

STB

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Development of Premium Paid for Conrail Assets 1/

Item (1)	Amount (Millions) (2)	
<u>Revenue Adequacy Premium</u>		
1. Total Cost to CSX/NS of Conrail Shares Acquired	\$9,895	2/
2. Book Value of Conrail Shares	\$3,169	2/
3. Value of Eliminated Accumulated Depreciation and Asset Disposition	<u>\$2,387</u>	3/
4. Premium for Revenue Adequacy Purposes	\$9,113	4/
<u>Regulatory Costing Premium</u>		
5. Appraised Value of Conrail Assets	\$16,243	2/
6. Gross Book Value of Conrail Assets	<u>\$8,510</u>	2/3/
7. Premium for Regulatory Costing Purposes	\$7,733	5/
<u>Premium Deferred Taxes</u>		
8. Deferred Taxes associated with Fair Value	\$3,490	6/

1/ The Conrail Premium is measured on two bases, an Acquisition basis for Revenue Adequacy Purposes and an Appraisal basis for Regulatory Costing and Jurisdictional Threshold Purposes.

2/ Whitehurst Deposition, pages 24, 29 - 30.

3/ Conrail's 1995 Form 10-K Page 45, Asset Disposition equals \$285 million and Accumulated Depreciation equals \$2,102 million.

4/ Line 1 - Line 2 + Line 3.

5/ Line 5 - Line 6.

6/ Application, Vol. 1, Ex. No. 16, Appendices C, page 5 identifies CSX's portion of deferred taxes. By dividing this amount by CSX's share of Conrail, total deferred taxes are calculated. Deferred taxes reduce the investment base for both revenue adequacy purposes regulatory costing.

Note: The Revenue Adequacy Premium is based on Acquisition Cost. The Railroad Accounting Principles Board ("RAPB") adopted GAAP costs as the basis for valuing the railroads assets for Revenue Adequacy Purposes. The RAPB defined GAAP costs as "The value of the resources forgone by the entity to acquire the assets. GAAP cost, as applied in business combinations, is acquisition cost except in a "pooling of interests." GAAP cost is the net book values of the pooling entities."

Note: The Regulatory Costing Premium is based on Appraisal Cost. Recent railroad mergers have used appraised value or fair market value in adjusting the acquired assets of the purchased railroad. The last two mergers (i.e. BNSF and UP/CNW) used appraised value in adjusting the property accounts of the acquired railroads.

**Impact of Conrail Premium on Variable Cost and Jurisdictional Threshold
For Average CSX Coal Movement**

A. Movement Assumptions For Costing

Source

1. Line Haul Miles
2. Car Train
3. Tons Net Load Per Car
4. Railcar is Owned and Provided by
5. Ex Parte No. 270 (Sub 4) Unit Train Adjustments
6. CSXT's Premium Equals \$3.25 Billion - Exhibit TDC-11 \$7.73 Billion times CSX 42% share of Conrail

STB Methodology

Exhibit TDC-11

B. Variable Cost and Jurisdictional Threshold

**1995
CSXT
W/CRC
Portion of Premium
(3)**

Item
(1)

Source
(2)

Without Premium

7. Variable Cost Per Ton
8. Jurisdictional Threshold Per Ton

Phase III URCS

Line 7 x 1.80

With Premium

9. Variable Cost Per Ton
10. Jurisdictional Threshold Per Ton

Phase III URCS

Line 9 x 1.80

Increase

11. Increase In Variable Cost or Jurisdictional Threshold

(Line 9 ÷ Line 7) or (Line 10 ÷ Line 8)

Source

- Exhibit TDC-11

1995
NS
W/CRC
Portion of Premium
(3)

7.	Variable Cost Per Ton	Phase III URCS
8.	Jurisdictional Threshold Per Ton	Line 7 x 1.80

9.	Variable Cost Per Ton	Phase III URCS
10.	Jurisdictional Threshold Per Ton	Line 9 x 1.80

11. Increase In Variable Cost or Jurisdictional Threshold (Line 9 + Line 7) or (Line 10 + Line 8)

IMPACT OF CONRAIL AND CONRAIL PREMIUM ON
1996 REVENUE ADEQUACY CALCULATIONS

Railroad (1)	1996 STB FINDING			CSX & NS With CR		CSX & NS With CR And Acquisition Premium		
	Conrail (2)	CSX (3)	NS (4)	CSX With CR 4/ (5)	NS With CR 4/ (6)	Conrail Premium (7)	CSX With CR 5/ (8)	NS With CR 5/ (9)
Combined/Consolidated NROI	435,305	610,621	787,725	793,449	1,040,202			
+ Interest From Working Cap. Cash	253	8,929	12,835	9,035	12,982			
+ Inc Tax Non-rail	(6,166)	3,241	23,660	651	20,084			
- Incremental Depreciation	0					1/		
+ Net gain transfers	11,014	13,133	16,646	17,759	23,034			
** Adjusted NROI **	440,406	635,924	840,866	820,895	1,096,301			
Comb Net Inv R&E End	6,591,515	9,482,069	8,912,338	12,250,505	12,735,417	2/		
Comb Net Inv R&E Start	6,355,952	8,949,689	8,589,425	11,619,189	12,275,877	2/		
Comb Net Inv R&E Av	6,473,734	9,215,879	8,750,882	11,934,847	12,505,647			
OE Inv End	0	0	0	0	0			
OE Inv Start	0	0	0	0	0			
OE Inv Av	0	0	0	0	0			
IDC End	0	0	3,014	0	3,014			
IDC Start	0	0	3,197	0	3,197			
IDC Av	0	0	3,106	0	3,106			
Net Rail Rel Ass. End	23,017	0	0	9,667	13,350			
Net Rail Rel Ass. Start	31,919	0	0	13,406	18,513			
Net Rail Rel Ass. Av	27,468	0	0	11,537	15,931			
Work Cap End	144,679	123,537	267,241	184,302	351,155			
Work Cap Start	208,202	109,665	268,265	197,110	389,022			
Work Cap Av	176,441	116,601	267,753	190,706	370,088			
Acc Def Tax End	1,484,091	2,310,618	2,612,504	2,933,936	3,473,277	3/		
Acc Def Tax Start	1,400,411	2,063,544	2,524,852	2,651,717	3,337,090	3/		
Acc Def Tax Av	1,442,251	2,187,081	2,568,678	2,792,826	3,405,184			
Tax Adj Net Inv Base End	5,275,120	7,294,988	6,564,061	9,510,538	9,623,631			
Tax Adj Net Inv Base Start	5,195,662	6,995,810	6,329,641	9,177,988	9,343,125			
* Tax Adj Net Inv Base *	5,235,391	7,145,399	6,446,851	9,344,263	9,483,378			
TAX ADJUSTED ROI	8.4%	8.9%	13.0%	8.8%	11.6%			

1/ CSX workpapers

2/ The Premium for Revenue Adequacy Purposes is \$9.1 Billion ((Acquisition minus Book Cost) Plus Eliminated Accum. Depreciation) - Exhibit TDC-11.

Line 1 Minus Line 2 Plus Line 4

3/ identifies CSX's portion of deferred taxes. By dividing this amount by CSX's 42% share of Conrail, total deferred taxes are calculated.

4/ CSX = Column (2) x 42% plus Column (3); NS = Column (2) x 58% plus Column (4)

5/ CSX = Column (5) + 42% of Column (7); NS = Column (6) + 58% of Column (7)

1995 Conrail Book Value --
Schedule 352B Investment and 335 Accumulated Depreciation

Line No.	Account	Gross Investment			Accumulated Depreciation		
		Conrail 1995 Schedule 352B Column (b)	1995 CSXT Schedule 352B Column (b) 2/	1995 NS Schedule 352B Column (b) 2/	Conrail 1995 Schedule 335 Column (g)	1995 CSXT Schedule 335 Column (g) 3/	1995 NS Schedule 335 Column (g) 3/
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	(2) Land	\$109,942	\$46,176	\$63,766	\$0	\$0	\$0
2	(3) Grading	209,689	88,069	121,620	22,811	9,581	13,230
3	(4) Other ROW	2,586	1,086	1,500	757	318	439
4	(5) Tunnels and subways	27,688	11,629	16,059	2,874	1,207	1,667
5	(6) Bridges, trestles	227,358	95,490	131,868	51,941	21,815	30,126
5	(7) Elevated Structures	2,575	1,082	1,494	2,769	1,163	1,606
7	(8) Ties	1,294,855	543,839	751,016	201,778	84,747	117,031
8	(9) Rails and Other Track Material	2,503,630	1,051,525	1,452,105	304,233	127,778	176,455
9	(11) Ballast	877,012	368,345	508,667	(10,865)	(4,563)	(6,302)
10	(13) Fences, snowsheds, & signs	1,309	550	759	543	228	315
11	(16) Station & office Bldgs	183,645	77,131	106,514	59,494	24,987	34,507
12	(17) Roadway Bldgs	11,937	5,014	6,923	4,574	1,921	2,653
13	(18) Water Stations	480	202	278	343	144	199
14	(19) Fuel Stations	33,619	14,120	19,499	8,964	3,765	5,199
15	(20) Shops and enginehouses	84,747	35,594	49,153	33,866	14,221	19,639
16	(22) Storage warehouses	0	0	0	0	0	0
17	(23) Wharves and docks	936	393	543	58	24	34
18	(24) Coal and ore wharves	79,151	33,243	45,908	23,957	10,062	13,895
19	(25) TOFC/COFC terminals	77,212	32,429	44,783	31,587	13,267	18,320
20	(26) Comm systems	121,275	50,936	70,340	76,965	32,325	44,640
21	(27) Signals & interlockers	368,989	154,075	214,014	131,446	55,207	76,239
22	(29) Power Plants	1,140	479	661	476	200	276
23	(31) Power-Trans	8,981	3,772	5,209	5,293	2,223	3,070
24	(35) Misc. Struct	3,868	1,625	2,243	530	223	307
25	(37) Roadway Machines	98,537	41,386	57,151	73,495	30,868	42,627
26	(39) Public improvements	43,207	18,147	25,060	5,225	2,195	3,031
27	(44) Shop machinery	52,041	21,857	30,184	27,817	11,683	16,134
28	(45) Power-plant machinery	3,739	1,570	2,169	3,198	1,343	1,855
29	Other	0	0	0	45,569	19,139	26,430
30	Amortization Adjustments	0	0	0	438,536	184,185	254,351
31	TOTAL ROAD	\$6,430,148	\$2,700,662	\$3,729,486	\$1,548,228	\$650,256	\$897,972
32	(52) Locomotives	\$1,138,328	\$478,098	\$660,230	\$469,155	\$197,045	\$272,110
33	(53) Freight-train cars	741,841	311,573	430,268	313,823	131,806	182,017
34	(54) Passenger-train cars	0	0	0	0	0	0
35	(55) Highway Revenue	2,790	1,172	1,618	1,920	806	1,114
36	(56) Floating Equipment	0	0	0	0	0	0
37	(57) Work Equipment	84,682	35,566	49,116	50,271	21,114	29,157
38	(58) Misc Equipment	31,401	13,188	18,213	26,735	11,229	15,506
39	(59) Computer Equipment	79,785	33,510	46,275	62,374	26,197	36,177
40	Amortization Adjustments	0	0	0	300	126	0
41	TOTAL EQUIPMENT	\$2,078,827	\$873,107	\$1,205,720	\$924,578	\$388,323	\$536,081
42	(76) Interest during Const.	\$0	\$0	\$0	\$0	\$0	\$0
43	(80) Other elements of investments	7,734,025	3,248,291	4,485,735	0	0	0
	(90) Construction work in progress	0	0	0	0	0	0
	GRAND TOTAL	\$16,243,000 1/	\$6,822,060	\$9,420,940	\$2,472,806	\$1,038,579	\$1,434,053

1/ Estimated Fair Value -- Whitehurst Depositon, page 30, value in Account 80 equals premium shown in Exhibit TDC-11, Line 7.

2/ Column (3) x CSXT-42% or NS-58%.

3/ Column (6) x CSXT-42% or NS-58%.

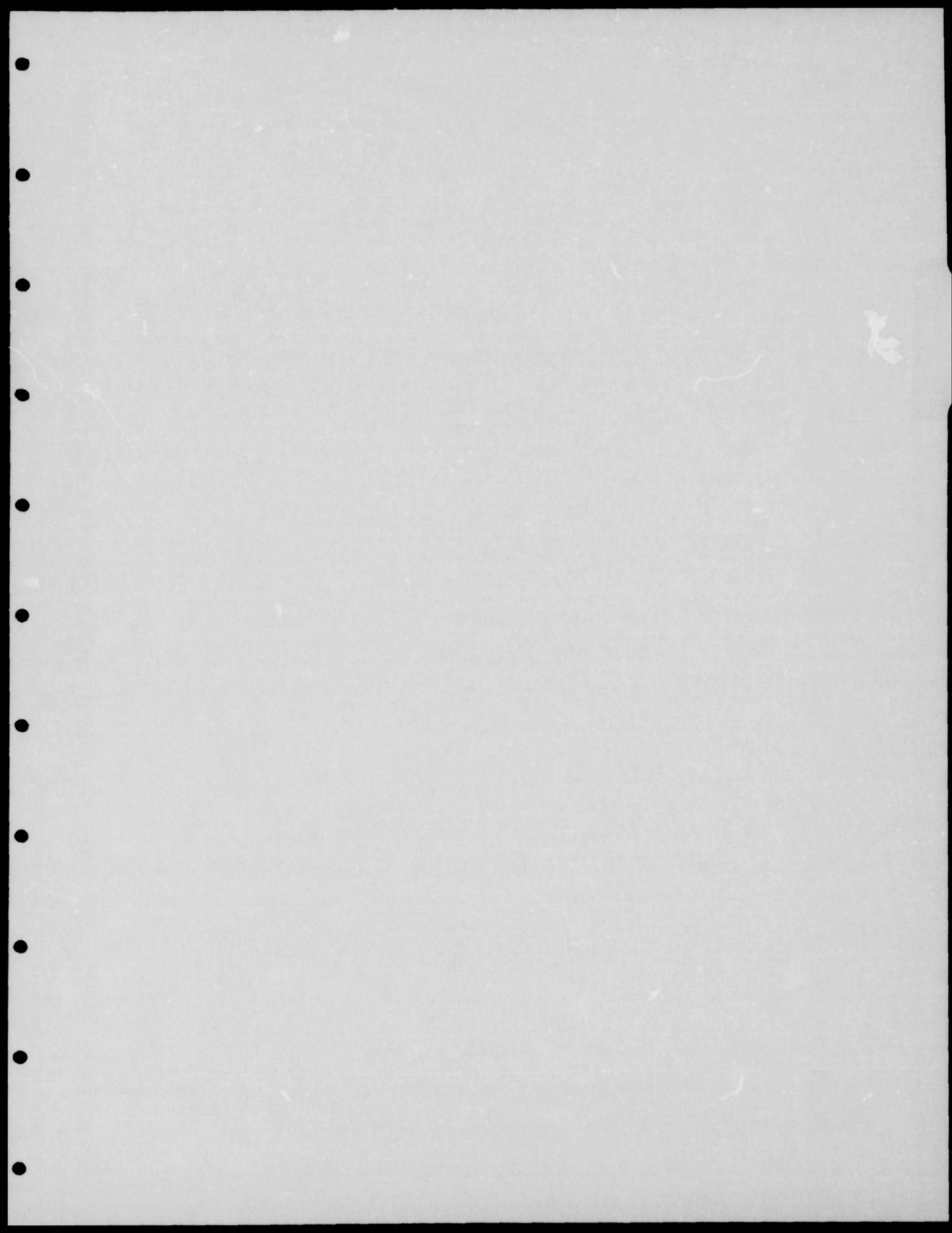


EXHIBIT 3

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1. Excerpts from Fox Deposition Transcript
2. Excerpts from Goode Deposition Transcript
3. Excerpts from McClellan Deposition Transcript
4. Excerpts from Orrison Deposition Transcript
5. Excerpts from Sansom Deposition Transcript
6. Excerpts from Sharp Deposition Transcript
7. Excerpts from Snow Deposition Transcript
8. Excerpts from Whitehurst Deposition Transcript
9. Excerpts from Wolf Deposition Transcript
10. Letter to Customers, John Q. Anderson, May 8, 1997
11. Whitehurst Deposition Exhibit No. 1
12. Whitehurst Workpapers CSX 19 CO 000114-15
13. Wolf Deposition Exhibit No. 1

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BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
RAILROAD CONTROL APPLICATION

~~HIGHLY CONFIDENTIAL~~ PUBLIC

Washington, D.C.
Monday, August 25, 1997

Deposition of JOHN WILLIAM FOX, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by JAN A. WILLIAMS, a Notary Public in and
for the District of Columbia, taken at the
offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
888 Seventeenth Street, N.W., Washington, D.C.,
20006-3959, at 10:05 a.m., Monday, August 25,
1997, and the proceedings being taken down by
Stenotype by JAN A. WILLIAMS, RPR, and
transcribed under her direction.

1 AFTERNOON SESSION

2 (1:50 p.m.)

3 Whereupon,

4 JOHN WILLIAM FOX,

5 the witness on the stand at the time of recess,
6 having been previously duly sworn, was further
7 examined and testified as follows:

8 EXAMINATION BY COUNSEL FOR AMERICAN ELECTRIC
9 POWER SERVICE CORPORATION, ATLANTIC CITY
10 ELECTRIC COMPANY, DELMARVA POWER & LIGHT COMPANY,
11 INDIANAPOLIS POWER & LIGHT COMPANY, and
12 THE OHIO VALLEY COAL COMPANY

13 BY MR. McBRIDE:

14 Q. Mr. Fox, my name is Michael McBride. I
15 told you earlier, but I'll repeat it just so
16 you're aware of who I'm representing today,
17 American Electric Power, Atlantic City Electric
18 Company, Delmarva Power & Light Company,
19 Indianapolis Power & Light Company, and The Ohio
20 Valley Coal Company.

21 Mr. Fox, I have spoken to Mr. Sharp
22 already as you may be aware. And he had once
23 publicly described his job as charging the
24 highest rate that he could without losing the
25 customer's business. Would you think that that

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1 description applies to your job as well?

2 A. That's an oversimplification, but I
3 think there is some element of truth in that,
4 yes.

5 Q. Now, do you know a Mr. McClellan?

6 A. Jim McClellan, yes.

7 Q. He's got a chart, your counsel can show
8 it to you if you like, at page 550 of volume 1 of
9 the application that talks about single-line
10 hauls going to joint-line hauls for coal, coke,
11 and iron ore. Have you seen that table?

12 A. I read through Jim's statement, but I
13 didn't study the table.

14 Q. Why don't you take a minute and look at
15 it.

16 A. I've looked at the table, but I haven't
17 studied it. I'm not sure I understand it.

18 Q. Well, let me represent to you that
19 Mr. Williams who you see as the source of the
20 table according to Mr. McClellan testified that
21 units, when it comes to coal, are carloads. They
22 may be containers as I understand it if we're
23 talking about container traffic, but for coal
24 it's carloads.

25 And I'm just interested, without asking

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1 A. Yes.

2 Q. So you told me earlier, when I asked
3 you about your job, that maybe it was an
4 oversimplification, but there was certainly some
5 truth, in fact, that your job was to charge the
6 highest price you could without losing the
7 business, correct?

8 A. That's right, I said that.

9 Q. And you don't know what Conrail is
10 charging today to its customers, even the ones
11 you're going to serve after you complete the
12 acquisition, assuming it's approved, right?

13 A. Rumor is they do pretty well, that they
14 charge what the market will bear.

15 Q. But, if that turns out not to be the
16 case, would it be your job to raise those rates?

17 A. Oh, I would be surprised if it weren't
18 the case. At the first round of negotiations
19 that NS -- when NS negotiates the transportation
20 contracts, we'll evaluate those conditions and
21 try to maximize our revenues.

22 Q. So, if you find a rate on Conrail that
23 you think can be increased, you will?

24 A. Yes.

25 Q. And, in effect, do you remember seeing

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1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL

11 Washington, D.C.
12 Tuesday, September 30, 1997
13 Deposition of DAVID R. GOODE, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by JAN A.
17 WILLIAMS, a Notary Public in and for the District
18 of Columbia, taken at the offices of Zuckert,
19 Scoutt & Rasenberger, L.L.P., Suite 700, 888
20 Seventeenth Street, N.W., Washington, D.C.,
21 20006-3939, at 10:00 a.m., Tuesday, September 30,
22 1997, and the proceedings being taken down by
23 Stenotype by JAN A. WILLIAMS, RPR, and
24 transcribed under her direction.

25

ALDERSON REPORTING COMPANY, INC.

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1 numbers would be calculated in this.

2 Q. Do you understand that some coal rates
3 have been prescribed at the level of the
4 jurisdictional threshold as I defined it for you?

5 A. I understand that.

6 Q. So do you understand the concern that,
7 if my representations to you of a moment ago are
8 correct and the jurisdictional threshold were
9 effectively to rise because of what you and CSX
10 are paying for Conrail's assets, that the
11 shipper's prescribed rate might rise as a result;
12 do you understand that?

13 A. As a theoretical point, yes.

14 Q. Is there any comfort that Norfolk
15 Southern could give the shippers if my
16 representations are correct?

17 A. Well, I've already referred to the plan
18 which as you have seen does not call for rate
19 increases.

20 Q. Do I also understand, though, that
21 you're not willing to commit to there being no
22 rate increases taking inflation into account?

23 A. Well, I think it would always be
24 irresponsible to make a commitment, because none
25 of us knows what the future may look like.

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BEFORE THE
SURFACE TRANSPORTATION BOARD
Finance Docket No. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, September 25, 1997

Deposition of JAMES W. McCLELLAN, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by JAN A. WILLIAMS, a Notary Public in and
for the District of Columbia, taken at the
offices of Zuckert, Scoutt & Rasenberger, L.L.P.,
Suite 700, 888 Seventeenth Street, N.W.,
Washington, D.C., 20006-3939, at 10:05 a.m.,
Thursday, September 25, 1997, and the proceedings
being taken down by Stenotype by JAN A. WILLIAMS,
RPR, and transcribed under her direction.

1 Conrail that it's acquiring is something that the
2 customers are obliged to pay for or is it a risk
3 that NS takes?

4 A. It's a risk NS takes.

5 Q. Further up that page, do you see I
6 think it's the third paragraph above the solid
7 line that begins where trackage rights are the
8 best alternative for market access, do you see
9 that line?

10 A. Is it in the big paragraph?

11 Q. No.

12 A. Okay.

13 Q. It goes on to say, they should be on
14 the CMA, UP/SP model, permitting access to new
15 plants, build-outs, and terminals and other
16 necessary infrastructure.

17 A. Yes, sir.

18 Q. That was NS's position in the
19 principles of balanced rail competition back in
20 October of '96, correct?

21 A. Yes, it was.

22 Q. Is that still NS's position as the
23 optimal design for trackage rights?

24 A. We negotiated something different.

25 Q. But is that still your view as to the

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1 can get into the Hawthorne Yard to interchange
2 with Norfolk Southern?

3 A. I'm virtually sure they can.

4 Q. They can?

5 A. Yes.

6 Q. And is NS going to have any ownership
7 interest in the Hawthorne Yard?

8 A. No.

9 Q. And how is it that you could be so
10 confident that Norfolk Southern will have
11 adequate capacity for traffic in and out of the
12 Hawthorne Yard?

13 A. Because we have -- the agreement says
14 that we will have adequate capacity. And I
15 believe that we could, if there's a disagreement,
16 make a case that they were trying to squeeze us
17 there.

18 And, furthermore, the nature of this
19 transaction, there are a number of places where
20 CSX will be relying on NS and vice versa. So
21 there isn't a reasonable -- there's pressure on
22 both sides. Let me be blunt about it. We have
23 some places where, if they're not reasonable in
24 Indianapolis, we can be somewhat unreasonable
25 with them. And that's the way it works.

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SURFACE TRANSPORTATION BOARD
Finance Docket No. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
RAILROAD CONTROL APPLICATION

~~HIGHLY CONFIDENTIAL~~ PUBLIC

Washington, D.C.
Wednesday, August 27, 1997

Deposition of ROBERT L. SANSOM, a
witness herein, called for examination by counsel
for the Parties in the above-entitled matter,
pursuant to agreement, the witness being duly
sworn by JAN A. WILLIAMS, a Notary Public in and
for the District of Columbia, taken at the
offices of Arnold & Porter, 555 Twelfth Street,
N.W., Washington, D.C., 20004-1202, at
10:05 a.m., Wednesday, August 27, 1997, and the
proceedings being taken down by Stenotype by
JAN A. WILLIAMS, RPR, and transcribed under her
direction.

OMITTED

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 ~~HIGHLY CONFIDENTIAL~~ PUBLIC (9/22/97)
11 Washington, D.C.
12 Thursday, August 21, 1997
13 Deposition of RAYMOND L. SHARP, a
14 witness herein, called for examination by counsel
15 for the Parties in the above-entitled matter,
16 pursuant to agreement, the witness being duly
17 sworn by JAN A. WILLIAMS, a Notary Public in and
18 for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:00 a.m., Thursday, August 21, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.
25

OMITTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.

NORFOLK SOUTHERN CORPORATION AND

NORFOLK SOUTHERN RAILWAY COMPANY

-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, September 18, 1997

Deposition of JOHN W. SNOW, a witness
herein, called for examination by counsel for the
Parties in the above-entitled matter, pursuant to
agreement, the witness being duly sworn by MARY
GRACE CASTLEBERRY, a Notary Public in and for the
District of Columbia, taken at the offices of
Arnold & Porter, 555 Twelfth Street, N.W.,
Washington, D.C., 20004-1202, at 10:00 a.m.,
Thursday, September 18, 1997, and the proceedings
being taken down by Stenotype by MARY GRACE
CASTLEBERRY, RPR, and transcribed under her
direction.

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1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

OMITTED

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Wednesday, September 3, 1997
13 Deposition of WILLIAM W. WHITEHURST,
14 JR., a witness herein, called for examination by
15 counsel for the Parties in the above-entitled
16 matter, pursuant to agreement, the witness being
17 duly sworn by JAN A. WILLIAMS, a Notary Public in
18 and for the District of Columbia, taken at the
19 offices of Arnold & Porter, 555 Twelfth Street,
20 N.W., Washington, D.C., 20004-1202, at
21 10:00 a.m., Wednesday, September 3, 1997, and the
22 proceedings being taken down by Stenotype by
23 JAN A. WILLIAMS, RPR, and transcribed under her
24 direction.
25

1 1. Let me ask you first, the first column there
2 refers to the number of Conrail shares acquired
3 by CSX and Norfolk Southern; is that correct?

4 A. Yes, the column entitled shares
5 acquired in thousands.

6 Q. The next is the price paid for each
7 group of those shares; is that correct?

8 A. Yes.

9 Q. So that this item reflects that, in
10 order to acquire 86,475,000 Conrail shares, the
11 joint applicants paid a total of 9,856,000,000?

12 A. That is correct.

13 Q. The next item refers to cost of
14 unexercised stock options I guess totaling 39
15 million. Could you explain what that item is,
16 please?

17 A. If I recall correctly, that was part of
18 the options of Conrail -- that were on Conrail's
19 books that were acquired.

20 Q. I'm sorry, I didn't hear you?

21 A. Part of the options that were on
22 Conrail's books that were acquired and became
23 part of the total purchase price.

24 Q. The next line item refers to Conrail
25 base year net book value, 3,169,000,000. Could

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1 you tell us what the source of that value is?

2 A. It should be the -- let's see. If you
3 were to look in Exhibit WWW-4, page 1 of 2,
4 column 3, Conrail base value, the line entitled
5 total shareholders' equity, you will find the
6 amount of 3,169,000,000 which is the
7 shareholders' equity or stated differently would
8 be the total assets less liabilities.

9 Q. For Conrail as reported in its 1995
10 10-K subject to the adjustments that you made on
11 Exhibit 4?

12 A. Yes.

13 Q. Referring now back to Deposition
14 Exhibit 1, the next line item, total adjustment
15 to reflect cost of the purchasers, that's simply
16 the difference between the joint purchase price
17 and the shareholders' equity; is that right?

18 A. That's right. It would be -- in the
19 case of the total joint cost column, it would be
20 the number arrived at if you take 9,895 and
21 subtract 3,169, arriving at 6,726.

22 Q. And the next column in that same line
23 item would show what CSX's 42 percent share of
24 that adjustment would be; is that correct?

25 A. Yes. If you multiply 6,726 by 42

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1 percent, you get the amount shown there which is
2 2,825.

