp; HIPPEL 1617 JOHN F. KENNEDY BLVD ONE PENN CENTER-19T PHILADELPA 19103-1895 US</td>
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<td>John J. Coscia, Executive Director</td>
<td>DELAWARE VALLEY REGIONAL PLANNING COMMISSION 111 SOUTH INDEPENDENCE MALL EAST PHILADELPA 19106 US</td>
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<td>Eric N. Hocky</td>
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<td>J. E. Thomas</td>
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<td>Frederick H. Schranck</td>
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<td>Richard G. Slattery</td>
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<td>Joseph Guerrieri, Jr.</td>
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SERVICE LIST FOR: 29-My-1998 STB FD 33388 O CSX CORPORATION AND CSX TRANSPORTATION

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<tr>
<td>WILLIAM L OSTEEEN</td>
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<td>HONORABLE KIRK FORDICE, GOVERNOR</td>
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<td>THOMAS M O'LEARY</td>
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<td>RON MARQUARDT</td>
<td>LOCAL UNION 1810 UMWA R D #2 RAYLAND OH 43943 US</td>
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<td>CHARLES HESSE ASSOCIATES 7777 BAINBRIDGE ROAD CHAGRIN FALLS OH 44023-2124 US</td>
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<td>ANITA R BRINDZA</td>
<td>THE ONE FIFTEEN HUNDRED BUILDING 11500 FRANKLIN BLVD SUITE 104 CLEVELAND OH 44102 US</td>
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<td>CHRISTOPHER C MCCRAKEN</td>
<td>ULMER &amp; BERNE LLP 1300 EAST NINTH STREET SUITE 900 CLEVELAND OH 44114 US</td>
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<td>LASTMAN CHEMICAL COMPANY PO BOX 431 KINGSPORT TN 37662 US</td>
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<td>HONORABLE PAUL E. PATTON</td>
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<td>COLETTA MCNAMEE SR</td>
<td>CUDELL IMPROVEMENT INC 11500 FRANKLIN BLVD STE 104 CLEVELAND OH 44102 US</td>
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<td>C L LITTLE</td>
<td>UNITED TRANSPORTATION UNION 14600 DETROIT AVE CLEVELAND OH 44107 US</td>
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<td>C V MONIN</td>
<td>BROTHERHOOD OF LOCOMOTIVE ENGINEERS 1370 OHIO STREET CLEVELAND OH 44113 US</td>
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<td>DAVID ROLLOFF</td>
<td>GOLSTEIN &amp; ROLLOFF 526 SUPERIOR AVENUE EAST SUITE 1440 CLEVELAND OH 44114 US</td>
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<td>CHRISTOPHER J BURGER, PRESIDENT</td>
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SERVICE LIST FOR: 29-may-1990 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

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METAIRIE LA 70002 US

05/29/1998  Standing selected: 'ALJ','GOV','MOC','POR'
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<tr>
<th>Name</th>
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<td>Mike Spanis</td>
<td>FINA OIL &amp; CHEMICAL CO.</td>
<td>8350 North Central Expressway, STE. 1620</td>
<td>Dallas</td>
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<td>Michael P. Ferro</td>
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<td>1221 N McKinney Street Suite 1600</td>
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<tr>
<td>J D Fitzgerald</td>
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<td>400 E Evergreen Blvd Suite 217</td>
<td>Vancouver</td>
<td>WA</td>
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Records: 347
On May 18, 1998, the Cities of East Chicago, IN, Hammond, IN, Gary, IN, and Whiting, IN (collectively, the Four City Consortium or the Four Cities), filed a Motion to Strike certain materials submitted by CSX to the Board's Section of Environmental Analysis (SEA) during the environmental review process for the proposed Conrail Acquisition. For the reasons discussed below, the motion to strike will be denied.

The Four Cities argue that we should strike three documents and portions of two other documents that CSX submitted to SEA between March 5, 1998, and May 12, 1998. The Four Cities complain that they did not have an adequate opportunity to review and appropriately respond to these materials, given the short time available prior to the late May 1998 schedule for the issuance of the Final Environmental Impact Statement (Final EIS) in this case. However, in the Final EIS, which was served May 22, 1998, SEA thoroughly analyzed the environmental issues regarding the acquisition-related changes in rail traffic in the Four Cities. In doing so, SEA performed its own independent analysis and considered both the information submitted by CSX (in its Operating Plan and subsequent submissions) and all public comments, including those filed by the Four Cities as late as May 7, 1998. Moreover, in the Final EIS, SEA recommended mitigation measures for the Four Cities to address the potential adverse environmental impacts of the proposed Conrail Acquisition. As the Final EIS explains, SEA recommended mitigation in the Four Cities

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1 In this proceeding, CSX Corporation and CSX Transportation, Inc. (collectively CSX) and Norfolk Southern Corporation and Norfolk Southern Railroad Company (collectively NS) seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.
because of the unique circumstances of those communities. The recommended mitigation was not based on the acquisition-related increases in the number of trains.\(^2\)

The Four Cities' suggestion that SEA must provide a formal comment period and opportunity to respond every time an applicant updates or modifies its traffic projections is not correct. Nor is there merit to the Four Cities' claim that parties participating in the environmental review process are bound to comply with our procedural schedule for submission of material on the merits and may not submit new evidence or studies to SEA upon closure of the evidentiary phases of a proceeding. The environmental review process is a fluid and open one that encourages the broadest possible participation by the public throughout the process.\(^3\) As the environmental review progresses, it is not unusual for an applicant to propose voluntary mitigation options and other changes to the applicant's original operating plans that can affect projected train traffic levels. SEA normally considers these types of changes as part of its ongoing environmental analysis and recommendations.

Where such changes could potentially affect parties' rights, SEA provides an opportunity for additional comment. (See the additional comment period announced in the Final EIS for parties affected by NS's proposed train traffic changes in the Greater Cleveland area, which could result in potential train traffic increases in Ohio and Pennsylvania, while reducing traffic in some areas of Cleveland.) Here, however, there is no such problem. As noted, SEA, in the Final EIS, carefully analyzed all of the information provided by the Four Cities, as well as CSX, and has recommended mitigation for those communities. The Four Cities will have an opportunity to raise any concerns about the adequacy of SEA's environmental review and its recommendation for the Four Cities at the oral argument being held in this case on June 3 and 4, 1998, where environmental, as well as economic and competitive transportation, issues can be raised. The Four Cities, like all other parties, then will have the opportunity to bring any remaining concerns to our attention.

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\(^2\) We understand that SEA in the Final EIS established two thresholds to evaluate whether potential adverse environmental impacts are significant enough to warrant mitigation. SEA developed criteria of significance to measure quantitatively whether a particular impact area (such as hazardous materials transport or highway/rail at-grade crossing safety or delay) was significantly impacted and that therefore mitigation would be appropriate. SEA also recommended mitigation for certain locations which had unique circumstances, including the Four Cities. As a result, the determination to mitigate was not based upon traffic considerations that the Four Cities seek to challenge.

\(^3\) During its environmental review, SEA frequently consults informally with appropriate federal, state, and local agencies, applicants, and communities and other interested parties to verify and evaluate the information provided by applicants. The environmental review process is an informal one. There is no requirement that persons filing environmental comments serve copies of those comments on parties of record.
through an administrative appeal of our July 23, 1998 final written decision on the proposed Conrail Acquisition. In that decision, we will address environmental, economic, and competitive transportation issues and impose such conditions as we deem appropriate, including environmental conditions.

