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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

D

FINANCE DOCKET NO. 33388 [redacted]

BESSEMER AND LAKE ERIE RAILROAD COMPANY
-- TRACKAGE RIGHTS --
LINES OF CSX TRANSPORTATION, INC.
AND PENNSYLVANIA LINES LLC

COMMENTS AND REQUESTS FOR CONDITIONS OF
BESSEMER AND LAKE ERIE RAILROAD COMPANY

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Dated: October 21, 1997

TABLE OF CONTENTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

FINANCE DOCKET NO. 33388 (SUB-NO. 61)

BESSEMER AND LAKE ERIE RAILROAD COMPANY -- TRACKAGE RIGHTS -- LINES OF CSX TRANSPORTATION, INC. AND PENNSYLVANIA LINES LLC

COMMENTS AND REQUESTS FOR CONDITIONS OF BESSEMER AND LAKE ERIE RAILROAD COMPANY

I. COMMENTS

A. INTRODUCTION

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997, and July 23, 1997, respectively, Bessemer and Lake Erie Railroad Company ("BLE") hereby submits its Comments and Requests for Conditions in response to the Primary Application filed herein by CSX Corporation ("CSXC"), CSXT Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC")[1] seeking authority for

[1] CSXC and CSXT are referred to collectively herein as "CSX." NSC and NSR are referred to collectively herein as "NS." CRI and CRC are referred to collectively herein as "Conrail." CSX, NS and Conrail are referred to collectively herein as the "Primary Applicants."

common control of Conrail by CSXC and NSC and the division of CRC's assets between CSXT and NSR.

On August 22, 1997, BLE and Transtar, Inc. ("Transtar") jointly filed a Description of Anticipated Responsive Application indicating BLE's intention to seek, as a condition of any Board approval of the Primary Application, overhead trackage rights over the Conrail line between Pittsburgh and Shire Oaks, Pennsylvania or over CSXT's line between Pittsburgh and Brownsville, Pennsylvania for the sole purpose of transporting coal originating at current and future mines on the former Monongahela Railway ("MGA") destined to P&C Dock at Conneaut, Ohio. BLE indicated that it would seek these trackage rights in conjunction with haulage rights via NSR over the former MGA lines between such mines and Shire Oaks or Brownsville, as the case may be, on the same terms and conditions as applicable to CSXT. BLE further indicated that the above condition would apply only in the event that NSR provides haulage services to CSXT over the former MGA lines.

In addition to the foregoing, Transtar and BLE also indicated that they would seek additional competitive conditions pertaining to coal originating on the former MGA lines, not requiring the filing of a responsive application in their comments and evidentiary submission scheduled to be filed on October 21, 1997.

In the interim between the filing of the Description of Anticipated Responsive Application and today's filing, BLE has negotiated with the Applicants in the hope that its transaction-related concerns might be resolved. Although those discussions continue and BLE is hopeful of reaching a satisfactory resolution with at least one of the Applicants, no such resolution has been reached as of this date. Therefore, BLE is today submitting its Comments and Requests for Conditions along with its Responsive Application. These Comments and Requests for Conditions are a part of and should be considered together with BLE's Responsive Application wherein it requests imposition of the overhead trackage rights described above.

B. <u>BOARD AUTHORITY</u>

The authority to condition the Primary Application (e.g., by imposing the conditions to be sought by Applicants) is found in 49 U.S.C. § 11324(c). The statutory criteria for regulatory consideration of the proposed transaction are provided in 49 U.S.C. §§ 11323-25. Section 11324(d) states:

> (d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that -
>
> (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and
>
> (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

The Board interprets Section 11324(d) to require the imposition of conditions if the consolidation may produce effects harmful to the public interest, that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger. Union Pacific -- Control -- Missouri Pacific, Western Pacific, 366 I.C.C. 462, 562-65 (1982).

In considering the Primary Application, the Board has a statutory obligation to, among other things, consider "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1). See, e.g., Decision No. 44, served October 15, 1997, at 4. BLE believes that the transactions contemplated by the Primary Application will diminish the adequacy of transportation services for and have serious anticompetitive effects on the transportation of coal in the eastern United States, particularly from origins on the former MGA in southwestern Pennsylvania and northern West Virginia and, absent appropriate conditions to ameliorate these harms, will not be in the public interest. In particular, as is relevant here, the BLE is concerned about anticompetitive effects upon such coal moving to the lake coal market and the inability of the Applicants to meet the service needs of the lake coal marketplace.

In accordance with the foregoing, what follows is a brief discussion of BLE's reasons for seeking the requested conditions and why the requested relief would ameliorate the anticipated harmful effects of the transaction contemplated by the Primary Application without diminishing the anticipated benefits of the transaction.

C. DISCUSSION

In its Responsive Application, BLE seeks limited overhead trackage rights over approximately 54 miles of rail line (14 miles of CRC/Pennsylvania Lines LLC track and/or 40 miles of CSXT track) in a single, defined area of one state. As is explained more fully in the Responsive Application and the Verified Statement of BLE Director of Marketing Timothy R. Howerter which accompanies it, the requested trackage rights will become effective only in the event that NSR initiates or provides haulage service for CSXT to and from the current and future mines served by the former MGA. If activated, the proposed trackage rights will ensure and enhance adequate transportation service and competitive routing options for MGA-origin coal. Such rights will clearly offer lake coal customers competitive service to the P&C Dock where, in the absence of such trackage rights, none would exist.

To make the requested trackage rights work effectively for the movement of coal originating on the former MGA lines, BLE will also need haulage rights via NSR so that this traffic can offer single line pricing to compete with NSR. NSR will haul this traffic directly to BLE at Shire Oaks or Brownsville from where it will move to the P&C Dock. These haulage rights would be under the same terms and conditions as those between CSXT and NSR.

Even in the absence of a haulage agreement between CSXT and NSR to trigger the BLE trackage rights, the lake coal customers must be assured of adequate coal transportation services to and adequate coal handling capacity at the Lake Erie ports. Under the transaction contemplated by the Primary Application that will not occur. Therefore, BLE also requests additional competitive conditions pertaining to coal movements originating in the B&O Origin Coal District and on lines of the former MGA.

BLE seeks to preserve for lake coal customers the competitive alternative interline rates and route that currently exists for B&O Origin District coal destined for the P&C Dock. Today, the P&C Dock competes with CRC's dock facilities at Ashtabula, Ohio for coal business bound for vessel movement on the Great Lakes. As a competitive alternative to CRC's sources routed to Ashtabula, CSXT currently routes its B&O Origin District coal to Conneaut in interline movements over the Buffalo & Pittsburgh Railroad ("BPRR") and BLE. CSXT delivers the coal to New Castle, PA for interchange with BPRR, which then moves the coal to Butler, PA. At Butler, BLE takes over the movement for delivery to Conneaut.

If the transaction contemplated by the Primary Applicants is approved, CSXT will gain shared access to the CRC port facilities at Ashtabula, OH, thereby removing any incentive to interline this B&O Origin District coal over the BLE to Conneaut. Ontario Hydro, a major customer of BLE, relies on the P&C Dock, and absent conditions requiring long term, market based rates to protect interline movements to Conneaut, CSXT will likely divert this B&O Origin District coal to Ashtabula. Protection of the existing interline rate structure will ensure competitive traffic routings for customers desiring to transload coal via the P&C Dock.

Similarly, BLE seeks a condition requiring NSR and CSXT to establish competitive interline rates and routings for movement of MGA coal via BLE to the P&C Dock. These routings must be market based and long term to allow BLE's route to Lake Erie via the P&C Dock to effectively compete with NSR or CSXT single line service between the MGA lines and Ashtabula. Otherwise, customers will have no competitive alternative but to route all of the MGA-origin coal to the already overburdened Ashtabula facility. Fewer service options and poorer service for the customer will surely take place. Moreover, in view of the legitimate questions surrounding the ability of NSR and CSXT to be true competitors on the shared but NSR controlled Ashtabula route, the trackage rights requested by BLE are necessary to afford the shipping public genuine competition for the transportation of MGA-origin coal to Great Lakes destinations. A viable route to Conneaut is essential to providing Northern Appalachia coal customers real competition in the marketplace.

The conditions sought herein by BLE are necessary to mitigate the adverse impact of the Primary Application on the adequacy of transportation service and provide customers with true competition in the provision of such service with respect to

MGA and B&O District origin coal destined for transloading to Great Lakes vessels for delivery to end users.

Under the proposed division of CRC's assets, NSR (through PRR) will acquire CRC's former MGA coal lines, CRC's rail line between Youngstown and Ashtabula, Ohio and CRC's Ashtabula Dock on Lake Erie.[2] NSR thus will obtain a single-line route from MGA coal mines to Lake Erie. NSR will grant trackage rights to CSXT over the former MGA lines to access MGA mines, will continue to grant CSXT trackage rights over the NSR/PRR/CRC line from Youngstown to Ashtabula, and will allocate 42% of the capacity of Ashtabula Dock to CSXT. In each instance, however, the rail lines and the Ashtabula Dock will be owned, controlled and dispatched by NSR.

The proposed routing of all MGA coal moving to the Great Lakes via the former CRC Youngstown-Ashtabula line and the Ashtabula Dock will not result in adequate transportation service to the public or effective competition for the traffic. Currently, Ashtabula Dock lacks adequate capacity to efficiently handle all of the traffic, and Conrail is forced to divert traffic from there more than 120 miles west to the ports of Sandusky and Toledo, Ohio. That is not efficient transportation service and over the long term it will also require that a higher price for service be extracted from the customers.

In addition, there are serious, unanswered questions regarding the ability of NSR and CSXT to effectively share and

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[2] CRC's Ashtabula Dock functions in a manner similar to the P&C Dock, although BLE believes Ashtabula to be an inferior facility. <u>See</u> Howerter V.S. at 15-16.

utilize CRC's Youngstown-Ashtabula line. CSXT's need to rely on its major competitor for its access to the mines, use of the Youngstown-Ashtabula line and use of Ashtabula Dock, all subject to NS direction and control, will seriously impede any effective competition for this important coal traffic.[3]

The conditions proposed herein by BLE will assure the shipping public of needed port capacity and competition for the movement of MGA-origin coal via BLE's route to Conneaut, Ohio and the P&C Dock. The availability and utilization of the P&C Dock is essential to assuring adequate capacity and effective competition for MGA-origin coal moving to the Great Lakes. These conditions will assure customers of competitive routings on MGA coal to Lake Erie and will assure adequate transportation service and competition for that traffic. Absent such conditions, customers will face foreclosure from these routes and this essential capacity and competition will be lost.

The competitive conditions proposed by BLE will mitigate the adverse impact that the transaction proposed in the Primary Application would otherwise have on the adequacy of transportation and competition for MGA and B&O origin coal moving to Lake Erie for subsequent delivery by lake vessel. Without these conditions, port capacity on the Great Lakes may be

[3] That NSR and CSXT agreed to open MGA coal origins to rail service from both carriers is evidence of Primary Applicants' acknowledgment of the public need for effective competition on this traffic. The operating and service arrangements and facilities outlined in the Primary Application, however, are insufficient to provide such effective competition and to ensure adequate transportation facilities and resources for the movement of MGA-origin coal.

significantly reduced and the users of vessel delivered coal will suffer. The P&C Dock is vital to the needs of the Great Lakes coal customers. Under the Primary Applicants' proposal, Northern Appalachia coal will be routed exclusively to an already overburdened Ashtabula or other lake ports west. Removing Conneaut as a viable alternative for this traffic will result in added customer inconvenience and transportation cost.

Customer access to both Ashtabula and Conneaut is essential to satisfying their current and future coal transfer, storage and ship-loading needs. The questionable shared access of one port facility as proposed by the Primary Applicants is deficient and will not provide the level of customer service that will be afforded if the P&C Dock is allowed to meaningfully compete with the shared Ashtabula facility.

The proposed competitive conditions will not result in harm to the essential services of any carrier and will not result in a reduction in competition at any point. Rather, they will serve to markedly enhance the competition and service for lake coal customers.

The proposed transaction will substantially promote the adequacy of transportation service to the public by assuring the availability of adequate port facilities for lake coal customers. Ashtabula Dock is already operating at full capacity. Conrail has been forced to divert tonnage away from Ashtabula to Sandusky and Toledo in order to accommodate the existing traffic flow. That adds significant distance, expense and inconvenience to the movement of lake bound coal. The Primary Applicants' proposal to provide joint access to and use of the Ashtabula Dock will likely cause further problems in serving the needs of the customers. Properly coordinating and allocating resources at Ashtabula will not be easy, and the Primary Applicants have not commented on how this may be accomplished. Extremely effective management will be required if the joint users are to even approach the volumes of coal handled solely by Conrail today. That is not likely to occur at this already overburdened port facility. There needs to be an alternative to handling the existing coal traffic and the growing market for coal produced from longwall mining techniques at the Pittsburgh Seam mines.