3 Q. In the next section of your Deposition
4 Exhibit 1, which is entitled Allocation of CSX
5 Adjustment to Reflect Cost to the Purchasers, let
6 me ask you first, the total of all of the items
7 which is actually I guess on the next page is
8 2,925,000,000; is that correct?

9 A. Yes.

10 Q. But that's \$100 million different from
11 the item that we just looked at on the previous
12 page of 2,825,000,000?

13 A. That's correct.

14 Q. Well, could you explain, because there
15 doesn't seem to be a note relating to that item,
16 why there's \$100 million difference between those
17 two items?

18 A. If you will look at Deposition Exhibit
19 WWW-1, page 2 of 3, which is also identified as
20 CSX 19 CO 000121, you will see about three lines
21 up from the 2,925,000,000 you mentioned an amount
22 of 2,825,000,000 which does match the amount on
23 page 1. The difference as shown in item 5 is the
24 adding in of transaction costs, debt issuance
25 costs of 50 million, and transaction costs of 50

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1 value, parentheses, estimated fair value, \$16,243
2 less book value, \$6,693 equals \$9,550 write-up
3 times 42 percent CSX share, close paren. Do you
4 see that reference?

5 A. Yes, I do.

6 Q. Let me ask you first, the source of the
7 book value that's shown there of 6,693, and I
8 should have said that all of these numbers should
9 be I guess followed by six zeros like all the
10 other data in this table, is that correct?

11 A. Yes. If you'll notice, at the top
12 of -- why don't we just refer to this as page 120
13 to avoid rattling through CSX, et cetera.

14 Q. That's fine.

15 A. If you'll notice, at the top of the
16 page, under the title, it says Amounts in
17 Millions, Except Per Share Data.

18 Q. Do you recall the question? The
19 question was what was the source of the
20 6,693,000,000 book value?

21 A. If you'll refer to Exhibit WWW-4, page
22 1 of 2, which appears at page 396, in column 3,
23 Conrail base year, on the line properties-net,
24 you will see the amount of 6,693,000,000 which
25 you just asked about.

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1 Q. And again, as we previously indicated,
2 with adjustments that you've already described or
3 adverted to, this is derived from Conrail's 1995
4 10-K?

5 A. Yes.

6 Q. Again, referring back to page 120, this
7 note we were discussing, the value of estimated
8 fair value shown in this note of 16,243,000,000,
9 what was the source of that estimated fair value?

10 A. The applicants retained a public
11 accounting firm to review the properties and
12 other aspects of the transaction and determine
13 fair value. At the time we went to press, they
14 had some preliminary values. And this was their
15 preliminary estimate of fair value of the
16 properties and equipment.

17 Q. What was the name of the public
18 accounting firm that prepared that estimated fair
19 value?

20 A. If I recall correctly, it's Price
21 Waterhouse.

22 Q. If you know, were they engaged just by
23 CSX or by both CSX and Norfolk Southern?

24 A. If I answer that, it will be
25 speculation.

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1 Q. Do you recall the name of the
2 individual employed by Price Waterhouse who
3 provided this information to you, this number?

4 A. I would suspect there was a team of
5 people. I do not recall the name of any of the
6 individuals.

7 Q. Was this number provided to you in
8 written form, this information?

9 A. No, it was provided to me orally.

10 Q. Did you have any personal involvement
11 in the activity or the engagement by Price
12 Waterhouse to determine the estimated fair value?

13 A. I would appreciate it if you would
14 clarify that question.

15 Q. You indicated this information was
16 provided to you by a team at Price Waterhouse.
17 Were you personally involved in any of what you
18 describe as the evaluation process that Price
19 Waterhouse engaged in in order to determine this
20 number?

21 A. No.

22 Q. The next three items in this page,
23 under this heading Investment in Affiliates,
24 Other Assets, Employees Benefits Trust, Long-Term
25 Debt, and Other Long-Term Liabilities, each have

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1 have the question back one more time to make sure
2 I'm doing it right.

3 THE REPORTER: "Question: Well, this
4 sentence says I, meaning yourself, have
5 participated in negotiations and/or litigation
6 related to the bases for components of and the
7 amount of compensation to be paid by one railroad
8 for another railroad's lines. And my question
9 was was that activity or participation involving
10 a determination of the value of the railroad's
11 assets or the railroad's lines as you refer to
12 here, not necessarily this transaction?"

13 BY MR. WOOD:

14 Q. Not the clearest question I admit, but
15 can you answer?

16 A. My understanding is that you were
17 asking, in one or more of these occasions that I
18 refer to, was I involved in the determination of
19 value. If that is the correct understanding of
20 that question, the answer is yes.

21 Q. That is. All right. In this
22 proceeding with respect to this transaction, did
23 you provide any independent evaluation of the
24 16,243,000,000 estimated fair value for Conrail's
25 assets referred to on page 120?

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1 necessary to make an adjustment to the value of a
2 debt security to fair value?

3 A. I believe, if you look at the Conrail
4 annual report, you will find some text in the
5 notes to the financial statements where they
6 address the question of the fair market value of
7 their debt as distinct from the book value of the
8 debt.

9 Q. The next column, looking again on page
10 121, refers to long-term debt, 4,256,000,000. Is
11 that the exact amount of long-term debt issued by
12 CSX that you were referring to generally on page
13 382 in your statement?

14 A. This is the amount that I was referring
15 to generally in the first full paragraph on page
16 382 of my verified statement.

17 Q. Referring to the last page of this
18 Deposition Exhibit 1 which is page 122 which has
19 section 4 of this work paper entitled
20 Depreciation and Amortization of Components of
21 Adjustment to Reflect Cost to the Purchasers, the
22 first item under that is A, depreciation of fair
23 value adjustment to property and equipment. Do
24 you see that item?

25 A. Yes, I do.

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1 Q. And again this 4,011,000,000 is the
2 same number that appears in the previous summary;
3 is that correct?

4 A. It appears both in the summary Roman
5 numeral III and in Roman numeral II.

6 Q. What is the purpose of the calculation
7 reflected in section A of this part?

8 A. The purpose of the calculation is to
9 determine the amount of annual depreciation
10 expense which would reflect the return of this
11 value, if you will, straight depreciation kind of
12 a concept over the estimated useful life or
13 estimated remaining useful life of those
14 properties.

15 Q. What was the source of the estimated
16 remaining useful life of 45 years that you used
17 here?

18 A. I believe, if you would look in the
19 Conrail annual report, Form R-1, depreciation
20 schedule which is something like schedule 335,
21 but don't hold me to that number, various
22 properties are listed and their depreciation
23 rates are listed.

24 And there is a composite for properties
25 and a composite for equipment. And I would

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1 think, if you take the reciprocal of the
2 depreciation rate, you get the number of years.
3 And I think you would find that it would be on
4 this order of magnitude.

5 Q. You referred to the R-1 which is the
6 annual report that Conrail files with the STB as
7 opposed to the 10-K?

8 A. That is correct.

9 Q. Did you perform yourself the
10 calculation you just described or did someone
11 else provide you with that calculation?

12 A. Someone provided me with the 45 years.
13 And I ran the calculation in the R-1 to see what
14 my level of comfort with it was. And I came out
15 comfortable.

16 Q. Does that mean it was reasonably close
17 to 45 years?

18 A. Yes.

19 Q. The next item in this section refers to
20 B, amortization of goodwill, it refers to an
21 amortization period of 40 years. Would you
22 explain the source of that amortization period?

23 A. I believe, if you look in the Code of
24 Federal Regulations, the regulations
25 applicable -- the Uniform System of Accounts for

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1 from Price Waterhouse.

2 Q. Thank you. Now, could you turn to page
3 2 of Deposition Exhibit No. 1, please.

4 A. I have page 2 in front of me.

5 Q. In the section labeled Summary of
6 Purchase Accounting Adjustment, there is a line
7 which you discussed with Mr. Wood, line C,
8 long-term debt.

9 A. Yes.

10 Q. There is a number in the column
11 long-term debt in the amount of \$4,256,000,000.
12 Could you explain the source of that number for
13 me, please.

14 A. I believe that reflects a combination
15 of long-term debt and commercial paper. And I
16 think you will find that -- the breakout of that
17 number elsewhere in my work papers. It's my
18 general recollection that the long-term portion
19 was about 2.5 billion. It's also my recollection
20 that those numbers probably appear in the CSX S-4
21 registration statement of the beginning of June
22 1997.

23 Q. Am I correct that the amount of
24 long-term debt shown on line C is the amount of
25 debt that CSX issued to acquire Conrail?

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1 A. This is discussed generally in my
2 verified statement at page 382 in the first full
3 paragraph. And, if you will note, partway down
4 that paragraph, seven lines down, there's a
5 sentence that begins in May 1997 CSX issued 2.5
6 billion in debentures.

7 There is some discussion earlier about
8 commercial paper. And then, in the last sentence
9 of the paragraph, there's a sentence which reads,
10 subsequent to the joint tender offer and merger,
11 CSX's interest in Conrail is financed by a
12 combination of debentures and commercial paper.
13 And the amount we were referring to of
14 4,256,000,000 is the reflection of that.

15 Q. So the answer to my question is yes,
16 that does reflect the cost of debt and the
17 commercial paper that CSX has issued to acquire
18 Conrail?

19 A. Yes.

20 Q. Staying on that one section, on page 2
21 of Deposition Exhibit No. 1, I believe you
22 discussed the first three lines with Mr. Wood,
23 that's lines A through C; is that correct?

24 A. That is correct.

25 Q. And, as I understand your testimony,

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CERTIFIED COPY

1

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION
10 HIGHLY CONFIDENTIAL
11 Washington, D.C.
12 Thursday, September 11, 1997
13 Deposition of HENRY C. WOLF, a witness
14 herein, called for examination by counsel for the
15 Parties in the above-entitled matter, pursuant to
16 agreement, the witness being duly sworn by
17 FERNITA R. FINKLEY, a Notary Public in and for
18 the District of Columbia, taken at the offices of
19 Zuckert, Scoutt & Rasenberger, L.L.P., 888
20 Seventeenth Street, N.W., Washington, D.C.,
21 20006-3939, at 9:55 a.m., Thursday, September 11,
22 1997, and the proceedings being taken down by
23 Stenotype by FERNITA R. FINKLEY, RPR, CRR, and
24 transcribed under her direction.
25

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1 some time since I went through this, but I
2 believe that's what this is.

3 BY MR. WOOD:

4 Q. Do you know who prepared this worksheet
5 that's on page 103?

6 A. My recollection is that this was
7 prepared again in the accounting department of
8 Norfolk Southern Corporation.

9 Q. On page 103, the first column is headed
10 Conrail Assets December '96 Estimate. You see
11 that column?

12 A. I do.

13 Q. Do you know what the source of that
14 estimate of Conrail's assets?

15 A. I do not.

16 Q. Do you know if that estimate would have
17 been prepared by Norfolk Southern's accounting
18 department?

19 A. I believe that it was.

20 Q. Do you know if Norfolk Southern's
21 accounting department might have engaged any
22 outside consulting or accounting firm to assist
23 in preparing that estimate?

24 A. I don't know that.

25 Q. Are you aware that CSX engaged the

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1 expense?

2 A. I think that's correct.

3 Q. If the valuation is higher, the
4 depreciation expense will be higher?

5 A. That's correct.

6 Q. By the same token, if it's lower --

7 A. If it's lower, the depreciation expense
8 will be lower.

9 Q. But if the valuation is lower when it's
10 finally completed, would that mean that there
11 would be an increase in the amount that would
12 have to be booked as goodwill?

13 A. I think that's correct.

14 Q. Is the goodwill expense -- is the
15 goodwill item on the balance sheet also subject
16 to amortization?

17 A. Yes, it is.

18 Q. What's the rate or amortization of
19 goodwill?

20 A. Generally goodwill is amortized over 40
21 years.

22 Q. Do you have any knowledge as to when
23 Price Waterhouse was first engaged to conduct the
24 valuation study?

25 A. Not specifically, no.

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1 Q. You wouldn't have any -- would you have
2 any understanding of how they might -- whether
3 they would make similar purchase accounting
4 adjustment on the consolidated balance sheet in
5 determining revenue adequacy after the
6 transaction?

7 A. I don't know the answer to that.

8 Q. You referred to in response to a
9 question some time ago that the -- your
10 understanding that amortization of goodwill is at
11 40 years. Is that something that's established
12 by a financial accounting standard issued by the
13 FASB, Financial Accounting Standards Board?

14 A. I don't know that it's established by
15 the financial accounting board. I'm just
16 generally familiar from having read some things
17 on the subject of goodwill, that typically it is
18 amortized over 40 years. It doesn't have to be
19 40 years. It can be less than 40 years.

20 Q. The last page of this Exhibit 1 is a
21 table headed Calculation of Estimated Average
22 Interest Rate.

23 A. Yes, sir.

24 Q. The second column there refers to the
25 amount, and at the end it's -- again, I'm

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TRANSPORTATION

John Q. Anderson
Executive Vice President -
Sales & Marketing

500 Water Street - J120
Jacksonville, FL 32202

May 8, 1997

Dear Customer:

It's been a few weeks since I wrote advising you that CSX reached agreement with Norfolk Southern on the division of Conrail. Now I'd like to let you know what CSX has been doing since my last letter and identify our plans for moving forward. Though we have much work to do, our acquisition of Conrail will result in a redrawn rail map in the East, with two Class I railroads competing head to head.

CSX and NS plan to jointly file an application with the Surface Transportation Board seeking approval of this transaction on June 16, 1997, and have asked the STB for an accelerated 255-day review process. We believe this will give ample time for interested parties and the STB to review the merits of our application. Our reasons for this request are as follows:

- Until the STB approves our joint application, the benefits to our customers of increased rail competition lie beyond reach.
- CSX and NS collectively have invested over \$10 billion but until we begin to operate our new routes, we cannot capture the efficiencies needed to earn our projected return on investment.
- Conrail will remain an independent company until the STB acts on our joint application. The uncertainty affecting its employees and customers needs to be settled as soon as possible.

As you know from prior communications, we would very much appreciate your support of the proposed CSX-NS acquisition of Conrail and would ask you to express your support in the form of a verified statement or letter. The STB values input from all stakeholders, especially shippers. One letter supporting the acquisition, addressed to the STB with copies to John Snow and David Goode, is all that's required. Your CSX representative will have the details you need.

We continue to work on our operating plan, which we expect to complete in mid-May. This document, which I will summarize for you in subsequent correspondence, will explain in detail how we plan to operate the larger network and identify resource needs and capital requirements. For example, our plan will provide information on infrastructure-upgrade programs. It will also describe how we will operate those areas we will share with NS.

We approach our future with great enthusiasm. We believe the routes we will acquire from Conrail will complement our existing network. More importantly, they will enable us to grow our business as a result of offering you, our customer, a number of benefits such as:

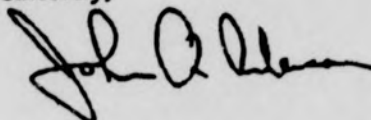
- Expanded reach into new markets where you can increase your business.
- Elimination of interchange headaches thereby increasing both the reliability and velocity of your shipments.
- Improved responsiveness and easier use of rail by reducing the handling of many of your requests to a single carrier.

Many of you have asked if we will be forced to raise prices to fund our acquisition of Conrail. In response, let me say that our plans are to grow our business aggressively and to attack a market that's 86% dominated by business moving on the highway. Improved service and efficiency available from an enhanced CSX rail system should allow us to put together price and service packages that make inroads into this market and help us meet our growth objectives. Competitive factors will also come into play as there will now be two Class I railroads vying for business in many of the markets now dominated by one carrier. In short, we do not see raising prices as the path to funding this acquisition, we see efficiency and new business growth.

As always, I thank you for your comments, suggestions and, most importantly, your business. In closing, I want to ask you once again to support us when our representative calls you in the near future. We need statements/letters of support by June 2nd.

I'll keep you informed of our progress and will plan to write you again in the very near future.

Sincerely,



OMITTED

STB

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10-21-97

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 21st day of October, 1997, a copy of the foregoing "Joint Comments, Evidence, and Request for Conditions of Atlantic City Electric Company and Indianapolis Power & Light Company" (ACE, et al.-18) and "Supplemental Comments, Evidence, and Request for Conditions of Indianapolis Power & Light Company" (IP&L-3) by first-class mail, postage prepaid, or by more expeditious means, upon all parties of record. The "highly confidential" version was served on persons on the Highly Confidential Restricted Service List only; a redacted version was served on all other parties of record. The following persons were served by hand delivery:

Office of the Secretary
Case Control Unit
ATTN: STB Finance Dkt. 33388
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building
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Washington, DC 20423-0001
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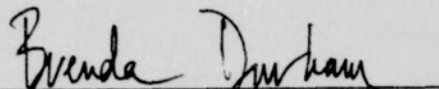
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Brenda Durham

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Before the

ORIGINAL SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

VERIFIED STATEMENT OF JOHN H. BURNER

My name is John H. Burner. I reside in Effingham, IL, and since 1962 have been employed by Illinois Central Railroad Company. I am Assistant Illinois Legislative Director for the United Transportation Union, an elective position which I have held since February, 1996.

I have been requested by Joseph C. Szabo, the Illinois Legislative Director for UTU, to submit this statement regarding the applications by CSX Corporation and Norfolk Southern Corporation, and their carrier affiliates CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NS) to control Conrail, Inc. and its carrier affiliate, Consolidated Rail Corporation (Conrail).

I am fully familiar with railroad operations in Illinois. I am a locomotive engineer. This statement has been reviewed by Mr. Szabo, and has his concurrence. The UTU's Illinois Legislative Board is in opposition to the proposed applications for a break-up of Conrail's system through the acquisition and/or operation of its principal lines by CSXT and NS.

The operational changes in Illinois would be dramatic. It is my understanding upon review of the application and upon various accounts, that the CSXT line between East St. Louis and Cincinnati via Vincennes would be substantially downgraded in favor of routing over the Conrail line between East St. Louis and Indianapolis, via Effingham and Terre Haute. Other operating changes embrace greater use of the NS routes through Decatur, IL, with a substantial increase in employment at Decatur, and the substantial downgrading of the NS yard at Calumet, IL. These are only a few of the changes, and the full impact cannot be determined at this time in the absence of full knowledge of the various claims for conditions anticipated from other carriers, such as from Illinois Central Railroad Company, Wisconsin Central, Ltd., and Iowa Interstate Railroad, Ltd.

The proposed changes for the Chicago area are particularly disturbing, with applicants having the avowed purpose of diverting traffic from the Chicago gateway.

The UTU Illinois Legislative Board reserves the rights to offer a supplemental analysis of the impact of the transactions upon railroad operations in Illinois, and the impact upon rail employees, when the arrangements with other carriers are resolved. This can be accomplished at further evidentiary stages, or on brief.


It is clear at this time that the impact upon competition, and upon rail services, will be adverse; and likewise the transactions will have an overall negative impact upon rail employees.

Recent developments in the Western District, with a virtual breakdown in carrier operations in many areas, strongly suggest that the merger mania should be stopped in the East.

STATE OF ILLINOIS)
COUNTY OF EFFINGHAM)

Under the penalties of perjury, I affirm the foregoing is true
and correct as stated.

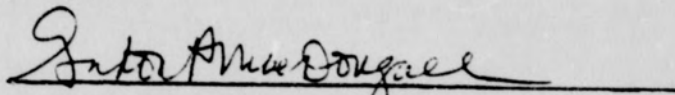
October 21, 1997



JOHN H. BURNER

Certificate of Service

I hereby certify I have served a copy of the foregoing upon ALJ
LEVENTHAL
and all parties of record indicated by Decisions Nos. 21, 27, and 43,
by first class mail postage-prepaid.



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10-21-97

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October 21, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

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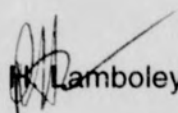
Re: Finance Docket No. 33388

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-five (25) copies of the Comments and Responsive Application for Conditions submitted on behalf of the Southern Tier West Regional Planning and Development Board (STW-2) for filing in this proceeding. In accordance with Decision No. 6 in this proceeding, copies of the enclosed document are being served upon applicants' counsel and Administrative Law Judge Jacob Leventhal.

Should there be any questions about this filing, please call me at (202) 496-4920.

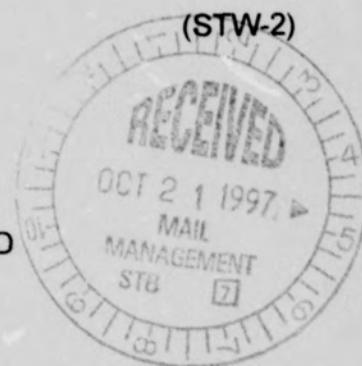
Respectfully submitted,


Paul H. Lamboley

Enclosures

cc: Hon. Jacob Leventhal
All parties of record

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388

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

COMMENTS AND RESPONSIVE APPLICATION FOR CONDITIONS
OF
SOUTHERN TIER WEST REGIONAL PLANNING AND DEVELOPMENT BOARD

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Facsimile: 202-293-6200

Counsel for Southern Tier West
Regional Planning & Development
Board

A. Description Of Interest And Line At Issue

The Southern Tier West Regional Planning and Development Board ("STW") is a regional planning board representing the New York State counties of Allegany, Cattaraugus, and Chautauqua located in the southwestern corner of New York State. For purposes of this proceeding, STW also represents the county of Steuben, also in New York State.

The STW region is served by an east-west Conrail (CR) line known as the "Southern Tier Extension", which runs 146 route miles from Hornell, New York to Corry, Pennsylvania. See accompanying map attached as Exhibit A. Formerly part of the main line of the Erie Lackawanna Railway Company (EL), it connects at Hornell with Conrail's Buffalo-Jersey City "Southern Tier Line." Between Corry and Meadville, Pennsylvania, the former Erie Lackawanna main line is owned by the Northwest Pennsylvania Rail Authority. Between Meadville and Youngstown, Ohio, it is owned by Conrail. At Corry, connection is made to the Emporium-Erie line of the Allegheny & Eastern Railroad ("ALY"), a Class III carrier.

The STW region is also served by three north-south lines. Conrail's Buffalo-Harrisburg line intersects the Southern Tier Extension at Olean, New York. The Buffalo & Pittsburgh Railroad ("BPRR") is a Class III railroad whose line passes over the Southern Tier Extension east of Salamanca, New York.

BPRR and ALY are subsidiaries of Genesee & Wyoming, Inc. Finally, the New York and Lake Erie Railroad ("NY&LE") operates as a Class III carrier between Gowanda, New York and Conewango, New York. It possesses a dormant connection with the Southern Tier Extension at Waterboro, New York.

Conrail and Norfolk Southern operate separate main lines along the shore of Lake Erie in Chautauqua County. Inasmuch as these lines are at the periphery of the STW region, and do not connect with the Southern Tier Extension, this filing does not address them.

B. The Recent History of the Southern Tier Extension Is Unique

The Southern Tier Extension is unique in that it has been the subject of almost constant controversy between Conrail and state and local agencies since the early 1980's. This very public controversy has worked to dissipate the confidence of rail users, and contributed to a precipitous decline in rail usage and industrial activity in communities served by the Southern Tier Extension. When the New York State Department of Transportation ("NYSDOT") surveyed rail usage along the line 1980, annual volume was 4488 carloads; at this time, annual volume is about 500 cars.

In 1979, New York State gave Conrail grants in aid totaling \$26.9 million for various capital improvements to the Southern Tier Extension and Conrail's Buffalo to Suffern, New York "Southern Tier Line." One of the grants, the "TCS-Wellsville Agreement" of December 6, 1979, provided \$2.5 million for single-tracking existing double track between Cuba Junction, New York and Salamanca, New York, installation of new signals and Traffic Control System

(TCS) apparatus, and construction of a new controlled siding near Wellsville, New York. Consistent with New York State's use of bond monies to finance these grants, i.e., the assets purchased with grant monies collateralized the bonds, NYSDOT retained 30-year ownership of the materials used in the improvements and required Conrail to repay their depreciated value if the improvements were abandoned. Alternatively, NYSDOT could apply the same amount toward acquisition of the properties if they were abandoned. NYSDOT also secured maintenance and service commitments.

Following 1981-82 litigation arising from NYSDOT's concern that Conrail was not performing the maintenance and service commitments it had entered into three years before, NYSDOT and Conrail executed the "Southern Tier Agreement" of October 12, 1982. The Southern Tier Agreement was amended in 1987 and again in 1990. The latter amendments relieved Conrail of its obligation to operate ten through freight trains per week via Jamestown and reduced certain track maintenance requirements. Shortly thereafter, Conrail ceased operating a through freight between Elkhart, Indiana and Newark (Oak Island), New Jersey via Jamestown. Concurrently, Conrail terminated a program to rehabilitate trackage between Olean and Hornell.

In light of the concessions by New York, Conrail agreed that the improvements funded by the TCS-Wellsville grant no longer served their intended purpose, and that the depreciated value thereof was \$2.136 million. The 1990 amendments provided that Conrail would, on or before December 31, 1991, submit a plan to redeploy the investment elsewhere in New York State, and that NYSDOT would consider such a proposal. No such proposal was ever

submitted. In its absence, Conrail should have paid the \$2.136 million as called for by the Southern Tier Agreement. No payment has ever been made.

STW became involved in the future of the Southern Tier Extension in late 1992, when it commissioned a comprehensive consulting study of the line's future. Following completion of the study, and working closely with NYSDOT, STW attempted to acquire trackage between Hornell and Corry from Conrail. Summarizing a long and difficult negotiation, Conrail was generally willing to sell the line whenever Conrail management believed that it would be able to sever a continuous route between CSXT at Youngstown and Canadian Pacific ("CP") at Hornell by abandoning the segment between Corry and Meadville. After this segment was sold to the Northwest Pennsylvania Rail Authority pursuant to the order of the Interstate Commerce Commission in 1995 AB No. 167 (Sub. No. 1139) Consolidated Rail Corp. - Abandonment between Corry and Meadville, in Erie and Crawford Counties, PA (non print) served April 17, 1995 clarified July 18, 1995, Conrail terminated negotiations with STW.

While these negotiations were underway, traffic continued to deteriorate and large portions of the Southern Tier Extension were allowed to fall into disuse. At this time, two customers remain active in the vicinity of Jamestown, New York, generating approximately 500 cars annually. They receive service from Olean, approximately 50 miles away. Remaining segments, totaling 92 miles out of the 146 miles between Hornell and Corry, are shut down altogether. The segment between Olean and Hornell was damaged by flooding in January 1996. Due to Conrail's failure to repair the damage, the washed out sections continue to erode, raising the cost of any repair that might be made.

In summary, the uncertain status of the Southern Tier Extension within Conrail has accelerated its deterioration both commercially and physically.

C. Conrail Acquisition Concerns

Working with NYSDOT and Congressman Amo Houghton, STW has continued to seek an outcome in the Conrail Acquisition Proceedings for the Southern Tier Extension that will stabilize the future of rail service to active customers in the Jamestown area and revive use of the Hornell-Corry route for overhead freight traffic sufficient to support the costs of maintaining this essential piece of the region's economic development infrastructure.

1. Transaction Potentials.

a. Following the proposed division of Conrail between CSX Transportation ("CSXT") and the Norfolk Southern Railway Company ("NS"), the Southern Tier Extension and Conrail's Buffalo-Harrisburg line are designated for transfer to Norfolk Southern. In conjunction with Conrail's Meadville-Youngstown line (which will also be conveyed to NS) and the Corry-Meadville segment owned by the Northwest Pennsylvania Rail Authority, the Southern Tier Extension could therefore form part of a continuous route between other NS lines at Hornell and Youngstown. Alternatively, it could form part of a continuous route between Hornell and Erie, using Conrail trackage rights over the ALY which NS proposes to acquire.

b. As a party of record in this proceeding, BPRR has indicated that it expects to seek overhead trackage rights over a portion of the Southern Tier Extension between Salamanca and Olean. Southern Tier West supports BPRR's obtaining such trackage rights so long as it can be accomplished without interfering with the Norfolk

Southern's operations on this line segment and will not be construed to attenuate Norfolk Southern's common carrier obligations thereon.

2. Norfolk Southern's Failure to Define Its Plans for the Southern Tier Extension Harms the Southern Tier West Region

The CSX/NS proposal to divide Conrail fails to address or detail Norfolk Southern's plans for the Southern Tier Extension in any way.

Initially, Southern Tier West was told that its concerns would be addressed in Applicants' primary filing. Disappointingly, they were not. While STW has continued to engage in constructive discussions with Norfolk Southern in the hope of arriving at an agreement that would be beneficial both to NS and the region, it is now apparent that STW will not have (1) a clear idea of Norfolk Southern's plans for the line, or (2) an agreement protecting the future stability of rail service, prior to October 21, 1997.