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

It is ordered:

1. The Four City Consortium’s Motion to Strike is denied.

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

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City, State Zip</th>
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<tr>
<td>STEPHEN M FONTAINE</td>
<td>MASSACHUSETTS CENTRAL RAILROAD CORPORATION</td>
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<td>RICHARD B. KENNELLY, JR</td>
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<td>JOHN D CIRAME, ASSISTANT SECRETARY</td>
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<td>WILLIAM D ANGNER PHD</td>
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<td>JOHN K DUNLEAVY</td>
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<td>EDWARD J RODRIGUE</td>
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<td>MICHAEL E STRICKLAND</td>
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<tr>
<td>Honorable Thomas J Ridge</td>
<td>Governor, Commonwealth of Pennsylvania</td>
</tr>
<tr>
<td>225 Main Capitol Building</td>
<td>Harrisburg PA 17120 US</td>
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<tr>
<td>D J O'Connell</td>
<td>General Chairperson UTU</td>
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<tr>
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<td>Harry C Barbin</td>
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<tr>
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<td>David Berger</td>
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<td>John K. Leary, General Manager</td>
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<td>1234 Market Street 5th Floor</td>
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<tr>
<td>How Joseph R Biden, Jr.</td>
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<td>844 King Street</td>
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<td>E C Wright</td>
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<td>Donald F Griffin</td>
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<td>HONORABLE JOHN BREAUOX</td>
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Records: 348
In Decision No. 76, served April 17, 1998, we denied the motion by Richard and Judith Bell and George Rigamer for leave to intervene and participate individually and as representatives of a class of approximately 8,000 plaintiffs in the court proceeding In Re: New Orleans Train Car Leakage Fire Litigation, No. 87-16374, Civil District Court for the Parish of Orleans, LA. By motion filed May 12, 1998, movants seek reconsideration of our Decision No. 76. CSX replied in opposition to the request. See CSX-146. The motion for reconsideration will be denied.

Appeals from a decision by the entire Board will be granted only upon a showing that the prior decision is materially in error or materially affected by new evidence or changed circumstances. See 49 CFR 1115.3. Movants fail to show any of these required elements. Movants state that they did not seek to enter this proceeding prior to the due date for comments, protests, and requests for conditions “because of the uncertainty of the status of the case [before the Louisiana courts].” Movants concede, however, that their jury verdict was rendered on September 9, 1997, as noted in Decision No. 76. By necessary implication, any evidence presented to the trial court could have been submitted in this proceeding on or before the October 21, 1997 deadline.

1 Although movants attached a certificate of service, dated April 24, 1998, to their reconsideration request, the pleading was not officially filed and entered into the record until May 12, 1998, when movants tendered the appropriate filing fee. See 49 CFR 1002.2(61).

2 CSX refers to CSX Corporation and CSX Transportation, Inc. In this proceeding, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), Conrail Inc., and Consolidated Rail Corporation (collectively Conrail), and CSX seek approval and authorization under 49 U.S.C. 11323-25 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.
Movants maintain that they had no notice of our deadlines. However, public notice of this proceeding, and the public's right to participate in it, was provided on a number of occasions. In addition, the proposed acquisition of Conrail by CSX and NS received widespread publicity, as did the fact that approval of the transaction was subject to our review. In these circumstances, we must affirm our conclusion that movants' request to intervene, filed more than 5 months after the October 21, 1997 deadline, is too late.

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

It is ordered:

1. The motion for reconsideration, filed by Richard and Judith Bell and George Rigamer, is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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3 See Decision No. 2, served April 21, 1997, and published that day in the Federal Register at 62 FR 19390, where we invited public comments on the proposed procedural schedule; and Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387, where we adopted a procedural schedule to govern the course of the proceeding.
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Records: 372
Oral Argument in this proceeding has been scheduled for Wednesday and Thursday, June 3, and 4, 1998, at 10:00 a.m. and the voting conference on June 8, 1998, at 1:00 p.m., in the Surface Transportation Board Hearing Room (Suite 760) at 1925 K Street, N.W., Washington, D.C. The Board will provide an overflow room (the Brick Room) on the first floor of the building with a closed-circuit telecast of the entire proceedings.

Given the large number of persons likely to attend the oral argument and voting conference, the Board requests that all persons attending the hearings use the building's entrance located on 20th Street between K and L Streets. The participants should use the door marked "Speakers", while the public should use the door marked "Public". For security reasons, upon entering the 20th Street entrance, all persons should be prepared to produce photo identification (such as a driver's license), pass through a metal detector, and submit to an inspection of all briefcases, handbags and any other bags. The hearings are expected to last all day each day, and the hearing room and the overflow room will be secured during the lunch recesses.

To effectively conduct these hearing, the Board must limit access to the hearing room and the overflow room. Only participants and a limited number of members of the public will be permitted into the hearing room, and Board staff will issue them badges. Each applicant (Conrail, Inc., CSX Corporation and Norfolk Southern Corporation) will be allotted five admission badges for each day of the oral argument and voting conference. Each speaker at the oral argument will be allotted an admission badge for themselves and one associate. The balance of the seating in the hearing for the oral argument will be on a first come, first served basis. At the voting conference, all seats will be disbursed on a first come, first served basis, with the exception of the five seats allotted to each applicant. Upon clearing security at the 20th Street entrance, the holders of admission badges for the hearing room will be escorted to the seventh floor hearing room. Only holders of hearing
room or media badges will be admitted to the seventh floor hearing room. The holders of the media badges will be selected and notified by the Board.

The public will be admitted to the overflow room for the oral argument and voting conference and 105 seats will be available for each day of the proceedings. A separate admission badge will be required for each day of the proceedings. The visitor badges for the overflow room will be issued by Board staff at the 20th Street entrance on a first come, first served basis. Only holders of the visitors badges will be admitted to the first floor overflow room. "Line sitters" are permitted, but will not be issued badges.

Board staff will begin admitting people to the hearing room and overflow room at 8:00 a.m. for the oral argument and at 12:00 p.m. for the voting conference. All participants are requested to arrive early enough to be admitted to the hearing room by 9:45 a.m. for the oral argument and 12:45 p.m. for the voting conference. Badge holders leaving the premises, and not intending to return, should relinquish their badge to Board staff. The Board’s Hearing Room does comply with the Americans With Disabilities Act, and persons needing such accommodation should contact the Office of the Secretary by noon, June 1, 1998.

Any prepared statements submitted by the speakers at the oral argument will be available at the Board’s contractor, D.C. News and Data, Inc., located in Room 210 in the Board’s building, as soon after the conclusion of the hearing as possible. D.C. News can be reached at 202/289-4357. The statements will also be available for viewing and self copying in the Board’s Microfilm Unit, Room 755, as soon as the statements are processed by Board staff. The oral argument and voting conference will be video-taped, and the Board will make arrangements to have the tapes duplicated, at cost, if there is a public demand for copies of the tapes.

Comments or questions concerning this decision should be directed to Bettye Uzzle, the Information Officer for the Office of the Secretary at 202/565-1600.

It is ordered:

1. Admittance to the Surface Transportation Board proceedings on June 3, 4 and 8, 1998, will be upon the conditions set forth above.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary
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<th>Address</th>
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<td>Hon. Joseph I. Lieberman</td>
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HON CHRISTOPHER SHAYS
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HON MICHAEL B. MCMULLEN
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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

HONORABLE SAXBY CHAMBLISS
U.S. HOUSE OF REPRESENTATIVES
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<tr>
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SERVICE LIST FOR: 11-may-1998 STB FD 33388 0 CSX CORPORATION AND CSX TRANSPORTATION

PETER O. NICE, JR.
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901 NORTH STUART STREET
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F RONALD WALKER
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MICHAEL CONNELLY
CITY OF EAST CHICAGO
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LARRY B. KARNES
TRANSPORTATION BUILDING
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LANSING MI 48909 US

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SERVICE LIST FOR: 11-may-1998 STB FO 33388 O

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<tr>
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<td></td>
<td>3748 NORTH CAUSEWAY BLVD SUITE 301</td>
<td>METAIRIE</td>
<td>LA</td>
<td>70002</td>
</tr>
<tr>
<td>W DAVID TIDHOLM</td>
<td>HUTCHESON &amp; GRUNDY</td>
<td>1200 SMITH STREET #5300</td>
<td>HOUSTON</td>
<td>TX</td>
<td>77002</td>
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<tr>
<td>DAVID L HALL</td>
<td>COMMONWEALTH CONSULTING ASSOCIATES</td>
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<td>77065-4069</td>
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<td>77253-3272</td>
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<tr>
<td>MONTY L PARKER</td>
<td>CMC STEEL GROUP</td>
<td>50-505 GRAND TRAVERSE</td>
<td>SEGUN</td>
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<td>RICHARD WELSH</td>
<td>NARPO</td>
<td>50-505 GRAND TRAVERSE</td>
<td>LA QUINTA</td>
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<td>92253</td>
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<tr>
<td>Wendell H. Gauthier</td>
<td></td>
<td>3500 N. Hullen Street</td>
<td>METAIRIE</td>
<td>LA</td>
<td>70002</td>
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Records: 378
Oral argument in this proceeding will be held on Wednesday and Thursday, June 3 and June 4, 1998, respectively, at 10:00 a.m., in the Surface Transportation Board Hearing Room (Suite 760) at 1925 K Street, N.W., in Washington, D.C. In Decision No. 70, served March 12, 1998, we required parties wishing to participate in the oral argument to notify the Secretary of the Board by April 10, 1998. We received over 65 requests from parties of record wishing to participate in the oral argument. To accommodate the numerous parties, we are extending the oral argument in this proceeding to 2 days. The schedule of appearances and the time provided for each party are set forth in the Appendix to this decision.