Conneaut is a state-of-the-art port with unused capacity that can immediately address the growing need of lake coal customers. Its coal terminal has been modernized and expanded over the years to provide a facility second to none. Conneaut offers two separate coal unloading and storage facilities which can operate either independently, on a stand alone basis, or in a coordinated mode to provide unparalleled flexibility. It has extensive unused capacity available to provide a true competitive alternative to the Ashtabula Dock. Competitive access to the P&C Dock is a necessity if the volumes of coal demanded through the lake coal market are to be efficiently handled for its end users. The lake coal market deserves no less than to have <u>all</u> port facilities available to it to meet its growing capacity and service demands.

The Board's imposition of the competitive conditions proposed by BLE will ensure that lake coal market customers have competitive routings available for their traffic and ensure that these customers have access to needed port capacity. The Ashtabula Dock facility cannot satisfactorily meet the entire needs of the lake coal market. Traffic delays and diversion and inadequate storage and loading facilities will diminish the adequacy of transportation services and unduly burden the market. The lake coal customers deserve and require the added capacity and efficiencies of service afforded by available utilization of the P&C Dock.

The transaction proposed by the Primary Applicants will jeopardize P&C Dock as a viable port destination for Northern Appalachia. The lake coal market and its end users should not be made to suffer unnecessary traffic delays and diversions simply because of the acquisition desires of the Primary Applicants. It is imperative that the Board prevent the worsening of transportation services to the lake coal market by granting BLE the relief requested herein.

II. REQUESTS FOR CONDITIONS

Therefore, BLE hereby requests imposition of the following conditions on any Board approval, in whole or in part, of the Primary Application:

1. In the event the Board grants the trackage rights sought by BLE in its Application, the Board shall additionally order NSR to grant haulage rights to BLE over the MGA lines for the movement of coal traffic between the MGA mines and Shire Oaks or Brownsville, PA. The haulage rights shall be on the same terms and conditions as any haulage agreement between CSXT and NSR relating to coal traffic on the MGA lines.

2. NS and CSXT shall each quote and establish linehaul rates, excluding transfer, handling and storage and after any refunds, on coal via BLE's interchanges with each carrier -- NS through Thomson, PA, Shenango, PA or Wallace Junction, PA and CSXT through Bessemer, PA, Shenango, PA or Conneaut, OH. Linehaul rates shall be quoted on traffic between mines on the former Monongahela Railway via either NS or CSXT and mines in the B&O Origin Coal District via CSXT, on the one hand, and the Pittsburgh and Conneaut Dock Company at Conneaut, OH, on the other hand. Such joint linehaul rates will yield to either NS or CSXT, as the case may be, the same revenue per mile (after any refunds) via the BLE's route as NS or CSXT, as the case may be, receives via its own single line route from the same mine or mines through the Ashtabula Dock at Ashtabula, OH, based on the applicable shortline routing mileages for each historical route. Such joint linehaul rates or single line linehaul rates shall exclude any and all transfer, handling and storage charges at either P&C Dock or Ashtabula Dock. Nothing shall relieve NS or CSXT of its obligation hereunder if BLE takes action to achieve the required revenue per mile earnings above designated.

These proposed conditions are necessary to ameliorate the anticompetitive and harmful effects of the transaction proposed in the Primary Application upon the transportation of certain Northern Appalachia coal to the Great Lakes. These conditions have been narrowly crafted to help satisfy the port capacity needs of the lake coal market and provide essential competition to the Ashtabula Dock with the least intrusion on Primary Applicants. The conditions requested will not diminish the anticipated benefits of the transaction as proposed in the Primary Application.

For the foregoing reasons, Applicant BLE respectfully requests that the Board grant the conditions requested herein if it approves, in whole or in part, the transaction contemplated by the Primary Applicants.

Respectfully submitted,

By: ______________________________

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ATTORNEYS FOR BESSEMER AND LAKE ERIE RAILROAD COMPANY

Dated: October 21, 1997

VERIFIED STATEMENT
OF
TIMOTHY R. HOWERTER

My name is Timothy R. Howerter. I am Director of Marketing - East for the Bessemer and Lake Erie Railroad ("B&LE") and three other railroads owned and operated by Transtar, Inc. As Director of Marketing - East, I am responsible for all commercial activities of the B&LE, Union Railroad, Lake Terminal Railroad, McKeesport Connecting Railroad, and The Pittsburgh & Conneaut Dock Company. In addition, I am responsible for the development of traffic and revenue forecasts used in our companies' Business Plan to develop and support capital investments to maintain and grow our long term business. I joined the B&LE in January, 1990 and have served in various marketing management positions over the past seven years. With the exception of 1995, I have been actively involved in the commercial activities supporting coal movements into the B&LE's bulk product terminal facility located on Lake Erie at the port of Conneaut, Ohio. I have served in my current position since January, 1996.

Prior to joining the B&LE, I worked for Consolidated Rail Corporation ("Conrail") and its predecessor, Penn Central Transportation Company, for over 14 years in a series of marketing management positions. From 1981 until I accepted the position Manager Marketing - Open Top Hoppers with the B&LE, I worked in Conrail's Open Top Hopper Business Group in a variety of management positions, including Manager Equipment, Facilities and Service Planning and Account Executive - Utility Coal.

I hold a Bachelor of Science Degree in business logistics from The Pennsylvania State University. I am a member, and past president, of the Coal Club of Philadelphia and a member of the Pittsburgh Traffic Club.

The purpose of my verified statement is to describe the affected market, the significant, adverse impacts on that market of the Applicants' proposed takeover of Conrail (if appropriate protections are not implemented), and the conditions required to assure that adequate transportation service will be provided and competitive options protected in that market.

B&LE is a Class II railroad which owns and operates 335.9 miles of trackage, including approximately 150 route miles, in the States of Pennsylvania and Ohio. Its principal line extends between North Bessemer, Pennsylvania (near Pittsburgh) and Conneaut, Ohio on Lake Erie. The principal commodities handled by B&LE are: (a) coal from mines served by the B&LE, from river sources using the inland waterways and transferred at the Union Railroad's Duquesne Wharf on the Monongahela River, and from off-line mines located in Pennsylvania, West Virginia and Ohio interchanged to B&LE by the Buffalo & Pittsburgh Railroad ("BPR"), CSX Transportation, Inc. ("CSXT"), Conrail or Norfolk Southern Railway ("NSR") for movement to Conneaut, Ohio; (b) iron ore and other steel raw materials from B&LE's port at Conneaut, Ohio moving to integrated steel plants; (c) fluxing and industrial stones, aggregate, salt and gypsum delivered via vessel to Conneaut for outbound rail and truck delivery; and (d) steel, scrap and miscellaneous freight to and from points on the B&LE.

For many years, B&LE has been an active competitor in the so-called "lake coal market." For the purpose of this statement, the "lake coal market" is defined as the market for bituminous coal, primarily from Northern Appalachia coal fields moving either to B&LE's Pittsburgh & Conneaut Dock ("P&C Dock") at Conneaut, Ohio or Conrail's Ashtabula Dock at Ashtabula, Ohio. The Northern Appalachia coal fields consist generally of mines located in Maryland, Ohio, Pennsylvania and Northern West Virginia. High and mid sulfur steam coals from these Northern Appalachia mines are transported by rail to these dock facilities for transshipment via lake vessel to customers served by the maritime industry on the Great Lakes. End users include electric utilities and industrial customers on the Great Lakes and export traders which serve markets overseas via the St. Lawrence Seaway.

Since the mid-1980s, the scope of the lake coal market has been expanded to include the movement of low sulfur steam coals to the historical users of the P&C and Ashtabula Docks (the same electric utilities, industrial customers and export traders described above). More stringent federal and state environmental regulations have forced many of the long-term users of the P&C and Ashtabula Docks to purchase low sulfur coals and decrease, or in some cases, abandon traditional higher sulfur coal sources.

The lake coal market I have described does not include shipments of low sulfur steam coal for electric utilities and industrial users, nor shipments of metallurgical coal for the coking industry, from the Central Appalachia coal fields to NSR's lake terminal at Sandusky, Ohio or CSXT's lake terminal at Toledo (which is also served by Conrail). The Central Appalachia coal fields consist generally of mines located in Eastern Kentucky, Virginia and Southern West Virginia. First, the Central Appalachia coal mines involved are almost exclusively served by NSR and CSXT, both of which provide efficient, single line service from these mines to their own ports. NSR and CSXT do not serve the same customer base and end use markets as B&LE and Conrail serve via our lake ports. That Applicants are reluctant to promote and accept the use of capacity at P&C Dock at Conneaut to supplement what each carrier will share at Ashtabula demonstrates their lack of knowledge about the lake coal market served via Conneaut and Ashtabula. This is consistent with and supports the historical market fact that Sandusky/Toledo serve different markets than Conneaut/Ashtabula. Second, as the coal mining industry in Northern Appalachia has evolved into a concentration of production controlled by several very large coal companies that utilize longwall mining technology, transportation economics have not supported the movement of the high and mid sulfur production from those mines to the NSR and CSXT lake ports. That Applicants will also have docks at Sandusky and Toledo does not change the fundamental economic fact that transporting coal that would otherwise be expected to move to either Conneaut or Ashtabula at least 120 rail miles farther west (to either Sandusky or Toledo for transshipment to lake vessel) will in the long run demand a higher price.

Thus, the competition for movements of Northern Appalachia high and mid sulfur coals to the lake coal market is between Conrail's Ashtabula Dock and B&LE's P&C Dock at Conneaut. By and large, P&C Dock and Ashtabula have not directly competed with Sandusky (NSR) and Toledo (CSXT) because of a different end user customer base and because the coal chemistry of its coal origins was different.

The B&LE has been a participant in the lake coal market since before the turn of the century. Our first coal dock began operation at Conneaut in 1897. Our coal terminal facilities have since been modernized, refined and expanded over the years. As a result, B&LE has a lake coal facility that is second to none on the lakes. Our capabilities at Conneaut include two separate coal unloading and storage facilities which can operate either independently on a stand-alone basis, or in a coordinated mode to provide unparalleled flexibility. Each unloading facility is capable of unloading an average of two hundred, 100-ton rail cars per eight hour shift. Each facility is equipped with inbound, automatic sampling. The lower coal facility can store up to 1.7 million tons of coal at any time and the upper coal facility can store up to 4.0 million additional tons of coal, depending upon the number and size of the stockpiles.

Both the lower and upper coal facilities access two, six thousand-ton storage silos. These silos serve two primary functions. First, the silos reduce vessel loading time when operated in concert with each coal facilities' direct rail car to vessel loading capability and each facilities' coal reclaiming capacity. Second, the silos provide the ability to blend coal as demanded by the market through seven adjustable, metered discharge gates which are located at the base of each silo. Both coal facilities also share access to two ship-loaders which can load coal into either lake vessels or barges. The rated capacity of the two ship-loaders is 11,000 tons per hour.

Northern Appalachia coal which has moved through Conneaut has traditionally come from either coal mines directly served by the B&LE or from sources with access to the river (which permits the coal to be barged to Duquesne Wharf and transferred to rail cars for movement to the Lake), or from off-line mines which reach the B&LE via rail connections. Conneaut and its coal sources directly compete with Conrail's Ashtabula Dock and Conrail's own portfolio of coal sources, including directly-served origins in Pennsylvania, West Virginia and Ohio and off-line sources interchanged to Conrail via its own connections, including the former Monongahela Railway ("MGA").

The issue presented by the proposed Conrail transaction is not about protecting B&LE, its port at Conneaut, or its long-term coal sources from changes in competition in the lake coal market. It is about assuring adequate transportation service to the shipping public and retaining essential port capacity to support the lake coal customers in their fuel procurement and transportation purchases. The service and capacity provided by B&LE and P&C Dock is vital to the transportation needs of the lake coal customers. Access to both ports (Ashtabula <u>and</u> Conneaut) provides access to three unloading systems instead of one, three ground storage areas instead of one, three ship-loaders instead of one, etc. to satisfy current and future customer coal transfer, storage and ship-loading needs. As discussed in the accompanying Verified Statements of Grant R. Seiveright, James H. Bonnie, Brad F. Huston and William G. Rieland, two carriers (NSR and CSXT) jointly serving an already congested port at Ashtabula on a shared basis (and acting to foreclose shipper access to Conneaut on a competitive basis) will not come close to being able to provide adequate transportation service, or the total port capability, total port capacity and competitive options responsive to the needs of lake coal customers.