What is apparent is that the Conrail/NYS DOT Southern Tier Agreement will expire June 1, 1998, before the control of Conrail is likely to pass to its new owners. As the public sector planning agency representing part of the region protected by the Southern Tier Agreement, STW has a vital interest in seeing that its provisions are adhered to by Conrail and NS.

The profound uncertainty affecting the Southern Tier Extension cannot continue. To let it continue beyond the control date is to further discourage existing customers and hinder economic development in the Southern Tier West region.

D. Conditional Remedies Requested

These acquisition proceedings, commenced by Primary Application filed pursuant to relevant provisions of 49 USC 11323-11325, are governed by the five factor "public interest" criteria of Sections 11324(b)(1)-(5):

- (1) the effect of the proposed transaction on the adequacy of transportation to the public;
- (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
- (3) the total fixed charges that result from the proposed transaction;
- (4) the interest of rail carrier employees affected by the proposed transaction; and
- (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

See also 49 CFR 11801.1, General Policy Statement for Merger or Control of at Least Two Class I Railroads

The imposition of conditional remedies here sought by STW is consistent with the above statutory and regulatory criteria, and is appropriate to ensure the transaction complies with public interest requirements. 49 USC 11324(c); 49 CFR 1180.1(d).

STW opposes the proposed division of Conrail's assets in its unconditioned form, and requests that any Board approval of the Primary Application be subject to following conditions and requirements:

1. NS should be required to state and describe specifically its plans for the Southern Tier Extension.

2. Conrail should be required to pay the \$2.136 million owed to NYSDOT under the Southern Tier Agreement, or in the alternative, Norfolk Southern should be required to enter into an extension of the Southern Tier Agreement that addresses and provides for the future use, application or investment of those funds on the Southern Tier Extension to the mutual satisfaction of the parties.


3. NS should be required to repair the washouts at Alfred, New York, Scio, New York, and Belmont, New York, and to otherwise restore the entire line to operable status, as required by the Southern Tier Agreement.

4. The service and maintenance commitments contained in the Southern Tier Agreement should be extended five years from June 1, 1998. A summary of these commitments is attached as Exhibit B.

WHEREFORE, STW respectfully submits this comment and request for impositions of conditions on any approval of the Primary Application in this proceeding.

Dated: October 21, 1997

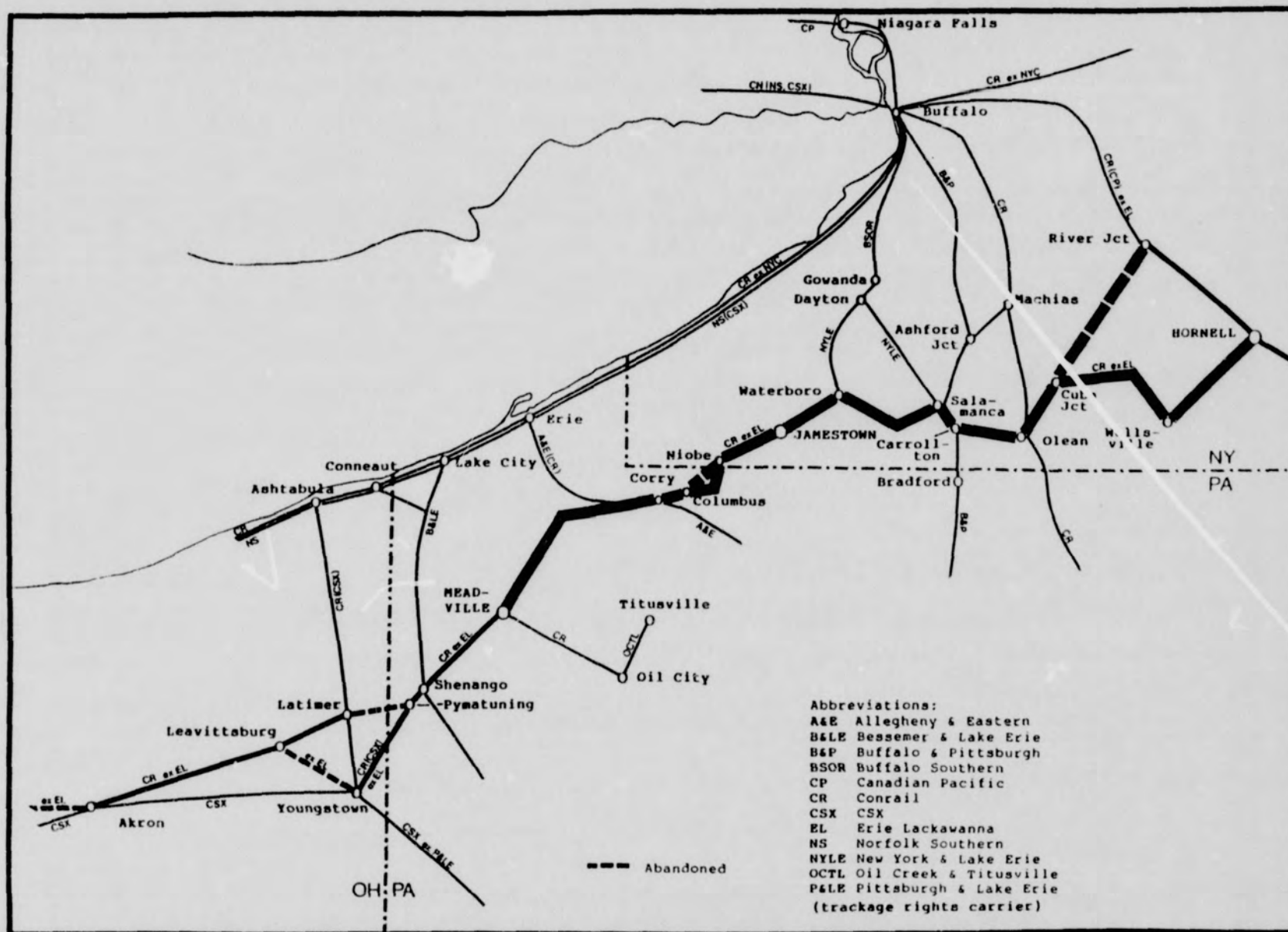
Respectfully submitted,



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Counsel for Southern Tier West
Regional Planning and Development
Board

EXHIBIT A



1990 SOUTHERN TIER AGREEMENT

THROUGH FREIGHT

None

SERVICE COMMITMENT

LOCAL FREIGHT

Olean - Jamestown: 5 days/week if

SERVICE COMMITMENT

traffic is 90% or more of 1989 levels;

3 days/week if between 75% and 89%

of 1989 levels; "as needed" if less than

75% of 1989 levels

Hornell - Olean: "As needed"

Jamestown - Corry: "As needed"

MAINTENANCE COMMITMENT

Olean - Jamestown: FRA Class II

track (25 MPH freight) with slow

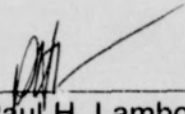
orders not to exceed 10 route miles

Hornell - Olean: "As needed"

Jamestown - Corry: "As needed"

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of October 1997, copies of the foregoing document (STW-2) were served upon counsel for applicant parties via messenger or other expeditious means, and upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE, Suite 11F, Washington, DC 20426, and other parties of record, via first class mail, prepaid.



Paul H. Lamboley

STB

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October 21, 1997

D

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-five (25) copies of the Comments and Responsive Application for Conditions submitted on behalf of the Resources Warehousing & Consolidation Services Inc. (RWCS-3) for filing in this proceeding. In accordance with Decision No. 6 in this proceeding, copies of the enclosed document are being served upon applicants' counsel and Administrative Law Judge Jacob Leventhal.

Should there be any questions about this filing, please call me at (202) 496-4920.

Respectfully submitted,

Paul H. Lamboley

Enclosures

cc: Hon. Jacob Leventhal
All parties of record

182924

UNITED STATES OF AMERICA
BEFORE THE
SURFACE TRANSPORTATION BOARD



STB FINANCE DOCKET NO. 33388

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

COMMENTS AND RESPONSIVE APPLICATION FOR CONDITIONS
OF
RESOURCES WAREHOUSING & CONSOLIDATION SERVICES INC.

Paul H. Lamboley
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Telephone: 202-496-4920
Facsimile: 202-293-6200

Counsel for Resources Warehousing
& Consolidation Services, Inc.

A. Statement Of Interest

Resources Warehousing & Consolidation Services Inc. (RWCS) has offices, warehouses and terminal facilities located at 2200 Secaucus Road, North Bergen, NJ. Commonly owned Land Bridge Terminal Inc. (LBT) is also located at that address.

RWCS, a freight forwarder, provides warehousing, consolidation, and intermodal services for international trade from warehouse and terminal facilities owned and operated by RWCS - LBT being the terminal operator. RWCS is a significant intermodal terminal facility in Northern New Jersey.

RWCS intermodal facilities are located on the southern terminus of a north-south rail line owned and served by the New York Susquehanna & Western (NYSW). The Delaware Ostego Corporation (DO) owns the NYSW. The RWCS terminal lies between the North Bergen and Croxton Terminals, north of the Kearny - APL Terminal facility. RWCS has committed to substantial development and expansion of its intermodal facilities on property owned at its present location. All of RWCS facilities are located within the North Jersey Shared Asset Area.

B. Comments On Transactions

1. CSX/NS - Delaware Ostego Agreement.

The CSX and NS agreement to acquire DO makes less clear the nature of rail services that may be available to RWCS. RWCS has had discussions with DO, CSX and NS regarding rail service options at its facilities. RWCS has requested additional information clarifying the DO arrangement. Upon inquiry,

the agreement has been stated to be confidential and proprietary in nature. Further, RWCS has been advised DO will continue operations.

2. CSX/NS-Conrail Acquisition.

RWCS has been constructively engaged in negotiations with the Applicants for service opportunities or commitments for its current intermodal facilities as well as the planned expansion.

RWCS supports the transaction proposed by the Applicants and does not anticipate difficulty in ultimately achieving satisfactory service options or commitments

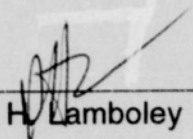
C. REQUEST FOR RELIEF

However, in the absence of definite agreement at this time, RWCS requests that any approval of this Primary Application be subject to imposition of appropriate conditions to ensure competitive rail service for its present and future facilities. In short, RWCS requests equal access to both NS and CSX rail service to and from its terminal facilities, similar to the dual access the Applicants have already proposed for other facilities in the North Jersey Shared Assets Area, such as the APL Terminal in Kearny.

The Primary Application in these proceedings, filed pursuant to 49 USC 11324-11325, is governed by applicable public interest criteria set out in statute and regulations. The condition requested is consistent with the public interest criteria, will ensure competitive access and is within the authority of the Board. See 49 USC 11324(b) and (c); also 49 CFR 1180.1(a)-(d).

Dated: October 21, 1997

Respectfully submitted,

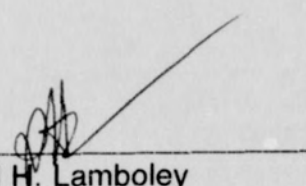


Paul H. Lamboley

Counsel for Resources Warehousing
& Consolidation Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of October 1997, copies of the foregoing document (RWCS-3) were served upon counsel for applicant parties via messenger or other expeditious means, and upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE, Suite 11F, Washington, DC 20426, and other parties of record, via first class mail, prepaid.



Paul H. Lamboley

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October 21, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-five (25) copies of the Comments and Requests for Conditions submitted on behalf of the Transportation Intermediaries Association (TIA-2) for filing in this proceeding. In accordance with Decision No. 6 in this proceeding, copies of the enclosed document are being served upon applicants' counsel and Administrative Law Judge Jacob Leventhal.

Should there be any questions about this filing, please call me at (202) 496-4920.

Respectfully submitted,

Paul H. Lamboley

Enclosures

cc: Hon. Jacob Leventhal
All parties of record

182922

(TIA-2)

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

COMMENTS AND REQUESTS FOR CONDITIONS
OF
TRANSPORTATION INTERMEDIARIES ASSOCIATION

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Transportation Intermediaries
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Counsel for Transportation
Intermediaries Association

A. Interest of the Transportation Intermediaries Association (TIA)

The Transportation Intermediaries Association (TIA) represents over 1,000 members providing a wide variety of transportation related services as property brokers, freight forwarders, consolidators, intermodal marketing companies (IMC's), non-vessel operating common carriers (NVOCC's), ocean or air forwarders, and logistics companies. In addition, TIA members provide related services as warehousemen and payment auditors. TIA members also provide motor carrier fleet management and/or supplementary carrier services.

As transportation intermediaries (TI's), TIA members serve both shipper and carrier customers, many of which are small to medium sized businesses that may not have personnel, technology or resources readily available, but necessary for today's competitive transportation industry. The hallmark of TIA members is their investment in technology which provides effective and efficient data basing and retrieval, price/service option studies and comparisons, shipment and equipment tracking, and EDI systems for manifests, packing slips, bills of lading, receipts, invoices and payments.

TIA members provide services involving all modes of transportation, whether in single, multi- or inter-modal transactions, for regulated and non-regulated commodities including hazardous materials, in domestic and foreign commerce. Customs related services are also provided by TIA members.

It is estimated that transportation intermediaries participate in over \$20 billion of the Nation's freight bill. As a result of TIA members' breadth of experience serving shipper and carrier customers, TIA brings a unique

perspective to merger impacts on intermodal service, especially through the members of TIA's constituent Intermodal Conference.

B. Comments and Requests of the Transportation Intermediaries Association (TIA)

1. Summary of TIA Concerns

The Intermodal Conference of the Transportation Intermediaries Association does not support the acquisition of Consolidated Rail Corp. by the Norfolk Southern and CSXT unless conditions are imposed. Using the experiences provided by the Western Carriers, to this nation's ability to transport goods via cost efficient and safe railroad services may be compromised.

The benefits of the transaction appear that it will bring rail to rail competition East of the Mississippi River for the first time since the formation of Conrail. However, with safety issues involving CSXT coupled with the debt load impacting the two acquiring carriers, rail transportation service and safety may become as problematical in the East as it currently is in the West.

Access may become an issue in terms of the volume of contract business necessary to access the new rail services. Conrail has given only a few new rail contracts out in the last decade and took the step in 1995 to raise limits so as to reduce current contract holders from participating in the industry. Norfolk Southern has already raised their contract limits to prevent new companies from entering the marketplace. It is an educated guess that once the acquisition is approved, the standards will be raised to shrink the marketplace further. One only has to look to the Burlington Northern Santa Fe's one year rise from

\$500,000 to \$5,000,000 contract minimum requirement jump to appreciate what may happen to railroad transportation East of the Mississippi.

The shrinking of the IMC industry will adversely effect small to mid-range businesses and their ability to receive competitive transportation services on a timely basis. As the small to mid-range IMC is eliminated from the marketplace, volume will dictate access to rail intermodal services. IMC's in the industry will require volume to maintain service contracts and will look to the largest shippers and their tonnage as their customer base.

As volume customers of railroad intermodal services, TIA's Intermodal Marketing Companies (IMCs) have experienced many negative results from the mergers of the BNSF and UP/SP which must be avoided in the case of Conrail's acquisition by NS and CSX. Some of these experiences include:

- Elimination of existing service lanes and railroad intermodal terminals where no other competitive rail service exists.
- Unilateral increases in contract volume requirements by the railroads with little relation to ability to produce that volume.
- Unilateral changes by the railroad contract credit terms, specifically:
 - materially shortened days for freight payment, 50+% reduction in some cases.
 - bonding or letter of credit requirement by one railroad in spite of our lengthy excellent credit history with that carrier.
 - imposition of liquidated damages for our volume falling below the required minimum volume.

- Substantial rate increases in many service lanes which has eliminated rail intermodal as a competitive option for our customers.
- Severe shortages of intermodal containers and trailers which has forced our customers to ship via highway truck service at substantially higher cost to them.
- Severe service deterioration in terms of transit times and service consistency.¹

These experiences give rise to concerns that prompt TIA to propose imposition of conditions upon any approval of the Primary Application.

2. Conditional Relief Requested

Any approval of this merger should prohibit CSXT and NS (as well as Conrail where applicable) from imposing liquidated damages for volume shortfall due to:

- increases in the carrier's rates which materially reduce the competitiveness and marketability of their service.
- terminated railroad service lanes and/or intermodal terminals when no other competitive rail service alternative exists.
- service performance which materially deviates from published service schedules.
- carrier service schedules which materially increased service transit times.

¹ In addition to these stated concerns, TIA shares and joins in the Comments and conditions proposed by the National Industrial Traffic League (NITL).

- increased frequency and/or severity of cargo loss or damage by the railroad.

CSXT and NS (as well as Conrail where applicable) should be required submit plans demonstrating competitive intermodal linehaul service in all lanes currently serviced by Conrail, including, but not limited to:

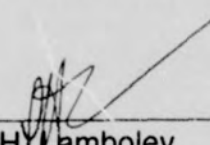
Chicago, IL to/from Philadelphia, PA or Morrisville, PA
Chicago, IL to/from Baltimore, MD
Chicago, IL to/from Kearny, NJ and/or North Bergen, NJ
Chicago, IL to/from Buffalo, NY
St. Louis, MO to/from Philadelphia or Morrisville, PA
St. Louis, MO to/from Baltimore, MD
St. Louis, MO to/from Kearny, NJ and/or North Bergen, NJ

Both CSXT and NS (as well as Conrail where applicable) should submit plans showing how they plan to allocate intermodal containers and trailers. They should also be required to submit plans showing continued interchange of intermodal railcars, containers and trailers with all other railroads.

The conditions requested are consistent with the public interest criteria and within the authority of the Board to impose. See 49 USC 11324(b) and (c); also 49 CFR 1180.1(a)-(d).

Dated: October 21, 1997

Respectfully submitted,

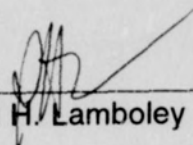


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Counsel for Transportation
Intermediaries Association

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of October 1997, copies of the foregoing document were served upon counsel for applicant parites via messenger or other expeditious means, and upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE, Suite 11F, Washington, DC 20426, and other parties of record, via first class mail, prepaid.



Paul H. Lambole

STB

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10-21-97

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ORIGINAL
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



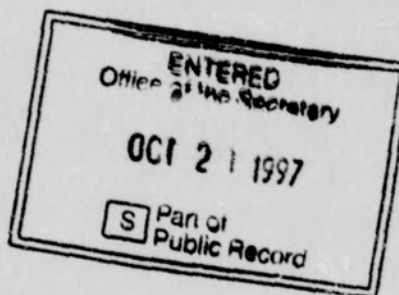
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

NYCH-3
Comments of the
New York Cross Harbor Railroad

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Counsel for New York Cross
Harbor Railroad

DATED: OCTOBER 21, 1997

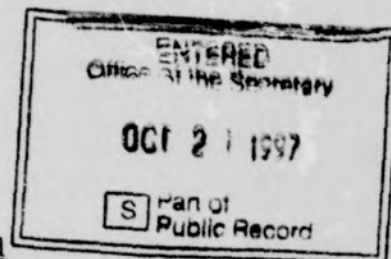


BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

Comments of the
New York Cross Harbor Railroad



I.

INTRODUCTION

Pursuant to the schedule adopted by the Surface Transportation Board ("the Board") on July 23, 1997, New York Cross Harbor Railroad ("NYCH") files its comments in the above-captioned proceeding. NYCH conditionally supports the acquisition and partition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and Norfolk Southern Railroad ("NS")¹ provided that the Board addresses certain specific concerns. Specifically, NYCH requests that the Board, as a condition of its approval, require (1) CSX to route traffic between Long Island and points in southern New England and

¹ Collectively referred to as the Applicants.

adjacent New York State, on the one hand, and, on the other hand, points in the Mid Atlantic States and the South and Southwest where NYCH's "Greenville Gateway" represents the shortest, most efficient and most economical routing and (2) both Applicants to guaranty Conrail's pre-closing liabilities to the extent that Conrail lacks sufficient assets after consummation of this transaction to meet such liabilities.

II.

NYCH is a class III short line rail carrier headquartered in Brooklyn, NY. Originally established in 1983, NYCH acquired the assets and franchises of the former New York Dock Railway. It serves about 40 customers along a network of rail lines and sidings on the waterfront near the Bay Ridge section of Brooklyn, operates a car ferry linking float bridges in Brooklyn and Jersey City, NY (Greenville Yard), and serves customers at the Greenville Yard. Historically, NYCH (and the New York Dock Railway before it) provided overhead rail transportation across New York Harbor. For its Brooklyn customers, it provided the principal interstate rail connection to Conrail at Greenville Yard. Second, it provided one of two interstate rail connections between the Long Island Rail Road ("LIRR") and Conrail² by handling traffic brought by the LIRR to

² The second connection is at Fresh Pond Yard, Fresh Pond, NY, where the LIRR tracks will connect with CSX after consummation of the merger. In the Spring of 1997, the LIRR leased its freight facilities and rail operations to the New York & Atlantic Railroad ("NY&A"), a newly former class III railroad.

the 65th Street Yard in Brooklyn. Third, at one time NYCH and New York Dock Railway handled freight traffic as a bridge carrier for Conrail. This traffic moved from southern New England and southern New York points east of the Hudson River via Fresh Pond for movement to Brooklyn. NYCH (and before its formation, New York Dock) floated this freight across the Hudson River to Greenville for interchange back to Conrail before resuming a south or westbound haul. Twenty years ago, New York Dock Railway handled over 20,000 cars per year as a bridge carrier for Conrail and the LIRR. Until 1976, NYCH's predecessor handled in cross harbor float service 50% of the LIRR's western and all of its southern origin and destination freight. Verified Statement of Robert Crawford attached as Exhibit A hereto. Even in 1990, it handled significant (about 6,000) carloadings in interchange service between the LIRR and Conrail. NYCH offers the public significant benefits by operating a direct routing across the New York Harbor. This routing saves substantial time and money on shipments moving to the South and Southwest compared with the use of an all Conrail gateway through Selkirk Yard.³

During the years between 1983 and the present, NYCH's carloadings and revenues fell substantially, by 50%. This

³ The Selkirk routing requires shipments to go up Conrail's New York-Albany Hudson Division along the east side of the river to Selkirk Yard and then down its River Division to its Oak Island (NJ) yard. Aside from adding 300 miles to the trip, the New York-Albany line is a key passenger thoroughfare for both commuter and Amtrak trains and has restrictions on freight movements. This Selkirk detour can add up to 72 to 120 hours in transit time versus NYCH's 45 minute carfloat ride. Crawford V.S.

decline was due in part to actions of Conrail's management to reroute LIRR interline traffic moving to or from the South and Southwest via Fresh Pond and Selkirk, rather than by NYCH's direct carfloat. By the time NYCH's current management acquired the railroad in 1989, what little Conrail-NYCH-Conrail interline traffic remaining had already been rerouted.

NYCH management began to study the causes of its traffic and revenue declines. It found that Conrail had implemented a policy of using predatory pricing to encourage shippers to route traffic via Selkirk rather than NYCH even where NYCH's routing was the only logical move. It also found that Conrail's computers had been programmed to delete NYCH from the routings. In some cases Conrail routed traffic via Selkirk contrary to specific shipper instructions. NYCH concluded that Conrail was improperly withholding revenue divisions owed NYCH to offset car hire payments that Conrail erroneously thought NYCH owed it. NYCH discovered that Conrail had let its interchange facilities with NYCH at Greenville Yard fall into disrepair contrary to the terms of the relevant agreements. Finally, NYCH learned that certain Conrail management officials had deliberately misrepresented to others the condition of NYCH's facilities, the nature of NYCH's ownership (that NYCH's management had Mafia ties), and that NYCH was on the verge of bankruptcy.

These events culminated in NYCH's decision in the Spring of 1997 to sue Conrail for antitrust violations. After

service of a "demand letter" upon Conrail, the parties met in an attempt to resolve their differences. When presented with written evidence of traffic reroutings, Conrail officials acknowledged this action terming it a "computer error." Conrail offered to settle this dispute with a modest amount of money which NYCH declined to accept. On June 5, NYCH initiated suit against Conrail under Section 2 of the Sherman Antitrust Act and common law in Federal Court in Brooklyn, NY. Conrail has filed a Motion to Dismiss for failure to state a cause of action. The matter will be briefed, argued, and considered during the next several months.

III.

THE CURRENT PROCEEDING

NYCH requested condition #1

Shortly after NYCH initiated its antitrust litigation, Applicants filed their application with the Board seeking to acquire control and division of Conrail. In many respects, their proposal is good for the eastern part of the country and for NYCH. For the first time, NYCH will enjoy two competitive class I railroad connections, NS and CSX. NS in particular has reached out to NYCH in a way unparalleled in its history. NS has met with NYCH officials and is working hard to develop new traffic flows. NS sees NYCH as its partner for developing business to and from Long Island and southern New England, as well as from NYCH's local customers.

Unfortunately, NYCH has not found the same friendly reception from CSX that it has gotten from NS. CSX has stated in discovery that it will interchange with NYCH at Greenville Yard, one of the shared asset facilities. CSX cannot interchange directly with NYCH on Long Island because NY&A operates an 11 mile line of railroad between Bay Ridge and the NY&A/CSX interchange at Fresh Pond. NYCH hopes that it can negotiate rate or marketing arrangements with NY&A to give NYCH an effective connection to CSX. But even if NYCH and NY&A collaborate to mutual advantage, NYCH needs to convince CSX to work with it to route traffic from southern New York and New England to the South and Southwest via NYCH.

Interrogatories propounded by NYCH to CSX appear to reflect a disinterest on its part to using NYCH's efficient cross harbor route instead of the circuitous Selkirk gateway. For example, NYCH propounded a series of questions to CSX to elicit its likely routings for certain traffic movements that are well suited to NYCH's cross harbor route. In answering a simple routing question, CSX -- after admitting that its diversion study showed that the Conrail acquisition would result in a small amount of diversion (\$20-25,000) from NYCH -- answered the question of whether it would route over or around NYCH -- stating that this decision will depend upon controlling contracts or common carrier rates and routing guides. Elsewhere CSX admitted that it did not have a "routing corridor" between southeastern points and points on Long Island, southern New York, and southern

New England. Instead, it stated that the description of new service lanes in the Operating Plan is intended to portray on a "macro level the directional flow of traffic on the enhanced CSX-Conrail network." Finally, in response to NYCH's inquiry as to how CSX would route traffic that a shipper requested be sent via NYCH from Rocky Mount, NC, to Bridgeport, CT, CSX responded that it would "consider all relevant factors in responding to the shipper's request" and would take into consideration "all relevant market factors in pricing the requested service." See, CSX Responses to the First Set of Interrogatories and Document Requests of New York Cross Harbor Railroad Terminal Corporation, attached here as Exhibit B. Moreover, NYCH understands that CSX operating official Orrison testified in a deposition taken by the New York State Department of Transportation that CSX is reluctant to use NYCH's routings because of its alleged deteriorated condition. NYCH's Chairman Robert Crawford addresses that allegation in his attached Verified Statement. NYCH has spent substantial money to rehabilitate the car float bridge facilities and they are capable of handling about 37,000 rail cars per year, far in excess of current traffic volumes.

The simple factor of the matter is that CSX has not studied how exactly to move traffic to or from the New York Metropolitan Area, including Long Island, southern New York, and southern Connecticut. Instead, it appears to have taken as the gospel truth Conrail's perceptions of NYCH's physical facilities and ability to function as an economical and efficient rail

carrier for the New York. Unlike NS, CSX has made no effort to contact NYCH or its shippers to learn of their needs and capabilities or verify the facts. Absent Board action, NYCH fears that CSX will continue to route traffic around, rather than via NYCH.

Should CSX continue Conrail's practice of diverting all traffic moving to or from points in southern New England, adjacent New York State, and Long Island and southern and southwestern origin and destination points around the cross harbor gateway, NYCH's very ability to continue in business to serve its on line customers will be severely threatened. Accordingly, NYCH requests that the Board require CSX as a condition of this merger to honor all shipper directions, routing traffic between Long Island and points in southern New England and adjacent New York State, on the one hand, and, on the other hand, points in the Mid Atlantic States and the South and Southwest where NYCH's "Greenville Gateway" represents the shortest, most efficient and most economical routing.

NYCH requested condition #2

Applicants have represented that Conrail will be responsible for "certain other liabilities, including among others, certain liabilities related to any suit, action or claim arising on or after the Closing Date that do not relate predominantly to the NYC- or PRR-allocated assets." Later

Applicants provide that, "it is expected that most of the pre-Closing liabilities of CRC, its parent CRR and their subsidiaries will remain in place." According to Applicants, CRC will pay its pre-Closing Date liabilities, including its debt obligations, out of payments received, either directly or through NYC and PRR, from CSXT and NSR in connection with the Allocated Assets and the Shared Assets Areas. Applicants represented that such payments should be more than sufficient to permit CRC and its subsidiaries to discharge and pay all of their obligations. Significantly, Applicants stated, "[h]owever, if for any reason (and none is presently foreseeable) these sources of funds to CRC, its Subsidiaries and CRR provide insufficient to permit them to pay and discharge their obligations, NS and CSX have agreed in the Transaction Agreement (Section 4.3) that CRC Holdings shall provide to CRC the necessary funds." See, Vol. I, Application at 42, 55, and 56.