On April 9, 1998, Frederic L. Wood of Donelan, Cleary, Wood & Maser, P.C., notified the Board regarding his plan to conduct a meeting among parties opposing or seeking conditions to the proposed transaction where he would attempt to develop an agreed structure and allocation of time for oral argument. By letter dated April 24, 1998, Mr. Wood, on behalf of the various parties opposing or seeking conditions to the proposed transaction, submitted a proposed schedule that would allocate to opposition parties over approximately 6 hours (370 minutes), instead of the 3 hours contemplated by the Board in Decision No. 70. According to Mr. Wood, the parties to this joint proposal recommend that the 370 minutes be divided among 12 different groups of parties, which they developed among themselves by grouping together issues that are common or similar. They request that we issue a decision specifying the groups and amount of time allotted to each group, and that we direct the members of each group to agree on the allocation of time among the group members and the order of appearance. Mr. Wood's letter also suggests that a second day for oral argument might be obtained by using June 3, 1998, or June 5, 1998.

By letter dated April 29, 1998, counsel on behalf of applicants stated that applicants neither support nor oppose an allotment of 370 minutes to the parties other than primary applicants, but that applicants should receive a proportionate increase in their allotment so that they may have 2/5ths of the total time allotted. If the oral argument extends for 2 days, applicants indicate that June 3, 1998,
would be acceptable to them, and that they would oppose any postponement of the date of the voting conference or date for issuance of the Board’s written decision.

Following the suggestion of the parties, we have scheduled a 2-day oral argument beginning one day earlier on June 3, 1998. As much as possible, we have attempted to allot to parties and groups of parties the amount of time as suggested in the joint proposal. Although the joint proposal would allocate 20 minutes to the federal parties, we will grant the U.S. Department of Justice’s original request for 10 minutes and the U.S. Department of Transportation’s original request for 15 minutes for a total of 25 minutes (and we note that neither federal party appears to be a signatory to the joint proposal). In some cases, the time provided for argument has been reduced from the time allotment requested. The time allocations for the oral argument totals 540 minutes (9 hours), of which 150 minutes (2 hours 30 minutes) are being allocated to primary applicants, and 390 minutes (6 hours and 30 minutes) are being allocated to other parties (most of whom are opposed in some form to the application but some of whom are supporting parties). Because the purpose of the oral argument is not to restate the written arguments previously made, but rather, as noted in Decision No. 70, to summarize and emphasize the key points of each party’s case and to provide an opportunity for questions from Members of the Board, we believe that the time allocations set forth in the Appendix are sufficient for these purposes.

Oral Argument Procedures.

Participants planning to use visual aids, such as maps, are advised to inform the Office of the Secretary at (202) 565-1674, no later than close of business Tuesday, May 26, 1998. Participants are limited to projector-adaptable visual displays or handouts. The Board will provide space for handouts participants wish to bring to the oral argument for dissemination to the public. The Board staff will be available in the Board’s Hearing Room—Suite 760, from 2:00 p.m. to 4:00 p.m. on Monday, June 1, 1998, to demonstrate the Board’s projection system. Please call (202) 565-1674 to make arrangement.

RELATED MATTERS

Motion for Leave to Late File Oral Argument Participation Notice. On April 14, 1998, Harry C. Barbin, Esq., attorney for the Former Employees of Consolidated Rail Corporation (Retirees), filed a motion for leave to late file a notice to participate in the oral argument (RETR-11). Mr. Barbin is a party of record and stated that he either did not receive the mailed copy of

2 We note that the joint proposal did not purport to speak for all parties covered in its proposed time allotments and several parties have submitted comments responsive to and differing from the joint proposal.

3 A number of United States Senators and Congressmen have requested to be included in the schedule to speak at the oral argument. Time will be allocated at the beginning of each day or otherwise as needed to accommodate these Members of Congress.

4 The previous date for the demonstration was June 3, 1998, shown in Decision No. 70.
Decision No. 70 or it was misplaced in his office. Mr. Barbin states that, as soon as he received a copy of Decision No. 70, he filed his motion which was received at the Board on April 15, 1998. No objection to Mr. Barbin’s motion has been received. Because the late service of the notice of intent to participate in the oral argument will not unduly complicate or delay this proceeding or its procedural schedule, Mr. Barbin’s motion will be granted, and he will be permitted to participate in the oral argument on behalf of the Retirees.

Oral Argument Request from the Wellington, Ohio Village Council. On April 8, 1998, Fred Alspach, Councilman of the Wellington, Ohio Village Council (Wellington), filed a request to be heard at the oral argument in conjunction with the 5th Congressional District Representative, Congressman Paul E. Gillmor. Wellington is not a party of record in this proceeding but has been an active participant in the environmental process. Both Wellington and Congressman Gillmor have submitted comments on the draft Environmental Impact Statement. We will permit Wellington to participate in the oral argument.

Non-Party of Record Requests to Participate in the Oral Argument. We also received requests from the following non-parties of record or their representatives to participate in the oral argument: (1) Edward G. Banks, Jr., Maryland and Delaware Railroad (M&D RR); (2) Nona J. Cunane, President, Guardian Construction Company (Guardian); (3) Wendell H. Gauthier, attorney for Plaintiffs (Gauthier), In Re: New Orleans Tank Car Leakage Fire Litigation, No. 87-16374, Civil District Court for the Parish of Orleans; (4) Kristopher Michael Klemick, Jersey Shore, PA (Klemick); (5) Thomas J. Moraghan, Toms River, NJ (Moraghan); and (6) CONSOL Inc. (CONSOL), Fritz R. Kahn, attorney. These requests to participate in the oral argument are denied. We will limit participation in the oral argument to parties of record, or to parties that have submitted environmental comments.

5 In Decision No. 76, served April 17, 1998, we denied the motion to intervene in this proceeding filed by Richard and Judith Bell and George Rigamer. Movants requested to intervene and to participate individually and as representatives of a class of approximately 8,000 plaintiffs in the cited court proceeding.

6 CONSOL’s statement as to oral argument participation was filed as CONS-3. In Decision No. 77, served April 24, 1998, the Board denied CONSOL’s petition to intervene (CONS-1), and rejected its petition to file comments (CONS-2).

7 Under the procedural schedule established in Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387, entities seeking to participate in this proceeding were required to enter their appearances by August 7, 1997, and file responsive applications, comments, protests, and requests for conditions by October 21, 1997.

8 By notice served on July 3, 1997, in STB Finance Docket No. 33388, and published on July 7, 1997, in the Federal Register at 62 FR 36332-36336, a Projected Schedule in the environmental review process was established that provided, among other things, comment due dates concerning the draft Environmental Impact Statement.
It is ordered:

1. The Retirees' motion for leave to late file an oral argument participation notice in this proceeding is granted.

2. Wellington's request to participate in the oral argument is granted.

3. The requests of non-parties of record (M&O RR, Guardian, Gauthier, Klemick, Moraghan, and CONSOL) to participate in the oral argument are denied.