For example, CSXT has historically routed B&O Origin Coal District coals to P&C Dock via a CSXT-New Castle, PA - BPR - Butler, PA - B&LE route. Much of this tonnage has been purchased by Ontario Hydro, a provincially owned and operated utility in the Province of Ontario. With CSXT gaining shared access to the port at Ashtabula, CSXT will likely divert most, if not all, of the B&O Origin Coal District shipments to Ashtabula. Given the current capacity constraints and traffic diversions already occurring at Ashtabula, service to Ontario Hydro can be expected to decline. Service will be slower, equipment utilization will suffer and the likely result to Ontario Hydro will be poorer service at a higher cost. The lake coal market should not be made to suffer the consequences of the transaction contemplated by the Applicants in this proceeding. Foreclosing the availability and use of P&C Dock for B&O Origin Coal District coal may unnecessarily reduce needed port capacity for lake coal customers and essentially eliminate competitive alternatives for transporting coal in the lake coal market. Therefore, to protect competition and assure that adequate transportation service will be provided to the lake coal market, the Board should condition any approval of the proposed Conrail transaction to ensure that adequate port capacity and competition will be available for the transportation of coal in the lake coal market. The Board must preserve access to P&C Dock for Ontario Hydro by assuring that long-term, market-based interline rates and routes on B&O Origin Coal District tonnage to P&C Dock will not be foreclosed.

Similarly, under the transaction contemplated by the Primary Applicants, competitive access to the still-growing coal production of a subset of mines in Northern Appalachia (the Pittsburgh Seam mines served by the former MGA) will also suffer. Access to the coal produced at these mines is critical to many of our lake coal customers. Given its high BTU content and low production costs, this coal can be competitive in a variety of markets on both a direct consumption basis as well as for blending purposes. In the event NSR provides haulage service for CSXT from the MGA mines, customers will have no alternative but to move that coal on either NSR or CSXT through the Ashtabula Dock. Lack of competitive access to P&C Dock will further constrain lake coal terminal services and terminal capacity. Rail customers in the lake coal market deserve and must be assured adequate capacity, transportation service and competitive transportation alternatives. To protect against the foreclosure of joint line routes via B&LE and P&C Dock on both B&O Origin coal and MGA origin coal, B&LE requests that the conditions attached to this statement be imposed on any STB approval of the proposed Conrail transaction.

To assure the availability of a true competitive alternative for customers moving MGA-origin coal to the lake coal market, in the event CSXT agrees to allow NSR to haul CSXT cars from mines on the former MGA in lieu of CSXT conducting its own operations over former MGA lines, B&LE has filed a Responsive Application seeking trackage rights over CSXT or NSR to access NSR's haulage services. B&LE seeks trackage rights over either CSXT track between Bessemer, PA (Pittsburgh, PA) and Brownsville, PA or over NSR track between Thomson (Duquesne), PA and Shire Oaks, PA. By obtaining either of the two trackage rights to be operated in concert with NSR's haulage services for the B&LE from either Brownsville, PA (CSXT) or Shire Oaks, PA to the former MGA mines and return, Pittsburgh Seam Northern Appalachian coal producers will have the option of choosing single line B&LE pricing from the MGA mines to P&C Dock as an alternative to routing to Ashtabula. As explained in the accompanying Verified Statements of Messrs. Seiveright, Bonnie, Huston and Rieland, to assure that adequate transportation services will be provided to customers in the lake coal market, these customers need access to the capabilities of the P&C Dock in order to limit vessel loading delays, provide market demanded coal blending and to provide an alternative coal transfer and storage facility when congestion occurs at the Applicants' port at Ashtabula.

Although Applicants may assert that B&LE's request for trackage rights is nothing but a market grab by the B&LE, this is not the case. B&LE decided to pursue such relief only after discussing the situation with the lake coal customers and attempting unsuccessfully to negotiate a long-term agreement with each of the Applicants that would allay those customers' concerns and provide a means to allow the services into the lake coal market demanded by those customers on a long-term basis. Unfortunately, those discussions were not successful and regulatory intervention in the transaction is necessary.

B&LE's trackage rights condition does not assure any business for the B&LE, only an equitable means for us to offer the competitive service demanded by the market. The requested trackage rights will assure adequate competition for both NSR and CSXT in providing service through their acquired port at Ashtabula. If NS and CSXT do not agree to implement a haulage arrangement or in the event the STB declines to impose the trackage rights condition sought by B&LE, B&LE must be afforded competitive long-term, market-based rates and routings with CSXT and NSR to meet the market demands of the lake coal market. Ashtabula cannot handle the entire lake coal market shipments from Northern Appalachia. Competitive routings via B&LE and P&C Dock must be preserved to ensure the adequacy of transportation service to that market.

A review of several coal and coal transportation market conditions strongly support why the conditions sought by the B&LE are needed by our lake coal customers. Historically, the traffic base for the Ports of both Conneaut and Ashtabula has consisted of high and mid sulfur steam coals from Northern Appalachia producers located in central and western Pennsylvania, northern West Virginia and eastern Ohio. Since the early 1970s, various economic and environmental factors have reduced the marketability of Northern Appalachian coal in its broad market segments, including the lake coal market. Although total production in Northern Appalachia has decreased by over 20% since 1980, one significant production area has expanded and prospered -- Pittsburgh Seam mines which utilize longwall mining technology.

With projected further increases in production from the Pittsburgh Seam longwall mines, some of which will be shipped to the lake coal market via Ashtabula or Conneaut, a practical question that needs to be asked is -- what is Ashtabula's capacity to handle further traffic increases? During 1997, Conrail did an outstanding job of selling Ashtabula's capacity. In fact, many participants in the lake coal market have argued that Conrail may have done its job too well, overselling the facility and forcing the diversion of some tonnage to the out-of-route ports of Toledo and Sandusky. If Conrail had not acted to foreclose competitive routings via B&LE and P&C Dock, P&C Dock at Conneaut would be the preferred port terminal for this coal.

The Applicants argue that they are providing previously unavailable competition in the lake coal market by providing for joint access to Ashtabula Dock to both NSR and CSXT. On its face, that might seem to be true. In practice, however, serious questions remain as to whether the so-called shared access at

Ashtabula will provide the capacity and level of service demanded by the customers. In their Application, Applicants have stated that the coal dock at Ashtabula will be shared on the basis of Applicants' ownership division of Conrail (58% NSR and 42% CSXT). NSR will have the right to operate and control Ashtabula Dock with CSXT receiving access to and use of a 42% proportion of the total ground storage throughput and tonnage capacity. What does this mean in practical terms? Does CSXT get 42% of the support track capacity at the dock on a daily, weekly, monthly or some other time frame basis? Does CSXT get 42% of the carloading dumping turns or do they get 42% of the unloading capacity on a daily, weekly, monthly or some other time frame basis? Does CSXT get 42% of the storage piles at any time at the dock? Does CSXT have veto power on how its 42% of the ground storage area is used? If one user does not need all its ground storage capacity (whenever and however this may be defined by the Applicants in the future) at any given time, does this mean it is obligated to pass that unused capacity to the other user? This is anything but an exhaustive list of the questions that must be answered to determine what the effective capacity of Ashtabula will be after NSR and CSXT get their "piece of the dock."

The next set of significant questions revolve around how the two companies (NSR and CSXT) can share a facility and still get the same throughput as one company (Conrail) does now. As stated above, Conrail as the sole carrier serving the port today cannot handle current volumes without diverting tonnage to out-of-route ports. NSR and CSXT will have to effectively manage and jointly use several shared components needed to deliver coal to the shared coal dock at Ashtabula. First, the rail line between Youngstown and Ashtabula will be owned and dispatched by NSR with CSXT retaining trackage rights over this line. It is questionable whether CSXT will get its needed line capacity to effectively utilize its shared use of Ashtabula Dock. Second, the Youngstown to Ashtabula line which both CSXT and NSR will use to access Ashtabula Dock crosses Conrail's Cleveland to Buffalo main line at Ashtabula. CSXT will be assigned ownership of Conrail's Cleveland to Buffalo main line and will be responsible for dispatching the line to allow both CSXT and NSR trains to cross it in order to get into the port of Ashtabula. Will crossing access be handled equitably? Third, with NSR owning and operating Ashtabula Dock and its support facilities, NSR will be providing all the local yard service. Will CSXT get its 42% of the yard crew time to support its business levels with its customers?

The Applicants also state that the former MGA will be a joint service area in order to provide competitive options for the coal producers on this line as well as single line service between the mines and the end users that both NSR and CSXT will serve after the transaction. As is the case with Ashtabula Dock, the Applicants have yet to communicate how they intend to implement joint service for both companies to the mines on the former MGA. Will each railroad operate from its respective serving yard to and from each of the former MGA mines on the former MGA trackage? How will the two railroads coordinate the joint service? Shippers have speculated that with NSR owning the trackage and being responsible for dispatching, NSR may well provide the local serving yard to and from the mine service for both its own business and CSXT's business. The cost of providing this service could be apportioned in a similar fashion as the maintenance of way costs will be allocated in the Applicants' filing. Again, the Applicants have been silent as to how joint service will be implemented.

How secure can a lake coal customer who purchases and consumes former MGA-origin coal feel about the Applicants' ability to service his terminaling needs through a capacity constrained Ashtabula Dock? Can the Applicants provide the needed service when the Applicants have yet to definitively enunciate how they will convert shared assets and service areas into working entities capable of originating, transporting, unloading, storing, reclaiming and loading vessels with millions of tons of coal each year into the future? Now is the time for the Board to assure that the capacity and service needed to support the lake coal market as demanded by the customers will be met. Conditioning the transaction as B&LE has requested will preserve and promote competition between Ashtabula and Conneaut and assure the lake coal market of the service and capacity it demands.

In addition to the significant questions about the Applicants' ability to actually deliver quality service to the lake coal market through a shared service operation at Ashtabula, I am compelled to comment on the Applicants' promise of creating competition, that currently does not exist for the lake coal market, through the shared dock at Ashtabula. My comments are driven by several inter-related factors. First, one of Conrail's primary sources of coal that moves through Ashtabula into this market is coal from the longwall Pittsburgh Seam mines located on the former MGA lines. As previously stated, the service to be provided to and from the former MGA mines (a shared service area) is nebulously defined by the Applicants. Second, the arguments and the promises of the Applicants that their plan will provide real competition for the movement of coal from these mines to and through Ashtabula are not fully defined and documented. Frankly, our customers and the B&LE have lived through previous filings, supported and justified with similar competitive theories when Conrail acquired CSXT's and Pittsburgh & Lake Erie Railroad's ownership interests in the MGA. As explained in Witness Bonnie's statement, competitive theories do not assure competitive reality in practice. Unless NSR and CSXT negotiate agreements that provide competitive options for the lake coal market <u>or</u> the Board imposes the conditions sought by B&LE, long-term, meaningful competition in this market will suffer. The Applicants' promises of competition will do little to satisfy the actual needs and demands of the lake coal market. Only by assuring that shippers have full and cost-effective access to P&C Dock will the transportation needs of those customers be met.

The capacity and service capabilities of P&C Dock are without equal on Lake Erie. Yet, that has not precluded Conrail from foreclosing competitive shipper access to P&C Dock even though its own Dock at Ashtabula is congested and less efficient. With the level of current coal shipments exceeding any practical estimate of Ashtabula's throughput capabilities, there is little support whatsoever for Applicants' claims that jointly they can handle current demand levels and future growth through Ashtabula alone. Conrail's current need to divert traffic to ports farther away plainly undercuts that assertion. Ashtabula cannot handle current traffic levels let alone probable further growth of coal moving into the lake coal market. P&C Dock has extensive unused capacity available to provide the additional capacity demanded by today's lake coal market. Access to it on competitive terms should not be foreclosed. Rather, the Board should ensure its availability to promote competition and meet the transportation needs of the lake coal market.

If NSR and CSXT are allowed to foreclose shipper access to P&C Dock on competitive terms, P&C Dock will likely experience further declines in the amount of lake coal traffic transloaded at the port. The likely diversion of the B&O Origin District Coal from P&C Dock to Ashtabula will continue the recent downward trend of lake coal business at the P&C Dock in Conneaut. This downward trend has not, however, been the result of inadequate service or facilities at the P&C Dock. Rather, it has resulted from Conrail's market power and revenue incentive to route nearly all Northern Appalachia coal to its Ashtabula Dock to the exclusion of P&C Dock. This has not been in the best interests of the participants in the lake coal market which have been forced to accept delay, disruptions and diversion of their traffic.

If this is allowed to continue and worsen, as it will under the transaction proposed in the Primary Application, continued maintenance of current operations at P&C Dock may not be possible. Ashtabula Dock simply cannot handle the level of coal currently moving through that market or projected to move through it in the future. This Board can ensure that the lake coal market will receive the port capacity and high quality of transportation service it requires by assuring those shippers access to P&C Dock on a competitive basis.

VERIFICATION

Commonwealth of Pennsylvania)
) SS:
County of Allegheny)

Timothy R. Howerter, being duly sworn, deposes and says that he is Director of Marketing - East for Transtar, Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

Timothy R. Howerter

Timothy R. Howerter

SUBSCRIBED AND SWORN to
before me this 16th day
of October, 1997.