NYCH's wants the Board to condition its approval of this application on a specific requirement that NS and CSX will be jointly responsible for all of Conrail's pre-closing liabilities in the unlikely event that Conrail lacks the funds after closing to meet those obligations. NYCH believes that its antitrust cause against Conrail is meritorious. Should NYCH prevail in this litigation, its economic damages could run over \$100 million (trebled to over \$300 million) and its punitive damages could exceed \$500 million. Should NYCH and Conrail reach

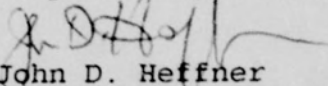
a settlement of the lawsuit, those damages would still likely be fairly substantial.

But for certain statements made at the deposition of CSX and NS witnesses Sparrow and Romig taken by NYCH, statements repeatedly made throughout the application and Transaction Agreements should put to rest any concerns that NYCH should have on the handling of pre-closing Conrail liabilities. Rather than spare the Board with a long recitations of questions and answers from that deposition, NYCH attaches the more relevant pages as its Exhibit C. The bottom line is that CSX's and NS' liability witnesses were unable to confirm the representations made in the application and Transaction Agreements about the handling of Conrail's pre-closing liabilities because they were not lawyers and had no intimate familiarity with the very issues about which they were testifying.

In view of the reluctance of CSX's and NS' "liability witnesses" to confirm what their companies had represented in the application and Transaction Agreements and the size of NYCH's potential litigation damages, NYCH requests that the Board condition its approval of this merger on the following requirement: That Applicants will jointly and severally guaranty Conrail's pre-closing liabilities arising out of litigation (or settlement of litigation) relating to actions by Conrail that occurred prior to closing to the extent that Conrail lacks sufficient assets after consummation of this transaction to meet such liabilities.

Accordingly, with those conditions NYCH supports the proposed acquisition and division of Conrail.

Respectfully submitted,

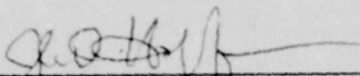

John D. Heffner
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Washington, DC 20036
(202) 785-3700

DATED: OCTOBER 21, 1997

Counsel for New York Cross
Harbor Railroad

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid.



John D. Heffner



VERIFYING STATEMENT

This verifying statement is made by New York Cross Harbor Railroad in response to the Application by Norfolk Southern and CSX to acquire and divide Conrail.

Until 1976 the Long Island Rail Road's freight was served by railroad carfloats from the Greenville Yards for about 50% of its western and all of its southern US origin and destination freight. Today, that service has dropped to less than 5% with the balance being moved by Conrail via the Selkirk, NY rail bridge. This adds 72-120 hours to the freight trip and over 300 miles to the destination of the freight.

The CSX operations has testified before the Board that it will not use the New York Cross Harbor Railroad as the New York City and Long Island gateway to and from the national rail system due to the deteriorated state of the Cross Harbor's rail facilities. New York Cross Harbor has spent over \$250,000 in renovation and refurbishing the rail facilities in the past year. This refurbishing includes the track in the Greenville Yards, which will be completed by October 31, 1997, the renovation to the Bush Yards in Brooklyn that will be continued into the winter, and the continued renovation of the float bridges in both Yards. Currently, New York Cross Harbor Railroad can handle 37,000 rail cars a year. Upon completion of the renovations and refurbishing now underway, the railroad will be able to handle 75,000 per year. After additional capital improvements, approximately \$20,000,000, to existing infrastructure, the railroad will be able to handle over 250,000 railcars, annually. The car float trip across the harbor is approximately 3 miles and takes 45 minutes of time.

A handwritten signature in dark ink, appearing to read "Robert R. Crawford".
Robert R. Crawford, President

September 18, 1997

VERIFICATION

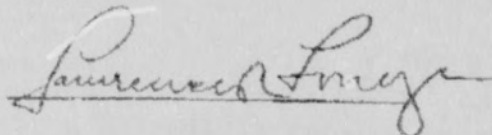
STATE OF New York)
COUNTY OF New York) ss:

ROBERT CRAWFORD, being duly sworn, deposes and
says that he has read the foregoing statement, knows the facts
asserted there are true and that the same are true as stated.



Subscribed and sworn to before me this 18th day of
September, 1997.

Notary Public of New York



My Commission expires:

LAWRENCE R. LONERAGAN
Notary Public, State of New York
No. 8008723
Qualified in New York County
Commission Expires March 15, 1999

- 9 -

EXHIBIT
B

Subject to the general objections, CSX responds as follows:

The General Merchandise Study included traffic moving between the geographic areas identified by NYCH. The method of ALK's Advanced Traffic Diversion Model, as described in Mr. Rosen's verified statement, creates candidate routings for post-transaction services, and then estimates a market share for each candidate routing. Hence, the study of routing options suggested by NYCH was inherent in the General Merchandise Study.

8. In its Application, CSXT has discussed various "freight corridors" (i.e., the "Memphis Gateway Service Route" discussed at section 3.2.6 of Volume 3A of the Railroad Control Application), has offered detailed observations concerning how operations would [be] conducted over such "corridors," and has furnished the public with detailed analyses of the rail service improvements shippers will enjoy over such "corridors." NYCH is unaware of any discussion of a proposed CSXT "corridor" or "gateway service route" between (1) southeastern points such as Waycross, GA; Tampa, FL; Rocky Mount, NC; and Hamlet, NC and (2) points on Long Island, NY (such as Babylon or Sayville, NY); points in Westchester, Dutchess, Putnam, Bronx and Columbia Counties, NY; or points in southern New England (such as Stamford or Bridgeport, CT). Assuming NYCH is correct that CSXT developed no such "corridor" in preparing its Application, please identify that "corridor" or "gateway service route" CSXT would recommend for the movement of a carload of traffic from Rocky Mount, NC to Bridgeport, CT.

Subject to the general objections, CSX responds as follows:

The description of numerous new service lanes in the Operating Plan is intended to portray on a macro level the directional flow of traffic over the enhanced

- 10 -

CSX-Conrail network. A single carload of traffic originating at Waycross, GA, for example, most likely would be routed to Long Island, NY via the Atlantic Coast Service Route, which extends along the east coast from southern Florida to New England. See pages 132-34 of Volume 3A of the Application.

9. Assuming after CSXT's initiation of operations over the New York Central Lines that a shipper in Rocky Mount, NC, desired to send a carload of traffic from Rocky Mount to Bridgeport, CT, via CSXT to Greenville, NJ, thence NYCH to 65th Street Yard in New York City to NYAR, thence NYAR to Fresh Pond, NY, finally CSXT from Fresh Pond to Bridgeport --

(a) would CSXT decline to offer such a routing a favor of some other routing to Bridgeport?

(b) assuming CSXT agreed to such a routing, what considerations would go into CSXT's computation of the appropriate through rate for this route?

Subject to the general objections, CSX responds as follows:

(a) Assuming that a shipper did make such a request, CSX would consider all relevant factors in responding to the shipper's request.

(b) CSX would take into consideration all relevant market factors in pricing the requested service.

10. Has CSXT undertaken any rate or service pricing for traffic to be handled by, and routed via, CSXT between those points listed in Interrogatory No. 7, above? If so, please provide any and all documents CSXT has produced in the course of pursuing or undertaking such rate or pricing analysis.



9

1 Bill on my left and then ask Bill on the right if
2 he wants to --

3 MR. LYONS: Either way you want to do
4 it. You can mix and match.

5 MR. CALDERWOOD: Perhaps for
6 clarification of the record you should, John,
7 refer to them by their last name --

8 MR. HEFFNER: I will.

9 MR. CALDERWOOD: -- as well so in the
10 transcript we'll know who we're talking to.

11 MR. LYONS: That's up to you. You can
12 mix it up.

13 EXAMINATION BY COUNSEL FOR
14 NEW YORK CROSS HARBOR RAILROAD
15 BY MR. HEFFNER:

16 Q. Mr. Sparrow and Mr. Romig, I have right
17 now 16 questions. I would estimate they will
18 take 30 minutes. I'll try to proceed as quickly
19 as I can. I'll start with Mr. Sparrow first and
20 then I'll pop the same question to Mr. Romig.
21 Mr. Sparrow, did you assist or prepare in --
22 excuse me, did you prepare or assist in preparing ✓
23 those portions of the application that pertain to
24 the handling of liabilities, especially pages 42,
25 55 and 56?

1 Mr. Orrison in another conference room.

2 MR. CALDERWOOD: Could we have an
3 indication on the highly confidential?

4 MR. STONE: Yes, again for the record
5 Scott Stone I have signed both confidentiality
6 undertakings. Off the record.

7 (Discussion off the record.)

8 THE WITNESS: (By Mr. Sparrow) I hadn't
9 anything to do with the writing of these
10 particular sections.

11 BY MR. HEFFNER:

12 Q. Did you assist in the writing? ✓

13 A. (By Mr. Sparrow) No.

14 Q. You had no involvement?

15 A. (By Mr. Sparrow) In the writing of
16 these particular sections.

17 MR. LYONS: May I ask the witness to
18 speak out, and possibly you might want to face
19 the reporter to assist her.

20 THE WITNESS: (By Mr. Sparrow) I had no
21 role in the writing of these particular sections.

22 BY MR. HEFFNER:

23 Q. Mr. Romig, I gather you heard the
24 question. Do you want me to repeat it?

25 A. (By Mr. Romig) No. I did not assist in

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1 preparing or prepare the referenced sections. ✓

2 Q. Mr. Sparrow, did you have -- you
3 take -- I gather you sort of took a minute and
4 skimmed it, as it were?

5 A. (By Mr. Sparrow) I did.

6 Q. Mr. Romig, have you had a chance to
7 look at it?

8 A. (By Mr. Romig) I also skimmed it.

9 Q. Okay, great. On page 55 about three
10 lines down, and this will be for Mr. Sparrow
11 first, where it says continuing Conrail
12 activities you see a sentence that begins,
13 However, it is expected that most of the
14 pre-closing liabilities, you see that sentence?

15 MR. LYONS: If counsel will excuse us,
16 since there was no notice that these pages would
17 be called to his attention, counsel and the
18 witness only have one copy so this will slow it
19 up.

20 THE WITNESS: (By Mr. Sparrow) I see
21 the line in question.

22 BY MR. HEFFNER:

23 Q. I was wondering if you know why the
24 qualifier most was used or what do they mean by
25 most as opposed to all?

1 MR. LYONS: Objections, since he's
2 indicated that he has not participated in or in
3 any way in the preparation of these pages, but he
4 may answer.

5 THE WITNESS: (Mr. Sparrow) No.

6 BY MR. HEFFNER:

7 Q. In your verified statement,
8 Mr. Sparrow, on page 2 it indicates that you're
9 familiar with the --

10 MR. CALDERWOOD: Excuse me, are you
11 referring to page 2 of his -- what's the page in
12 the record?

13 MR. HEFFNER: Okay, page in the record
14 would be page 620.

15 BY MR. HEFFNER:

16 Q. I gather based upon what you say on
17 page 620 of the verified statement that you are
18 familiar with the transaction agreements as they
19 pertain to liabilities? ✓

20 A. (By Mr. Sparrow) Yes, I'm familiar with
21 the transaction agreements as they pertain to
22 liabilities.

23 Q. And, Mr. Romig, if I can put the same
24 question to you? ✓

25 A. (By Mr. Romig) Yes, I am also familiar

1 with them.

2 Q. At page 621 of the joint verified
3 statement there's a statement that says that
4 Conrail will pay pre-closing date liabilities.
5 Do you understand the term liability to include ✓
6 liabilities arising out of litigation? Is that
7 what is meant by the term liability or could
8 that -- does that include litigation liabilities?

9 MR. LYONS: Objection since it calls
10 for a legal conclusion and there's no showing
11 that the gentleman is a lawyer, but he can
12 answer.

13 THE WITNESS: (By Mr. Sparrow) Well, I
14 was going to say that being a capitalized term, I
15 would take it that that's actually defined ✓
16 somewhere and therefore subject to legal
17 interpretation, which I'm not qualified to give ✓

18 BY MR. HEFFNER:

19 Q. Understand. But you said, didn't you,
20 that you are familiar with the transaction
21 agreement?

22 A. (By Mr. Sparrow) Right.

23 Q. Mr. Romig, if I can ask you the same ✓
24 question, do you -- what's your understanding of
25 the term pre-closing date liabilities as used in

1 the joint statement on page 621?

2 MR. CALDERWOOD: I'll object. That ✓
3 really calls for a legal conclusion as to legal
4 interpretation what the term means. The witness
5 can proceed to respond.

6 THE WITNESS: (By Mr. Romig) I'm not
7 familiar with the legal interpretation of that
8 term.

9 BY MR. HEFFNER:

10 Q. Okay. But you are familiar with what ✓
11 is contained in the transaction agreement, aren't
12 you?

13 A. (By Mr. Romig) Yes.

14 Q. Does the transaction agreement provide ✓
15 that Conrail -- and this we'll start with
16 Mr. Sparrow -- Conrail will be responsible for
17 certain other liabilities among others --
18 including among others certain liabilities
19 relating to any suit, action or claim arising on
20 or after closing date that do not relate
21 predominantly to NYC or PRR allocated assets?

22 MR. LYONS: I'm going to object. It
23 sounds as if this is a quotation from somewhere
24 and if it is, I think the witness should be
25 directed to the quotation so he can see it in

1 context.

2 BY MR. HEFFNER:

3 Q. Okay, page 42. This is contained in
4 the actual text of the application, and I made a
5 mistake. I should have said prior to closing
6 date. Have you read the actual application
7 itself?

8 A. (By Mr. Sparrow) 15,000 pages, no, sir.

9 Q. Have you read the initial volume of the
10 application particularly as it pertains to things
11 covered in your verified statement?

12 A. (By Mr. Sparrow) I've read the
13 transaction agreement and various other segments
14 of the application.

15 Q. Have you read that part of the
16 application that deals with liabilities?

17 A. (By Mr. Sparrow) Yes.

18 Q. Okay. Great.

19 A. (By Mr. Sparrow) Several months ago,
20 but yes.

21 MR. LYONS: Counsel, do you want to
22 call his attention to a particular sentence or
23 the list and have him read it now?

24 MR. HEFFNER: Yes. I'd like

25 Mr. Sparrow to read the second sentence under the

1 the witness is being asked about that.

2 THE WITNESS: (By Mr. Sparrow) Conrail
3 is responsible for certain -- for obligations ✓
4 for -- which arose from events prior to the
5 closing as defined by legal authorities.

6 BY MR. HEFFNER:

7 Q. Mr. Romig, if I can put the question to
8 you and make let me see if I can frame it a
9 little more precisely. Under this statement on
10 page 42 and similar statement contained on page
11 621 that Conrail will pay pre-closing date
12 liabilities and you were partially responsible, I
13 gather, for authoring the statement on page 621, ✓
14 in your opinion would Conrail be legally
15 responsible for paying a judgment that arose out
16 of litigation for events that occurred prior to
17 closing?

18 MR. CALDERWOOD: I'll object to that.
19 First, there's no indication that Mr. Romig had
20 anything to do with the language that appears on
21 page 42 and secondly that it is -- calls for
22 legal conclusions. The document page 42 stands
23 for itself, and as to, you know, liabilities for
24 lawsuits and so forth, that really pertains to a
25 legal issue and there's no indication that

1 BY MR. HEFFNER:

2 Q. First referring to corporate level
3 liabilities, to what does the word action refer
4 to in the seventh line, actions arising prior to
5 the closing date?

6 MR. LYONS: I will object to that once
7 again, we're putting questions as to legal
8 interpretation of defined terms in an agreement
9 to a nonlawyer, and it's objected to. He can
10 answer subject to that for what it's worth.

11 THE WITNESS: (By Mr. Sparrow) I don't
12 know what the legal definition of action in that
13 particular context means.

14 BY MR. HEFFNER:

15 Q. Looking at your verified statement at
16 page 621, you refer a couple of times to ✓
17 obligations, discharge and pay all obligations.
18 Does obligation include liabilities arising from
19 litigation? ✓

20 A. (By Mr. Sparrow) To a finance person
21 obligations mean obligations to pay money in the
22 course of conduct of business. If such an
23 obligation to pay money arises as a part of
24 litigation, I suppose so.

25 Q. Would your answer be yes then?

1 A. (By Mr. Sparrow) Yes.

2 Q. If I could go to Mr. Romig for a couple
3 of minutes, have you followed the line of
4 questioning with Mr. Sparrow about corporate
5 level liabilities and retained liabilities?

6 A. (By Mr. Romig) I have.

7 Q. Would the liability that arose through ✓
8 litigation be considered a -- an obligation
9 within the meaning of your verified statement?

10 MR. CALDERWOOD: I'm going to object to
11 that as it's calling for a legal conclusion by
12 the witness. I'll permit him to respond.

13 THE WITNESS: (By Mr. Romig) I do not ✓
14 know.

15 BY MR. HEFFNER:

16 Q. What do you mean then by the term
17 obligations used in your statement?

18 A. (By Mr. Romig) An obligation as ✓
19 intended in our statement is something which has
20 been determined that Conrail is required to pay.

21 Q. Could it include, say, a judgment?

22 A. (By Mr. Romig) If a judgment were an ✓
23 obligation of Conrail, then it would be a
24 required payment.

25 Q. Suppose that your employer, Norfolk

1 MR. HEFFNER: The activities complained
2 of occurred before the control date.

3 MR. LYONS: No, as to the settlement as
4 to the time of settlement.

5 MR. HEFFNER: The settlement would
6 occur after the control date.

7 MR. LYONS: Okay. The witness can
8 answer if he's able subject to the objections
9 that he's not a lawyer and that calls for a legal
10 conclusion.

11 THE WITNESS: (By Mr. Sparrow) Yeah, it
12 seems to call for a legal conclusion that I'm not
13 qualified to make other than to read back the
14 language.

15 BY MR. HEFFNER:

16 Q. But you stated, didn't you, that you're
17 familiar with the transaction agreement?

18 A. (By Mr. Sparrow) In the sense that I
19 have read it. I haven't offered to make any
20 legal interpretations of it.

21 Q. Do you believe the term pre-closing
22 liabilities and the term obligations as you've
23 used in your verified statement would include
24 litigation judgments or settlements with the
25 qualifications that your counsel has -- and I

1 have discussed?

2 MR. LYONS: I object to that since
3 there's no specific reference to what the
4 qualifications are, and I think a generic
5 reference to the -- to the verified statement is
6 vague. And if there's some specific passage of
7 the verified statement that you wish him to
8 address, he could answer that. I don't --
9 otherwise I object to it.

10 MR. HEFFNER: And does that mean he can
11 answer anyway or you're directing him not to?

12 MR. LYONS: He can answer it anyway if
13 he can do it without looking at a particular part
14 of the statement. Certainly you can ask him that
15 question.

16 THE WITNESS: (By Mr. Sparrow) Well, I
17 would respond again that any obligation to pay ✓
18 money which became a legally compelling
19 obligation of Conrail to pay would be an
20 obligation.

21 BY MR. HEFFNER:

22 Q. Okay. Mr. Romig, you've heard these
23 questions, are you in a position to elaborate?

24 MR. CALDERWOOD: I object. There's no
25 indication that has been made that Mr. Romig is

1 MR. CALDERWOOD: Objection. That calls
2 for speculation by the witness on what may or may
3 not happen in some lawsuit. There's no
4 indication he's even familiar with that lawsuit
5 and calls for a legal conclusion. I'll permit
6 him to respond.

7 THE WITNESS: (By Mr. Romig) I have no ✓
8 idea how such an incident would be handled.

9 BY MR. HEFFNER:

10 Q. Are you aware of the lawsuit filed by
11 New York Cross Harbor, you know, predating my
12 telling you about it?

13 A. (By Mr. Romig) I became aware of it
14 yesterday when I learned that you would be at
15 this deposition.

16 Q. And how did you come to learn of the
17 lawsuit?

18 A. (By Mr. Romig) I was informed of it by
19 my counsel.

20 Q. Who was that person?

21 A. (By Mr. Romig) Mr. Calderwood.

22 Q. Would you -- do you have an opinion as ✓
23 to whether or not Norfolk Southern and/or CSX
24 would be responsible to satisfy any judgment that
25 Cross Harbor were to obtain?

1 MR. CALDERWOOD: Objection, calls
2 for --

3 BY MR. HEFFNER:

4 Q. I'm sorry, that Conrail would be
5 required to satisfy?

6 MR. CALDERWOOD: Objection. It calls
7 for a legal conclusion. I'll permit the witness
8 to respond. ✓

9 THE WITNESS: (By Mr. Romig) I have no
10 opinion.

11 BY MR. HEFFNER:

12 Q. On page 621 and 622, Mr. Sparrow, of
13 your -- of the joint verified statement am I
14 correct in understanding that if the liabilities
15 that Conrail accumulated should we say going back
16 to pre-closing activities were insufficient to
17 pay, that the Conrail assets were insufficient to
18 pay any obligations -- you use the term pay and
19 discharge obligations -- that Norfolk Southern ✓
20 and CSX would cover any shortfall or deficiency?

21 MR. LYONS: Is there some specific
22 language that you're --

23 MR. HEFFNER: Yes, there is. It begins
24 with the word however at the bottom of page 621,
25 and it continues really over the first paragraph

1 of page 622.

2 MR. LYONS: Okay. I will have an
3 objection to that since it involves the same
4 issues as to obligations that we've been hacking
5 about for the past half-hour. And subject to
6 that and to the objection that it calls for a
7 legal conclusion, I'll let him proceed.

8 THE WITNESS: (By Mr. Sparrow) As ✓
9 between Norfolk Southern and CSX we have agreed
10 to provide funds to Conrail to meet its
11 obligations.

12 BY MR. HEFFNER:

13 Q. All obligations or where there's what's
14 called a shortfall?

15 MR. LYONS: Same objection. You can
16 answer.

17 THE WITNESS: (By Mr. Sparrow) ✓
18 Essentially where there's a shortfall as between
19 the two of us.

20 BY MR. HEFFNER:

21 Q. So then am I correct in understanding
22 that if Conrail essentially runs out of money to ✓
23 pay lawful obligations, rather than letting it go
24 down the tube, the two companies NS and CSX will
25 satisfy any remaining obligations?

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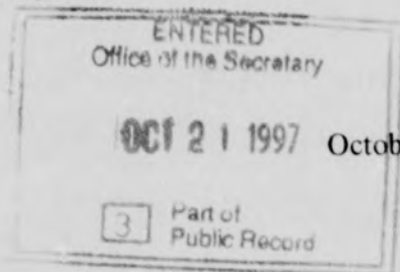
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October 21, 1997

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VIA COURIER

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, DC 20423-0001

Re: CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail, Inc. and Consolidated Rail Corporation--Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc. (Finance Docket No. 33388)

Dear Secretary Williams:

When filing the Comments of the Providence and Worcester Railroad Company ("P&W") in this proceeding yesterday, we inadvertently failed to attach the various exhibits to that letter. Accordingly, we are refileing the Comments of the P&W today, together with a complete set of the exhibits.

We apologize for any inconvenience this may have caused the parties.

Very truly yours,

Edward D. Greenberg

Enclosures

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FOUNDED 1844

October 17, 1997

Vernon Williams
Secretary - Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423



RE: Finance Docket No. 33388
CSX/Norfolk Southern Acquisition and Control of Conrail ("Application")

Dear Secretary Williams:

This letter is to reiterate Providence and Worcester Railroad Company's ("P&W") full support for the above referenced Application as expressed in my letter dated August 28, 1997. P&W draws your attention to our understanding that the Application if approved does not obviate pre-existing agreements and judicial orders relating to Conrail. For example, the Order of the Special Court created by the Regional Rail Reorganization Act of 1973 dated April 13, 1982, Approving and Directing the Consummation of Expedited Supplemental Transactions in the Matter of Expedited Supplemental Transactions Pursuant to Section 305(f) of the Regional Rail Reorganization Act of 1973 provides in Section 21 a right to P&W to acquire, inter alia the terminal properties known as New Haven Station defined in Exhibit D in the Order, "if Conrail elects to withdraw from or abandon or discontinue freight service obligations" thereon. A copy of the Order is enclosed as Exhibit 1. Certain aspects of the Order were discussed in a letter dated March 31, 1982 requested by Conrail from Robert W. Blanchette, then FRA Administrator. In his letter, Mr. Blanchette confirms that the Order would be construed and applied by the Special Court. This letter is attached as Exhibit 2. P&W has initiated steps to effect the implementation of the Order by notifying Conrail (Exhibit 3) and requesting the determination required by the Order from the Federal Railroad Administration (Exhibit 4). Conrail has recently responded by declining to enter into the requested negotiations over reasonable price and reasonable terms and conditions.

PROVIDENCE AND WORCESTER RAILROAD COMPANY
75 HAMMOND STREET, WORCESTER, MA 01610 P.O. BOX 16551, WORCESTER, MA 01601
TELEPHONE (508) 755-4000



V. Williams
Secretary - Office of the Secretary
Surface Transportation Board
October 17, 1997

The Special Court, established pursuant to Section 209 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 719) was abolished pursuant to Pub. L. 104-317, Title VI, Section 605(a), 110 Stat. 3858 (Codified at 45 U.S.C. § 719 (b)(2)). After January 18, 1997, all jurisdiction and other functions of the Special Court were assumed by the United States District Court for the District of Columbia. P&W intends to seek enforcement of the provisions of the Order of the Special Court.

Your attention is also drawn to the August 22, 1997 filing of Connecticut Southern Railroad (CSO) describing anticipated inconsistent or responsive applications. CSO stated its intention to file a responsive application seeking 75 miles of local trackage rights between New Haven and Fresh Pond Junction, NY. CSO defines local trackage rights to include providing service to customers located on the territory involved. Obviously, more information regarding CSO's application will be available upon the filing of same. As described, however, CSO's requests would appear to include rights in New Haven Station and therefore would be violative of the Order since the Order plainly provides that P&W will acquire New Haven Station in the event Conrail elects to withdraw from or abandon or discontinue freight service obligations.

Very truly yours,

Orville R. Harrold
President

cc: Administrator Jolene Molitoris, FRA

FILED ✓

APR 13 1982 A.M.

SPECIAL COURT

JAMES F. DAVEY, Clerk

REGIONAL RAIL REORGANIZATION ACT OF 1973

In the Matter of
EXPEDITED SUPPLEMENTAL TRANSACTIONS
PURSUANT TO SECTION 305(f) OF THE
REGIONAL RAIL REORGANIZATION ACT
OF 1973

Misc. No. 81-1

ORDER APPROVING AND DIRECTING THE
CONSUMMATION OF EXPEDITED SUPPLEMENTAL TRANSACTIONS

This matter having come before the Court on the Petition Of The Federal Railroad Administrator For An Order Directing The Conveyance Of Consolidated Rail Corporation (Conrail) Rail Properties In Connecticut And Rhode Island Under Section 305(f) of The Regional Rail Reorganization Act of 1973, as Amended (Rail Act), (Petition), due notice having been afforded all interested parties, the Court having considered the Determination of the Administrator as delegate of the Secretary of Transportation, the documents filed with the Petition, and other relevant materials brought to its attention, and having heard the arguments of the parties on Conrail's objections to the transactions and incidental matters, it is hereby found:

23.

Findings and Determinations

1. On December 11, 1981, the Federal Railroad Administrator (Administrator) filed the instant Petition pursuant to section 305(f) of the Rail Act, seeking an order to transfer all of the rail properties and freight service obligations of the Consolidated Rail Corporation (Conrail) in the States of Connecticut and Rhode Island (the States) to one or more railroads in the Region, as defined in Section 102 of the Rail Act.

2. On December 18, 1981, the Administrator lodged with the Court the record made before the Federal Railroad Administration with respect to the Petition.

3. The Court has determined (a) that the proposed transferees of the rail properties which are the subject of the Petition, the Providence and Worcester Railroad Company (P&W), and the Boston and Maine Corporation, Debtor (B&M), have agreed to the transfer proposal advanced by the Administrator, and (b) that Conrail will by Order of this Court make the transfers set forth in the proposal, and is willing to retain designated properties and guarantee rail service thereon for four years from the date established hereunder for conveyance of properties and transfer of freight service obligations (Conveyance Date), as permitted by section 305(f)(2)(B) of the Rail Act.