4. Time for oral argument is allotted as reflected in the Appendix to the decision.

5. This decision is effective on May 13, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary
APPENDIX

Time will be allocated to Members of Congress at the beginning of each day or otherwise as needed. Members of Congress will have the option of appearing on either Wednesday, June 3, 1998, or Thursday, June 4, 1998:

MEMBERS OF CONGRESS

New York:
- Senator Alfonse M. D’Amato
- Senator Daniel Patrick Moynihan
- Congressman Jerrold Nadler
- Congressman Jack Quinn
- Congressman John J. LaFalce

Ohio:
- Congressman Sherrod Brown
- Congressman Dennis Kucinich
- Congressman Ralph Regula

Pennsylvania:
- Senator Arlen Specter
- Congressman Ron Klink

Rhode Island:
- Senator Jack Reed

SCHEDULE OF APPEARANCES

Wednesday, June 3, 1998:

MEMBERS OF CONGRESS

PRIMARY APPLICANTS

CSX Corporation, CSX Transportation, Inc.,
Norfolk Southern Corporation, Norfolk Southern
Railway Company, Conrail Inc. and Consolidated
Rail Corporation

FEDERAL GOVERNMENT PARTIES

U.S. Department of Justice
U.S. Department of Transportation

<table>
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<td>60 minutes</td>
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<td>(Primary Applicants will have a total of 150 minutes, but will reserve 90 minutes for rebuttal)</td>
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Total 25 minutes
BROAD SHIPPER INTERESTS
The National Industrial Transportation League  5 minutes
The Fertilizer Institute  5 minutes
Chemical Manufacturers Association  5 minutes
Society of the Plastics Industry, Inc.  5 minutes
Total  20 minutes

SPECIFIC SHIPPER INTERESTS
AK Steel Corporation  5 minutes
APL Limited  5 minutes
ARCO Chemical Company  5 minutes
ASHTA Chemicals Inc.  5 minutes
Eastman Kodak Company  5 minutes
Joseph Smith & Sons, Inc.  5 minutes
Millennium Petrochemicals Inc.  4 minutes
Citizens Gas & Coke Utility  3 minutes
Total  37 minutes

COAL
Centerior Energy Corporation [First Energy Corp.]  5 minutes
Consumers Energy Company  5 minutes
Eighty-Four Mining Company  5 minutes
Niagara Mohawk Power Corporation  5 minutes
Orange and Rockland Utilities, Inc.  5 minutes
Potomac Electric Power Company  5 minutes
American Electric Power Service Corporation  3 minutes
Total  33 minutes

PASSENGER AND COMMUTER INTERESTS
AMTRAK (National Railroad Passenger Corporation)  10 minutes
American Public Transit Association  5 minutes
Metro-North Commuter Railroad  5 minutes
Northern Virginia Transportation Commission & Potomac
   and Rappahannock Transportation Commission (VRE)  5 minutes
Southeastern Pennsylvania Transportation Authority  5 minutes
Total  30 minutes
OTHER RAILROADS
Illinois Central Railroad Company  7 minutes
Ann Arbor Railroad  5 minutes
New England Central Railroad, Inc.  5 minutes
Bessemer & Lake Erie Railroad Company  5 minutes
Housatonic Railroad Company  5 minutes
Livonia, Avon & Lakeville Railroad Corporation  5 minutes
Philadelphia Belt Line Railroad Company  5 minutes
Reading, Blue Mountain & Northern Railroad Company  5 minutes
New York & Atlantic Railway  5 minutes
Gateway Western Railway Company  3 minutes

Total  50 minutes

NEW YORK/NEW JERSEY
State of New York  10 minutes
New York City Economic Development Corporation  5 minutes
Erie-Niagara Rail Steering Committee  5 minutes
Genesee Transportation Council  4 minutes
Southern Tier West Regional Planning and Development Board  2 minutes
The Port Authority of New York and New Jersey  5 minutes

Total  31 minutes

CHICAGO
Wisconsin Central, Ltd.  5 minutes
Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I&M Rail Link  5 minutes
Illinois International Port District  5 minutes

Total  15 minutes

Thursday, June 4, 1998:

MEMBERS OF CONGRESS

INDIANAPOLIS
City of Indianapolis, Indiana  5 minutes
Indiana Southern Railroad  5 minutes
Indianapolis Power & Light Company  5 minutes

Total  15 minutes
OHIO
The Attorney General, State of Ohio, The Ohio Rail
Development Commission, and The Public Utilities
Commission of Ohio
Wheeling & Lake Erie Railway Company
Wyandot Dolomite, Inc.
Stark Development Board
Martin Marietta Materials, Inc.
National Lime & Stone Company
Total
10 minutes
5 minutes
4 minutes
4 minutes
4 minutes

OTHER STATE GOVERNMENTS
Delaware Department of Transportation
State of Vermont
Total
5 minutes
5 minutes
10 minutes

ENVIRONMENTAL AND SAFETY ISSUES
Four City Consortium—(The Cities of East Chicago, IN;
Hammond, IN; Gary, IN; and Whiting, IN
City of Cleveland, Ohio
The Cities of Bay Village, Rocky River and Lakewood, Ohio
Wellington, Ohio Village Council
Tri-State Transportation Campaign
American Trucking Associations
Total
10 minutes
10 minutes
5 minutes
4 minutes
3 minutes
3 minutes
35 minutes

LABOR
Allied Rail Unions, Transportation Communications
International Union, International Association of Machinists
and Aerospace Workers, and United Railway Supervisors Assn.
United Transportation Union
Brotherhood of Locomotive Engineers--Consolidated Rail
Corporation--General Committee of Adjustment
Brotherhood of Locomotive Engineers, Division 227
New York State Legislative Board, United Transportation Union
Union
Retirees--Former Employees of Conrail
Total
25 minutes
15 minutes
5 minutes
5 minutes
5 minutes
3 minutes
58 minutes

PRIMARY APPLICANTS

Total Time Allocated
90 minutes (rebuttal)
540 minutes
SERVICE LIST FOR: 11-may-1998 STB FO 33308 D

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<td>JAMES HOWARD</td>
<td>COALITION OF NORTHEASTERN GOVERNORS 400 NORTH CAPITOL STREET, SUITE 352</td>
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<td>Joseph R. Pomponio</td>
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<tr>
<td>William W Whitehurst Jr</td>
<td>W W WHITEHURST &amp; ASSOCIATES INC</td>
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05/11/1998 Page 13
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ILLINOIS DEPT. OF TRANSPORTATION  
2300 S. Dirksen Parkway, RM 302  
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</tbody>
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Records: 378

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On April 23, 1998, APL Limited (APL) filed an appeal (designated as APL-21) requesting that we reverse a ruling issued by Administrative Law Judge Jacob Leventhal on April 17, 1998. In his ruling, Judge Leventhal granted, in part, the petition by CSX to declassify certain portions of the record with respect to a lease agreement between Conrail and APL. CSX's petition (designated as CSX-141) sought to change the designation of the material from "Highly Confidential" to "Public." In granting the relief sought by CSX, Judge Leventhal found that, contrary to APL's assertions, the declassified portions of the lease agreement do not contain commercially sensitive material (Tr. at 18-19) and that CSX's need to use the information in its oral argument outweighs any detriment to APL (Tr. at 20). CSX replied in opposition to APL's appeal.

BACKGROUND

In 1988, APL and Conrail entered into a 16-year rail transportation contract providing for the movement of intermodal traffic between various points in the Eastern United States, including rail movements between Chicago, IL, and Conrail's South Kearny Yard in Northern New Jersey. In connection with the transportation contract, Conrail also agreed to lease a 20-acre intermodal facility in South Kearny to APL for a term of 24 years at an annual rental of "One Dollar ($1.00), payment waived." Lease agreement, Section 4.1. Under the terms of applicants' agreement to acquire Conrail (referred to herein as the Transaction Agreement), Conrail's South Kearny Yard is allocated to CSX. Pursuant to section 2.2(c) of the Transaction Agreement, APL's Chicago-South Kearny movements are allocated to both CSX and NS, with revenues from the movements pooled between them.

1 CSX refers to CSX Corporation and CSX Transportation, Inc. In this proceeding, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) and CSX seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS. CSX, NS and Conrail are collectively referred to as applicants in this decision.
In this proceeding, APL takes the position that section 2.2(c) of the Transaction Agreement, insofar as it provides for the succession of CSX and/or NS to the rail transportation contracts of Conrail, where both the shipper and the succeeding carrier will remain bound by the terms of the contract, should not be approved by us, either generally or as applied to APL. According to APL, section 2.2(c) is anticompetitive on its face and, therefore, APL should not be bound by the terms of its existing transportation contract with Conrail, but instead should have the opportunity to negotiate new rail service terms with both CSX and NS.

To further support its position that section 2.2(c) of the Transaction Agreement should not be approved, APL, in its brief filed February 23, 1998, unilaterally declassified as “Public” and referred to two provisions in its Conrail transportation contract that, in its entirety, had previously been classified by APL as “Highly Confidential”: section 17 with respect to contract renegotiation in light of inequities or substantially changed circumstances; and section 19 restricting contract assignment generally. In response to APL’s reference to this newly declassified material, CSX asked APL to declassify two interrogatory answers by APL, as well as two portions of APL’s lease agreement with Conrail: section 4 dealing with the annual rent for South Kearny intermodal facility; and section 27 concerning the relationship between the lease agreement and the transportation contract. After APL refused CSX’s request, CSX filed its petition in CSX-141 asking us to declassify the two portions of the lease agreement. APL opposed CSX’s petition. In Decision No. 74, served March 26, 1998, we referred the matter to Judge Leventhal for resolution. In his April 17, 1998 ruling, Judge Leventhal granted CSX’s declassification petition with respect to sections 4 and 27 of the lease agreement and, as modified by counsel for CSX at the April 17 conference before Judge Leventhal, APL’s single-word “no” response to the two interrogatories.