Patricia L. Kirk

Notary Public

My Commission expires:

Notarial Seal
Patricia L. Kirk, Notary Public
Monroeville Boro, Allegheny County
My Commission Expires July 13, 2000

VERIFIED STATEMENT
OF
<u>JAMES E. STREETT</u>

My name is James E. Streett. I am Superintendent of Operations for the Bessemer and Lake Erie Railroad ("B&LE"), The Pittsburgh & Conneaut Dock Company ("P&C Dock"), Union Railroad Company ("URR") and the McKeesport Connecting Railroad Company. In this position, to which I was appointed on July 1, 1993, I have over-all management responsibility for transportation and dock operations for the above-stated companies.

Prior to assuming my current responsibilities, I served as Superintendent of Operations for The Lake Terminal Railroad in Lorain, Ohio; Director of Equipment Utilization for URR and B&LE in Monroeville, PA and Administrative Manager to the General Manager Eastern Properties in Monroeville. Prior to the above assignments, I served as an Assistant Trainmaster on the URR in various locations for six (6) years.

I began my railroad career with the Penn Central Railroad as a Diesel Shop laborer and was promoted to various management positions with Penn Central before moving on to the URR in 1978.

I hold a Bachelor of Science degree from Heidelberg College in Tiffin, Ohio. I have worked in the rail operations environment for a total of 23 years, with experience in all three Surface Transportation Board "(STB") classes of railroad operations.

As Superintendent of Operations, I directed and supervised the preparation of the Operating Plan, which is included as Exhibit 15 in the B&LE's Responsive Application. The trackage rights that the B&LE seeks as a condition to STB approval of the transaction contemplated by the Primary Applicants cover segments of two existing Class I carriers, Conrail and CSXT. B&LE seeks trackage rights over either CSXT track between Bessemer (Pittsburgh), PA and Brownsville, PA or over Conrail track between Pittsburgh (Duquesne), PA and Shire Oaks, PA. The B&LE connects with Conrail at Pittsburgh (Duquesne), and from there the line runs a distance of approximately 14 miles to Shire Oaks, PA. This Conrail line has been assigned to Norfolk Southern Railway Company in the proposed division of Conrail assets, and upon consummation of the transaction contemplated in the Primary Application, if approved, will be owned by Pennsylvania Lines LLP. The CSXT line over which B&LE seeks to operate is a line of railroad that runs between CSXT's connection with B&LE at Bessemer (Pittsburgh), PA and CSXT's Newell Yard near Brownsville, PA, a distance of approximately 40 miles.

Currently, B&LE operations south of its terminus at North Bessemer, PA are provided by the URR. URR is a terminal and switching carrier and does not participate in any interline routings with B&LE. It is anticipated that URR would perform services in the account of B&LE on the trackage rights proposed to be acquired in this proceeding. The URR performs daily interchange service for B&LE with CSXT at CSXT-owned, URR dispatcher-controlled Dexter Yard. URR also interchanges daily with Conrail on behalf of B&LE at Conrail's Munhall and Kenny

Yard facilities. These two interchange locations provide the URR access to the trackage rights being sought by B&LE.

The CSXT line accessed by URR was formerly owned and operated by the Pittsburgh & Lake Erie Railroad prior to its acquisition by CSXT. The line is direct traffic control, non-signaled and controlled by CSXT dispatchers in Jacksonville, FL. The line can be accessed by URR through the CSXT's Demler Yard near McKeesport, PA. The approximately 40 miles of single track is a river route along the north side of the Monongahela River to Newell, PA.

The existing Conrail route runs on the south side of the Monongahela River from Pittsburgh (Duquesne), PA to Shire Oaks, PA, a distance of approximately 14 miles. This line is CTC-controlled by dispatcher in Greentree, PA.

In my examination of the above rail line segments, I have found them to be in very good condition. Each line has adequate capacity to accommodate the trackage right operation proposed by B&LE. Our marketing forecasts indicate the availability of one to three million tons of MGA-origin coal that could move on B&LE via the trackage rights proposed in this proceeding. Assuming B&LE were to handle two million tons of such coal, it would require operation of approximately four trains per week over the trackage right lines with each train handling about 10,000 in coal tonnage. This service would require the addition of eight engine and train crews per week on each of the URR and B&LE.

VERIFIED STATEMENT
OF
GRANT R. SEIVERIGHT

My name is Grant R. Seiveright. I am Manager - Fuels Division, Fossil Business for Ontario Hydro, a position I have held on an acting basis since September, 1996, and on a confirmed basis since July, 1997. I am responsible for the planning, procurement and transportation of all fossil fuels, including coal, used by Ontario Hydro at its fossil-fueled electric generating stations. I am also responsible for the disposal of the combustion process byproducts from each of our stations, including fly ash from the boilers and gypsum from the scrubbed units.

I have served in the Fuels Division for 16 of my 21 years with Ontario Hydro, the last seven being in the fossil fuel procurement function. Prior to joining Ontario Hydro in 1976, I was an engineer in the Atomic Power Division of Westinghouse Canada Ltd.

I hold a Bachelor of Engineering degree from McMaster University, a Master of Science in Engineering degree from the University of London, England, and a Master of Business Administration degree from the University of Toronto. I am a member of the Professional Engineers of Ontario, the provincial licensing body for professional engineers.

Measured by installed generating capacity, Ontario Hydro is one of the largest utilities in North America. In 1996, Ontario Hydro's customers included 306 municipal electric utilities, which in turn served more than 2,946,000 customers. Ontario Hydro also directly served almost one million retail customers, including 103 large direct industrial customers. The Ontario Hydro system includes 69 hydroelectric stations, five nuclear stations and six fossil-fueled stations (five of which burn coal). Total electrical production in 1996 was approximately 144 terawatt-hours. Although most of Ontario Hydro's annual electrical production is sold to customers in Ontario, in 1996 approximately six terawatt-hours of production was sold to neighbouring utilities, much of it fossil-fueled and most of it sold at the U.S. border to utilities in New York and Michigan

Ontario Hydro is one of the largest single receivers of coal in the "lake coal market" described in the accompanying Verified Statement of Timothy Howerter. Three of our five coal-fired power plants depend heavily on substantial volumes of eastern U.S. high BTU coal from mines located in Pennsylvania, West Virginia and Kentucky. This coal is moved to the plants via lake terminals or docks on Lake Erie in Ohio. In 1996, approximately 75% of the eastern U.S. coal we purchased came from mines served solely by Consolidated Rail Corporation ("Conrail") or CSX Transportation, Inc. ("CSXT"). As such, these three plants, representing about 75% of the generating capacity of our fossil-fueled plants, are directly affected by the proposed breakup of Conrail.

Our Nanticoke Generating Station situated on Lake Erie near Port Dover, Ontario, is the largest coal-fired power plant in Ontario and one of the largest in the world. The plant is capable of generating about 4,000 megawatts of power from eight units. At full power, the plant consumes about 1,500 tons of coal per hour. Thus, at full power, the Nanticoke plant will consume about 15 railroad cars of coal per hour. The Nanticoke plant is designed to facilitate the burning of coal of several different specifications, including a blend of low sulphur, western Canadian or western U.S. coal with medium sulphur Pittsburgh seam coal from mines in Pennsylvania and West Virginia, and also unblended high BTU, low sulphur coal from mines in West Virginia.

Ontario Hydro's Lakeview Generating Station is situated on Lake Ontario in the City of Mississauga, Ontario, approximately 10 miles southwest of downtown Toronto. The plant can generate about 1,200 megawatts of power from four units; four other units at the plant are currently mothballed. At full power, the plant burns about 400 tons (about 4 railroad cars) of coal per hour. Due to its close proximity to Toronto, this plant is subject to environmental constraints that require the burning of high BTU, low sulphur coal, such as that obtained from mines on CSXT or Conrail in West Virginia.

Our Lambton Generating Station is located approximately 15 miles south of Sarnia, Ontario, on the St. Clair River between Lake Erie and Lake Huron. The plant has a capacity of about 2,000 megawatts of power from four units. At full power, the plant consumes about 700 tons (about 7 railroad cars) of coal per hour. Two units at this plant are equipped with "wet limestone slurry" scrubbers, a process which removes sulphur dioxide from the plant's flue gas, thus reducing air emissions; these two units burn high BTU, high sulphur coal from West Virginia. The other two units burn high BTU, low sulphur coal.

Each of these three plants is set up to receive coal exclusively by lake vessel, the ships are designed for operation in the Great Lakes and carry on average about 30,000 tons (approximately three units trains) of coal. There are no economically practicable delivery alternatives; more specifically, none of these plants can receive coal by train. At full power these plants together could consume the equivalent of 26 rail cars of coal per hour or 624 rail cars of coal per day. Anything that would disrupt or constrain the flow of eastern U.S. coal to these plants threatens their operation.

In 1996, Ontario Hydro purchased 5.2 million tons of eastern U.S. coal for these plants, an increase of 2.6 million tons over the previous year. The coal was purchased from several major U.S. coal suppliers including Amvest Coal Sales, Coastal Coal Sales, Consolidation Coal Company, Cyprus Amax Coal Sales, Massey Coal Sales and Peabody COALSALES Company. All of this coal moved through Ohio lake terminals or docks on Lake Erie for movement by lake vessel to the three plants described above. Approximately 75% of the volume was moved from the mines by rail directly to the lake terminal. The remaining 25% was moved from the mines to barges, then to a river port where the coal was transloaded into rail cars for movement to the lake terminals. A map depicting the flow of this eastern U.S. coal to these plants in 1996 is attached to this statement as Appendix A.

As part of their plan to acquire Conrail's rail assets, Norfolk Southern Corporation (NS) and CSXT have announced a plan that would permit both railroads to offer single line service from mines located on lines of the former Monongahela Railway ("MGA") to Ashtabula Dock, which would be owned by NS, but shared with CSXT. We would applaud that plan if the result would be meaningful competition between NS and CSXT, improved service and adequate capacity at Ashtabula Dock for the future. However, in the absence of greatly expanded capacity at Ashtabula Dock, we are very concerned that the proposed Conrail transaction will in fact have a substantial adverse effect on Ontario Hydro's long-term access to Pennsylvania and West Virginia coal through the lake terminals in at least two respects: (1) the potential for NS and CSXT to attempt to route all current and future volumes of MGA-origin coal through the already congested Ashtabula Dock; and (2) the potential for CSXT to attempt to route volumes of low sulphur coal, which originate on CSXT in West Virginia and which currently move via B&LE to their dock at Conneaut, to the Ashtabula dock.

There are four ports on Lake Erie, all in Ohio, that Ontario Hydro uses to tranship its Eastern US coal. They are the Pittsburgh & Conneaut Dock (P&C Dock), owned by the B&LE at Conneaut, OH; the Ashtabula Coal Dock, owned by Conrail at Ashtabula, OH; the Sandusky Coal Pier, owned by NS at Sandusky, OH; and Toledo Docks, operated by CSXT (under lease) at Toledo, OH.

Of the four, the two key ports for Ontario Hydro are the P&C Dock and the Ashtabula Dock. First, these two ports currently have adequate ground storage available to us; in contrast, Sandusky presently has only limited ground storage available to Ontario Hydro (60,000 to 100,000 tons), while Toledo has no ground storage, and requires direct rail to vessel scheduling. Adequate ground storage is vital to our operation for two reasons: it permits year-round shipment of coal from the mines, which gives the mines a more efficient operation and relieves some strain on the railroad infrastructure; and, during the lake shipping season, it allows flexibility for a vessel to be redirected from one dock to a second if the first is congested, or to pick up a different quality of coal than planned if fossil station requirements change.

Second, the two ports at Conneaut and Ashtabula are located closest to Nanticoke, our largest single receiver of coal, and are also close to each other. This not only makes for shorter, more efficient, less costly shipping of coal, but is also very important for the logistics of vessel usage. It allows us to quickly redirect a vessel from one port to the other at little loss of vessel time; and it allows us to do partial vessel fills at one port and top off at the other, again with minimal lost vessel time. With only one of the ports available, or even with one port very dominant, the resulting congestion and lack of flexibility causes vessel delays (hence demurrage charges) or vessels refusing to take our load because the delays would make them late for other loads. The result is added expense and/or lost vessel days.

These two ports are important enough to Ontario Hydro's business that we have long maintained a strategy of balancing (but not necessarily equalizing) our volumes through the ports, to attempt to support both ports and to keep them both viable and competitive. The need for two viable ports will become even more critical in the near future. Ontario Hydro recently announced that it will begin an extensive overhaul of its nuclear power plants that will result in a lay-up of about one-third of our nuclear generating capacity over the next several years. A significant portion of the replacement generation will come from Ontario Hydro's fossil-fueled plants, which will be operated at higher capacities. This will result in a sharp increase in Ontario Hydro's need for coal through the lake terminals for the next three years and possibly longer. For example, we project that in 1998 Ontario Hydro will purchase an additional 3-4 million ton of coal in the lake coal market, an increase of about 40% over 1997. Congestion at any one port, or a loss of our ability to use the extensive ground storage and loading capacity at P&C Dock would be harmful for the company, our customers (some of whom are, through our sales program, in the U.S.) and our coal suppliers (in large measure U.S. coal suppliers).