4. Conrail, P&W, and B&M are railroads in the Region. Conrail and B&M are Class I railroads and P&W is a Class II railroad.

5. The Court determines that the Administrator's proposal as embodied herein is (i) fair and equitable; (ii) meets the requirements of subsection 305(f), and (iii) is in the public interest.

6. The Court determines that the price terms of the several transactions described herein are fair and equitable.

7. The Court determines that the parties have agreed on divisions of joint rates for through routes over such properties.

NOW, THEREFORE, it is hereby ORDERED that Conrail, P&W and B&M shall consummate the transactions proposed by the Administrator and shall fulfill the following terms and conditions:

1. At and after Conveyance Date, B&M's divisions of revenue between Conrail and B&M for traffic to, from and over the rail properties conveyed to B&M pursuant to this Order shall be the same divisions as those previously received by B&M for traffic to or from Greenville, New Hampshire, interchanged between Conrail and B&M (except that on Potomac Yard traffic the New England Terminal Arbitrary will not apply) unless or until divisions of joint rates on such traffic are changed or cancelled pursuant to applicable law.

2. (a) At and after Conveyance Date, divisions of revenue between Conrail and P&W for traffic originating, terminating or moving over Conrail to, from or over the rail properties conveyed to P&W pursuant to this Order shall be 70 percent of Conrail revenue to Conrail, 30 percent of Conrail revenue to P&W. This division will be applied solely against the former Conrail portion of the rate with all other carriers participating in the through movement receiving their normal division of the charges.

(b) All traffic originating or terminating at new P&W stations (those acquired by P&W pursuant to this Order) in Rhode Island and Connecticut will be interchanged at Worcester, Massachusetts or at another location as may be agreed to by

Conrail and P&W, except that traffic moving overhead on P&W properties acquired pursuant to this Order will be interchanged at Worcester, Massachusetts on the one hand, and on the other, the point most consistent with the normal flow of traffic.

(c) Prior to Conveyance Date, or within 15 days after Conveyance Date, Conrail shall identify and notify P&W of all movements to, from and over the rail properties conveyed to P&W which after Conveyance Date will result in revenues to Conrail which are below 110 percent of unadjusted ICC Rail Form A costs, or costs as computed under any successor cost system thereto. Within 90 days after Conveyance Date, Conrail and P&W shall negotiate upon new proportional rates to a designated junction with respect to such movements.

(d) Conrail and P&W shall, prior to one year from Conveyance Date, negotiate upon proportional rates to a designated junction with respect to all traffic to and from the rail properties conveyed to P&W pursuant to this Order.

(e) Proportional rates in effect as to grain and grain products and recyclables on Conveyance Date shall be applied to the newly established junction points between P&W and Conrail after Conveyance Date. P&W shall not adopt

existing Conrail local or proportional rates on grain and grain products and recyclables as to traffic moving from, to or via properties or stations conveyed to P&W pursuant to this Order. However, P&W may publish any level of its own local or proportional rates on such traffic to or from the junction point.

(f) Proportional rates applied or instituted pursuant to this Paragraph over a junction point shall divide as made.

(g) On and after the 91st day after Conveyance Date, all of the provisions of subparagraphs (a) through (f) of this Paragraph shall be subject to Paragraph 14 of this Order.

3. At Conveyance Date, B&M and P&W shall, in writing, assume, and Conrail shall, in writing, assign that portion of the exclusive rights and obligations of Conrail under the Northeast Corridor Freight Operating Agreement (Corridor Agreement) between Conrail and the National Railroad Passenger Corporation (Amtrak), dated April 1, 1976, which applies to B&M's or P&W's operation over the following portions of the Northeast Corridor track, subject to the retention of appropriate rights by Conrail. Such operations shall be solely for the following purposes:

(a) Springfield, Massachusetts, to New Haven, Connecticut: to B&M for the purpose of transporting all traffic originating or terminating on properties or interests in Connecticut conveyed or transferred to B&M;

(b) Springfield, Massachusetts, to New Haven, Connecticut: to B&M for the purpose of transporting TOFC/COFC traffic to or from Cedar Hill Yard, Connecticut; and all traffic to or from Hartford Yard, Connecticut, and Cedar Hill Yard, Connecticut, pursuant to the reciprocal switching arrangements specified in Paragraph 5 of this Order which originates or terminates on (i) points in Canada which are east of the border between the Provinces of Ontario and Manitoba; (ii) all New England and B&M points; and (iii) points on the Delaware and Hudson Railroad (D&H) north of Delanson, New York;

(c) Springfield, Massachusetts, to New Haven, Connecticut: to B&M for the purpose of transporting traffic to and from (i) points in Canada which are east of the border between the Provinces of Ontario and Manitoba; (ii) all New England and B&M points; and (iii) points on the D&H north of Delanson, New York, originating or terminating on the Long Island Railroad (excluding shipments of newsprint consigned for

final delivery in the Boroughs of Bronx and Manhattan, New York, New York) in conjunction with contract operations by Conrail from Cedar Hill Yard, Connecticut, to Fresh Pond Junction, New York, as agreed to in Paragraph 6 of this Order; and

(d) Westbrook, Connecticut (MP 100.9) to Rhode Island/Massachusetts State line (MP 190.8): to P&W, restricted trackage rights between MP 100.9 and MP 101.2; ^{*}/ MP 101.2 to MP 190.8, to P&W all of the exclusive rights and obligations of Conrail under the Corridor Agreement subject to the rights of Amtrak under such Agreement, except that Conrail shall retain the right to operate trains carrying stone (STCC 14 and 32) from East Wallingford, Connecticut and Branford/Pine Orchard, Connecticut to Old Saybrook, Connecticut and to Millstone, Connecticut (MP 118.0), subject to the payment by Conrail to Amtrak of charges to be agreed upon between Conrail and Amtrak in accordance with determinations by the Interstate Commerce Commission.

Conrail shall relinquish, in writing, its rights under paragraph 2.2(a) of the Corridor Agreement or elsewhere to disapprove B&M's or P&W's above-described use of portions of the Northeast Corridor in the States.

^{*}/ P&W shall not be permitted to perform any local freight service at any point at or between MP 100.9 and MP 101.2.

4. At Conveyance Date, B&M shall, in writing, assume, and Conrail shall, in writing, assign those rights and obligations of Conrail under applicable agreements between Conrail and the Connecticut Department of Transportation ("CDOT"), which apply to B&M's operation over the portion of CDOT-leased track from Derby Junction, Connecticut, to Waterbury, Connecticut.

5. For traffic originating and terminating on (a) points in Canada which are east of the border between the Provinces of Ontario and Manitoba; (b) all New England and B&M points; and (c) points on the D&H north of Delanson, New York, Conrail shall provide reciprocal switching with the B&M at Hartford, Connecticut, to, and from the following stations in Connecticut: Newington, Hartford, Windsor, Windsor Locks, East Hartford and Suffield; and reciprocal switching at New Haven, Connecticut to and from the following stations in Connecticut: New Haven, North Haven, and Wallingford. B&M shall pay Conrail the following charge for such switching: \$275 per carload or as otherwise mutually agreed upon by Conrail and B&M. B&M shall pay per diem costs, and such charge shall be exclusive of those per diem costs, up to the level specified in the reciprocal switching agreement concluded pursuant to this Order.

6. Conrail shall transport between New Haven and Fresh Pond Junction, New York, or between such alternative Conrail/B&M points and Fresh Pond Junction, New York as Conrail shall designate, under contract to B&M, B&M traffic to and from (a) points in Canada which are east of the border between the Provinces of Ontario and Manitoba; (b) all New England and B&M points; and (c) points on the D&H north of Delanson, New York, which terminates or originates on the Long Island Railroad (excluding newsprint consigned for final delivery in the Boroughs of Bronx and Manhattan, New York, New York) subject to the following contract charge to be paid by B&M: \$275 per carload or as otherwise mutually agreed upon by Conrail and B&M. B&M shall pay per diem costs, up to the level specified in the contract concluded pursuant to this Order.

7. For as long as Conrail shall choose to operate a TOFC/COFC ramp in the New Haven, Connecticut, area, Conrail shall provide B&M, under a joint operating agreement with Conrail, access to the use of such ramp, subject to the payment of charges by B&M to Conrail which correspond to B&M's proportion of the total operating expenses of the ramp based on the proportion of B&M's lifts at the ramp to the total lifts at the ramp.

Conrail shall have no obligation to maintain service or personnel at such ramp or provide any service to B&M or to perform any maintenance on such ramp. Conrail may at any time cease operations at such ramp and sell such ramp except that B&M shall have a right of first refusal to purchase such ramp.

8. For traffic originating or terminating on points on Conrail, B&M shall initially provide reciprocal switching for Conrail at Stanley Works, New Britain, Connecticut to and from New Britain, Connecticut, at the following charge: \$275 per carload, or as otherwise mutually agreed by Conrail and B&M. Conrail shall pay per diem costs, and such charge shall be exclusive of those per diem costs, up to the level specified in the reciprocal switching agreement concluded pursuant to this Order.

9. As of Conveyance Date, Conrail shall convey, by quit-claim deed, all rights, title and interest of Conrail in and to the rail properties listed (i) in Appendix A to this Order to B&M, and (ii) in Appendix B to this Order to P&W, and B&M and P&W shall take such property as is and where is. Except as otherwise provided in this Order, at or as soon as is practicable after Conveyance Date, Conrail and B&M and Conrail

and P&W shall execute all documents, in addition to necessary deeds, which may be required to perfect in B&M and P&W title to all rail properties listed in such Appendices A and B (such documents hereinafter referred to as the "Conveyance Documents"). At or before Conveyance Date, Conrail and B&M and Conrail and P&W shall also execute any Operating, Trackage Rights, Reciprocal Switching, Interchange and other agreements (including assignment of all Conrail rights pertaining to the property conveyed and release of all appropriate Conrail obligations) necessary to the implementation of this Order. If Conrail and B&M or Conrail and P&W shall have failed to agree on the terms and conditions of such agreements as of 10 days prior to Conveyance Date, the Administrator will provide final and binding arbitration of any dispute concerning terms and conditions within five days of notice by any party of such failure to agree.

10. Conrail shall have no obligation with respect to labor protection benefits to any and all Conrail employees who may be adversely affected or deprived of employment as a result of the consummation of this Order.

11. Neither this Order nor its implementation shall create any new Conrail liability under the Providence Terminal Agreement between the New York, New Haven and Hartford Railroad

Company, the Boston and Providence Railroad Company and the P&W dated September 13, 1925 ("PTA"). As between the P&W and Conrail, Conrail shall be relieved of any and all claims or obligations of any kind under or related to the PTA arising in connection with rail freight operations conducted on or after Conveyance Date; and P&W shall be deemed to have assumed liability for such claims or obligations.

12. On Conveyance Date, B&M and P&W shall each separately succeed to the common carrier obligations of Conrail to provide rail freight service over rail properties conveyed to B&M and P&W, respectively, and Conrail shall thereupon be relieved of such obligations, except that a limited obligation shall continue solely to the extent Conrail retains the right to provide rail service over such properties.* / Conrail, B&M and P&W each separately shall assure, solely with respect to those rail properties and freight service obligations conveyed to or retained by each of them, and not with respect to the rail properties and freight service obligations conveyed to or retained by any other of them, that rail service is operated on such properties for four years from Conveyance Date and shall not seek to abandon or discontinue rail service on such rail properties for such four-year period.

* / B&M may provide the rail freight service required of it under this Order, in whole or in part, through a wholly owned subsidiary.

13. In order to permit P&W to serve the Newport Secondary Track in Rhode Island, as of Conveyance Date, Conrail shall grant overhead trackage rights to P&W as follows:

(a) On the Attleboro Secondary Track, from Attleboro, Massachusetts (MP 0.0) to Whit Interlocking, Massachusetts (MP 9.4);

(b) On the New Bedford Branch, from Whit Interlocking, Massachusetts (MP 9.4) to Cotley Interlocking, Massachusetts (MP 13.3);

(c) On the New Bedford Secondary Track, from Cotley Interlocking, Massachusetts (MP 13.3) to Myricks, Massachusetts (MP 16.9); and

(d) On the Newport Secondary Track, from Myricks, Massachusetts (MP 0.0) to the Massachusetts/Rhode Island State line (MP 14.2).

P&W shall pay Conrail trackage rights fees of 15 cents per car mile for operations on the above described Conrail lines.

Conrail shall, as necessary, agree to the granting of overhead trackage rights to P&W from the Rhode Island/Massachusetts State line (MP 190.8) to Attleboro, Massachusetts (MP 197.5) on the Shore Line. Such grants shall be subject to the rights of any other party in the rail properties involved, including the Massachusetts Bay Transportation Authority as owner of said properties.

14. Nothing in the Order shall bar or in any way otherwise limit (a) the right of Conrail, B&M or P&W to seek to obtain or compete for any traffic or any portion of a traffic movement which is or may become accessible to service by Conrail, B&M or P&W, or (b) the right of Conrail, B&M or P&W to take any action with respect to rates, routes or divisions, which Conrail, B&M or P&W is or may be permitted to take under the Interstate Commerce Act (49 U.S.C. Subtitle IV), as amended, or under the Staggers Rail Act of 1980 or other applicable law, except as specifically provided herein.

15. Conrail and B&M and Conrail and P&W, shall make all payments of divisions due to each other in accordance with the AAR Railway Accounting Rules, and within the time periods specified in the AAR Railway Accounting Rules, with no offset or contrasettlement permitted except the contrasettlement of

one interline balance against another interline balance with respect to divisions as provided for in General Mandatory Rule One of the AAR Railway Accounting Rules. If Conrail, B&M or P&W, as the case may be, shall fail to make any payment of divisions, within such time periods, and shall further fail or refuse to make such payment within 10 days of notice that payment is due by the carrier demanding payment, all such future divisions may be paid to and collected by such demanding carrier on the basis of a junction settlement, which shall, if necessary, include restrictions requiring prepayment of freight charges by the shipper and/or rebilling from the interchange point to destination. Prior to any institution of payment by junction settlement the carrier which has failed or refused to make payment shall be entitled to demand final and binding arbitration respecting the failure or refusal to make payment within 15 days of the notice that payment is due by the carrier demanding payment. Such arbitration shall be instituted and decided within a reasonable period not to exceed 60 days. Compliance with the award of the arbitrator shall restore the parties to their respective status before notice of non payment, for all purposes with respect to the failure or refusal to make payment that is the subject of such award. By participation in these transactions, Conrail, B&M and P&W shall be deemed to have waived all remedies, legal or otherwise,

which may be available to Conrail, B&M or P&W with respect to the institution of such junction settlement by Conrail, B&M or P&W and to have expressly confessed judgment before the Special Court or any other court of competent jurisdiction, with respect to liability for any failure to pay divisions, in accordance with this paragraph and this Order. This paragraph shall apply only to divisions respecting traffic originating, terminating or moving over rail properties conveyed or retained pursuant to this Order.

16. As between Conrail and B&M and Conrail and P&W, with respect to property and interests conveyed pursuant to the Order on Conveyance Date, the obligation, if any, for payment of:

(a) any tax, assessment, license fee or other charge imposed by a government authority on or with respect to any such property or interest or any use thereof or thereon for any period of time within which the Conveyance Date falls; or

(b) any rent, license fee, user fee or other charge imposed under or by virtue of any lease, license, easement, encumbrance or other agreement that continues to attach to the property after the Conveyance Date, shall be adjusted on a Pro rata basis to, and paid in cash or settled on, the Conveyance

Date so that

(i) Conrail is obligated for any such payment as is attributable to that portion of such period or term preceding the Conveyance Date; and

(ii) B&M and P&W, as the case may be, are obligated to pay Conrail that portion of any tax, assessment, rent, license fee, user charge or other charge paid in advance by Conrail which is attributable to the period or terms subsequent to the Conveyance Date, within 90 days of notification of the amount of such charges by Conrail.

17. B&M and P&W, as the case may be, shall assume, perform and observe each of the obligations and conditions on the part of Conrail to be performed or observed that arise or accrue after the Conveyance Date under all licenses, easements, leases and operating, trackage rights, joint facility or other agreements that pertain to the properties and interests subject to this Order, including any obligations under any agreement with a State or instrumentality thereof for the operation of light density rail properties, except to the extent such obligations and conditions represent mortgages, licenses, encumbrances or other indebtedness under section 18 hereof.

B&M and P&W, as the case may be, shall indemnify and hold Conrail harmless against any and all losses, claims or damages which Conrail may suffer or be required to pay by reason of B&M's or P&W's failure to pay and discharge, as and when required, the obligations assumed under this Order. This paragraph shall not apply to the assumption of any obligations or conditions respecting the PTA, which shall be governed by paragraph 11 of this Order.

18. The transfers and conveyances to be made pursuant to this Order shall be free and clear of all mortgages, licenses, encumbrances or other indebtedness, and the same shall be deemed to be made without limitation, covenants or warranties of title, except that (a) Conrail shall covenant and warrant that it was conveyed the rail properties subject to transfer under this Order pursuant to section 303(b)(2) of the Rail Act, and (b) B&M shall pay to Conrail that portion of the proceeds of any sale or other disposition for value of rail properties or interests transferred or conveyed to B&M pursuant to this Order as is specified in Appendix C to this Order. With respect to Conrail, no transfer or conveyance pursuant to this Order shall create any liability of any kind from and after the Conveyance Date except to the extent expressly provided in this Order, or in a Conveyance Document executed pursuant to the Order.

19. At Conveyance Date, B&M shall pay Conrail \$500,000 in the form of cash or a cashier's check. At Conveyance Date, P&W shall pay Conrail \$75,000 in the form of cash or a cashier's check.

20. All charges to be paid to Conrail, B&M or P&W of any kind described in this Order shall be subject to adjustment as provided herein, as subsequently agreed by the parties, or annual adjustment by the party to be paid. Unless provided herein, or otherwise agreed to by the parties, any annual increase in such charges may not exceed the total annual increase in railroad costs as measured by the aggregated annual total of the AAR quarterly cost index or any other cost index approved by the Interstate Commerce Commission under the procedures of Docket Ex Parte No. 290 (Sub. No. 2), Railroad Cost Recovery Procedures.

21. If Conrail elects to withdraw from or abandon or discontinue freight service obligations on the "Shore Line" between Westbrook, Connecticut (MP 101.2) and New Haven, Connecticut (MP 70.2) or on the terminal properties known as "New Haven Station" (which properties are more precisely defined in Appendix D) and if the Administrator shall find, on

application of P&W, that P&W is continuing to operate as a self-sustaining railroad capable of undertaking additional common carrier responsibilities without Federal financial assistance, Conrail shall sell said rail properties at a reasonable price and on reasonable terms and conditions to be agreed upon by Conrail and P&W or, in the absence of agreement in accordance with the procedures of the American Arbitration Association, and P&W shall succeed to Conrail's service obligations upon the following conditions:

(a) P&W's acquisition of the aforementioned rail properties shall be without prejudice to any application of the B&M to acquire other Conrail properties;

(b) B&M shall have access, upon reasonable terms, to its own rail properties, located on or adjacent to the properties acquired by P&W;

(c) B&M shall enjoy, under reasonable terms, overhead trackage rights through New Haven to and from the portion of the Shore Line presently leased by the Connecticut Department of Transportation from the Penn Central Corporation; and

(d) In the event Conrail conveys the terminal properties known as "New Haven Station" under the provisions of this section to P&W, B&M shall retain the same reciprocal switching rights for all traffic at New Haven Station, without regard to the origin or destination of such traffic, upon the same terms in effect between Conrail and B&M on the date of such conveyance to P&W.

(e) This paragraph shall not affect Conrail's right to convey, the title conveyed, or B&M's acquisition of such title to the TOFC/COFC ramp at New Haven, Connecticut, pursuant to paragraph 7 of this Order.

Consummation of such a transaction shall be in accordance with otherwise applicable law.

22. B&M shall refrain from imposing any surcharge specific to the Torrington Branch, in the State of Connecticut, for a period of 18 months after Conveyance Date, and thereafter if traffic shall be restored to 1979 levels. B&M shall provide daily service (on demand) on the Torrington Branch.

23. The properties conveyed to P&W by Conrail pursuant to this Order which are subject to the terms of the PTA may be alienated or encumbered by P&W only after it has been determined that from and after Conveyance Date, Conrail has continuing liability under or with respect to the PTA, other than that assumed by P&W under paragraph 11 of this Order.

24. The date established for conveyance of rail properties and transfer of freight service obligations (Conveyance Date) shall be--

(a) with respect to conveyance and transfers to the P&W, and Conrail's guarantee of service on properties that it retains, 12:01 a.m. on May 1, 1982; and

(b) with respect to conveyances and transfers to the B&M, 12:01 a.m. on June 1, 1982.

25. This Court retains exclusive jurisdiction under sections 209(e) and 305 of the Rail Act and section 1152 of the Northeast Rail Service Act of 1981 over this Order and the implementation of this Order.

A TRUE COPY

JAMES F. DAVEY, Clerk,

By

Rosza Callis
Deputy Clerk

Henry J. Friendly
Henry J. Friendly
Presiding Judge

John Minor Wisdom
John Minor Wisdom
Judge

Roszel C. Thomsen
Roszel C. Thomsen
Judge

Date: April 13, 1982

FILED

APR 13 1982 AM.

JAMES F. DAVEY, Clerk

Connecticut and Massachusetts Rail
Properties and Freight Service
Obligations of Consolidated Rail
Corporation (Conrail) To Be Conveyed
To Boston and Maine (B&M) By Type
of Transfer

CONNECTICUT

Conrail Owned Lines which Ownership and Freight Service Obligations shall
be transferred to B&M.

<u>Line Name</u>	<u>CR Code</u>	<u>Between 1/</u>	<u>M.P. to M.P. 1/</u>	<u>Total Miles</u>
Avon Secondary	41-4248	Plainville and Avon	0.0 to 9.7	9.7
Berlin Secondary	41-4261	Berlin and New Britain	0.0 to 2.6	2.6
Canal Secondary	41-4247	New Haven (Fair St.) and Plainville	0.0 to 1.1 2/ 1.1 to 27.8	1.1 26.7
Dublin Street Industrial Track	41-4276	Waterbury and Silver Street	17.29 to 17.45 2/ 17.45 to 20.05	.16 2.60
Griffins Industrial Track	41-4259	Hartford	0.0 to 2.0	2.0
New Britain Secondary	41-4244	Plainville and New Britain	0.0 to 4.5	4.5
Terryville Secondary	41-4222	Waterbury and Plainville	0.0 to 17.2	17.2
Torrington Secondary	41-4243	Highland Junction and Torrington	0.0 to 20.7	20.7
Watertown Secondary	41-4258	Highland Junction and Watertown	0.0 to 1.6	1.6
Waterbury Industrial Track	41-4204	Bank Street and Highland Avenue	0.0 to 1.9	1.9
Wethersfield Secondary	41-4263	Airport Road and Spring Brook	3.0 to 7.0	4.0

Lines owned by Penn Central Company and leased by the Connecticut Department of Transportation which Conrail shall transfer Freight Service Obligations to B&M.

<u>Line Name</u>	<u>CR Code</u>	<u>Between 1/</u>	<u>M.P. to M.P. 1/</u>	<u>Total Miles</u>
Waterbury Branch	91-9121	Derby Junction and Waterbury	8.8 to 26.9 -	18.1

Lines owned by Amtrak over which B&M shall receive Limited Trackage Rights.

<u>Line Name</u>	<u>CR Code</u>	<u>Between 1/</u>	<u>M.P. to M.P. 1/</u>	<u>Total Miles</u>
Hartford Line	41-4217	New Haven and State Line (MA)	0.0 to 55.8	55.8

Lines owned by Conrail over which B&M shall receive Limited Trackage Rights.

<u>Line Name</u>	<u>CR Code</u>	<u>Between 1/</u>	<u>M.P. to M.P. 1/</u>	<u>Total Miles</u>
Wethersfield Secondary	41-4263	Hartford and Airport Road	0.0 to 3.0	3.0

Massachusetts

Lines owned by Amtrak over which B&M shall receive Limited Trackage Rights.

<u>Line Name</u>	<u>CR Code</u>	<u>Between 1/</u>	<u>M.P. to M.P. 1/</u>	<u>Total Miles</u>
Hartford Line	41-4217	State Line (CT) and Springfield	55.8 to 62.0	6.2

1/ Approximate stations and mileposts defining property and trackage rights transferred.

2/ Out of service.

Connecticut, Rhode Island, and Massachusetts
Rail Properties and Freight Service Obligations
of Consolidated Rail Corporation (Conrail)
To Be Conveyed To
Providence and Worcester Railroad Company (P&W)
By Type of Transfer

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JAMES F. DAVEY, Clerk

CONNECTICUT

Non-Conrail Owned Lines which Conrail shall Transfer Freight Service Obligation to P&W*

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Shore Line	41-4209/4215	101.2 -	141.1	39.9

Note 1. Mileposts are approximate. Conrail to convey to P&W any real estate, including yards and sidings, with the tracks, platforms, shops, and other structures contained thereon owned by Conrail immediately adjoining the Shore Line which are or have been used by Conrail in connection with the provision of freight transportation service.

Note 2. Conrail to retain Limited Trackage Rights between MP 101.2 and MP 118.0 for the movement of stone (STCC 14 and 32) from East Wallingford and Branford/Old Pine Orchard, CT to Old Saybrook and Millstone, CT (MP 118.0).

Non-Conrail Owned Lines over which P&W shall receive restricted trackage rights*

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Shore Line	41-4209	100.9 -	101.2	0.3

Note 1. P&W shall not be permitted to perform any local freight service at any point on this segment.

RHODE ISLAND

Conrail Owned Lines which Ownership and Freight Service Obligation shall be Transferred to P&W

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Bristol Secondary	41-4165	1.7 -	1.9	0.2
East Jct. Secondary	41-4164	3.7 -	6.9	3.2
Harbor Jct. Ind.	41-4168	0.0 -	3.4	3.4
Newport Secondary	41-4192	14.2 -	21.5	7.3

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Slatersville Secondary	41-4170	0.0 -	3.4	3.4
Valley Falls Ind.	41-4128	0.0 -	0.8	0.8
Washington Secondary	41-4166	2.4 -	16.9	14.5

Note 1. Mileposts are approximate. Conrail shall convey to P&W all real estate in Rhode Island owned by Conrail, except a parcel of approximately 1 acre located along the Newport Secondary Track in the City of Portsmouth, Rhode Island; provided, however, that the western limit of the excepted parcel shall extend no further west than thirty-three (33) feet from the center of the Newport Secondary Track. Conrail shall also convey to P&W that portion of the Slatersville Secondary Track lying between milepost 0.0 and milepost -1.5 on which rail service is being operated on Conveyance Date, including that portion of said line located in Massachusetts, but excepting that property adjacent to said line known as the Winter Street Yard, including the portion of said Yard which lies within Rhode Island; provided, however, that Conrail shall grant to P&W, at no additional cost to P&W, an easement to operate rail service within the Winter Street Yard, which easement shall be effective for so long as P&W operates such service.

Note 2. Current Conrail ownership of Bristol Secondary Trackage extends from the end of Rhode Island DOT ownership at the harbor line of the Seekonk River (approximately MP 1.7) to MP 1.9.

Non-Conrail Owned lines which Freight Service Obligation would be Transferred to P&W*

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Providence Terminal	--	--	--	
Shore Line	41-4215/4116	141.1 -	190.8	49.7
Washington Secondary	41-4166	0.0 -	2.4	2.4

Note 1. Mileposts are approximate. Conrail to convey to P&W all real estate owned by Conrail adjoining lines.

MASSACHUSETTS

Conrail Owned Lines which Conrail shall grant Overhead Trackage Rights to P&W

	<u>RDBR</u>	<u>MP. From</u>	<u>MP To</u>	<u>Total Miles</u>
Attleboro Secondary	41-4140	0.0 -	9.4	9.4
New Bedford Branch	41-4189	9.4 -	13.3	3.9
New Bedford Secondary	41-4189	13.3 -	16.9	3.6
Newport Secondary	41-4192	0.0 -	14.2	14.2

Note 1. Mileposts are approximate.

Non-Conrail Owned Lines which P&W shall obtain Overhead Trackage Rights*

	<u>RDBR</u>	<u>MP From</u>	<u>MP To</u>	<u>Total Miles</u>
Shore Line	41-4116	190.8	197.5	6.7

Note 1. Mileposts are approximate.

* As between Conrail and P&W.