In its appeal, APL argues that, when Judge Leventhal declassified three sentences of a 30-page lease, the Judge erred by permitting material to be taken out of context of a unitary document. APL also maintains that, because the Judge refused to address the issue of relevancy of the material, he had no basis to conclude that CSX had met its burden of showing that declassification of the material was necessary to present its case to us. According to APL, the Judge’s ruling will permit CSX to use irrelevant argument in its oral presentation, thereby requiring APL to use its limited time to reply to CSX’s so-called “equitable” issues that are not directly at issue in this proceeding. Such a result, APL contends, would be manifestly unjust by forcing it to devote time and effort in addressing allegedly irrelevant issues and argument.

CSX responds that, because declassification of the material is necessary for it to argue its case, it has met its burden of proof. CSX maintains that it should not have to confine its argument to those portions of APL’s contracts that APL has seen fit to declassify. According to CSX, APL’s insistence that the involved material is irrelevant does not make it so. CSX indicates that the

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2 We note that APL, in its reply in opposition (APL-19), specifically sought to have this declassification matter referred to Judge Leventhal.
material declassified by Judge Leventhal is not commercially sensitive and should not have been classified as “Highly Confidential” in the first place.

DISCUSSION AND CONCLUSIONS

In this proceeding, we have delegated broad authority over disputes arising out of the discovery process to Judge Leventhal. See Decision No. 6, slip op. at 6-7 (May 30, 1997). Appeals from his decisions will be granted only “in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” 49 CFR 1115.1(c). Appeals from his procedural orders “are not favored.” id., and the standards for prevailing on such appeals are “stringent.” See Decision No. 17, slip op. at 2 (July 31, 1997). For the reasons discussed below, APL’s appeal will be denied.

We agree with Judge Leventhal that the declassified portions of the lease agreement and APL’s interrogatory responses do not contain commercially sensitive material and that CSX’s need to use the information in its oral argument outweighs any detriment to APL. While maintaining that the declassified material is irrelevant to the issues in this case, APL does not argue that the material is commercially sensitive nor that its release would cause it competitive harm. In fact, APL has already disclosed that, at the time it entered into its transportation contract with Conrail, it also signed a lease agreement for Conrail’s South Kearny facility “at nominal rental until the year 2012.” APL-4, Rhein V.S. at 15. The declassified material merely informs as to the amount of that nominal rent, the relationship between the transportation contract and lease, and APL’s single word negative answers to two interrogatories. Because there is nothing commercially sensitive about this information, APL’s claims that the lease agreement is a unified whole and that it would be misleading to declassify portions of it are of no avail to APL.

In addition, CSX has shown, and Judge Leventhal has agreed, that CSX needs to refer to the declassified material to argue its case. Prior to filing its February 23, 1998 brief, APL had not referred to, nor relied on, the antiassignment clause (section 19) or the inequities clause (section 17) in its transportation contract with Conrail to advance its case against section 2.2(c) of the applicants’ Transaction Agreement. By unilaterally declassifying and referring to these two provisions in its previously classified transportation contract, APL opened the door to further disclosure and discussion relative to the issue of the assignability of Conrail’s contracts. In arguing that section 2.2(c) is the only appropriate and fair method to succeed to the contracts, CSX is entitled to refer to the contested material. APL’s selective declassification of contract provisions at this late date should not foreclose CSX’s reference to the lease provisions and interrogatory responses that CSX believes are probative to its case and that, admittedly, are not commercially sensitive.

3 Although it is within APL’s perogative to argue that certain information or issues are irrelevant to the case at hand, we are the final arbiter of what is or is not relevant in this proceeding.
Judge Leventhal exercised his discretion by considering all factors, balancing the prejudice to CSX as against the prejudice to APL, and ultimately granting CSX’s declassification request. The exercise of such discretion by Judge Leventhal is entirely within the scope of his authority in this proceeding. Because APL has not demonstrated that Judge Leventhal’s ruling constitutes a clear error of judgment or manifest injustice, the appeal will be denied.

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

It is ordered:

1. The appeal in APL-21 from Judge Leventhal’s April 17, 1998 decision is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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4 See Decision No. 17 (July 31, 1997), Decision No. 58 (December 5, 1997), and Decision No. 68 (February 23, 1998) where, in each instance, we affirmed Judge Leventhal after finding that he exercised his discretion in granting or denying additional discovery requests.
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05/04/1998 Page 12
This decision addresses the petition by Cyprus Amax Coal Sales Corporation (Cyprus Amax), filed April 28, 1998, for leave to intervene and file comments. Applicants replied in opposition to Cyprus Amax's petition. See CSX/NS-205, filed May 1, 1998.

BACKGROUND

In its petition, Cyprus Amax states that it has not previously participated in this proceeding in view of applicants' representations that, although NS will have operational control of Conrail's Monongahela coal lines, CSX will have equal access to all current and future facilities in the area. Cyprus Amax contends that applicants' inability to negotiate an implementing operating plan for the area forces it to seek intervention at this time and the imposition of operating conditions to protect its interests. Although it is aware of our recent decision denying a similar intervention request by CONSOL Inc., see Decision No. 77, served April 24, 1998, Cyprus Amax avers that, unlike CONSOL, its interests have not been addressed by other parties in this proceeding. Petitioner claims that it should not be penalized for not burdening the Board with filings that appeared unnecessary, given the representations by applicants.

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1 Cyprus Amax tendered comments and a verified statement with its petition to intervene (CYPR-1).

2 "Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS). In this proceeding, applicants seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

3 Cyprus Amax states that it operates a coal mine, and plans the construction of another facility, in the area served by the former Monongahela Railway Company, which was acquired by Conrail in 1991.
Applicants argue that there is no difference between Cyprus Amax’s petition to intervene and CONSOL’s petition, and it should likewise be denied. According to applicants, Cyprus Amax has made no showing that it was prevented in any way from participating in the proceeding or following the established procedures. Applicants maintain that permitting Cyprus Amax to intervene at this time would seriously compromise the meaning of procedural deadlines and prejudice applicants in their ability to present their case.

**DISCUSSION AND CONCLUSIONS**

The petition to intervene will be denied. Cyprus Amax claims that, unlike the situation of CONSOL in Decision No. 77, no affiliate has addressed its interests in this proceeding. However, Cyprus Amax’s concerns have been outlined in a verified statement of a Cyprus Amax official appended to the comments and request for conditions of Bessemer & Lake Erie Railroad Company. See BLE-8, filed October 21, 1997, V.S. Huston. Those concerns address the same Monongahela coal movements at issue in the instant petition to intervene. Cyprus Amax has failed to show that its position is materially different from that of CONSOL in Decision No. 77. Although we are denying Cyprus Amax’s request to intervene, we reiterate that we will assess the proposed acquisition of Conrail in the light of representations made in the application, including applicants’ stated intention to afford equal access to all facilities in the Monongahela 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 petition to intervene in CYPR-1 is denied.

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4 In addition, we note that Centerior Energy Corporation (CEC), a major Monongahela coal customer, included in its comments (CEC-5, V.S. Kovach) its concerns regarding the impact on its coal supplier, Cyprus Amax Minerals Company, which has an agreement with CEC to supply approximately 600,000 tons per year of coal from its eastern mines (mainly from its Emerald Mine in the Monongahela region) and approximately 400,000 tons per year of coal from its western mines (mainly from its Belle Ayr Mine in the Powder River Basin).

5 See Decision No. 12, at 8, served July 23, 1997, and published that day in the Federal Register at 62 FR 39577.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

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Secretary
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05/04/1998
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Records: 382
On April 10, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC) filed four pleadings in this proceeding: (1) a notice of intent (CSX/NS-1) that indicates that CSX, NS, and Conrail intend to file an application seeking Surface Transportation Board (Board) authorization for, among other things, (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of the assets of Conrail by and between CSX and NS, (2) a petition for waiver (CSX/NS-2) of the 3-month pre-filing notification requirement of 49 CFR 1180.4(b)(1), (3) a petition for protective order (CSX/NS-3), and (4) a petition to establish a procedural schedule (CSX/NS-4).