With our reliance on the continued viability of both P&C Dock and Ashtabula, Ontario Hydro is very concerned that a continued effective prevention of the B&LE from economically accessing the coal mines in the former MGA region, will result in a severe and immediate threat to the ongoing operation of the B&LE and of the P&C Dock. Without access to the facilities and storage areas of the P&C Dock, Ontario Hydro will not be able to move the volumes of coal that we must move over the next three years; and unless significant expansion occurs at Ashtabula or another dock facility in the area, our ability to move coal will be jeopardized in the longer term as well.

Ontario Hydro strongly supports those conditions sought by B&LE which would assure them a fair opportunity to compete for the business of moving coal from the mines in the former MGA District, and from the mines in the former "B&O" Origin Coal District, to the P&C Dock at Conneaut.

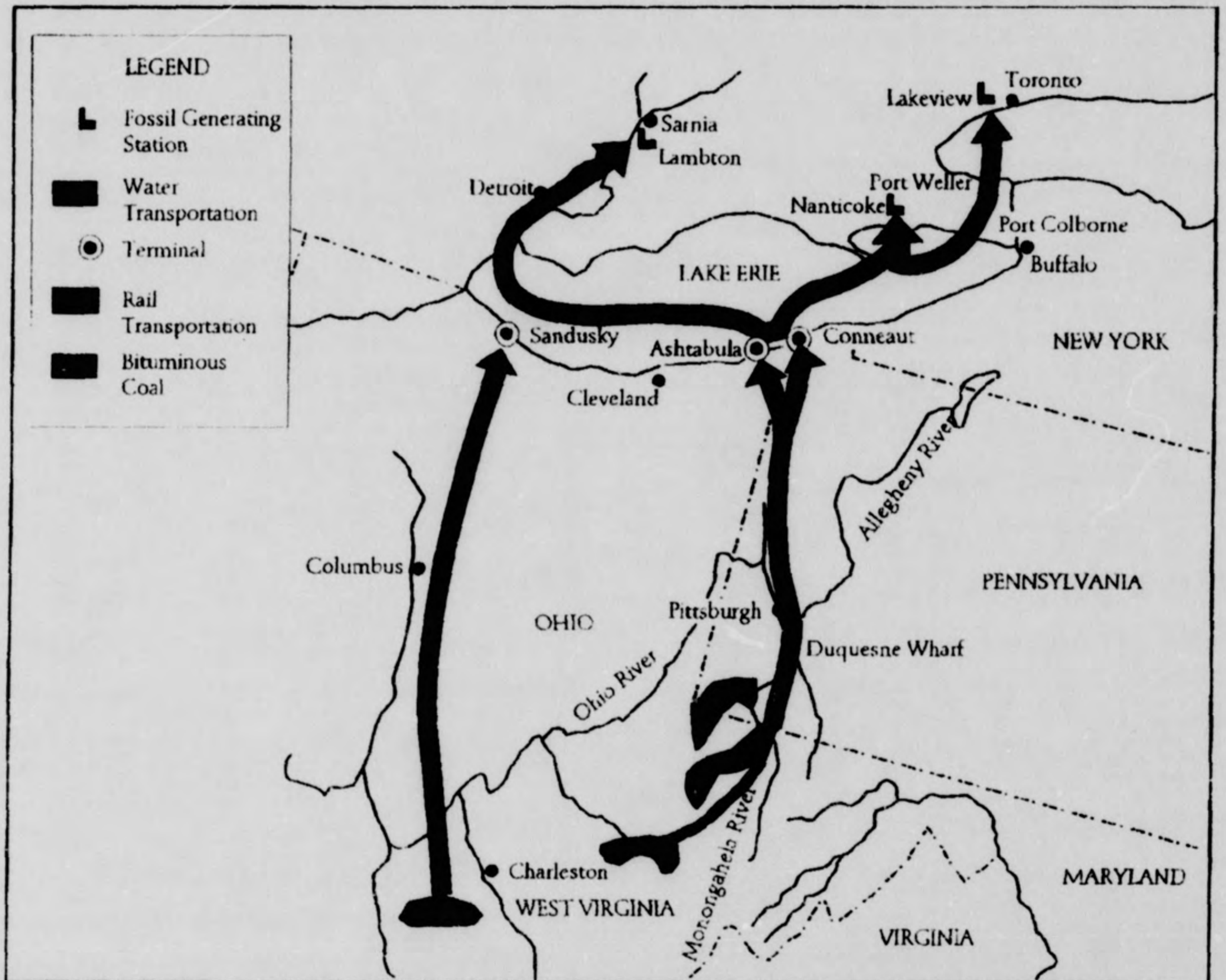
APPENDIX A

TO THE

VERIFIED STATEMENT

OF

GRANT R. SEIVERIGHT


LEGEND
Fossil Generating Station
Water Transportation
Terminal
Rail Transportation
Bituminous Coal
Toronto
Lakeview
Sarnia
Lambton
Detroit
Port Weller
Nanticoke
Port Colborne
Buffalo
LAKE ERIE
Sandusky
Ashtabula
Conneaut
NEW YORK
Cleveland
Allegheny River
Columbus
PENNSYLVANIA
OHIO
Pittsburgh
Duquesne Wharf
Ohio River
Charleston
WEST VIRGINIA
Monongahela River
MARYLAND
VIRGINIA

VERIFICATION

SS: City of Toronto
Province of Ontario

G.R. SEIVERIGHT, being duly sworn, depose and says that he is Manager-Fuels Division for Ontario Hydro, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

G.R. SEIVERIGHT
Manager-Fuels Division
Ontario Hydro

SUBSCRIBED AND SWORN before me
this 20th day of October, 1997.

ROBERT DICKSON STEPHEN HARKNESS
A Notary Public in and for the
Province of Ontario.
My commission never expires.

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VERIFIED STATEMENT
OF
JAMES H. BONNIE

My name is James H. Bonnie. I am Manager-Fuel Procurement, Transportation & Contract Administration of Niagara Mohawk Power Corporation ("Niagara Mohawk"). I have served in my present position since January, 1985. I am responsible for the planning and procurement of all fossil fuels (coal, oil and natural gas) and related transportation services used by the Company's electric generating facilities, as well as all other fuels used throughout Niagara Mohawk's system. I have been directly involved in the procurement and transportation of coal for Niagara Mohawk's power plants for the past 17 years. I hold a Bachelors degree in Engineering from the State University of New York at Buffalo and a Master's degree in Business Administration from Corpus Christi State University.

Niagara Mohawk is a major utility company based in Syracuse providing electric service to over 1.5 million customers in eastern and upstate New York. The Company's total electric generating capacity is 8,194,000 kilowatts, of which approximately 1.3 million kilowatts is generated by the Company's two coal-fired power plants. To fuel these plants, Niagara Mohawk purchases approximately 3 million tons of coal per year.

Niagara Mohawk's C.R. Huntley Station is located on the Niagara River at Tonawanda, New York, approximately three miles north of Buffalo. It is the larger of Niagara Mohawk's two coal-fired plants and at one time was the largest coal-fired power plant in the world. The plant today consists of four 100,000 kilowatt units and two 200,000 kilowatt units which together produce 715,000 kilowatts of electricity annually for over 1 million households in our service territory. Rail service to the plant is provided exclusively by Consolidated Rail Corporation ("Conrail") via a line to be conveyed to CSX Transportation, Inc. ("CSXT") as part of the proposed breakup of Conrail. The plant is equipped to receive coal primarily by rail but also to a limited extent by lake vessel. The plant consumes approximately 5,000 tons (about 50 rail cars) of coal per day on an annual basis (and slightly higher volumes of coal per day during the winter months December-March).

Niagara Mohawk's other coal-fired power plant is its Dunkirk Steam Station located on the shore of Lake Erie at Dunkirk, New York. This plant consists of two 100,000 kilowatt units and two 200,000 kilowatt units, which together produce approximately 600,000 kilowatts of electricity annually. Like the Huntley plant, rail service to the Dunkirk plant is provided exclusively by Conrail via a line that will be conveyed to CSXT. The plant is also equipped to receive coal by lake vessel. The plant consumes approximately 4200 tons (about 42 rail cars) of coal per day.

With the imminent deregulation of the electric power industry, the success --indeed the survival -- of the industry will depend heavily on our ability to generate electricity at low cost. As a result, we are constantly looking for ways to reduce our costs. With the cost of transportation representing approximately 35% of the total delivered cost of the coal we consume at our coal-fired plants, an objective for us for some time has been to find ways to reduce the cost of transporting the coal to our plants. And the need to do so comes at the very time that we must comply with more stringent air emission standards at our coal-fired plants.

As discussed below, the Bessemer and Lake Erie Railroad Company ("B&LE") is a key component to our accomplishing both of these objectives . first, B&LE has provided and continues to provide a transportation option for us. Second, changing air emission standards may force us to blend coals, among other options, in order to comply with the new restrictions. B&LE has the proven capability and experience to support a blended coal alternative for us.

Because Conrail is our sole serving rail carrier at both our Huntley and Dunkirk plants, we have worked very hard over the years to create as much competition as possible in the coal transportation market to both plants. In the late 1980's, we began to test the feasibility of delivering coal to Huntley by lake vessel. The coal for these test shipments came from mines on the B&LE. The B&LE transported the coal from the mines to Pittsburgh and Conneaut Dock ("P&C Dock") on Lake Erie at Conneaut, Ohio, where the coal was unloaded from the rail cars, placed into storage and subsequently reclaimed and transferred to lake vessel for delivery to our Huntley plant. This means of delivery of modest volumes provided a limited competitive option to Conrail's single line service through about 1990.

Unfortunately, B&LE coal mine sources are relatively small and produce coal using the less-efficient continuous mining techniques. From a cost standpoint, the B&LE mines have been unable to compete with the large Pittsburgh Seam producers located on Conrail in southwestern Pennsylvania and northern West Virginia which utilize efficient, high-production longwall mining techniques. The majority of these longwall mines are located on lines of the former Monongahela Railway, which is now part of Conrail. With these mines also located on Conrail, the opportunity for competitive transportation routings does not exist.

To maintain some level of competition for the transportation of coal to our two plants, we have purchased coal from the Cumberland Mine of Cyprus Amax Coal Company, a Pittsburgh Seam mine with access to barge service on the Monongahela River. Cumberland Mine is one of the few longwall producers that is not captive to Conrail. Coal from Cumberland is routed via barge to B&LE's Duquesne Wharf for movement to P&C Dock for transfer to lake vessel for delivery to our plants. We began this movement in 1993 and currently have contracts in place which support up to 500,000 tons of Cumberland Mine coal via B&LE through P&C Dock annually.

Although we applaud the Applicants' plan for creating joint access to both the mines of the former Monongahela Railway and the port of Ashtabula, this initiative by itself does not assure, nor would it replace, the level of service and commitment to competition we currently enjoy through the B&LE's P&C Dock.

As described below, Niagara Mohawk has direct, first hand experience with an unconditioned rail merger that resulted in a loss of competitive options. Although we would like to believe otherwise, the Applicants' proposal here for creating competition via joint access to the former Monongahela Railway mines sounds very similar to the assurances of non-discriminatory pricing given by Conrail to the shipping community and sanctioned by the Interstate Commerce Commission when Conrail purchased the former Monongahela Railway in 1991.

It is my understanding that at the time Conrail purchased the Pittsburgh & Lake Erie Railway ("P&LE") and CSXT ownership interests in the Monongahela Railway, Conrail assured the shipping community (and the ICC) that it would extend to both the P&LE and CSXT the same division of revenue (as adjusted for inflation) on coal originating on the former Monongahela Railway as the latter had extended to Conrail. Based upon information and belief, on the basis that a "neutrality agreement" among Conrail, P&LE and CSXT would protect such joint line routings, the ICC declined to condition the transaction to protect such routings.

In 1994, in an effort to stimulate competition for the transportation of coal to our two plants, Niagara Mohawk agreed to a three-year coal transportation contract with CSXT and the B&LE that would apply on Monongahela Railway origin coal routed via CSXT-Pittsburgh, PA-B&LE Conneaut, Ohio for transfer to vessel for delivery to our plants. The foundation for this agreement was Conrail's assurance of non-discriminatory rates contained in the so-called "neutrality agreement" CSXT obtained when it sold its ownership interest to Conrail in 1991.

However, only three years after Conrail consummated its purchase of the Monongahela Railway, Conrail advised CSXT that its non-discriminatory pricing agreement with CSXT did not cover routings via Pittsburgh to the B&LE. After many fruitless discussions with Conrail and CSXT, Niagara Mohawk was forced to withdraw its three-year contract award to CSXT/B&LE and accept single line Conrail routing on the coal.