Gains on the sale (Real or personal property) or other disposition (term leases) of properties acquired by B&M from Conrail pursuant to the Supplemental Transaction Proposal process established under Section 305(f) of the Regional Rail Reorganization Act of 1973, as amended, shall be shared by Conrail and B&M on the following terms and conditions:

a. The following costs and expenses shall be deducted from the total proceeds of any sale (real or personal property) or disposition (term leases) by B&M of property acquired from Conrail. To the extent particular costs or expenses cannot be directly attributed to the properties transferred to B&M pursuant to this Appendix which are being sold or otherwise disposed of, B&M shall pro-rate the cost or expense in question over the total number of miles acquired from Conrail, and shall deduct that portion of the total cost or expense which corresponds to the number of miles sold or otherwise disposed of.

1. The acquisition cost of the properties.
2. All interest accrued or payable on the acquisition costs.
3. The net liquidation value of materials installed in rehabilitation or other improvements on the properties.
4. Operating losses on the properties. Such losses shall not include interest or rehabilitation already deducted pursuant to items 2 and 3 above.

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APR 13 1982 *A.M.*

JAMES F. DAVEY, Clerk

b. The net proceeds of any sale (real or personal property) or other disposition (term leases), after deducting costs and expenses described in item a above, shall be escrowed in an interest bearing account.

c. On June 1, 1986 and on June 1 of each calendar year thereafter, B&M shall pay Conrail the following portion of the net proceeds of any sale (real or personal property) or the disposition (term leases) and of the interest earned on the escrow of such proceeds:

For sales or dispositions from:

June 1, 1982 to May 31, 1983	87.5% of Proceeds
June 1, 1983 to May 31, 1984	75.0% of Proceeds
June 1, 1984 to May 31, 1985	62.5% of Proceeds
June 1, 1985 to May 31, 1986	50.0% of Proceeds
June 1, 1986 to May 31, 1987	37.5% of Proceeds
June 1, 1987 to May 31, 1988	25.0% of Proceeds
June 1, 1988 to May 31, 1989	12.5% of Proceeds
June 1, 1989 and thereafter	0.0% of Proceeds

d. B&M shall exert its best efforts to obtain the maximum proceeds of sale or other disposition and interest on the escrowed proceeds.

APPENDIX D

DESCRIPTION OF PROPERTIES
COMPRISING THE NEW HAVEN STATION
FOR PURPOSES OF PARAGRAPH 21

Solely for purposes of paragraph 21 of this Order, "New Haven Station" shall mean (1) those rail properties of Conrail within the Corporate limits of New Haven, Connecticut (as those limits were defined on January 1, 1982) and (2) that portion of Cedar Hill Yard reasonably necessary to conduct operations of the P&W, together with the right (as among other freight railroads) to control dispatching functions in the immediate environs of the Yard and through all switches providing access thereto such dispatching to be conducted without preference to the movements of any railroad using the Yard or portions thereof: provided, that, any rights to acquisition of properties in Cedar Hill Yard by P&W shall be without prejudice to the rights of Conrail to retain, or any of the rights of any operator of rail freight service in Central Connecticut to seek to acquire, remaining portions of the Yard to conduct such railroad's operations in the area.

FILED

APR 13 1982 A.M.

JAMES F. DAVEY, Clerk

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DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF
THE ADMINISTRATOR

MAR 31 1982

L. Stanley Crane
Chairman and Chief Executive Officer
Consolidated Rail Corporation
c/o Russell L. Smith, Esq.
P. O. Box 23451
L'Enfant Plaza Station
Washington, DC 20024

Dear Mr. Crane:

During our consultations last week on the final form of conveyance order for transfer of the Connecticut/Rhode Island properties under section 305(f) of the Regional Rail Reorganization Act of 1973, as amended, a disagreement arose between Conrail and the Providence and Worcester Railroad Company (P&W) concerning the intent and meaning of paragraph 21 of the order, which states in pertinent part that:

If Conrail elects to withdraw from or abandon or discontinue freight service obligation on the "Shore Line" between Westbrook, Connecticut (MP 101.2) and New Haven, Connecticut (MP 70.2) or on the terminal properties known as "New Haven Station" (which properties are more precisely defined in Appendix D) and if the Administrator shall find, on application of P&W, that P&W is continuing to operate as a self-sustaining railroad capable of undertaking additional common carrier responsibilities without Federal financial assistance, Conrail shall sell said rail properties at a reasonable price and on reasonable terms and conditions to be agreed upon by Conrail and P&W or, in the absence of agreement, in accordance with the procedures of the American Arbitration Association, and P&W shall succeed to Conrail's service obligations upon the following conditions:

* * * * *

Consummation of such a transaction shall be in accordance with otherwise applicable law.

Conrail, the P&W and the FRA sought to arrive at a mutually acceptable refinement of that provision for inclusion in the final form of order which was filed with the Special Court on March 26, 1982. Because of the complexity of the issue we were unable to agree on appropriate substitute language and adhered to the original formulation embodied in the proposal of December 11, 1981, which we believe is quite adequate for its purpose.

You have requested that we state our intent in proposing paragraph 21 and the general effect of its language. We are pleased to do so, with the obvious caveat that the order, once entered, will be construed and applied by the Special Court, rather than this agency.

Paragraph 21 was intended to accommodate the P&W's interest in succeeding to Conrail's operation on the Shore Line (MP 70.2 to 101.2) or in the New Haven Station (as defined in Appendix D), should Conrail elect to withdraw from either of those markets. Clearly, Conrail may "withdraw from or abandon or discontinue freight service obligations" on the designated properties only after the expiration of four years from May 1, 1982 (see paragraphs 12 and 24). Conrail is expected to maintain its properties and conduct its operations consistent both with its pre-existing common carrier obligations and the four-year service guarantee, and failure to perform would be actionable by the affected shipper (in an appropriate forum) and the Administrator (before the Special Court). Under our plan, as proposed, and under the final form of order now before the Court for review, P&W's rights would ripen prior to the expiration of the four-year period only if Conrail is disabled, either as a result of the operation of title IV of the Rail Act, or by some other extraordinary circumstance, from fulfilling its guarantee. During the four-year period Conrail will retain its pricing freedoms under the Staggers Rail Act of 1980.

After the expiration of the service guarantee, Conrail may elect, consistent with prevailing law, to withdraw from the Shore Line or New Haven Station, or both. If Conrail elects to withdraw, P&W has a right of first refusal on the affected property.

The area of dispute between Conrail and the P&W over interpretation of paragraph 21 was whether an incremental withdrawal from a portion of the Shore Line or New Haven Station, or a complete withdrawal from one market, but not the other, would trigger a right on the part of the P&W to purchase the entirety of the affected market or, perhaps, both of the markets. We will begin with the example of withdrawal from an entire market, since it is the easiest case and involves principles capable of application in the other situations that might arise.

Paragraph 21 would permit Conrail to withdraw from the Shore Line east of New Haven, but not from New Haven itself, since Conrail may elect withdrawal from either the Shore Line "or" New Haven; and it is "said properties" that the P&W may then purchase. Under the current configuration of rail operations of the two carriers, Conrail's withdrawal to New Haven without concessions in New Haven would not be unreasonable, and the P&W would presumably have only such additional rights as might be incidental to that acquisition, including access to a convenient point of interchange.

Although the literal language of paragraph 21 would also permit Conrail to withdraw from New Haven while retaining its rights to traffic on the Shore Line, it is difficult to imagine at this date a circumstance in which such an action would be reasonable, either from Conrail's point of view or the view of users

of rail service in the area. Certainly the P&W, as holder of a right of first refusal on the New Haven Station properties, could contend that a "reasonable term" of the New Haven sale would be certain rights on the Shore Line (at a minimum, overhead trackage rights).

Obviously, it was not our intent that these markets be carved up by the railroads involved solely to serve their immediate self interest. As between Conrail and P&W, arbitration will be available to help shape the proposed transaction. The public interest in any transaction under paragraph 21 (other than a transaction under title IV of the Rail Act) will be protected by the Interstate Commerce Commission, which will apply "applicable law" in reviewing the proposal of the parties.

The foregoing should also shed light on the matter of Conrail's incremental withdrawal from one or both of the relevant markets, a subject on which the order is silent. First, in our view as original drafters of the proposed paragraph 21, nothing in that provision creates a "trigger" whereby a partial withdrawal from the market would give rise to a right on the part of P&W to purchase properties comprising the entire relevant market. Similarly, nothing in the order was intended to restrict Conrail's ability to make ordinary adjustments in its operations consistent with prevailing traffic levels, the four-year guarantee and its common carrier and contractual responsibilities.

At the same time, P&W would have the right of first refusal on any property Conrail might elect to abandon or on which Conrail declines to provide service, even if other properties in the market are retained. Of course, if that property from which Conrail "withdraws" is something of little value for rail use, then P&W will have to determine whether to purchase the property and serve it as a volunteer, with an eye to the future, or whether to forego the opportunity. (P&W would certainly be entitled to overhead trackage rights on reasonable terms and conditions to reach any properties that it acquires.)

If, on the other hand, Conrail engages in a withdrawal of a more substantial magnitude, while retaining properties and operations elsewhere in the particular market, then basic issues of transportation economics, operational necessity and equity may arise. It was not intended that P&W would be forced to choose between surrendering its rights and purchasing isolated, non-viable markets. Rather, it was intended that P&W would be offered markets or segments thereof on which economic rail operations can be conducted under normal conditions.

While it was not possible for us to anticipate the shape of all possible Conrail "withdrawals" several years hence, to predict the traffic levels, traffic mixes and operating patterns that might exist at that time, and to define the resultant rights of P&W to additional properties necessary to comprise realistic units for transfer in the form of order proposed to the Court last week, we believe that the operation of the order would involve fewer actual difficulties than has been suggested might be the case. If Conrail elects to withdraw from a portion of

the Shore Line, or a portion of New Haven Station, the order requires that Conrail offer to sell those properties for a reasonable price and "on reasonable terms and conditions." Both arbitration between the parties and subsequent Commission review will be available to assure that any transactions under paragraph 21 will foster efficient and economic rail service. The Federal Railroad Administration will also be available to play a mediating role at the request of the parties and to provide its views on the transportation aspects of the proposed transactions.

Sincerely,

Robert W. Blanchette

Robert W. Blanchette

cc: John L. Richardson, Esq.
J. J. Nee, Esq.
Docket No. RFA-305-81-1

bc: C-4, C-30,
RFA-1, 20, 21
RCC-2

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CERTIFIED MAIL
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FOUNDED 1844

September 9, 1997

Mr. David LeVan
Chairman, President and CEO
Consolidated Rail Corporation
2001 Market Street
Philadelphia, PA 19101

Dear David:

Pursuant to Section 21 of the Order Approving and Directing the Consummation of Expedited Supplemental Transactions, issued by the Special Court, in the matter of Expedited Supplemental Transactions Pursuant to Section 305(f) of the Regional Rail Reorganization Act (Misc. No. 81-1) ("Order"), Providence and Worcester Railroad Company possesses the right to acquire certain properties of Conrail in and around the City of New Haven, Connecticut.


Specifically, Section 21 provides in pertinent part:

If Conrail elects to withdraw from or abandon or discontinue freight service obligations...on the terminal properties known as New Haven Station (which properties are more precisely defined in Appendix D) and if the Administrator [of Federal Railroad Administration] shall find, on application of P&W, that P&W is continuing to operate as a self sustaining railroad capable of undertaking additional common carrier responsibilities without Federal financial assistance, Conrail shall sell said rail properties at a reasonable price and on reasonable terms and conditions to be agreed upon by Conrail and P&W or, in the absence of agreement, in accordance with the procedures of the American Arbitration Association and P&W shall succeed to Conrail's service obligations....

Appendix D defines "New Haven Station" to include:

(1) those rail properties of Conrail within the Corporate limits of New Haven, Connecticut (as those limits were defined on January 1, 1982) and (2) that portion of Cedar Hill yard reasonably necessary to conduct operations of the P&W,

PROVIDENCE AND WORCESTER RAILROAD COMPANY
76 HAMMOND STREET, WORCESTER, MA 01610 P.O. BOX 18551, WORCESTER, MA 01601
TELEPHONE (508) 755-4000



together with the right (as among other freight railroads) to control dispatching functions in the immediate environs of the Yard and through all switches providing access thereto, such dispatching to be conducted without preference to the movements of any railroad using the Yard or portions thereof: provided, that, any rights to acquisition of properties in Cedar Hill Yard by P&W shall be without prejudice to the rights of Conrail to retain, or any of the rights of any operator of rail freight service in Central Connecticut to seek to acquire, remaining portions of the Yard to conduct such railroad's operations in the area.

P&W's rights under the Order have been further clarified by letter dated March 31, 1982 to L. Stanley Crane, then Chairman and Chief Executive Officer, Conrail, from Robert Blanchette, then FRA Administrator.

Having carefully reviewed the various transaction agreements ("Agreements") by and between Conrail, CSX Corporation, Norfolk Southern Corporation (NS) and their respective affiliated entities, P&W concludes that the contemplated conveyance of New Haven Station to New York Central Lines LLC, an entity controlled by CSX, without first offering same to P&W as required by the Order would appear to violate P&W's rights under the Order.¹

The agreement of Conrail to the acquisition of control of Conrail by Green Acquisition Corp. (CRR Holdings) and the subsequent division of Conrail's assets to Pennsylvania Lines LLC and New York Central Lines LLC controlled by NS and CSX respectively constitutes an election by Conrail to withdraw from freight service obligations on New Haven Station triggering P&W's purchase rights.

As respects the extent of property P&W requires in Cedar Hill Yard, please be advised that P&W requires the entirety of the yard "to conduct operations of the P&W." P&W acknowledges the need to establish interchange facilities for the purposes of implementing the Revenue and Service Agreement dated August 6, 1997 by and between P&W, CSX Transportation, and CSX Intermodal for operations between New Haven, Connecticut and Fresh Pond Junction, NY.

Would you kindly advise me by no later than September 30, 1997 whether Conrail intends to enter into negotiations with P&W to establish a reasonable price and reasonable terms and conditions for the acquisition by P&W of New Haven Station. In the event we are unable to agree on such provisions, we are prepared to submit the matter to arbitration as provided in the Order.

¹ Note that P&W acquired Conrail's freight service obligations on the Shore Line between Westbrook, Connecticut (MP 101.2) and New Haven, Connecticut (MP 70.2) in 1991.



David LeVan
September 9, 1997
Page 3

In the event Conrail declines to enter into such negotiation, please be advised that P&W intends to take such measures as are necessary to enforce the Order.

Very truly yours,

Orville R. Harrold
President

cc: Jolene Molitoris, Administrator, Federal Railroad Administration
David Goode, Chairman, President & CEO, Norfolk Southern
John Snow, Chairman, President & CEO, CSX Corporation

ORH:ws



FOUNDED 1844

October 2, 1997

Ms. Jolene Molitoris
Administrator
Federal Railroad Administration
400 7th Street, S.W.
Washington, DC 20590


Dear Administrator Molitoris:

This letter concerns the Order Approving and Directing the Consummation of Expedited Supplemental Transactions issued by the Special Court in the matter of Expedited Supplemental Transactions pursuant to Section 305F of the Regional Rail Reorganization Act of 1993, Miscellaneous Number 81-1, dated April 13, 1982 and its application to the impending acquisition and division of Conrail by CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS"). A copy of the Order is enclosed for your convenience.

According to Section 21 of the Order, if Conrail elects to withdraw from New Haven Station as defined in the Order and you find on application of P&W that P&W is continuing to operate as a self sustaining railroad capable of undertaking additional common carrier responsibilities without federal financial assistance, Conrail shall sell the properties to P&W at a reasonable price and on reasonable terms and conditions. In the absence of an agreement on such price and terms and conditions, arbitration is available.

P&W has reviewed the available information on the proposed transaction by and between Conrail, CSX and Norfolk Southern. Indeed, Conrail is now an indirect wholly owned subsidiary of CSX and NS with all of the stock of Conrail held in a voting trust pending Surface Transportation Board ("STB") review of the application. To accomplish the division of the assets of Consolidated Rail Corporation ("CRC"), a wholly owned subsidiary of Conrail, between CSX and NS, CRC will form two new wholly owned subsidiaries, New York Central Lines LLC ("NYC") and Pennsylvania Lines LLC ("PRR") and will transfer CRC assets to these subsidiaries.

PROVIDENCE AND WORCESTER RAILROAD COMPANY
75 HAMMOND STREET, WORCESTER, MA 01610 P.O. BOX 16551, WORCESTER, MA 01601
TELEPHONE (508) 755-4000



According to the STB application, New Haven Station is among the assets CRC intends to transfer to NYC. CSX will have exclusive authority to appoint the officers and directors of NYC and will manage and direct the operations of NYC for its own account and retain all revenues and profits. Moreover, CRC, now jointly owned by CSX and NS, will follow in all respects the direction of CSX and NS and all liabilities associated with the operation of these properties will be borne by CSX and NS.

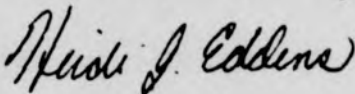
Following consummation of the transaction, CRC will no longer hold itself out to the public as performing transportation services directly or for its own account.

It is clear after a review of the transaction that the transaction will result in a withdrawal from the market by CRC creating a triggering event under the Order. P&W has so advised Conrail and is awaiting a response as to the terms and conditions of a conveyance of "New Haven Station" to P&W.

In accordance with the Order, please consider this letter as P&W's application for a determination that P&W is continuing to operate as a self sustaining railroad capable of undertaking additional common carrier responsibilities without federal financial assistance. In that regard, I am enclosing for your review a copy of P&W's most recent annual report and its first and second quarter 1997 results. The third quarter statements will be forwarded to you as soon as they are available.

If you have any questions regarding this determination, please do not hesitate to contact me.

Very truly yours,



Heidi J. Eddins
General Counsel

Enc.

HJE:ws

STB

FD

33388

10-21-97

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182862

LOWIS STOKES
11TH DISTRICT, OHIO

MEMBER,
COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER,
VA/HUD/INDEPENDENT AGENCIES

MEMBER,
LABOR/HHS/EDUCATION

Congress of the United States
House of Representatives
Washington, DC 20515-3511

182862
2365 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3511
(202) 225-7032

DISTRICT OFFICE:
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SUITE 204
SHAKER HEIGHTS, OH 44122
(216) 522-4900

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

October 21, 1997
Office of the Secretary

OCT 21 1997

3 Part of
Public Record



Finance Docket 33388

Dear Mr. Williams:

I am writing to express serious concern with proposed freight rail changes of the CSX and Norfolk Southern (NS) Corporations. My environmental comments are rooted in the great negative impact these proposed routes will have on my Congressional District and the greater Cleveland, Ohio area.

Disappointingly, CSX and Norfolk Southern have not shown intentions of tempering the detrimental effects of their proposal in the areas most heavily affected. The manner in which these two rail companies have proceeded has hitherto been unacceptable. I strongly urge the Surface Transportation Board to not allow any plan to progress without sufficient mitigation to the affected communities.

The proposed increase in rail traffic through Cleveland is almost exclusively in low-income minority neighborhoods. In one area, rail traffic is projected to increase nearly 1200 percent. This means that families living near these railroad tracks will see almost 15 times more trains, from three trains daily to 44. Other areas will see increases ranging from more than 100% to more than 500%.

The effects of such multiplied rail traffic are vast. Of primary concern is the strain on public safety services. The increase in rail traffic will delay the response times for emergency medical, law enforcement, and fire fighting services at the numerous rail crossings throughout Cleveland. Worse yet, these are areas that already have emergency service response times slower than more affluent parts of the city. I am concerned about the increased potential for loss of life.

CSX and Norfolk Southern's proposal will not only have a large impact on my constituents' quality of life, but I believe it may also have a negative economic impact. More than 60,000 citizens live within 1,000 feet of railroad tracks in Cleveland. The dramatic increase of rail traffic will expose these residents to

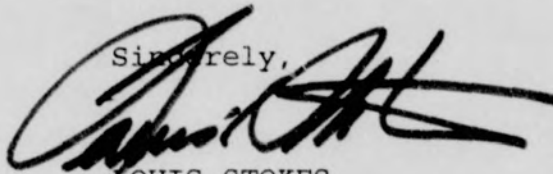
The Honorable Vernon A. Williams
October 21, 1997
Page 2

train noise at virtually any hour, further reduce property values for those who can least afford to move, and ship greater amounts of hazardous materials through these neighborhoods by rail. Increased rail traffic also poses a large risk to children who cross these tracks on their way to and from school. Children who live near the tracks may not be aware of the greater frequency with which freight trains will be operating.

It is possible that the CSX/NS proposal may result in some increase in economic development in Cleveland. The rail companies involved have indicated an interest in making Cleveland a hub for their service networks, but this does not come without damage to the everyday interest of the general public.

For the aforementioned reasons, I am requesting that the Surface Transportation Board pose effective steps to mitigate the CSX/Norfolk Southern rail proposal for the citizens of Cleveland or deny approval of their plan. Please do not hesitate to contact me if I may provide further comments or assistance in this very important matter.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to Louis Stokes, is written over the word "Sincerely," and extends down across the typed name.

LOUIS STOKES
Member of Congress

LS/pc

STB

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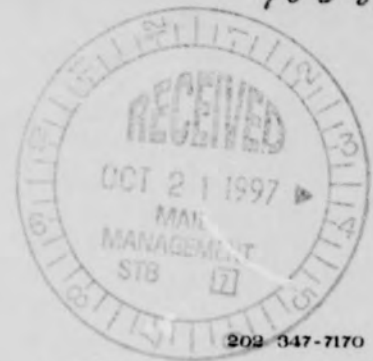
SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III



October 21, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

D

Re: 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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and twenty-five (25) copies of the Comments and Request for Conditions of The Detroit Edison Company (DE-02). Also enclosed, please find a computer diskette containing the text of this document in WordPerfect 5.0 format.

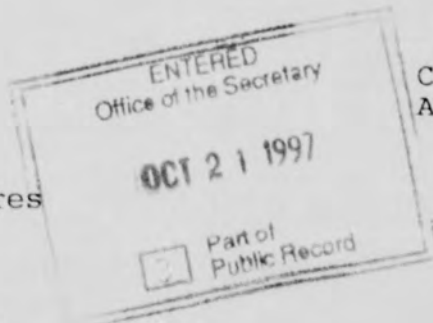
We have included an extra copy of the filing. Kindly indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,

C. Michael Loftus

C. Michael Loftus
An Attorney for the Detroit
Edison Company

Enclosures



RECEIVED
DB-02
OCT 21 1997
MAIL
MANAGEMENT
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Finance Docket No. 33388

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of
Public Record

Attorneys and Practitioners

INTRODUCTION

The Detroit Edison Company ("Detroit Edison") hereby submits its Comments And Requests for Conditions on the proposed acquisition of Consolidated Rail Corporation ("Conrail") by CSX Corporation and its rail affiliates ("CSX") and by Norfolk Southern Corporation and its rail affiliates ("NS").

BACKGROUND

Detroit Edison is an investor-owned electric utility serving the electricity needs of about 2 million people in 7,600 squaremiles of southeastern Michigan, including the Detroit metropolitan area. It owns and operates eight coal-fired generation stations (combined consumption exceeding 20 million tons), which represent its primary baseload generating capacity. All eight of these stations are served by Great Lakes vessels and six are also served by rail. The six rail-served power plants consume in excess of 10 million tons of rail-delivered coal annually. A majority of the rail-delivered coal is delivered by Conrail or CSX, and most of this coal originates on the Conrail, CSX or NS railroads.

The Application as submitted by CSX, NS, and Conrail ("Applicants") directly impacts the service and deliveries to Detroit Edison. The delivered cost of coal to our power plants is a significant portion of the cost of electricity and thus this proceeding will impact the energy costs of our 2 million customers.

COMMENTS

Detroit Edison has serious concerns over the effect of the proposed transaction in two particular areas. Detroit Edison urges the Board to examine the effectiveness of the competition promised by the Applicants for Detroit Edison's Trenton plant, in the Detroit Shared Assets Area, and the potential anti-competitive effect of the Transaction on coal traffic moving through the Chicago gateway, in light of the Comments presented below.

1. The Detroit Area

Although the Application maintains dual railroad access to Detroit Edison's Monroe and River Rouge Power Plants, and provides for a second railroad to access our Trenton Facility, it is this Trenton access that is of concern. The Application allows for access by both NS and CSX, and gives the illusion of effective competitive access. The CSX routing is circuitous, however, and does not provide for effective competition as it implies. The CSX routing requires train movement into and through a very congested corridor in Detroit that adds miles, but more importantly, time in comparison to the direct routing of NS. Furthermore, the CSX routing is not compatible with the dumping configuration in place at the Trenton plant, which is designed for approach from the south and creates significant operating problems for trains approaching from the north as CSX would be required to do under the Applicants' joint service arrangement.

Accordingly, Detroit Edison supports Canadian National Railway Company's submissions in this proceeding, CN-8 and CN-11,

to the extent they request trackage rights on a small segment (approximately 1.5 miles) of current Conrail track for access to its Trenton Channel Facility. CN's request would provide competitive access to the Trenton Channel via a direct Toledo to Trenton route that parallels the post-merger NS route. In addition, past cooperation between CSX and CN in joint movements to our Monroe and River Rouge Power Plants has demonstrated that such a movement will provide competition. The Verified Statement of Mr. Raymond L. Sharp of CSX confirms that "a highly coordinated CSXT/GTW service for MGA coal . . . is directly competitive with NS service for MGA coal." See Application, Vol. 2A, V.S. Sharp at 18.

2. Chicago Gateway

Approximately 5,000,000 tons of Powder River Basin coal are transported through the Chicago gateway to our power plants. Detroit Edison is concerned that the proposed divestiture of Conrail assets in the Chicago area will reduce the competition and increase the cost of western low sulfur coal, thus impacting electricity costs as Phase II of the Clean Air Act becomes effective. NS and CSX will control the vast majority of coal origins east of the Mississippi. As Phase II of the Clean Air Act takes effect, the eastern "compliance" coals and the western low sulfur coals will become more competitive in seeking market share. If control of the Chicago gateway is reduced to only those that offer eastern compliance coal as an alternative, then

the flow of low cost western coal could be economically cut off to those utilities in the east and midwest.

Several parties to this proceeding, including Illinois Central Railroad Company, Wisconsin Central Ltd., and Elgin, Joliet and Eastern Railway Company, express concern over the divestiture of Conrail's share of the Indiana Harbor Belt Railroad. Detroit Edison, whose interests are affected by the flow and economics associated with the rail transportation of western low sulfur coal through the Chicago area, encourages careful evaluation of the concerns expressed by the above-mentioned parties.

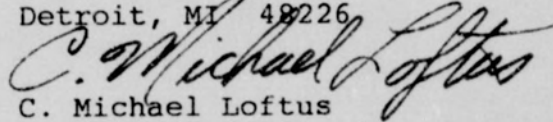
CONCLUSION

As stated in the Verified Statement of Norman H. Barthlow, dated May 30, 1997, Detroit Edison conditionally supports the proposed transaction. However, the above-described areas of concern -- access to its Trenton Channel Power Plant, and control of the Chicago gateway -- are destined to have an impact upon Detroit Edison's 2 million customers. Detroit Edison hereby requests that the Board consider these Comments as it evaluates the Application, and acts to preserve and enhance competition; that it impose a condition granting CN trackage rights enabling CSX to provide efficient competitive service to our Trenton Channel Plant; and that the impact of the transaction on the competitive movement of western low sulfur coals through the Chicago area be carefully considered.

Respectfully submitted,

THE DETROIT EDISON COMPANY

By: Gary E. Lapplander
Manager -- Fuel Supply
The Detroit Edison Company
2000 Second Avenue
Detroit, MI 48226



C. Michael Loftus
Frank J. Pergolizzi
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

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

Dated: October 21, 1997

Attorneys and Practitioners

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served copies of the foregoing Comments of The Detroit Edison Company by hand upon Applicants' counsel:

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

Samuel M. Sipe, Esq.
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Richard A. Allen, Esq.
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888 Seventeenth Street, N.W.
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Paul A. Cunningham, Esq.
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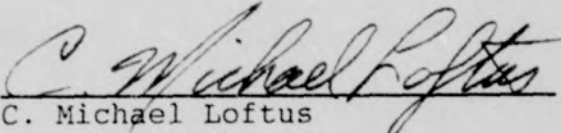
and by first-class mail, postage pre-paid upon:

The Honorable Rodney Slater
Secretary
U.S. Department of Transp.
400 7th Street, S.W.
Suite 10200
Washington, D.C. 20590

The Honorable Janet Reno
Att'y Gen. of the United States
U.S. Dept. of Justice
10th & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

The Honorable Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, D.C. 20426

and by first-class mail, postage pre-paid upon all other Parties
of Record in Finance Docket No. 33388.