In Decision No. 1, served April 16, 1997, the protective order sought in the CSX/NS-3 petition was issued, and, in addition, this proceeding was assigned to Administrative Law Judge Jacob Leventhal for handling of all discovery matters and the initial resolution of all discovery disputes.

In Decision No. 2, served April 21, 1997, and published that day in the Federal Register at 62 FR 19390 we found that the transaction contemplated by applicants is a major transaction, as that term is defined at 49 CFR 1180.2(a); we waived the 3-month pre-filing notification requirement of 49 CFR 1180.4(b)(1), and we invited comments on the procedural schedule proposed by applicants in the CSX/NS-4 petition.

In Decision No. 3, served April 22, 1997, Judge Leventhal announced that, on May 7, 1997, oral argument will be heard on a discovery motion filed in this proceeding.

We address, in this decision, the issues raised in the following pleadings: the CN-5 pleading filed April 16, 1997, by Canadian National Railway Company (CN).

---

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

2 Comments on the proposed procedural schedule are due by May 1, 1997. Applicants' reply to such comments is due by May 8, 1997.

3 The CN-5 pleading is a response to the CSX/NS-3 protective order petition. CN also filed, on April 16, 1997, its CN-4 response to the CSX/NS-2 waiver petition, that response was addressed in Decision No. 2, slip op. at 3, 62 FR at 19391-92.

On April 22, 1997, CN filed a letter advising that it reserves the right to file a formal (continued...)
designated, but hereinafter referred to as ACE-1) filed April 16, 1997, by Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company (hereinafter referred to collectively as ACE), the pleading (not designated, but hereinafter referred to as CURE-1) filed April 18, 1997, by Consumers United for Rail Equity (C.U.R.E.); the TCU/UTU/IAM-1 pleading filed April 30, 1997, by the Transportation-Communications International Union (TCU), the United Transportation Union (UTU), and the International Association of Machinists and Aerospace Workers (IAM), the CSX/NS-5, -6, and -7 pleadings filed April 21, 1997, by applicants; and the CSX/NS-8 and -9 pleadings filed April 23, 1997, by applicants.  

DISCUSSION AND CONCLUSIONS  

The CSX/NS-2 waiver petition. Our regulations provide that the notice of intent applicable to a major transaction must be filed with the Board at least 3 months prior to the proposed filing of the application. See 49 CFR 1180.4(b)(1) Our regulations also provide, however, that, upon petition of a prospective applicant, any of the requirements of our 49 CFR part 1180 Railroad Consolidation Procedures may be waived where good cause is shown. See 49 CFR 1180.4(f)(1).

C.U.R.E. contends that the shipping public needs the full 3-month pre-filing notification required by 49 CFR 1180.4(b)(1), in order to be informed properly regarding the impact of the proposed transaction on rail rates and competition. TCU, UTU, and IAM contend that the public, including rail employees, has not had sufficient notice of the transaction contemplated by applicants. We disagree. We reiterate what we said in Decision No. 2, slip op. at 3, 62 FR at 19392, when we granted the CSX/NS-2 waiver petition: “We believe that the public has been afforded sufficient notice of the proposed control proceeding, and we disagree that a waiver of the pre-filing notice requirement would create uncertainty or be prejudicial to any party.” In any event, applicants themselves have reconfirmed that they will be unable to file their primary application until on or about June 10, 1997, see CSX/NS-7 at 3-4, which is 2 months after the filing of their notice of intent.  

(continued)
ACE contends that it is not so much the shipping public but rather CSX and NS for whom the full 3-month prefiling notification required by 49 CFR 1180.4(b)(1) is needed. CSX and NS, ACE claims, have agreed to pay far too much for the roughly 70% of Conrail stock that neither yet owns. CSX and NS, ACE therefore argues, should be advised to use the 3 months to go back to Conrail's shareholders and to attempt to negotiate a lower per-share price. The price that CSX and NS have agreed to pay, ACE insists, includes the largest "acquisition premium" of any railroad merger or acquisition heretofore consummated; and, ACE continues, unless this $4 billion acquisition premium is to be paid for entirely by cost savings and new intermodal traffic, it will likely be passed on, at least in part, to the existing shippers of CSX, NS, and/or Conrail.

The prefiling notification required by our regulations is intended to give the public sufficient advance notice of an imminent application so as to allow interested persons to begin, prior to the filing of the application, their in-depth analyses of the impact the proposed transaction is likely to have. It would not be proper to use this prefiling period as an opportunity to second-guess the purchase price that applicants have already agreed upon. Nor would it be appropriate for us to delay the filing of the application in an attempt to force applicants to renegotiate their merger deal. ACE has not even suggested what provision of our statute would enable us to take such action. If ACE or others wish to make arguments about the reasonableness of the purchase price, they will have ample opportunity to do so on the merits once the application has been filed.

The CSX/NS-3 protective order petition. The protective order entered in Decision No. 1 is substantially similar to the protective orders entered in other recent merger proceedings. 

similar notices filed late last year. All persons with any interest in the Conrail acquisition transaction contemplated by CSX and NS are, or at least should be, already on notice given the widespread publicity surrounding the proposed transaction and the fact that the notice of intent filed by CSX, NS, and Conrail on April 10, 1997, in STB Finance Docket No. 33388 was long preceded by both the notice of intent filed by CSX and Conrail on October 13, 1996, in STB Finance Docket No. 33320 and the notice of intent filed by NS on November 6, 1996, in STB Finance Docket No. 33286. See CSX Corporation and CSX Transportation, Inc.—Control and Merger—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33220, Decision No. 2 (STB served Nov. 15, 1996) (published Nov. 15, 1996, at 61 FR 58613) (the notice of intent filed by CSX and Conrail); Norfolk Southern Corporation and Norfolk Southern Railway Company—Control—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33286, Decision No. 1 (STB served Nov. 27, 1996) (published Nov. 27, 1996, at 61 FR 60317) (the notice of intent filed by NS). Further, contrary to these opponents' arguments, the prefiling notice is not intended to set forth more than a general description of the transaction; rather, the application itself is the filing in which applicants must set forth all of the details of the proposed transaction. See 49 CFR 1180.4(b)(1)(i).

ACE also contends, see ACE-1 at 2, applicants acknowledge, see CSX/NS-7 at 5, and we agree that Conrail will be expected to perform its common carrier and contractual duties without diminution during the pendency of this proceeding.

contends, however, that, although the order may be similar, the context is not. In prior
proceedings, CN notes, the applicants sharing information in order to submit an application were
proposing to become one company upon issuance of a decision approving the proposed merger,
and approval of the application would necessarily reflect a determination that the pre-existing
competition between the two applicants did not need to be preserved. In the present proceeding,
CN continues, this model is applicable as respects CSX vs. Conrail competition and also as
respects NS vs. Conrail competition, but it is not applicable as respects CSX vs. NS competition
CSX and NS, that is to say, are competitors today, and the competition between them necessarily
must be preserved both during and after the present proceeding, even if the proposed transaction
is approved.

CN contends that the protective order proposed by applicants and adopted in Decision
No. 1 “is ambiguous at best, and silent at worst, as to the appropriateness of, and need for,
exchanges of confidential, competitively sensitive information between CSX and NS.” CN-5 at
3.11 This protective order, CN argues, appears to embrace: (1) competitively sensitive Conrail
information transferred from Conrail to CSX; (2) competitively sensitive Conrail information
transferred from Conrail to NS; (3) competitively sensitive Conrail information exchanged
between CSX and NS; (4) competitively sensitive CSX information transferred from CSX to NS;
and (5) competitively sensitive NS information transferred from NS to CSX.

The protective order adopted in Decision No. 1, CN argues, contains no limitations on the
identities, positions, and numbers of CSX and NS personnel who could obtain competitively
sensitive information from their company’s arch competitor. The only limitation on such
exchanges of information, CN adds, is a requirement that the exchange be “for the purpose of
preparing for or participating in the Proceedings, but not for any other business, commercial, or
other competitive purpose.” Protective Order, ¶2. This, CN warns, is a determination that CSX
and NS personnel would make unilaterally, with no standards to govern their determination, and
without any review by the Board and/or other parties. The potential for misuse of such
competitively sensitive information, CN argues, is great.