What can we expect from the current merger proposal? I have reviewed the Applicants' filings and do not find <u>any</u> specific commitments for rail-vessel or joint line routing competition from the former Monongahela Railway mines to our two plants. Why shouldn't we expect that CSXT will adopt the same pricing as Conrail, demanding only single line rail routing from the former Monongahela Railway mines to Huntley and Dunkirk and refusing competitive joint line routings with B&LE through P&C Dock? What assurance does Niagara Mohawk have that NS will have the incentive or the ability (given the limited storage and throughput capacity of the Ashtabula facility) to compete using its rail routing to the shared port at Ashtabula for transshipment via lake vessel to our two plants? We have no reason to believe that the result will be any different than what occurred after Conrail purchased the Monongahela Railway.

Such foreclosure of the joint line routings with B&LE via P&C Dock would also constrain, if not eliminate, the cost-saving option of using blended coal to meet the new air emission standards. Currently, our Huntley and Dunkirk plants burn approximately 3 million net tons of bituminous coal obtained from mines located in Pennsylvania, West Virginia and Ohio and delivered primarily to the plants by Conrail. The burning of this coal allows us to meet current air emission standards without the installation of scrubbers. However, beginning in the year 2000, sulfur dioxide emission standards will become even more restrictive. These changes present Niagara Mohawk with essentially five options for these plants: (1) install scrubbers at the plants at considerable cost; (2) switch to low sulfur coal, which is more expensive on a delivered basis; (3) blend coals that would permit us to meet the new standards without incurring the cost of installing scrubbers; (4) utilize emission credits in combination with existing lower sulfur coal, new low sulfur coal or various coal blends; or (5) close the plants. Given our unrelenting drive to lower our costs, our present planning efforts are focusing on the second, third and fourth options. Over the past several years, our goal has been to obtain long-term access to reliable sources for the coal we need to meet the new standards and where possible to lower our transportation costs.

To comply with the upcoming changes in emission standards, our chemical engineers have determined that a blend of mid-to-high sulfur Appalachian coal with low sulfur western coal would meet our specifications. We have also determined that a blend of Pittsburgh Seam coal and Central Appalachian low sulfur coal (with emission credit allowances) would meet our specifications. Our task then became to find the means to ship the blended coal by lake vessel to our plants as a competitive alternative to Conrail's all rail routes for low sulfur coal thereby stimulating competition and hopefully lowering our transportation costs. Since our two plants lack sufficient ground space to support blending and the equipment to blend coal at the plants, we are looking for a suitable, economical site within close proximity of eastern mines and our plants that has the capability to receive both high and low sulfur coal, store it, blend it and reship it to the plant by lake vessel.

P&C Dock located on the B&LE meets all of our blending needs. P&C Dock has available capacity, ample ground storage space, the facilities and experience to blend coal to our specifications and the ability to receive and ship coal by lake vessel as well as rail. As I discussed above, currently we can purchase coal from Cyprus Amax's Cumberland Mine and move it to P&C Dock without Conrail. However, Cumberland Mine cannot meet all of the coal quality requirements of our stations. Nor can we safely assume that Cumberland Mine alone will be able to economically supply all of our quantity requirements even if we do blend coal. In short, Niagara Mohawk cannot safely assume that this unique arrangement--with all its various elements--will last forever. To meet our needs, we must be able to tap alternative sources of Pittsburgh Seam coal available from the high production longwall mines on the former Monongahela Railway. Without access at competitive rates to additional sources of Pittsburgh Seam or other Appalachian coal, our ability to expand the volume of blended coal moving to our two plants is greatly impeded.

We are very concerned that as a result of the proposed Conrail transaction, the existing limited competitive alternative we have developed via B&LE and P&C Dock, even with Cumberland Mine coal, could be in jeopardy. Specifically, we are very concerned that unless B&LE is assured a fair opportunity to compete for coal moving from mines on the former Monongahela Railway to the lake, B&LE management may elect to downgrade or even abandon the B&LE and downsize P&C Dock to meet current levels of usage. Thus, not only do we face a competitive block on our ability to expand our use of blended coal through P&C Dock, we face the possibility that our existing limited competitive alternative may be lost.

There is no other proven competitive alternative. Although theoretically a rail/vessel route via Norfolk Southern through Ashtabula Dock to our plants could be established, it is only a theoretical option. Ashtabula Dock lacks adequate ground storage space and the capabilities to blend coal to our specifications. Ashtabula's limited capacity existed long before the Applicants proposed to divide that facilities throughput and capacity 42% CSX and 58% NS. Ashtabula's limited capacity will be further constrained by Ontario Hydro's need for additional coal during its current nuclear problems. Ashtabula Dock is not a substitute for P&C Dock.

Accordingly, Niagara Mohawk strongly supports the conditions sought by B&LE in this proceeding. B&LE is a known transportation supplier to Niagara Mohawk and has a proven track record when given the chance to compete. Unless the proposed Conrail transaction is conditioned so as to assure competitive joint line rates with B&LE to P&C Dock, our ability to continue to develop this competitive alternative will be frustrated and even worse, may be lost. I urge the Board to impose the conditions sought by B&LE.

I, James H. Bonnie, declare under penalty of perjury that the foregoing is true and correct and that I am qualified and authorized to file this Verified Statement on behalf of Niagara Mohawk Power Corporation. Executed on this 17 day of October, 1997.

James H Bonnie

James H. Bonnie

VERIFIED STATEMENT
OF
BRAD F. HUSTON

My name is Brad F. Huston. I am Manager-Logistics for Cyprus Amax Coal Sales Corporation, the marketing and sales arm of Cyprus Amax Coal Company ("Cyprus Amax" or "the Company"). I have served in my present position since I joined the Company in January 1995. I have over a dozen years of experience in the sale, marketing and transportation of coal in the United States, including four years in the Sales and Marketing Department of Consolidated Rail Corporation ("Conrail"). As Manager-Logistics, I am responsible for negotiating and managing Cyprus Amax's rail, barge and truck contracts with each of the company's mining operations throughout the eastern United States. I also work closely with our operations people to identify ways to improve the efficiency of our mining operations from a logistics standpoint. I hold a Bachelor of Science degree in Accounting and Business Administration from Washington and Lee University. Earlier this year, I was elected a Trustee of the Southern Coal Conference, an organization of nearly 100 companies including coal producers, shippers and rail and barge carriers, involved in the production or transportation of coal in the Midwest, South and East.

Cyprus Amax Coal Company, formed by the 1993 merger of Cyprus Coal Company and Amax Coal Industries, Inc., is the second largest coal mining company in the United States. We currently operate 21 coal mines in 9 states, including mines located in the Powder River Basin, Colorado, Utah, the Illinois Basin, Kentucky, Pennsylvania, West Virginia and Tennessee. In 1996, the Company mined 82 million tons of coal from our total company reserves of 2.5 billion tons. Although the Company participates in the metallurgical and industrial coal market, the vast majority of the Company's coal is sold to domestic electric utilities. In 1996, the Company provided coal to 124 power plants owned by 62 different U.S. utilities. The adequacy of the rail transportation facilities and service available to our Company is a critical factor in our ability to successfully market our coal to these customers.

Cyprus Amax operates the Emerald Mine located near Waynesburg, in southwestern Pennsylvania served by the former Monongahela Railway ("MGA"), purchased by Conrail in 1991. All of the coal from our Emerald Mine -- currently 4.7 million tons per year -- moves by Conrail. As a mine captive to Conrail, the Emerald Mine is directly affected by the proposed breakup of the Conrail system. Although we operate another mine in the area, the Cumberland Mine, that mine, near Kirby, Pennsylvania is served by a 17-mile private railroad owned by the Company, which transports the coal from the mine to a barge loadout facility on the Monongahela River at Alicia Harbor, Pennsylvania. The private railroad does not connect with any other railroad. Both of these mines tap an area of high-quality bituminous coal deposits in southwestern Pennsylvania known as the Pittsburgh No. 8 Seam.

The market for coal from our Pennsylvania mines has expanded steadily in recent years and we expect that it will continue to expand. The mid-level sulfur content (less than 2.5%) and high BTU (13,000 BTU + per lb.) characteristic of the coal, make it highly suitable for blending with other coals to meet clean air standards for utilities in the eastern United States and Canada. Moreover, the use of efficient longwall mining technology at our Pennsylvania mines allows us to produce the coal competitively. These factors, plus the relative close proximity of the mines to our eastern customers are expected to fuel an expanding market for this coal well into the 21st century. To meet the demands of the market for our coal, Cyprus Amax is investing millions of dollars in new equipment to expand production and further reduce operating costs at these mines. We are even currently investigating the feasibility of opening an entirely new state-of-the-art mine not far from our Cumberland Mine, to tap the Company's Freeport low sulfur coal reserves in this area. It is absolutely critical to Cyprus Amax's long-term competitive position that the rail transportation infrastructure available to us, have sufficient capacity, be efficient, flexible and provide adequate levels of service to handle not only current volumes but increased volumes of traffic in the near future as well. Without appropriate transportation support, we cannot achieve the market growth and business expansion for which we have planned. Undoubtedly there are markets where the post-Conrail rail systems will be able to meet these standards as a result of the proposed transaction. However, there is at least one important market for Cyprus Amax, where that will not be the case.

That market is the "lake coal market" described in the accompanying Verified Statement of Timothy R. Howerter. This market represents a very important market for the coal from our Pennsylvania mines, particularly Cumberland. To meet the demands of this market, we need the ability to efficiently move the coal north to dock facilities on Lake Erie, where it can be transferred, stored and blended with other coals received at the dock by rail and/or water, and then reshipped by rail or water to the ultimate receiver. It is absolutely essential to our ability to competitively market coal from our Pennsylvania mines to the lake coal market that we have access to adequate facilities for the shipment, storage, blending and reshipment of this coal to its ultimate destination.

For coal from our Cumberland Mine, this is not a problem. Due to the Mine's access to the River and the availability of barge-rail transfer points, such as the Duquesne Wharf on the Union Railroad/Bessemer and Lake Erie Railroad ("B&LE"), we have the flexibility to route coal via a number of competitive barge-rail routes to the Lake. This allows us to select the carriers that provide the best facilities, rates and service. This in turn makes our coal more competitive in the marketplace.

On its face, it might seem to some that the proposed Conrail transaction, which provides for both Norfolk Southern Railway ("NS") and CSX Transportation ("CSXT") to jointly serve mines on the former Monongahela Railway ("MGA"), including our Emerald Mine, will provide us with more capacity and more options, not less. However, with respect to our ability to be competitive and participate in the lake coal market, we believe that without regulatory intervention now, the transaction as presently structured, will actually result in inadequate service and less capacity being available to us than we have now, and entirely insufficient capacity to meet the growing demand for our coal over the next decade. Moreover, even assuming true direct service from both CSXT and NS from our Emerald Mine, our routing options on coal to the Lake will actually be fewer than what we had only a few years ago.

Although the transaction as presently structured will make available to us single-line routes from both NS and CSXT between our Emerald Mine and what is now Conrail's dock on Lake Erie at Ashtabula, Ohio, we understand that NS and CSXT plan to move the entire combined volume of both railroads of MGA-originated coal moving to the Lake over the exact same line (between Youngstown and Ashtabula) and through the same dock at Ashtabula. What they propose has failed in the past at existing tonnage levels and will not work in the future at increased tonnage levels. The Ashtabula Dock simply does not have the facilities or the capacity to handle the volume of coal that is expected to move to the Lake in the near future, let alone over the long term. A significant percentage of the coal from our Emerald Mine today moves via Conrail over the Youngstown-Ashtabula line and through the Ashtabula Dock. The Ashtabula Dock is already inadequate for our needs. For example, the Ashtabula Dock today does not have adequate ground-storage capacity to meet our need to store coal for later reshipment to destination, and there is no room for expansion under the present conditions. The Ashtabula Dock also lacks the efficient facilities to blend coals. It is critical when blending coals that the resulting mixture meet the precise BTU/sulfur content specifications established by the purchaser. Furthermore, delays in ship loading at Ashtabula are also not uncommon and sometimes result in a queue of ships waiting to load. This already intolerable situation will be made even worse once CSXT begins to market its single line routes from coal mines on its West Virginia lines through Ashtabula Dock, which the proposed Conrail transaction gives CSXT a strong incentive to pursue. At that point, we would have even less capacity available to us than we do now. There is no doubt that the Ashtabula Dock cannot handle the volume. We understand that Ashtabula Dock was at capacity this past summer and Conrail had to divert some spot tonnage through NS' Sandusky Dock to meet customer demands.