C. Michael Loftus

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10-21-97

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GALLAND, KHARASCH & GARFINKLE, P.C.
ATTORNEYS AT LAW

MORRIS R. GARFINKLE
EDWARD D. GREENBERG
DAVID K. MONROE
DAVID P. STREET
ROBERT W. KNEISLEY
STEVEN JOHN FELLMAN
CHARLES H. WHITE, JR.
KEITH G. SWIRSKY
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LAKTIN JACOBS

IRA T. KASDAN
JOSEPH B. HOFFMAN
XIANPING WANG*
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GEOFFREY P. GITNER
M. ROY GOLDBERG
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GEORGE D. NOVAK, II*
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ROBERT N. KHARASCH
OF COUNSEL
GEORGE F. GALLAND (1910-1985)

WRITER'S DIRECT DIAL NUMBER
(202) 342-6743

October 21, 1997

VIA COURIER

Mr. Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of the Secretary

OCT 21 1997

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Public Record



Re: 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

Dear Secretary Williams:

Enclosed for filing in the above-captioned case is an original and twenty (25) copies of the Comments of International Paper Company, designated as document IP-4. We have also enclosed a 3.5 inch diskette formatted for Word Perfect 6.1 and containing the text of IP-4. Finally, we have enclosed an additional hard copy to be date-stamped when filed and returned to us.

Very truly yours,

Gregg S. Avitabile

Enclosures

XIN JI YUAN/GKMG LAW OFFICE
AFFILIATED FIRM
SUITE A-1603, VANTONE NEW WORLD PLAZA
NO. 2, FU CHENG MEN WAI AVENUE
BEIJING 100037 PEOPLES REPUBLIC OF CHINA
TEL: 011-86-10-6858-8501 FAX: 011-86-10-6858-8505
E-MAIL: xjylaw@pku.edu.cn

182858

IP-4

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

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**

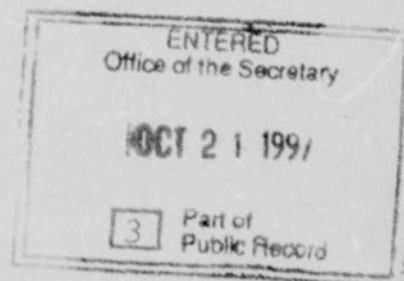
COMMENTS OF THE INTERNATIONAL PAPER COMPANY



Edward D. Greenberg
Gregg S. Avitabile
Galland, Kharasch & Garfinkle, P.C.
1054 - 31st Street, N.W.
Washington, DC 20007
(202) 342-5200

Attorneys for The International Paper Company

Dated: October 21, 1997



**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

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**

COMMENTS OF THE INTERNATIONAL PAPER COMPANY

In accordance with the governing procedural order in this matter, The International Paper Company ("IP") submits the following comments with respect to important issues raised by the prospective transfer of certain rail lines and trackage rights from Conrail, Inc. ("CR") to the Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS"), and CSX Corporation and CSX Transportation, Inc. ("CSX"), respectively.

PREFATORY STATEMENT

IP currently receives unique and efficient single-line unit train service between Lock Haven, Pennsylvania and IP's Erie Mill located in Erie, Pennsylvania, in which loaded cars are transported in both directions. The service is operated by CR using IP dedicated cars over a combination of CR and Allegheny and Eastern Railroad ("ALY") lines. As currently operated, the service traverses (1) a CR line between IP's Erie Mill and the OD Yard in Erie; (2) an ALY line between the OD Yard and Emporium, Pennsylvania, pursuant to a trackage rights agreement; and (3) a CR line between Emporium and Lock Haven.

Unfortunately, as structured, the proposed acquisition of CR by NS and CSX would certainly terminate the single-line aspect of this service and would likely jeopardize the entire arrangement. To the extent they have even focused on the issue, CSX and NS contemplate providing joint-line service between the points. NS would acquire and operate both the CR line between Lock Haven and Emporium and CR's trackage rights on ALY's line between Emporium and the OD Yard. CSX, however, would acquire and operate the CR line between the OD Yard and IP's Erie Mill, and has expressed its intent not to grant any carrier trackage rights to operate over its 3 mile rail segment between the OD Yard and IP's Erie Mill. As a result, NS would be unable to continue the single-line service between IP's Erie Mill and Lock Haven.

As explained in detail below, IP will experience greatly increased costs if the single-line unit train service involved here is terminated. Significantly, just the opposite consequence -- cost savings to shippers due to the conversion of joint-line service to single-line service -- is the principal benefit which NS and CSX contend will inure to the public from their proposed acquisition of CR.

In addition, circumstances unique to IP and the Erie Mill to Lock Haven line would render the line's conversion to joint service particularly damaging to IP. Briefly, consistent with its own service obligations, ALY can grant trackage rights over its Emporium to OD Yard line for only 12 hours each day. As a result, IP's dedicated cars must make a complete trip between IP's Erie Mill and Lock Haven in 12 hours, and, in the remaining 12 hours of the day, IP must unload and reload the cars for the next day's trip. CR routinely uses the entire 12 hour period to complete the haul. It is therefore clear that the haul could not be completed in 12 hours utilizing less efficient joint-line service. Failure to complete the haul in 12 hours would, in turn, result in the unit train's crews becoming "dead-on-the-line" when they completed the maximum 12 hours of duty time permitted

under federal rail safety law, with significant attendant labor and business costs to IP, and business interruptions to ALY, which would thereby lose full use of its track during time periods when it is entitled to exclusive access to the track.

In order to avoid these consequences, IP requests that the Surface Transportation Board condition approval of the CR acquisition on either (1) CSX's granting trackage rights to NS for the purpose of NS's carrying IP dedicated cars over CSX's line between Erie and the IP's Erie Mill, or (2) NS and CSX both granting trackage rights to ALY for the purpose of ALY's carrying IP dedicated cars over NS's line between Lock Haven and Emporium, and over CSX's line between the OD Yard and IP's Erie Mill.

Separately, IP also requests that the Board grant the Delaware & Hudson Railway Company ("D&H") and its parent the Canadian Pacific Railroad Company ("CP") improved access to the port of New York and the shared access area of New York/New Jersey. The D&H's access to the area is of vital importance to IP, which operates two paper mills in New York that are exclusively served by the D&H.

I. CR CURRENTLY PROVIDES IP WITH SINGLE-LINE UNIT TRAIN SERVICE BETWEEN IP'S ERIE MILL AND LOCK HAVEN

IP currently has a rail transportation contract with CR by which the carrier provides IP with dedicated, single-line unit train service over the approximately 228 miles between IP's Erie Mill and Lock Haven. In providing the service, CR traverses (1) approximately three miles over a CR rail line from IP's Erie Mill to CR's OD Yard in Erie; (2) approximately 150 miles between Erie and

Emporium over an ALY line, pursuant to a trackage rights agreement,^{1/} and (3) approximately 75 miles over a CR rail line between Emporium and Lock Haven.

IP utilizes a combination of its own and CR's cars to transport materials between its Erie Mill and Lock Haven. Of its own cars, IP utilizes approximately 330 specialized log and gondola cars. IP supplements this by using CR's box cars only as necessary to carry rolled or baled pulp.

The IP unit train departs IP's Erie Mill comprised of gondolas and box cars loaded with wood pulp, and empty log cars which are dropped off at wood yards en route. When the loaded cars arrive at Lock Haven, the wood pulp is unloaded, and the gondola and box cars return empty to IP's Erie Mill. During the trip between Lock Haven and Erie, loaded log cars are picked up at wood yards located in Port Allegany, Emporium and Kane. Once the cars return to IP's Erie Mill, the logs are unloaded, and wood pulp is loaded for the next trip to Lock Haven.

Under its agreement with ALY, CR is permitted to traverse ALY's line between Emporium and Erie for only twelve hours per day, between 6:00 p.m. and 6:00 a.m. Within this window of opportunity, CR makes a one way trip between IP's Erie Mill and Lock Haven, completing a turn every two days. IP's unit train makes between two or three turns a week, depending on IP's business volume. CR routinely utilizes the full twelve hour period to move IP's unit train between IP's Erie Mill and Lock Haven. IP then often uses the full 12 hours between 6:00 a.m. and 6:00 p.m. to unload and reload the dedicated cars.

^{1/} The rail line between Erie and Emporium was previously owned by the Allegheny Railroad, a former subsidiary of IP. IP sold the Allegheny Railroad to ALY, which granted trackage rights to CR. Indeed, an important aspect of that sale was ALY's willingness to grant trackage rights to CR, so that this efficient unit train operation could continue.

II. CSX AND NS CONTEMPLATE CONVERTING CR'S SINGLE-LINE SERVICE BETWEEN IP'S ERIE MILL AND LOCK HAVEN TO JOINT-LINE SERVICE

Under the terms of the proposed acquisition of CR by CSX and NS, NS would acquire CR's rail line between Lock Haven and Emporium, and succeed to CR's trackage rights on ALY between Emporium and the OD Yard in Erie. This leaves a three-mile gap, however, as CSX would own the three miles of rail line between IP's Erie Mill and the OD Yard. Under these circumstances, NS could continue the single-line unit train service only if CSX agreed to grant trackage rights to NS over the last remaining 3 miles. Alternatively, ALY could provide the single-line service if both CSX and NS granted it the necessary trackage rights. However, CSX's responses to interrogatories propounded by IP indicate that CSX will not grant trackage rights to another carrier. See Response of CSX Corporation and CSX Transportation, Inc. to the Interrogatories and Request for Documents of the International Paper Company at 5 (hereinafter "CSX's Responses," and attached hereto at Tab A).

NS's response to a similar interrogatory confirms this. An IP interrogatory asked NS whether NS will "be obtaining and/or providing direct access to the IP mill in Erie, Pennsylvania for the purpose of continuing to provide single line service for this unit train operation." NS responded:

NS will not have direct access to the IP mill. The IP mill is on Conrail lines that will be operated by CSX upon approval and consummation of the Transaction. At the present time, NS expects that the service to IP that currently is being provided by Conrail will be continued by CSX and NS on a joint line basis.

See Norfolk Southern's Responses to International Paper Company's First Set of Interrogatories to Norfolk Southern at 4, 5 (attached hereto at Tab B).

III. IP WILL BE SIGNIFICANTLY DAMAGED IF SINGLE-LINE UNIT TRAIN SERVICE IS NOT CONTINUED BETWEEN IP'S ERIE MILL AND LOCK HAVEN

The operational advantages of single-line service over joint-line service are well recognized by the Board, the shipping public, and the various rail carriers. Indeed, and consistent with the justifications typically offered by merging carriers, CSX and NS rely heavily upon those advantages in arguing for STB approval of their acquisition of CR. In this case, circumstances unique to IP's Erie Mill make the need for single-line service over this line particularly acute.

CSX Vice President, Chemical Marketing, Christopher P. Jenkins articulated well the disadvantages to shippers of general merchandise (including forest products) of joint service. As he explains, "the need to interchange general merchandise traffic with another carrier . . . results in unacceptably long transit times for rail movements." See Verified Statement of Christopher Jenkins at 15 (CSX/NS-19 at 418). The economic disadvantages of joint service are particularly pronounced for short hauls, "where both rail carriers must cover the costs of originating and terminating their portion of the movement." Id. at 17 (CSX/NS-19 at 420). Under such circumstances, "the combined revenue demands of the two [carriers] to cover the costs of two relatively short hauls make [the joint] price noncompetitive." Id. Customers of interline service are further disadvantaged by "the transaction costs . . . of having two different service providers. Potential customers sometimes experience unacceptable transaction delays associated with establishing a joint line price for a two-carrier move. . . . And if joint service is established, customers sometimes incur unacceptable costs in trying to resolve issues such as billing or freight damage because of poor communication between the railroads in responding to customer inquiry directed to one of them." Id. at 18-19 (CSX/NS-19 at 421-22).

Jenkins also described in detail the advantages of single-line service. He explained that "[a] particularly prominent advantage of single-line service is the reduced transit times that result from eliminating interchanges between rail carriers." Id. at 21 (CSX/NS-19 at 424). In addition, single line service can more dependably meet the rail customer's "need for predictable, on-time delivery . . . because it places responsibility for on-time shipment in the hands of one party." Id. at 24 (CSX/NS-19 at 427). Single-line service also "leads to improved safety and reduction in loss and damage to property. These benefits result from reduced handling, switching and classification associated with single-line service as compared to interline service." Id. Special advantages of single-line service flow to shippers that use their own equipment, such as IP. "[M]ore efficient single-line service [] benefit[s] our customers by yielding faster turn times on their equipment and hence increased equipment utilization, which translates into reduced equipment ownership costs." Id. at 26 (CSX/NS-19 at 430). Finally, single-line service benefits shippers "by allowing them to deal with one rail carrier rather than two or more on matters such as contract negotiations, billing issues, and questions regarding loss and damage to property." Id. at 28 (CSX/NS-19 at 432). See also Verified Statement of John W. Snow (CSX/NS-18 at 4) ("By integrating Conrail's networks into those of CSX and NS, simpler, more efficient, single-line service to shippers will be possible.").

Yet, due solely to how CSX and NS have determined to carve up the estate of CR, the opposite would occur here. Unless the transaction is appropriately conditioned, IP will lose the advantages of single-line service and suffer the disadvantages of joint-line service on the critically essential Erie/Lock Haven movement. And given the particular efficiency of a round trip unit train operation, it is remarkably quixotic to witness the loss of a single-line service simply because these parties here, for their own accommodation, failed to consider the interests of a major rail shipper.

If the only issue here were simply the substitution of a two-line haul for what had been a single-line move, the Applicant's plans would not be problematic. After all, some joint-line operations can be, and often are, more efficient than a single-line service. Although ample proof for this abounds, one need only look to the recent merger of the Union Pacific ("UP") and the Chicago & North Western ("CNW") rail systems to see that single-line service is not always efficient. To the contrary, the quality of single-line service provided to IP by the merged UP/CNW is far inferior to the joint-line service IP previously received from UP and CNW operating as separate carriers.

However, circumstances unique to the Erie Mill to Lock Haven haul make joint-line service an inadequate substitute for single-line service in this instance. As discussed above, under the terms of CR's trackage rights agreement with ALY, there is only a 12 hour window of opportunity within which to move IP's freight between IP's Erie Mill and Lock Haven. Even while utilizing single-line unit train service, CR routinely needs the full 12 hours to complete the haul. In addition, IP often uses the full 12 hours between hauls to load and unload its cars. Under these circumstances, and consistent with Jenkins' testimony concerning the "unacceptably long transit time" of joint service, it is clear that there would be insufficient time to complete the round trip movement (including unloading and reloading) in both directions utilizing the more time-consuming joint-service, even assuming that it was likely to have a quick and timely interchange between CSX and NS at the OD Yard.

And, we note that neither carrier has even offered any cooperation on this point. The delays attendant to this service diminution will plainly result in the unit train's crews routinely going "dead-on-the-line," as they serve the maximum 12 hours of on-duty time permitted under 45 U.S.C. §61 without completing the haul. When this occurs, it will be necessary to incur the added expense of

having a crew based in Lock Haven, or a crew based at the OD Yard, pull the unit train the remaining distance to Lock Haven or the OD Yard, depending on the direction in which the train is headed. This will in turn result in costly delayed delivery and processing of the cars once delivered. ALY, for its part, would suffer further disruptions of its own service as a consequence of IP's unit train being present on its track beyond the allotted 12 hours. The need to coordinate the interchange of carriers at the OD yard would create the additional risk of IP's ~~unit-train becoming stranded at the OD Yard~~, as the CSX crew assigned to switch the cars ran out of duty time waiting for the train's arrival from Lock Haven, or NS's unit train crew ran out of duty time waiting for CSX's crew to bring the train to the OD Yard from the Erie Mill.

Further, the increased cost of transporting the materials necessary to the operation of the Erie Mill would jeopardize the economic viability of the mill and put at risk the jobs it provides to the Erie community. The Erie Mill is an old facility that was recently purchased by IP. Transportation costs represent a substantial portion of the mill's total operating costs. Moreover, the mill's relatively old machines are already ill-equipped to compete with the more efficient equipment available for the production of fine white papers. Despite IP's efforts to maintain the profitability of the mill by diverting its high-quality paper production to the mill, IP intends within the next two weeks to shut down two of the Erie Mill's machines as not economically viable, necessitating the elimination of 227 of the mill's 1058 jobs. The mill's remaining operations and 831 jobs would be unlikely to survive any reduction in the efficiency of the transportation system serving the mill.

In addition to the jobs lost to the Erie community, closure of the Erie Mill would also deny IP the expected return on its purchase of the 330 specialized cars it uses to service the mill. IP's purchase of the cars for approximately \$50,000 each was predicated on their use in association with

single-line unit train service to the Erie Mill. IP has no other use for the cars, since its other mills that utilize such equipment are already serviced by a sufficient number of cars.

IV. THE BOARD SHOULD CONDITION ITS APPROVAL OF THE CR ACQUISITION ON THE GRANTING OF THE TRACKAGE RIGHTS NECESSARY FOR EITHER NS OR ALY TO CONTINUE IP'S SINGLE-LINE UNIT TRAIN SERVICE BETWEEN IP'S ERIE MILL AND LOCK HAVEN

The STB can and should prevent what is plainly a substantial reduction in service, by conditioning its approval of the CR acquisition on either (1) CSX's granting trackage rights to NS over the 3 miles of CSX track between IP's Erie Mill and the OD Yard in Erie; or (2) NS and CSX both granting trackage rights to ALY for the purpose of ALY's carrying IP dedicated cars over NS's line between Lock Haven and Emporium, and over CSX's line between the OD Yard and IP's Erie Mill. The alternative -- relying on CSX and NS reasonably to accommodate IP's shipping needs voluntarily -- is unlikely to resolve the issue satisfactorily.

IP recognizes that the Board has in the past generally resisted intervening into the privately negotiated trackage rights agreements incident to railroad mergers and acquisitions. Here, however, CSX and NS propose to carve up the thousands and thousands of miles of CR rail lines into spheres of influence, and it is not plain that their private agreements are necessarily entitled to the same presumption of reasonableness. These are public, not private, rights that are being negotiated away. The Board should look carefully at the terms of the transaction to ensure that it is in fact in the public interest, and not hesitate to exercise its unquestioned authority to impose conditions upon the transaction where necessary to protect the public interest.

Past experience teaches that the STB should not take at face value CSX's and NS's representations that their acquisition of CR will lead to improved service for IP and other CR customers. After all, in filing the application, CSX touted its reputation as a highly efficient, safe

railroad. See Verified Statement of John W. Snow at 12 (CSX/NS-18 at 314) ("CSX's outstanding safety record . . . will be extended to the portions of the Conrail system over which CSX will operate."). Yet, just a few days ago, the Federal Railroad Administration released a comprehensive report detailing numerous critical safety shortfalls throughout the entire CSX rail system. See FRA 25-97 (October 16, 1997).

Similar self-serving commitments were made prior to the merger of the UP and SP rail systems. In an effort to obtain approval of the UP/SP merger, those applicants represented that they could ameliorate the anticompetitive consequences of the merger by granting certain trackage rights to the Burlington Northern Santa Fe ("BNSF"), so that BNSF could fill the competitive void left after the merger. As a result, SP and UP argued, shippers would still have two strong competitors to choose from, and the quality of the available service would not suffer. IP's experience in the months since the merger belies UP/SP's pre-merger representations.

In addition to the fact that BNSF simply does not have the ability to compete with UP/SP for IP's business, the service IP has obtained from UP/SP since the merger is far inferior to that which it received from UP and SP prior to the merger. IP's facilities throughout the southwest--but specifically at Pine Bluff and Camden, Arkansas; Mansfield, Louisiana; and Texarkana, Texas--have been experiencing inordinate delays in obtaining cars to handle outbound product. Over the last several months, the service being provided by UP/SP has deteriorated drastically, as car shortages have threatened to shut down these mills. It frequently takes UP/SP four to five days to bring empty cars the short 71-mile distance from Pine Bluff to Camden, and in any event IP is totally unable to rely upon UP/SP promises as to when cars will be provided. Similarly, IP's large Mansfield mill has

been subjected to missed switches on an increasingly regular basis, all of which threaten its ability to continue functioning.

There is an even greater risk that IP will suffer deficient joint-line service between the Erie Mill and Lock Haven under the current terms of the CR acquisition than there was that the UP/SP merger would undermine the quality of service to IP. UP and SP were at least familiar with the service each provided prior to the merger. CSX, ~~on the other hand, is not even aware~~ of the terms of the service which CR currently provides to IP.

As an example, IP asked CSX to describe its plans, if any, to "participate in the unit train service currently operated by CR on behalf of IP which runs between Erie, Pennsylvania and Lock Haven, Pennsylvania." According to CSX:

CSX Transportation's current understanding of the train service referred to [above] is generally as follows: A train, dedicated to [IP], originates near Lock Haven, PA on a shortline railroad. The train consists of loaded cars consigned to [IP] at Erie, PA and empty cars intended for loading by [IP] at Erie, PA. CSX does not know the allocation of responsibilities and operations between the shortline and Conrail. The train is handled by Conrail to Emporium, PA where it then moves over the Allegheny & Eastern Railroad to Erie, PA where the road crew yards the train at a yard, which CSX believes to be Conrail's OD Yard. A Conrail yard crew delivers the train to [IP]'s facility at Erie, PA. A similar dedicated train movement operates in the reverse along the reverse route movement.

See CSX's Responses at 4 (emphasis supplied). CSX's understanding of CR's service to IP is inconsistent with the facts, as described above. The IP unit train originates in Lock Haven on a CR line, not that of a shortline railroad, and travels over a CR line from Lock Haven to Emporium. The train is operated exclusively by CR during the entire haul in both directions. CSX's and NS's confusion concerning the service is further reflected in the "Map of Lines of Applicant Carriers and Other Railroads Prior to the Transaction" (CSX/NS-18, Exhibit 1), which does not show CR's trackage rights over all of ALY's Emporium to OD Yard line.

Given CSX's ignorance of the service CR provides IP between Erie Mill and Lock Haven, CSX's and NS's assurances that the quality of services they provide to their customers will improve as a result of the CR acquisition offer little solace to IP.

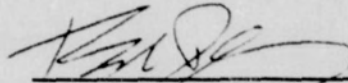
Accordingly, the STB should act, as requested herein, to ensure that the acquisition does not guarantee a reduction in the quality of service.

V. THE BOARD SHOULD GRANT THE D&H/CP IMPROVED ACCESS TO THE PORT OF NEW YORK AND THE SHARED ACCESS AREA OF NEW YORK/NEW JERSEY

One other concern to IP that has arisen recently pertains to service by the D&H. IP also owns and operates two printing paper mills at Corinth and Ticonderoga, New York that are exclusively served today by the D&H. CP, which owns the D&H, has made public pronouncements recently concerning their dissatisfaction with their current lack of access to the port of New York and the shared access area of New York/New Jersey, suggesting that the CP and D&H might withdraw to some extent from service in this region in the event that their negotiations with Applicants or any responsive application before the Board yields little fruit.

The D&H is of vital importance to IP, which is a position that the company has enunciated on many occasions. IP provided significant financial support to the D&H trustee during the carrier's reorganization struggles, and this support has not eroded over the years. We urge the Board to consider and grant the D&H/CP requests for improved access in this region, as it is essential that a viable Class I carrier be able to service the important local industries that are tied to rail. Any result in this case which disadvantages the D&H/CP would likely have significant adverse affects on IP.

Respectfully submitted,



Edward D. Greenberg

Gregg S. Avitabile

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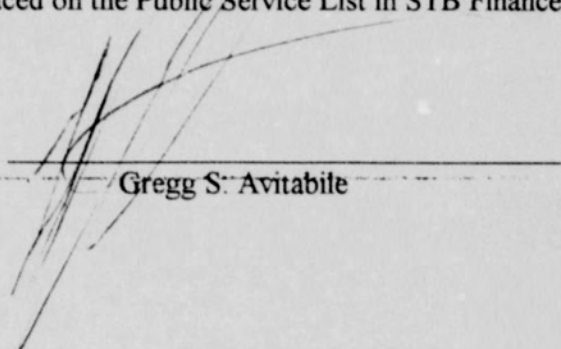
Washington, D.C. 20007

(202) 342-5200

Attorneys for the International Paper Company

CERTIFICATE OF SERVICE

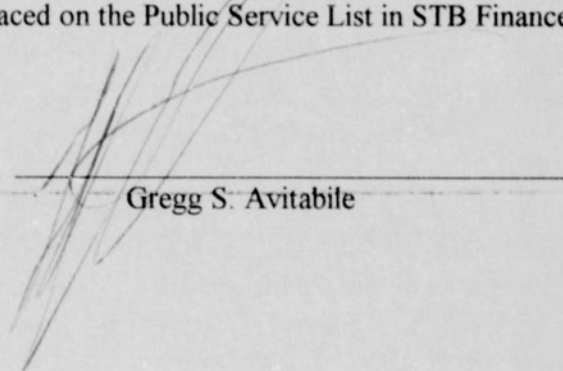
I certify that on this 21st day of October, 1997, I caused a copy of the foregoing Comments of International Paper Company to be served by first-class mail, postage prepaid, on all parties that have submitted to the Applicants a Request to be Placed on the Public Service List in STB Finance Docket No. 33388.



Gregg S. Avitabile

CERTIFICATE OF SERVICE

I certify that on this 21st day of October , 1997, I caused a copy of the foregoing Comments of International Paper Company to be served by first-class mail, postage prepaid, on all parties that have submitted to the Applicants a Request to be Placed on the Public Service List in STB Finance Docket No. 33388.



Gregg S. Avitabile

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RESPONSE OF CSX CORPORATION AND CSX TRANSPORTATION, INC.
TO THE INTERROGATORIES AND REQUEST FOR DOCUMENTS OF THE
INTERNATIONAL PAPER COMPANY

CSX¹ hereby responds to the Interrogatories and Request for documents of the
International Paper Company, served September 11, 1997.

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and
interrogatories.

1. CSX has conducted a reasonable search for responsive information to respond
consistent with the stated objections. Except as objections are noted herein,² all

¹ CSX refers to CSX Corporation and CSX Transportation, collectively.

² Thus, any response that states that responsive documents are being produced is subject
to the General Objections, so that, for example, any documents subject to attorney-client
privilege or the work product doctrine are not being produced.

9. CSX objects to Instruction No. 6 to the extent it requests detailed information regarding otherwise responsive documents that fall within the scope of a privilege. Such detailed information is not necessary, and it is unduly burdensome to provide. Such information was not required or provided in the most recent major control cases, and no showing has been made here to warrant different treatment.

INTERROGATORIES

1. Identify and describe in detail any plans by CSX to participate in the unit train service currently operated by CR on behalf of IP which runs between Erie, Pennsylvania and Lock Haven, Pennsylvania.

Response: CSX Transportation's current understanding of the train service referred to in Interrogatory No. 1 is generally as follows: A train, dedicated to International Paper Service, originates near Lock Haven, PA on a shortline railroad. The train consists of loaded cars consigned to International Paper at Erie, PA and empty cars intended for loading by International Paper at Erie, PA. CSX does not know the allocation of responsibilities and operations between the shortline and Conrail. The train is handled by Conrail to Exportum, PA where it then moves over the Allegheny & Eastern Railroad to Erie, PA where the road crew yards the train at a yard, which CX believes to be Conrail's OD Yard. A Conrail yard crew delivers the train to International Paper's facility at Erie, PA. A similar dedicated train movement operates in the reverse along the reverse route of movement.

After the transportation, OD Yard will be allocated to CSX. CSX intends to continue to perform the services currently performed by Conrail's yard crew at Erie.

including those relating to the aforementioned train between OD Yard and International Paper's facility at Erie, PA.

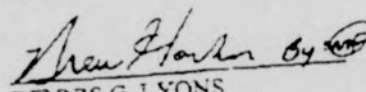
2. Does CSX intend to permit NS, or any other carrier, to have direct access to IP's mill at Erie, Pennsylvania, in order for those carriers to provide direct single line service to the mill?

Response: CSX Transportation objects to the interrogatory on the ground that the term "direct access" is ambiguous and susceptible of more than one meaning. Without waiving that or any other objection CSX states as follows: To the extent the term "carrier" in the interrogatory is limited to rail carriers and to the extent that the "access" contemplated by the interrogatory is limited to use in some manner of the Conrail track and facilities which are allocated to CSX (as opposed for example to construction of rail lines by another rail carrier) the answer is no.

3. If the answer to Interrogatory No. 2 is no, describe in detail how the unit train service currently being operated by CR on behalf of IP will continue to be conducted in the future.

Response: CSX objects to the interrogatory as confusing. Without waiving that or any other objection CSX states that CSX's current understanding is that the "unit train service" referred to in Interrogatories 1 and 3 (and apparently intended as the subject of Interrogatory 2) does not move in single line service today.