CN concedes that access by CSX and NS personnel to competitively sensitive Conrail
information appears to present somewhat lesser risks, and may be more necessary to the
preparation of an application. But it is important to remember, CN adds, that the Board
ultimately may deny the proposed acquisition of Conrail by CSX and NS, or may impose
conditions deemed unacceptable to applicants, in which case the merger would not be
consummated. CN insists that we should ensure that, in such circumstances, future competition
among CSX, NS, and Conrail will not have been compromised.

Accordingly, CN urges that we invite further comments:12 (1) regarding the extent to
which CSX and NS really need to directly exchange any of their own competitively sensitive
information in order to prepare an application; and (2) as to the appropriateness of placing some
limitations on the transfer of competitively sensitive Conrail information to CSX and NS. The
protective order, CN adds, should permit only those information exchanges that are necessary to

10 (...continued)

11 ACE advances a similar argument. See ACE-1 at 7.

12 CN insists that we should invite such comments before issuing the protective order.
The CN-5 pleading, however, was received after the service of Decision No. 1, and therefore was
not taken into consideration in that decision. See Decision No. 2, slip op. at 4 n.6, 62 FR at
19392 n.6.

- 4 -
the process of Board review, and should establish a "bright line" between proper and improper exchanges.

We reject CN's arguments respecting the protective order issued in Decision No. 1. That order allows CSX, NS, and Conrail to exchange information "for the purpose of preparing for or participating in the Proceedings, but not for any other business, commercial, or other competitive purpose." Protective Order, ¶2. The protective order simply does not allow information to be exchanged for other purposes, and, for this reason (as applicants themselves acknowledge), "[o]nly persons preparing for and participating in the proceeding may receive Confidential Information provided under the Protective Order, and only for the purpose of preparing for and participating in the proceeding." CSX/NS-7 at 6. Any information exchange conducted for purposes other than preparation for or participation in these "Proceedings," as that term is defined in Protective Order, ¶1(e), will not be "protected" by the protective order, and will thus be subject to any otherwise applicable consequences provided by law (e.g., the consequences provided by 49 U.S.C. 11904 and the antitrust laws).

We are not unmindful of the argument that the context of this merger proceeding is unlike that of past such proceedings, in that two of the applicants (CSX and NS) will remain competitors even if the application is approved without any conditions whatsoever and thereafter consummated. But a variation on that problem has existed in all past merger proceedings. Approval and consummation of a merger cannot be taken for granted; a merger application may be denied outright, or may be granted subject to conditions unacceptable to the applicants; and, if the merger is not consummated, the applicants will remain competitors. This problem is addressed by providing, in the protective order, that information may be exchanged "for the purpose of preparing for or participating in the Proceedings, but not for any other business, commercial, or other competitive purpose." Protective Order, ¶2. Any information exchanged pursuant to the protective order may be used only for the purposes of the merger proceeding, and may not be used for any other purposes; and, if such information were to be used for such other purposes, applicants and/or their personnel would be exposed to the otherwise applicable consequences provided by law (as noted in the previous paragraph).

Acting out of an abundance of caution, however, we will modify Protective Order, ¶2, to restrict all future exchanges of competitively sensitive information between CSX and NS to outside counsel and outside consultants. This restriction will apply to: (1) competitively sensitive CSX information transferred from CSX to NS, and (2) competitively sensitive NS information transferred from NS to CSX. If competitively sensitive CSX information is...

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13 Applicants have pointed out that there is a typographical error in Protective Order, ¶2, which provides, among other things, "that, if the Application in these Proceedings is approved, and control of Conrail by CSX and NS is authorized and effected, then CSX and NS may respectively use Confidential Information obtained from Conrail pertinent to their respective operations under operating agreements with Conrail or operating agreements with Conrail in connection with such operations." Applicants note, see CSX/NS-7 at 7 n.5, that this portion of Protective Order, ¶2, should read: "that, if the Application in these Proceedings is approved, and control of Conrail by CSX and NS is authorized and effected, then CSX and NS may respectively use Confidential Information obtained from Conrail pertinent to their respective operations under operating agreements with Conrail or operating leases with Conrail in connection with such operations."

14 This restriction applies only to "future" exchanges, by which is meant any exchange of information that takes place on any date after the date of service of this decision. Any exchange of information that took place on any date before the date of service of this decision, or on the date of service of this decision, will be governed by the original terms of Protective Order, ¶2, i.e., the terms contained in Appendix A to Decision No. 1.
transferred from CSX to NS, it can be received by and/or made available to NS's outside counsel and/or outside consultants only, and, if competitively sensitive NS information is transferred from NS to CSX, it can be received by and/or made available to CSX's outside counsel and/or outside consultants only.

We are taking this action out of an abundance of caution prompted by the realization that the context of this proceeding is indeed different from the context with which we are most familiar. The action we are taking should not unduly burden applicants; as applicants have themselves conceded, they anticipate that most of the information that would have been exchanged under the original protective order would have been exchanged either between Conrail and CSX or between Conrail and NS, and that "relatively little will be exchanged between NS and CSX." CSX/NS-7 at 6. And, in any event, if applicants find that the action we are taking today imposes a substantial burden on their preparation of the application, we are prepared to entertain petitions seeking relief, on a case-by-case basis, from the new restriction we have added to Protective Order, ¶2.

CN has also asked that we consider whether all or any of the exchanges of competitively sensitive information that may occur under the protective order will receive antitrust immunity, and whether the availability of such immunity will depend upon whether the merger application is approved or denied. If applicants adhere to the terms of the protective order, they have implied immunity to take all actions necessary to prepare and support their application.\(^\text{15}\)

**The Fort Wayne Line.** In Decision No. 2, slip op. at 1-2, 62 FR at 19391, we noted that, as part of the overall transaction contemplated by applicants, NSR will transfer its (formerly CRC's) Fort Wayne line to CSXT. In the CSX/NS-5 pleading, applicants note, by way of clarification: that the Fort Wayne line will be transferred from NSR to CRC or a newly-created CRC subsidiary in a like-kind exchange for CRC's Chicago South/Illinois Lines (the Streator line), and that CRC or the newly-created CRC subsidiary, as the case may be, will in turn make the Fort Wayne line available to CSXT, together with the other lines to be assigned to CSXT, under a long-term operating agreement, operating lease, or other operating arrangement. The described like-kind exchange, applicants insist, is integral to, and an inseparable part of, the overall division of Conrail assets between those to be assigned to CSX, those to be assigned to NS, and those to be shared. This like-kind exchange, applicants add, does not require a "directly related" application as that term is used in CFR 1180 4(c)(2)(vi), and therefore, applicants contend, this like-kind exchange should be reviewed in STB Finance Docket No. 33388, and not in a separate or related docket.

We disagree with applicants, and we therefore wish to clarify that the transfer of the Fort Wayne line will be considered not in the lead docket but rather in a separate ("directly related") sub-docket. We will consider, in the lead docket (i.e., the STB Finance Docket No. 33388 docket), (1) the acquisition, by CSX and NS, of control of Conrail; and (2) all matters (such as the division of CRC assets between CSX and NS) that are integral to, and an inseparable part of, the acquisition, by CSX and NS, of control of Conrail. We will consider, in separate sub-documents, all matters that are "directly related" to the CSX/NS acquisition of control of Conrail but that are neither integral thereto nor an inseparable part thereof. The transfer of the Fort Wayne line from NSR to CRC falls into the sub-docket category: it is "directly related" to the control transaction because, pursuant to the agreement arrived at by CSX and NS, the transfer of the Fort Wayne line from NSR to CRC, together with the transfer of the Streator line from CRC to NSR, will facilitate the division of CRC's assets between CSX and NS, but, while the disposition of the Fort Wayne line following CRC's acquisition of the line is an integral part of the

\(^{15}\) The terms of the protective order include the original ¶2 for the period ending on the date of service of this decision, and the revised ¶2 for the period beginning on the day after the date of service of this decision.
lead docket, the transfer of the Fort Wayne line from NSR to CRC is neither integral to nor an inseparable part of the control transaction. If the Fort Wayne line were already owned by CRC, its disposition would be an integral and inseparable part of the control transaction. Here, however, a separate transaction to transfer the Fort Wayne line from NSR to CRC is needed before such disposition can occur. The division of CRC’s assets does not inherently require that anything be done with respect to a line that is not, at the present time, a CRC asset.\(^{16}\)

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

*It is ordered:*

1. The CN-5, ACE-1, CURE-1, and TCU/UTU/IAM-1 pleadings are accepted for filing and made part of the record in this proceeding.