Moreover, we are concerned that the former Conrail line to the Ashtabula Dock between Youngstown and Ashtabula to be owned and operated by NS and over which CSXT will operate via trackage rights, will be unable to efficiently handle the combined volumes of the two railroads and will become a serious operating bottleneck. Indeed, at times, it is already a bottleneck. If a single railroad cannot operate the line without congestion problems today, how can anyone expect that two railroads operating over the same line trying to stay out of each other's way, handling greater volumes than Conrail handles today, will be able to avoid even worse congestion? The effect on our ability to market our Emerald Mine coal in the lake coal market would be greatly hampered.

The solution to this problem does not require that Applicants invest hundreds of millions of dollars in a new dock or additional line capacity if that were even possible. Additional independent line and dock capacity already exists, capable of improving the efficiency for the foreseeable future if the Applicants would remove the economic penalty assessed by Conrail since 1990 that renders our access to it for Emerald Mine coal uneconomical. Approximately 13 miles east of Ashtabula Dock at Conneaut, Ohio, is the Pittsburgh & Conneaut Dock ("P&C Dock"), a port facility on Lake Erie owned by the B&LE, a carrier unaffiliated with Conrail, NS or CSXT. As described in Mr. Howerter's Verified Statement, P&C Dock is a large, modern port facility whose capabilities and capacity meet all of our needs for storage, blending and transportation. The B&LE's line between Pittsburgh and Conneaut Dock is an efficient high-capacity route which until Conrail's acquisition of the MGA seven years ago handled substantial volumes of MGA-originated coal to P&C Dock. Yet, today we are economically foreclosed from using the B&LE's route and P&C Dock for coal from our Emerald Mine because Conrail, which because it favors its own long-haul routes through Ashtabula Dock, has been unwilling to quote competitive joint line rates via the B&LE that would allow movements of our coal through P&C Dock in competition with movements through Ashtabula Dock.

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The predictable result has been that no coal from our Emerald Mine has moved through P&C Dock in recent years. We are very concerned that given the incentives of NS and CSXT to maximize their own revenues, wherever and however possible, the proposed transaction will make permanent Conrail's practice of ensuring that joint-line rates via B&LE through P&C Dock are competitively disadvantaged compared to their own routes through Ashtabula Dock. Although substantial volumes of MGA-originated coal moved to the Lake via B&LE and P&C Dock for many years prior to Conrail's acquisition of the Monongahela Railway, and despite the assurances embodied in the so-called "Neutrality Agreement" and those given by the Interstate Commerce Commission, virtually none of MGA-originated coal moves to the Lake via B&LE and P&C Dock due to Conrail's pricing practices. We are very concerned that without adequate traffic volumes to support present capacity, B&LE management will elect to downgrade or even abandon B&LE's route to P&C Dock, and/or downsize P&C Dock itself, to reflect current usage. In our business, we would not hesitate to close a coal mine where revenue from production did not adequately cover the costs of its operation. How can we expect any different response from B&LE management? Should that occur, Cyprus Amax would truly be left with no alternative to an inadequate and congested Ashtabula Dock for our lake coal business. Our ability to obtain flexible transportation and terminal options that support expanded participation in the lake coal market would be severely damaged.

Cyprus Amax strongly supports the conditions proposed by B&LE in this proceeding. The proposed transaction should not be approved without them. We believe that imposition of such conditions on the transaction would reasonably assure B&LE's ability to compete for the movement of coal from our Emerald Mine to the Lake. We believe that absent a voluntary enforceable agreement by Applicants to make rates via B&LE and P&C Dock available on a competitive basis with Ashtabula Dock, imposition of these conditions is the only way to assure that adequate facilities, capacity and service will be available to meet our needs in the future. It is our understanding that one of the driving forces which motivated NS and CSXT to agree to joint access to mines on the former Monongahela Railway was the fact that coal receivers at Conrail destinations to be served by either NS or CSXT had long-term commercial needs to purchase coal produced at MGA-served mines. The same can be said for lake coal customers that need the option of using P&C Dock. I strongly urge the Board to condition the proposed transaction as requested by B&LE.

VERIFICATION

State of Ohio)
) SS: 221-58-8133
County of Clermont)

Brad F. Huston, being duly sworn, deposes and says that he is Manager - Logistics for Cyprus Amax Coal Sales Corporation, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

Brad F. Huston

Brad F. Huston

SUBSCRIBED AND SWORN
to before me this 17th day of
October, 1997.

Carol M. Canfield (Chapin)

Notary Public

My Commission expires:

CAROL M. CANFIELD (CHAPIN)
Notary Public, State of Ohio
My Commission Expires July 6, 2002

VERIFIED STATEMENT
OF
WILLIAM G. RIELAND

My name is William G. Rieland. I am Vice President-Transportation and Marketing Services for CONSOL Inc. ("CONSOL"). I am responsible for the activities of the Transportation, Distribution and Traffic, Contract Administration, Technical Marketing Services and Market Planning groups within the Marketing Department of CONSOL Inc. These responsibilities essentially encompass all of the administrative functions in the Marketing Department. I have been in this position since March, 1994.

Prior to assuming my current position, I was General Sales Manager-Midwest located in Chicago, Illinois. I was responsible for CONSOL's sales activity in the Midwest from January 1, 1982 through March, 1994.

I was in CONSOL's Planning Department from January, 1975 through December, 1981.

I have been with CONSOL almost 23 years. I have a Bachelor of Arts degree in Economics from Duquesne University, a Master of Arts degree in Economics from West Virginia University and an M.B.A. from Duquesne University.

The CONSOL Coal Group is a major bituminous coal producer operating in various coal basins through the United States. CONSOL is jointly owned by DuPont and Rheinbraun AG. In 1996, the CONSOL Coal Group mines produced approximately 72 million tons of coal and had sales of nearly $2.4 billion. The Coal Group sells its products to electric utilities and industrial customers throughout the eastern and Midwestern areas of the United States, electric utility and steel industry customers in Canada, and to electric utilities and steel companies in 24 foreign countries.

CONSOL operates the Bailey, Enlow Fork, Blacksville and Loveridge Mines located in southwestern Pennsylvania and northern West Virginia. These mines are currently served by Conrail which acquired the Monongahela Railway ("MGA") in 1990. All of the coal produced from these mines, currently 24 million tons per year, is shipped by rail. These mines are all directly affected by the proposed breakup of the Conrail system. These mines all operate in an area of high-quality bituminous coal deposits in southwestern Pennsylvania and northern West Virginia known as the Pittsburgh No. 8 Seam.

The market for coal from our Pennsylvania and West Virginia mines has expanded steadily in recent years and we expect that it will continue to do so. The range of sulfur content (1.5-3.0%) and the high BTU content (13,000 BTU + per lb.) of the coal from these mines, makes the coal highly suitable for either direct consumption or blending with other coals to meet clear air standards for utilities in the eastern United States and Canada. Moreover, the use of efficient longwall mining techniques allows CONSOL to be very competitive in most eastern United States and Canadian markets. These factors, plus the relatively close proximity of the mines to our eastern customers are expected to fuel an expanding market for this coal well into the 21st century. For example, CONSOL is in the process of expanding the Bailey and Enlow Fork mines by four million tons by 1999. Additional, production expansion is contemplated in the 2000-2010 time frame.

It is absolutely critical to CONSOL's long-term competitive position that the rail transportation infrastructure available have sufficient capacity, be efficient, flexible and provide adequate levels of service to handle not only current volumes but increased volumes of traffic. Without appropriate transportation support, CONSOL cannot achieve the market growth and business expansion it has planned. Undoubtedly there are markets where the post-Conrail rail systems will be able to meet these standards as a result of the proposed transaction. However, there is one important market where CONSOL is very concerned.

That market is the so-called "lake coal market" described in the accompanying Verified Statement of Timothy Howerter. This market represents one of the more important markets for the coal from CONSOL's Pennsylvania and northern West Virginia mines. To meet the demands of this market, we need the ability to efficiently move the coal north to vessel loading facilities on Lake Erie, where it can be unloaded from railcar, stored, and loaded into vessel for movement by water to the ultimate customer. Because CONSOL has very limited space to store coal at its mines, it is absolutely essential to its ability to competitively market coal from its mines to the lake coal market that access be available to adequate facilities for the shipment, storage, and reshipment of this coal to its ultimate destination.

It might seem to some that the proposed Conrail transaction, which provides for both Norfolk Southern Railway ("NS") and CSX Transportation ("CSXT") to jointly serve mines on the former Monongahela Railway ("MGA"), including CONSOL mines, will provide us with more capacity and more options, not less. However, with respect to our ability to be efficient and participate in the lake coal market, we believe that without regulatory intervention, the Conrail transaction as presently structured, will actually result in inadequate service and less capacity being available to us than we have now. As we propose to increase our MGA production, CONSOL is concerned that insufficient lakefront capacity would limit our success in the lake coal market.

Specifically, the Ashtabula Dock simply does not have the facilities or the capacity to handle the volume of coal that is expected to move to the Lake in the near future, let alone expanded production over the long term. In 1997, approximately 12% of the coal from our MGA mines moves via Conrail over the Youngstown-Ashtabula line and through the Ashtabula Dock. We know from actual experience that the Ashtabula Dock is already a bottleneck and subject to congestion on a recurring basis, particularly in the period between August and the end of the Lake shipping season. The result of congestion at the Dock is that CONSOL gets "rationed," i.e., we are only allowed to load the number of cars prescribed by Conrail, regardless of how much coal we have to move and regardless of our customers' needs and our shipping schedules. Not only do we risk loss of revenue, customer goodwill and market share, our costs increase due to the need to store the coal, to the extent possible, and later reclaim it for shipment and to rearrange shipping schedules.

Ashtabula Dock today does not have adequate ground storage capacity to meet our need to store coal for later reshipment to destination, and there is no room for expansion. Delays in ship loading at Ashtabula are also not uncommon and sometimes result in a queue of ships waiting to load. This already difficult situation will be made even worse after the Conrail breakup. The available Ashtabula space would be divided between the NS and the CSXT thereby reducing capacity to less than exists today. While CSXT operates the Toledo Dock, it has no ground storage, therefore, CSXT would likely wish to more fully utilize Ashtabula after the Conrail breakup.

The solution to this problem does not require the Applicants invest large sums of dollars in a new dock or additional line capacity, if that were even possible. Additional independent rail line and dock capacity <u>already exists</u>, capable of meeting CONSOL's needs for the foreseeable future if the Applicants would remove the economic penalty assessed by Conrail since 1991 that renders CONSOL's access to it for coal from our mines uneconomical. Approximately 13 miles east of Ashtabula Dock at Conneaut, Ohio, is the Pittsburgh & Conneaut Dock ("P&C Dock"), a port facility on Lake Erie owned by the Bessemer and Lake Erie Railroad Company ("B&LE"), a carrier unaffiliated with

Conrail, NS or CSXT. As described in Mr. Howerter's Verified Statement, P&C Dock is a large, modern port facility whose capabilities and capacity meet all of CONSOL's needs for storage and transportation. The B&LE's line between Pittsburgh and Conneaut Dock is an efficient high-capacity route, which until Conrail's acquisition of the MGA seven years ago handled substantial volumes of MGA-originated coal to the P&C Dock. Yet, today we are economically foreclosed from using the B&LE's route and P&C Dock for coal from our mines because Conrail, which favors its own long-haul routes through Ashtabula Dock, has been unwilling to quote competitive joint line rates via the B&LE that would allow movements of CONSOL coal through the P&C Dock in competition with movements through Ashtabula Dock.

The predictable result has been that little coal from CONSOL mines has moved through the P&C Dock in recent years. CONSOL is very concerned that given the incentives of NS and CSXT to maximize their own revenues, wherever and however possible, the proposed transaction will make permanent Conrail's practice of ensuring the joint-line rates via B&LE through the P&C Dock are competitively disadvantaged compared to their own routes through Ashtabula Dock. Although substantial volumes of MGA-originated coal moved to the lake via B&LE and P&C Dock for many years prior to Conrail's acquisition of the Monongahela Railway, and despite the assurances embodied in the so-called "Neutrality Agreement" and those given by the Interstate Commerce Commission, little of this coal does now move to the P&C Dock due to Conrail's pricing practices. We are very concerned that without adequate traffic volumes to support present capacity, B&LE management will elect to downgrade or even abandon B&LE's route to the P&C Dock, and/or downsize the P&C Dock. In our business, we would not hesitate to close a coal mine where revenue from production did not adequately cover the costs of its operation. How can we expect any different response from B&LE management? Should that occur, CONSOL would truly be left with no alternative to an inadequate and congested Ashtabula Dock for its lake coal business. CONSOL's ability to obtain flexible transportation and terminal options that support expanded participation in the lake coal market would be severely damaged.