Respectfully submitted,



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NS-27

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

NORFOLK SOUTHERN'S RESPONSES TO
INTERNATIONAL PAPER COMPANY'S
FIRST SET OF INTERROGATORIES
TO NORFOLK SOUTHERN (IP-2)

NS^{1/} hereby responds to the first set of discovery requests to NS served by the International Paper Company ("IP" or "Requester").

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

1. NS will conduct a reasonable search for documents responsive to the requester's requests. Except as objections are noted herein,^{2/} all responsive documents will

^{1/} "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

^{2/} Thus, any responses that state that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

9. NS objects to Instructions Nos. 1, 4, 6 and 7 to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. NS objects to Instruction No. 6 to the extent it requests detailed information regarding otherwise responsive documents that fall within the scope of a privilege. Such detailed information is not necessary, and it is unduly burdensome to provide. Such information was not required or provided in the most recent major control cases, and no showing has been made here to warrant different treatment.

11. NS objects to Definition No. 5(a) to the extent it requests individuals' home addresses and telephone numbers.

INTERROGATORIES

Interrogatory No. 1

Identify and describe in detail any NS plans to modify or change existing unit train service currently being operated by CR on behalf of IP which runs between Erie, Pennsylvania and Lock Haven, Pennsylvania.

1. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

NS has no plans to change the current unit train operation now in service.

Interrogatory No. 2

With respect to Interrogatory No. 1, will NS be obtaining and/or providing direct access to the IP mill in Erie, Pennsylvania for the purpose of continuing to provide single line service for this unit train operation?

2. NS objects to this interrogatory on the ground that the term "direct access" is ambiguous is ambiguous and susceptible of more than one meaning. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

To the extent that the term "carrier" in this interrogatory is limited to rail carriers and to the extent that the "access" contemplated by the interrogatory is limited to use in some manner of the Conrail track and facilities which are allocated to CSX (as opposed for example to construction of rail lines by another rail carrier), NS will not have direct access to the IP mill. The IP mill is on Conrail lines that will be operated by CSX upon approval and consummation of the Transaction. At the present time, NS expects that the service to IP that currently is being provided by Conrail will be continued by CSX and NS on a joint line basis.

Interrogatory No. 3

If the answer to Interrogatory No. 2 is yes, does NS plan to use its own equipment?

3. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

Not applicable.

Interrogatory No. 4

If the answer to Interrogatory No. 2 is no, how does NS plan to provide unit train service to the IP mill in Erie, Pennsylvania?

4. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

See response to Interrogatory No. 2.

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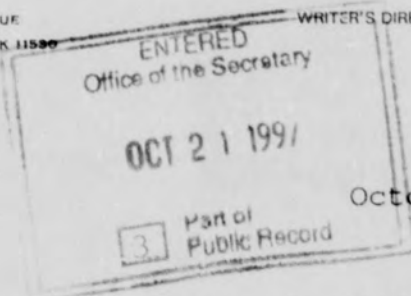
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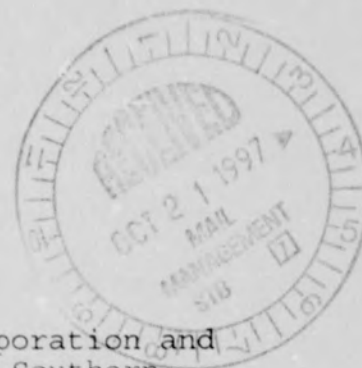
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WRITER'S DIRECT DIAL NUMBER: (716) 263-1526



October 20, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



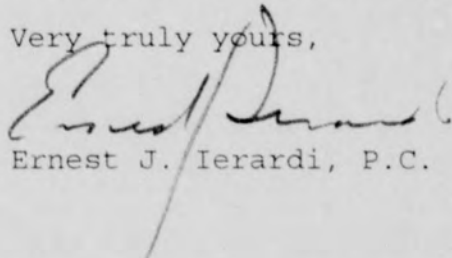
Re: Finance Docket No. 33388: CSX Corporation and
CSX Transportation, Inc., Norfolk Southern
Corporation and Norfolk Southern Railway
Company -- Control and Operating Leases/
Agreements -- Conrail Inc. and Consolidated
Rail Corporation

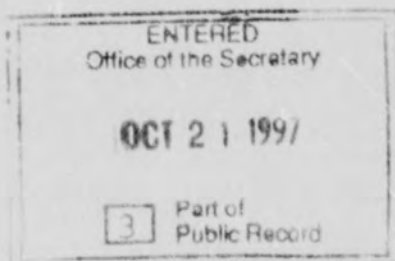
Dear Secretary Williams:

Enclosed please find an original and 25 copies of
Protest and Request for Conditions submitted on behalf of
Rochester Gas and Electric Corporation (RG&E-1). Also enclosed
is an electronic version of this document.

Kindly date stamp the enclosed additional copy of this
document at the time of filing and return it to our messenger.

Very truly yours,


Ernest J. Ierardi, P.C.



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RG&E-1

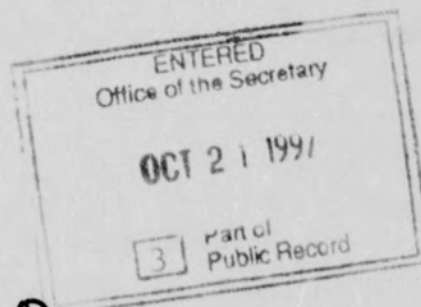
UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

ORIGINAL

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

PROTEST
and
REQUEST FOR CONDITIONS
submitted on behalf of
ROCHESTER GAS AND ELECTRIC CORPORATION



Ernest J. Ierardi, P.C.
Nixon, Hargrave, Devans & Doyle LLP
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UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

PROTEST
and
REQUEST FOR CONDITIONS
submitted on behalf of
ROCHESTER GAS AND ELECTRIC CORPORATION

As a Party of Record in this proceeding, Rochester Gas and Electric Corporation submits, in accordance with the Final Procedural Schedule herein, the following Protest and Request for Conditions with respect to the primary application and related documents filed herein by the applicant railroads on June 23, 1997.

RG&E's Interest

Rochester Gas and Electric Corporation (RG&E or the Company) is an investor-owned public utility serving electric and gas customers in a nine-county upstate New York service territory centered around the city of Rochester. A major portion of the Company's electric customers are located in and around Rochester, as is Russell Station, the Company's principal coal-burning electric generating station. Russell receives an average of 650,000 tons of coal per year, principally from mines in the Monongahela Valley of northern West Virginia, over lines exclusively owned and operated by Conrail. There is currently no other

economically efficient way that the Company can take delivery of its coal.

The delivered cost of fuel is a significant element in the production of electricity at Russell Station. Although we seek a high-quality coal to maximize plant efficiency and minimize the environmental impact from fuel combustion, the fuel component of that delivered cost typically runs no more than 60%. The rest is consumed in transportation. Thus, we incur many millions of dollars a year in rail charges to move coal the 350 or so miles from mine to boiler. All of those dollars are in turn reflected in our cents-per-kilowatthour electricity price, the measure by which we compete now and will be increasingly competing for our customers' energy requirements. We must hold that price to a minimum consistent with our continuing obligation to provide reliable, high-quality service.

Importance of Competition

The proposed division of Conrail properties between the CSX system and the Norfolk-Southern System carries a potential benefit for Rochester Gas and Electric and its customers. The proposal contemplates that both carriers -- as compared to Conrail alone, currently -- be able to originate coal on the former Monongahela Railroad System. The competitive potential in that allocation of origin rights is clearly positive. Competition is newly coming to a number of industries, including our own. We welcome that and look forward to offering our services in a fully competitive market. That same openness should characterize the railroad industry. This proceeding offers an important opportunity to achieve that objective.

The introduction of competition at the origin point for much of the Northeast's bituminous steam coal is

helpful, but inadequate. So long as the destination leg of the transportation is locked up by a single carrier, little real public benefit can be realized.

In RG&E's case, which is probably a typical one among eastern and midwestern utilities, the last 75 miles or so of rail line to its destination is in the exclusive control of one railroad at present; and that will continue to be the situation when CSX succeeds Conrail. Moreover, excessive switching charges imposed by the destination carrier where traffic is routed over an alternate carrier for a greater distance than is strictly necessary, given the geography involved, discourages taking advantage of traffic segments that could otherwise be competitive.

The answer to this unsatisfactory competitive half-step is for the Surface Transportation Board to compel the opening of significant rail routes to competition end-to-end. Without that relief, a shipper like RG&E ultimately must bend to the charges imposed by its destination carrier. In doing so, it finds the benefits of origin area competition to be illusory; it cannot realize them and, thus, it is effectively prevented from minimizing its delivered cost of fuel.

The joint operating rights established for the former Monongahela Railroad System contain a prospect for competition. To convert that prospect into a truly competitive market for transportation of utility steam coal in the Northeast would require the opening of certain rail line segments planned to be controlled by just one of the two successors to Conrail. In RG&E's case, that would principally involve opening portions of the East-West Conrail lines in upstate New York (the old New York Central main line and the West Shore line) from Rochester westward

to Buffalo and eastward to Lyons, N.Y., so that Norfolk-Southern and perhaps other carriers might use those lines now planned for exclusive CSX control.^{1/} A second alternative to CSX for the Rochester metropolitan area could be established through an authorization to one or more short haul carriers (e.g., Buffalo & Pittsburgh Railroad or the Livonia, Avon and Lakeville Railroad) to bridge the gap between Rochester in the north and those short haul carriers' southern connections with the Norfolk-Southern system in New York's Southern Tier area.^{2/} To round out the real competition these route openings would achieve, it would be particularly helpful to RG&E if carriers in addition to CSX could be authorized to use the spur line within Rochester which transports the Company's coal from the main lines in the western part of the city through its northerly portions and into the Company's terminus at Russell Station in the adjoining suburb of Greece, a 10-mile distance.^{3/}

The opening of these portions of the Northeast rail system in the manner described would provide the opportunity for two separate carriers to move RG&E's coal from origin through to destination, plus the opportunity to combine segments on these carriers' lines with short haul lines in the area south of Rochester. The resultant competitive situation would be particularly beneficial to the Rochester area, both in terms of potential for reduced

^{1/} Currently Conrail's water level route, MilePost 437 (Buffalo, N.Y.) to MilePost 335 (Lyons, N.Y.).

^{2/} Currently Conrail's Corning Secondary, MilePost 70 (Corning, N.Y.) to MilePost 0 (Lyons, N.Y.).

^{3/} Currently Conrail's Charlotte Running Track at CP 373 to termination at RG&E's Russell Station.

costs of goods originated in and received within the area and in terms of potential economies in the transportation component of the cost of fuel used to generate much of the electricity consumed in the metropolitan area.

Control over essential services

RG&E believes that the merits of the above-described opening of the rail system to competitive forces are self-evident. They stand independent of other forms of relief sought in this proceeding. Nonetheless, there remains a singular need for railroad charges exacted for essential services, such as those incurred in switching traffic from one carrier to another, to be held to compensable -- but not excessive -- levels. Attention to this concern would be all the more important if for some reason the fully open, end-to-end route competition envisioned above could not be immediately achieved.

In its experience with Conrail and predecessor carriers over many years, RG&E has been subjected to charges, or the threat of charges, for inter-carrier switching of its coal traffic that we consider to be exorbitant, unfair and unrealistic. These charges bear no relation to the cost of the service requested and are clearly designed to discourage use of carriers other than the one controlling the switching point. And they are quite effective in achieving this purpose. That is not the way a competitive system, or even a pre-competitive system which is regulated in part for the benefit of shippers and the public, should be operated, however.

Shippers should be enabled to utilize where available short haul carriers for local movement of traffic and even short movements by long-haul carriers where economies in overall transportation can be achieved. They

can now be impeded from doing so by excessive switching charges and similar mechanisms calculated to protect the exclusivity of the carrier currently enjoying revenue from the potentially competitive line segment. That practice should be terminated. This proceeding, with its comprehensive view of the operational plans and intended scope of service of the consolidating railroads would be a particularly suitable forum for directing that result.

Because of the importance of this issue of the potential for improper control to be exerted over essential services, RG&E supports the position of the Buffalo & Pittsburgh Railroad and its affiliates in seeking trackage rights over routes of long haul carriers and the position of the Livonia, Avon and Lakeville Railroad in seeking conveyance to it of the Genesee Junction Yard in suburban Rochester. Consistent with our preference for a competitive Northeast rail system, a granting of those railroads' requests, conditioned on the availability of the same lines and facilities to other carriers, would provide a desirable advance in the opening of rail traffic in the Rochester area.

Applicability of Bottleneck II

The Board's decision in Bottleneck II^{4/} may require that special conditions be imposed in this proceeding to assure the practicality of the relief which that decision affords to shippers. In that decision, the Board clarified the circumstances in which a bottleneck destination carrier could be compelled to provide service

^{4/} Central Power & Light v. Southern Pacific Trans. Co., No. 41242, and consolidated cases, _____ STB _____ (4/28/97), granting, in part, petition for clarification and denying petition for reconsideration.

from an origin carrier's movement to the shipper's destination. Even where the destination carrier could serve the entire route from origin through destination, it must provide destination segment service and quote a rate for it, challengeable on reasonableness grounds, where the shipper and an origin carrier have first contracted for service over the origin carrier's lines to a point of connection with the bottleneck carrier. The two carriers are to agree on a suitable point of interconnection, failing which the Board will resolve it.

Two concerns immediately arise in the context of the applicability of that decision to the present circumstances.

First, a shipper ought to have a fair and reasonable opportunity to secure an appropriate contract from the origin carrier. It will not have that opportunity if railroads adopt the view that Northeast rail transportation (and not just the Conrail properties facilitating that transportation) has been divided a certain way and they will compete with one another only in those areas where that division specifically prescribes joint access. RG&E believes that the Board should announce, in any approval of the proposed consolidation, its clear expectation that railroads will not refrain from competition with one another along any route-division lines where they are operationally able to compete; rather, they should indeed seek traffic from shippers as a matter of good business.

Second, a shipper ought not to be faced with willingness of a destination carrier to provide reasonably priced service over the destination haul, but only after an unreasonable switching charge has been paid. The charge ought to be part of the challengeable, reasonably-priced

destination service. Alternatively, the shipper could elect to have such a charge become a part of the Board's interconnection point resolution where the carriers cannot themselves agree on one.

Thus, to implement the Board's clarifying order in the Bottleneck cases, the railroads seeking to consolidate in this proceeding should be held to a good faith standard generally, but especially with respect to origin carrier contracting and destination carrier rates and terms of service.

Conditions

If the Board determines to grant, in whole or in part, the application filed in this proceeding, it should first carefully consider the implications of its decision for competitive rail traffic in the Northeast. Indeed, it is not too much for the Board to consider, in the course of its decision-making, the position in which the Northeast will be left, as it competes with other regions of the nation and the world, if its rail service is inefficient and costly. In a real sense, one objective of a proceeding like this can be said to be achieving a greater efficiency in the rail service of a major part of the nation. The outcome of this case is likely to set a pattern for transportation policy and decision-making in the Northeast for many years.

Accordingly, RG&E urges that the Board give serious consideration to conditioning its decision herein on the following:

1. The availability to the Rochester, New York area of genuine competition between at least two long haul rail carriers as well as such competition between them and shorthaul carriers for traffic over suitable segments of transportation routes in and around Rochester. In

particular, such competition should be created and fostered for the entire route between the former Monongahela Railroad System in northern West Virginia and RG&E's Russell Station in suburban Rochester.

2. The discontinuance of the railroad practice of charging exorbitant fees for essential services such as switching traffic from one carrier to the other, particularly in the routing of RG&E coal traffic in upstate New York. The Board should provide a simple, inexpensive procedure for determining a fair, non-discriminatory switching charge in those locations noted herein pertinent to coal delivery to Russell Station.

3. The vigorous pursuit of competition between the applicant longhaul carriers for the business of shippers outside joint access areas. In particular origin carriers must be open to reaching reasonable contract provisions with shippers over route segments where another carrier is capable of providing origin-to-destination through service.

4. The destination carrier, as part of its challengeable, reasonably-priced offer of service over the destination haul of traffic for which a shipper has contracted with another carrier for origination, must include any switching charges necessitated by the inter-carrier connection and do so at a price reasonably related to the cost of such switching service.

Conclusion

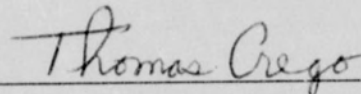
For the foregoing reasons, Rochester Gas and Electric Corporation protests the application of the applicant railroads herein and respectfully requests that the Surface Transportation Board condition any order

granting such application with a series of conditions including the four set forth immediately above.

Thomas Crego
Thomas Crego

VERIFICATION

I, Thomas Crego, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this verified protest on behalf of Rochester Gas and Electric Corporation. Executed on this 16th day of October, 1997.



Thomas Crego

CERTIFICATE OF SERVICE

I, Genaro Fullano, certify that on October 21, 1997, I have caused to be served by first-class mail, postage prepaid, or by more expeditious means, a true and correct copy of the foregoing Protest and Request for Conditions submitted on behalf of Rochester Gas and Electric Corporation (RG&E-1) on the official service list dated August 19, 1997, as corrected by STB Decision No. 43 and its appendices, and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
Office of Hearings
825 North Capitol Street, N.E.
Washington, D.C. 20426

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Harkins Cunningham
1300 19th Street, N.W.
Washington, D.C. 20036



Genaro Fullano

Dated: October 21, 1997

STB

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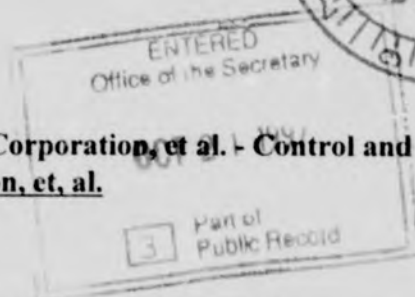


Westlake Group

Westlake Center
2801 Post Oak Blvd.
Houston, Texas 77056
Tel: 713/960-9111
FAX: 713/960-8738

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001



RE: **Finance Docket No. 33388, CSX Corporation, et al. - Control and Operating Leases/Agreements - Conrail Corporation, et, al.**

Dear Chairman Morgan:

I am Dennis A. Guth, Corporate Manager of Transportation and Distribution for Westlake Group of Companies. The Westlake Group of Companies is a Petrochemical and Plastics Manufacturer with annual rail shipments of over 8000 carloads. Conrail today serves markets which are vital to the transportation of our finished goods. The proposed control of Conrail by CSX Corporation and Norfolk Southern will directly affect us.

Westlake currently has several manufacturing plants on the CSX, several on the Paducah/Louisville Railway (75% owned by the CSX), and several served by the Union Pacific/Southern Pacific, Kansas City Southern, and Burlington Northern /Santa Fe, the latter service being a result of an STB ruling in the UP/SP merger proceedings. The announcement of a joint purchase of Conrail by CSXT and NS has raised concerns relative to further consolidation of an integral marketing tool of the Westlake Group; the U.S. rail system.

The key concerns center around the below listed issues, which Westlake requests the STB consider as key concerns for all Shippers:


- Of Westlake's approximate 49 current Conrail shipping destinations, only nine (18%) will end up in a "dual service area" where more than one railway is available to provide service. The publicity and benefits discussed by both acquiring Railroads rely on "competitiveness of the post-merged system". Westlake encourages the STB to provide economic protection for Shippers. The STB should put in place a specific mechanism to ameliorate or remedy any adverse rate actions contrary to merger stated benefits in the post merged condition.

- It is important that Shippers be allowed to choose carriers, routes, and particularly interchanges in the movement of freight. The potential exists in the Docket for the acquiring railroads to "re-define and effectively close" interchanges with connecting inter-line, origin, and short line carriers. Westlake requests the STB address all issues surrounding the maintenance of interchanges and to protect the ability of Shippers to choose interchange points across the post-merger Conrail property. As an example, the potential exists for the NS to become a "bridge carrier" on traffic originating in the west, with an ultimate destination in Conrail territory with a post-merger CSX delivery point. If the interchange points in the east are closed, the Shipper will only be allowed to turn traffic over to the CSX at "Mississippi River Gateway Junctions". Interchange closure can be operationally beneficial to a Railroad, but also can be economically disadvantageous to a Shipper. Therefore, to close interchanges would be counter to the stated economic benefits of the proposed merger from the Shipper perspective.
- Due to the most recent service deficiency occurrences of the UP/SP merger, Westlake requests the STB include in its merger decision that the CSX and NS provide safeguards to assure adequate ongoing service and a service guarantee to the Shippers, and that any substantiated service deficiency claims will be reimbursable by the railroads for a period of up to 5 years from the effective date of the merged control. Recent history has proven all too dramatically that the STB has a responsibility and should consider imposing provisions for service deterioration in railroad merger cases. Particularly when economic advantage to Shippers is claimed in the amount of \$258 million in "Shipper Logistics Benefits" as part of the Control Docket.

It is hoped that the STB will reviewing this docket with an eye to assuring shippers adequate service and enhance the economic benefit of the U.S. rail system to all its users and owners, while maintaining safe service.

As of this date, Westlake is undecided whether this merger will provide benefits to shippers, and therefore Westlake reserves its support or opposition until the above issues have been adequately addressed by CSX and NS. However, Westlake requests the STB consider the points discussed above, and provide remedies or put in place protective covenants to assure Shippers that an economically viable rail transportation system will be sustained in a post-merged environment. Westlake welcomes the opportunity to actively participate in these proceedings.

Respectfully submitted,



Dennis A. Guth
Corporate Manager,
Transportation & Distribution

STB

FD

33388

10-21-97

D

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182852

Oct 20, 1997

VIA FEDERAL EXPRESS

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



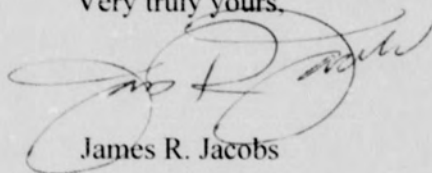
Re: Finance Docket No. 33388

Dear Secretary Williams:

Enclosed please find the original and twenty-five (25) copies of Jacobs Industries Description of Responsive Application to be filed on or before October 21, 1997. Along with the original and copies, the Description is also being submitted on a diskette formatted for Microsoft Word 7.0.

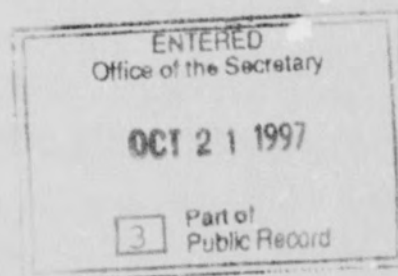
Thank you for your assistance in this matter. Should you have any questions, please contact me at 419-661-9328 ext. 17.

Very truly yours,



James R. Jacobs

Enclosures



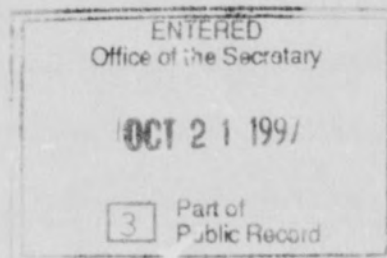
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

DESCRIPTION OF RESPONSIVE APPLICATION
OF JACOBS INDUSTRIES LTD.



Description of Responsive Application Jacobs Industries Ltd.

In a decision dated, July 23, 1997, the Surface Transportation Board accepted for consideration the primary application and related filings submitted by CSX Corporation, Norfolk Southern Corporation, and Consolidated Rail Corporation regarding acquisition by CSX and NS of control of Conrail, inclusive of division of assets of Conrail by both applicants.

Jacobs Industries, an Ohio corporation is a party of record in these proceedings. It has reviewed the primary application filed jointly by Norfolk Southern Railway and CSX Transportation thereby preparing itself for Responsive Application.

Background

Jacobs Industries Ltd. (2 Quarry Lane Stony Ridge, OH 43463) an Ohio Corporation operates its logistic services through a sister Corporation, JStar Consolidated, Inc. (6373 Ayers Road Walbridge, OH 43465). The purpose of JStar "is to provide any/all types of logistic service for origin/destination of rail freight." Types of service are open to customer needs. Handling of dry/liquid materials, food grade, chemical, pallet, oversize steel, precious metals and auto parts that make visible the products and services provided.

JStar is physically based within Conrail's Stanley yard, Toledo, Ohio. Switching agreements are in place with Conrail, "they hand off all inbound equipment, to be switched into final destination by JStar crews, which in turn give all outbound equipment back to Conrail for final connection destination. In essence, JStar rail serves it's facilities.

Comments

The split acquisition of Conrail's assets by CSX/NS, should prove to be pro-competitive, regarding much of the new system, but, be assured, **pockets of reduced competition or no competition will be created as well.** JStar Consolidated will fall into this classification for the following reasons.

- **Conrail at Toledo plays the role of "large, neutral switching carrier"**, not concerned who we elect to pass off traffic beyond the Conrail system, allowing competitive freedom for our customers, thus affording the best of rail competition.
- As we eliminate Conrail, we eliminate all control of competition. **The "single" connecting rail carrier to JStar ceases to be neutral.** It can now favor it's routings and traffic sources and now has the ability, as the surviving Class 1 carrier to purposely bypass or lock out a rail service provider at will.

- **Detroit rail competition will outrank Toledo after acquisition**, due to CSX/NS maintaining a "*shared assets zone*," within the Detroit markets opening all carriers to all customers within the zone. Whereas, as it stands today, JStar will be limited to only one carrier. Therefore, rail competition will flourish as close as 40 miles to our front door and our competition will be governed by the whims of our single serving carrier. As a rail logistic service provider company, this is not acceptable.
- **The operating plan states, Conrail's Stanley yard, Toledo, Ohio will be split.** CSX to own and operate Yard K and Yard S. NS will own and operate Yard E. Thereby the applicants are splitting yard operations and responsibilities of the Stanley facility, but by plan J-Star will only be served by one carrier, CSX.

Proposal Plan

In order to remain at current level of competition for logistic services, JStar Consolidated Inc., a division of Jacobs Industries Ltd., located Stanley Yard, Toledo, Ohio **requires Competitive Access to NS.**

Due to the fact NS will be located within Stanley Yard here are some proposed options.

- Option 1: NS be given trackage rights within the Stanley yard area, from CSX to the J-Star Consolidated facility, providing service direct.
- Option 2: CSX provide competitive access switch for NS at no extra cost, handling NS linehaul within the Stanley yard limits to the JStar facility.
- Option 3: CSX provide J-Star Consolidated, track routing and rights through their portion of yard to a point connecting with NS.

The above response application is filed within the exemption criteria of 49 C.F.R. 1105.6 (c) (2). The request in applications will not divert rail to motor carriage. Result in nonattainment area under the Clean Air Act, will not result in the following: an increase in rail traffic of at least 8 trains per day, or an increase of at least 100% rail yard activity. It will also not results in any increase in truck traffic.

Summary

JStar Consolidated today, is a successful working model of an "added value rail logistics center". It has become a Railport", a landing strip or launch pad for a large diversity of customers within our market. It has been so successful, Conrail and Jacobs Industries were in the process of expanding the program at time of acquisition, inclusive of an 88 acre parcel of land within the JStar area, expanding our concept of rail logistics.

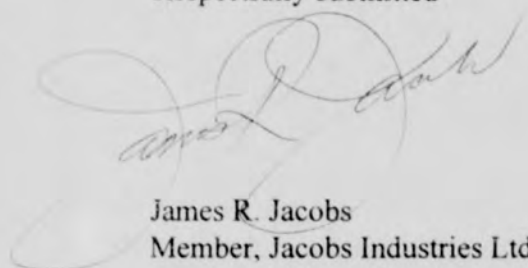
Jacobs Industries has not asked or used Fed / State / Local funding with the project, but has approved 1.3 million of personal funding within the past four years.

JStar identifies to two different major markets, a "8 million member consumer market" and secondly, *"The Midwest, Great Lakes Area Manufacturing Market"*, one of the worlds leading manufacturing areas. Thus, we are tuned with intensity to our customer's logistic needs which demands on large scale competitive rail access.

Our rail competitive importance can be summarized by the following statement: *"If you separated the States joined to the Great Lakes, cutting them out of the Union, you would create the third largest, strongest industrial power in the world. It would follow behind Japan, which would follow the remainder of the United States as No#1. JStar logistics operates within the heart of the described area, thus one can quickly understand the need for rail competitive action. **Our mission statement, demands we assist our consumers and manufacturers within our market to achieve their competitive best with their rail logistic needs.***

The strength and stability of the individuals, the area, the nation and possibly the world depend heavily on competitive transportation within JStar's market: thus the importance is stated why Jacobs Industries requests from the Surface Transportation Board to authorize competitive access into JStar Consolidated facility.

Respectfully submitted



James R. Jacobs
Member, Jacobs Industries Ltd.