2. The CSX/NS-6 and -8 petitions are granted, and the CSX/NS-7 and -9 replies are accepted for filing and made part of the record in this proceeding.

3. Treating the CN-5, ACE-1, CURE-1, and TCU/UTU/IAM-1 pleadings as requests for reconsideration of Decision Nos. 1 and 2, the requests are denied.

4. The terms of Protective Order, ¶2, are revised to read as set forth in the Appendix to this decision.

5. Except as noted in the next sentence, this decision is effective on the date of service. The revised terms of Protective Order, ¶2, as set forth in the Appendix to this decision, are effective on 12:01 a.m. of the day following the date of service (whether such day is or is not a Saturday, a Sunday, or a legal holiday).

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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\(^{16}\) 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.
APPENDIX

Protective Order, ¶2, as set forth in Appendix A to Decision No. 1, is revised to read as follows:

2(a). Subject to the restrictions contained in paragraphs 2(b) and 2(c), personnel of CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), and their affiliates (collectively, CSX), and of Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), and their affiliates (collectively, NS), including outside consultants and attorneys for CSX and NS (representatives), may exchange Confidential Information obtained from CSX, NS, or Conrail, Inc. (CRI), Consolidated Rail Corporation (CRC), and their affiliates (collectively, Conrail) (and, in the case of Conrail information, whether received directly by CSX or NS or by one of them from the other) with any other personnel or representatives of CSX or NS, and personnel of Conrail may furnish information to personnel or representatives of CSX or NS, in each case for the purpose of preparing for or participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, provided that, if the Application in these Proceedings is approved, and control of Conrail by CSX and NS is authorized and effected, then CSX and NS may respectively use Confidential Information obtained from Conrail pertinent to their respective operations under operating agreements with Conrail or operating leases with Conrail in connection with such operations. Information previously exchanged or furnished under the protective orders entered in either of STB Docket Nos. 33220 or 33286 shall be deemed to have been exchanged or furnished under this order.

2(b). Notwithstanding paragraph 2(a), if Confidential Information (other than Confidential Information obtained from Conrail) is transferred from CSX to NS, it can be received by and/or made available to NS's outside attorneys and/or outside consultants only.

2(c). Notwithstanding paragraph 2(a), if Confidential Information (other than Confidential Information obtained from Conrail) is transferred from NS to CSX, it can be received by and/or made available to CSX's outside attorneys and/or outside consultants only.
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Records: 62
This decision addresses the petition by CONSOL Inc. (CONSOL), filed April 9, 1998, for leave to intervene, file comments, and participate in oral argument.\(^1\) Applicants\(^2\) separately replied to CONSOL’s petition. See NS-65, filed April 14, 1998, and CSX-144, filed April 15, 1998.

In its petition, CONSOL indicates that it has not previously participated in this proceeding in light of applicants’ representations that, although NS will have operational control of Conrail’s Monongahela coal lines,\(^3\) CSX will have equal, perpetual access to all current and future facilities in the area. CONSOL maintains that it only recently learned that applicants have been unable to negotiate an implementing operating plan for the area and that conditions to the CSX/NS CR transaction may be necessary to protect its interests. CONSOL asserts that, as a potential protestant in the case, it was entitled to rely on applicants’ representations of two-carrier access to its coal producing area.

In opposing the petition, NS insists that CONSOL’s intervention request is too late, will broaden the issues and unjustly prejudice NS, and would disregard the well-established procedural schedule in the case. NS indicates that, although it agrees with many of petitioner’s objectives and is

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\(^1\) CONSOL tendered its comments (CONS-2) and statement as to oral argument (CONS-3) with its petition to intervene (CONS-1).

\(^2\) “Applicants” refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc., and Consolidated Rail Corporation (collectively Conrail). In this proceeding, applicants seek approval and authorization under 49 U.S.C. 11323-25 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.

\(^3\) CONSOL states that it is the largest producer of coal in the area served by the former Monongahela Railway Company, which was acquired by Conrail in 1991.
committed to resolving access issues for all shippers in the area, CONSOL’s proposed conditions would impose an artificial and unnecessary deadline for arriving at an implementing operating agreement. Although CSX does not object to CONSOL’s intervention, CSX requests an opportunity to reply if CONSOL’s tendered comments are accepted.

CONSOL’s petition to intervene will be denied. Under the procedural schedule established in Decision No. 6, entities seeking to participate in this proceeding were required to enter their appearances by August 7, 1997, and file responsive applications, comments, protests, and requests for conditions by October 21, 1997. CONSOL states that it has not participated previously in light of applicants’ representations that they would develop and agree to an operating plan for the Monongahela area. While CONSOL has not participated as a party, a number of parties to the proceeding have addressed the interests of CONSOL in their submissions. See, e.g., comments filed October 21, 1997, by E.I. DuPont de Nemours and Company, Inc. (DuPont) (DUPX-2), Bessemer and Lake Erie Railroad Company (BLE-8), New York State Electric and Gas Corporation (NYSEG-14), and Eighty-Four Mining Company (EFM-7). CONSOL could have decided to participate directly as a party in the proceeding under the schedule established, but did not. Under these circumstances, CONSOL has not shown extraordinary or compelling reasons for permitting it to participate now. In any event, the application will be assessed in the light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela 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 CONS-1 petition to intervene is denied. The comments in CONS-2 are rejected.

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4 See Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387.

5 In addition, DuPont is half owner of CONSOL.

6 See Decision No. 12, at 8, served July 23, 1997, and published that day in the Federal Register at 62 FR 39577.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary
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<td>HONORABLE CONNIE MACK</td>
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<td>HON ARLEN SPECTER</td>
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<td>RICK SANTORUM</td>
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<td>HONORABLE JESSE L. JACKSON, JR</td>
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<tr>
<td>Bob Weygand</td>
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<td>Dennis J. Kucinich</td>
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<td>Robert G. Torricelli</td>
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<td>Major R. Owens</td>
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<td>Bud Shuster</td>
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<td>John J. LaFalce</td>
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<td>DAVID G ABRAHAM</td>
<td>SUITE 400W 7315 WISCONSIN AVENUE BETHESDA MD 20814 US</td>
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<td>JOHN M ROBINSON</td>
<td>9616 OLD SPRING ROAD KENSINGTON MD 20895-3124 US</td>
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<td>JOHN HOY</td>
<td>P O BOX 117 GLEN BURNIE MD 21060 US</td>
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<td>JOHN WING CHAIRMAN</td>
<td>CITIES ADVISORY COMMITTEE 601 NORTH HOWARD STREET BALTIMORE MD 21201 US</td>
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<td>CHARLES M CHADWICK</td>
<td>MARYLAND MIDLAND RAILWAY INC UNITE BRIDGE MD 21791 US</td>
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<tr>
<td>GARRET G SMITH</td>
<td>MOBIL OIL CORPORATION 2203 GALLAWS RD RM 89/03 FAIRFAX VA 22037-0001 US</td>
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<td>WILLIAM P. JACKSON, JR.</td>
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<tr>
<td>MICHAEL P. HARMONIS</td>
<td>DEPARTMENT OF JUSTICE 325 SEVENTH STREET, NW WASHINGTON DC 20530 US</td>
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<tr>
<td>JOSEPH R. POMPONIO</td>
<td>FEDERAL RAILROAD ADMIN. 400 SEVENTH STREET SU ROCKVILLE MD 20850 US</td>
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<td>MITCHELL M. KRAUS</td>
<td>TRANSPORTATION -COMMUNICATIONS INTERNATIONAL 3 RESEARCH PLACE ROCKVILLE MD 20850 US</td>
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<td>WILLIAM W WHITEHURST JR</td>
<td>W. W WHITEHURST &amp; ASSOCIATES INC 12421 HAPPY HOLLOW ROAD COCKEYSVILLE MD 21030 US</td>
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<td>ROBERT J WILL</td>
<td>UNITED TRANSPORTATION UNION 4100 GRAVE RUN RD MANCHESTER MD 21102 US</td>
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<td>LINDA A JANEX J. D.</td>
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<td>CHEMICAL MANUFACTURERS ASSOC 1300 WILSON BOULEVARD ARLINGTON VA 22209 US</td>
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<td>JENNIFER BRAUN</td>
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