CONSOL strongly supports the conditions proposed by B&LE in this proceeding and nothing should be approved without those conditions. CONSOL believes that imposition of such conditions on the transaction would reasonably assure B&LE's ability to compete for the movement of coal from CONSOL's mines to the Lake. We believe that absent a negotiated agreement by the CSXT and/or the NS to make rates via B&LE and the P&C Dock available on a competitive basis with Ashtabula Dock, imposition of these conditions is the only way to assure that adequate facilities, capacity and service will be available to meet "MGA" coal's needs in the future. It is our understanding that one of the driving forces which motivated NS and CSXT to agree to joint access to mines on the former Monongahela Railway was the fact that coal receivers at Conrail destinations to be served by either NS or CSXT had long-term commercial needs to purchase coal produced at MGA-served mines. The same can be said for lake coal customers that need the option of using the P&C Dock. I strongly urge the Board to condition the proposed transaction as requested by B&LE.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ALLEGHENY :

William G. Rieland, being duly sworn, deposes and says that he is Vice President Transportation & Marketing Services for CONSOL Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

William G. Rieland

William G. Rieland

SUBSCRIBED AND SWORN
to before me this 17th day of
October, 1997.

Barbara P. Tato

Notary Public

My Commission Expires:

Notarial Seal
Barbara P. Tato, Notary Public
Upper St. Clair Twp., Allegheny County
My Commission Expires May 17, 1998
Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, a copy of the foregoing **Comments and Requests for Conditions of Bessemer and Lake Erie Railroad Company** (BLE-8) was served by overnight delivery upon the Primary Applicants herein, as follows:

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

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

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

and by first class mail, postage prepaid, upon all designated parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997 and revised on October 7, 1997.

Thomas J. Litwiler

STB FD 33388 10-21-97 D 182915 1/2

182915 ORIGINAL

IC-6

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

FINANCE DOCKET NO. 33388

D

ILLINOIS CENTRAL RAILROAD COMPANY
-- PURCHASE --
LINE OF CSX TRANSPORTATION, INC.

EVIDENCE IN SUPPORT OF CONDITIONS
AND RESPONSIVE APPLICATION

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ATTORNEYS FOR ILLINOIS CENTRAL RAILROAD COMPANY

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

FINANCE DOCKET NO. 33388 (SUB-NO. 62)

ILLINOIS CENTRAL RAILROAD COMPANY
-- PURCHASE --
LINE OF CSX TRANSPORTATION, INC.

EVIDENCE IN SUPPORT OF CONDITIONS
AND RESPONSIVE APPLICATION

Illinois Central Railroad Company ("IC") hereby submits its Evidence in Support of Conditions and Responsive Application in response to the Railroad Control Application submitted in this proceeding by CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc., and Consolidated Rail Corporation.

The transaction described in the Application filed by the Primary Applicants, if approved without conditions, would likely result in the foreclosure of efficient joint line routes with IC via IC's Illinois gateways and in the ability of CSXT to use its control over a portion of IC's mainline near Memphis, Tennessee to delay IC's trains and disrupt IC's ability to compete with CSXT.

To remedy these harms to the public interest, IC seeks imposition of the following conditions:

1. For traffic moving to or from stations on lines of CSX Transportation, Inc. ("CSXT") and the lines of CSXT's short line connections, upon request of a shipper or Illinois Central Railroad Company ("IC"), CSXT will join with IC in market competitive joint rates via IC's Illinois gateways (Chicago, East St. Louis, and Effingham) where the applicable joint line routes are reasonably efficient (distance considered) and/or where a competitive service package can be offered to the customer. In constructing joint rates via IC, CSXT agrees that its portion of such joint rates shall be at rate levels comparable on a per mile basis with CSXT's revenue requirement via the portion of its preferred long-haul route between the same origins and destinations. CSXT's revenues shall be calculated by determining its revenue per car mile (revenue per car divided by CSXT's route miles) over its preferred long-haul (e.g. via New Orleans) and multiplying such revenue per car mile by CSXT's route miles for the routing via IC (e.g. via Effingham). Any absorbed switching charges or other unusual terminaling costs shall be added to this calculation. The parties by mutual agreement shall be free to establish joint rates on bases differing from those specified above.

2. CSXT shall convey to IC CSXT's line between CSXT milepost F-371.4 at Leewood and CSXT milepost F-373.4 at Aulon in Memphis, Tennessee, subject to the retention of trackage rights by CSXT thereover under the terms of that certain trackage rights agreement between the parties dated January 22, 1907.

The first condition is described in the Verified Statement of Donald H. Skelton. The second condition is described in the Responsive Application and supporting Verified Statement of John D. McPherson.

WHEREFORE, IC respectfully requests that the Board grant the conditions sought herein.

Respectfully submitted,

By: William C Sippel

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ATTORNEYS FOR ILLINOIS CENTRAL RAILROAD COMPANY

Dated: October 21, 1997

VERIFIED STATEMENT
OF
DONALD H. SKELTON

My name is Donald H. Skelton. I am Senior Vice President Marketing and Sales for Illinois Central Railroad Company ("IC"). I began my railroad career in 1961 in the Marketing and Sales Department of Southern Pacific Transportation Company and rose through the ranks to become Assistant Vice President. In 1987, I became Director - Pricing for The Atchison, Topeka & Santa Fe Railway Company and later held various executive positions in Santa Fe's Marketing and Sales Department, including Vice President Marketing and Sales and Vice President International/Domestic Customer Development. I joined IC in October, 1994 as Vice President Marketing and Sales. On January 8, 1996, I was promoted to my present position. I hold a Masters of Business Administration degree from Washington University.

Over the past several months, IC has watched with alarm and not a little irony, the serious deterioration in rail service which has occurred on the Union Pacific/Southern Pacific rail system ("UP") in the western United States, especially in Texas. Although IC itself has suffered no service disabilities on its railroad during this period, the depth and scope of the UP's service problems have affected nearly everyone around it, including IC. The impacts are not insignificant. UP's service problems have resulted in delayed traffic and lost revenue on IC. A recent Wall Street Journal article indicated that the chemical industry had already incurred some $100 million in extra costs and lost sales and that UP's service problems were having such an impact that they had begun to adversely affect the economy of the United States.

UP has long been regarded in the rail industry as a very capable company with capital and human resources and planning expertise that are the envy of the industry. UP has also had more experience with rail consolidations than any other railroad in the modern era, having added five major railroads to its system over the last 15 years. If there is any railroad that could be expected to successfully plan and implement a consolidation, it would be UP. However, even these resources and experience were not enough to prevent the serious deterioration of service that we have recently seen following its acquisition of control of SP. Moreover, this is not the first time that UP with all of its resources was unable to provide the post-consolidation levels of service that it had promised. Serious service problems also developed after UP absorbed the much smaller Chicago and North Western Railway in 1995. In both cases, UP had told the ICC/STB without qualification that consolidation would result in substantially <u>better</u> transportation service to the public. Experience has shown us otherwise, not once but <u>twice</u>.

Now we are faced with another major rail consolidation, larger and far more complex than any ever proposed, a consolidation which will affect rail transportation in the East and the rest of the country for decades to come. Once again, we find the Applicants to that transaction assuring the shipping public, other carriers and the STB that service will be far better post-consolidation, despite the fact that this transaction is inherently more complicated and difficult to implement than a UP-CNW or a UP-SP and regardless of the fact that in several major shared markets, service will heavily depend upon an unprecedented degree of coordination and cooperation between two arch rivals.

Unlike UP, which acquired the entire SP at once and possessed unfettered control over all SP lines, equipment and personnel, CSXT and NS will have to divide certain Conrail assets and personnel and share others to make their plan work. Given these circumstances and recent experience, if service on one or both of these railroads deteriorates following consummation, can anyone, including the STB, legitimately claim surprise? How much greater would the impact be on the U.S. economy if the problems UP is now experiencing occurred in the eastern United States?

In my 36 years in the rail industry, I have witnessed the service problems that accompanied the bankruptcies of the Penn Central in the East and the Rock Island and Milwaukee Road in the West. The contrast between the resolution of the problems in the West versus that in the East starkly demonstrates the importance of having alternative service options available at the time a railroad's service begins to fail. When the Rock Island and Milwaukee Road suffered service disabilities in the late 1970s, most affected shippers at that time had viable alternatives in the form of other railroads and other routes to which they could turn when things fell apart. In the case of the

Penn Central, there were few other options. The Erie Lackawanna and other rail competitors of Penn Central in the Northeast were themselves bankrupt or struggling and unable to respond. The only way out was a $7 billion bailout by U.S. taxpayers.

These service problems of the late 1970s and early 1980s occurred largely in a time of excess rail capacity and stagnant or declining rail traffic volumes. Since that time, thousands of rail lines, including mainlines, have been abandoned, many yards and terminals consolidated and hundreds of interchanges eliminated. The number of major Class I railroads has been consolidated from about forty 20 years ago to less than ten (including Conrail). In the 10 years ending 1995 (the Base Year in these proceedings), miles of track operated by Class I railroads has decreased by about 25%, Class I cars in service have declined by 30%, Class I employment has declined by 37%. Yet, at the same time, rail traffic volumes are increasing. In the 10-year period ending 1995, revenue ton miles increased by almost 50% and carloadings originated increased 22%. More traffic is being handled over fewer lines, through fewer yards and terminals by fewer employees. Rail service and capacity have become recurring issues. As we are so graphically seeing today, the ability of the rail industry to respond to a major collapse of service on one of the major rail systems is far less than it once was.

The result of this experience must be that in reviewing the proposed Conrail transaction, the Board must focus not only on what is needed to protect competition, but also on <u>what is</u>

needed to assure that adequate transportation service to the public will be provided. Specifically, I believe that the shipping public and other transportation providers, such as IC, have a right to expect that the STB in exercising its statutory duty to review the proposed Conrail transaction before it is implemented will take steps now to assure that a third and far more devastating service "meltdown" does not occur. If it is not the Board's responsibility to do so here, then I do not know whose responsibility it is. There is no other agency with the authority, experience and resources, or the opportunity before the fact, to make sure that the transportation industry and the U.S. economy are not put at risk again. It is not a question of whether Applicants' service will be inadequate, but one of assuring that sufficient protections are in place to minimize the impact if that should occur.

Those protections must include assuring that shippers continue to have access on competitive terms to the efficient services and routing options available from IC. IC has worked extremely hard to provide shippers with a competitive alternative to the major rail systems and has had remarkable success. For example, IC is one of the few railroads in the nation which has implemented scheduled service across its entire system. We want our customers to know when the trains are scheduled to depart, when they are scheduled to arrive, and that they will be there when we say they will be. IC's on-time performance has historically approached 90%.

We've also driven ourselves to operate efficiently. By consistently focusing on asset utilization, IC has been able to achieve impressive improvements in the effective use of track, locomotives and equipment and thereby lower its operating costs. In fact, having the lowest operating ratio of all Class I railroads in North America - a measure of efficiency IC has held for several years - has become an IC signature characteristic.

IC is also an extremely safe railroad. IC's safety record is excellent, especially when it comes to the handling of hazardous materials. Our employee safety record, a factor that also translates directly into a cost of doing business, is one of the best in the industry. For the last six consecutive years, IC has won a Harriman Safety Award and for the last four consecutive years, IC has had the fewest employee injuries of any freight railroad in its class.

Without question, shippers who have access to IC's routes and services have benefited from these initiatives. These benefits are even more important in light of the service difficulties occurring in the West. But all of this means little if shippers can be denied access to those routes and services.

Shipper access to efficient IC routes to and from Conrail territory in the East is available today via IC's three so-called "Illinois gateways" at Chicago, East St. Louis and Effingham. Both Chicago and East St. Louis are well known as major rail gateways which handle substantial volumes of traffic. IC's principal interchange with Conrail, however, is at Effingham, Illinois, located approximately 100 miles northwest of

East St. Louis at the location where IC's north-south Chicago-New Orleans mainline crosses Conrail's east-west Cleveland-East St. Louis mainline. This year, IC expects to interchange over 100,000 cars with Conrail at Effingham. Recently, to further improve service via this gateway, IC and Conrail initiated run-through operations via Effingham. Northbound IC train GECR now operates from Geismar, Louisiana direct to the interchange with Conrail at Effingham. Southbound train CRGE operates from Effingham direct to Geismar.

IC-Conrail routes via IC's Illinois gateways compete very effectively with NS-Conrail and CSXT-Conrail routes. That IC's Illinois gateways provide efficient service and routing options for shippers today cannot be disputed.

IC believes that shipper access to IC's capacity and rail service via these efficient gateways must be assured as part of any approval of the transaction.

Unless the Board acts now to preserve shipper service options, such options are very likely to be unavailable to shippers shortly after consummation. Following each of the major rail consolidations over the past 20 years, *i.e.*, BN/Frisco, UP/MP, CSX, UP-CNW and now UP-SP, IC soon after experienced a wave of pricing or other actions by the consolidated carrier to foreclose shipper access to IC's services on a competitive basis with the carrier's single line routes, regardless of the quality of the service IC provided or the efficiencies of that service. It's happening now, in dramatic fashion. For the past 3 years, IC has handled SP intermodal traffic between Memphis and Chicago pursuant to a haulage arrangement with SP. IC's route between Memphis and Chicago is shorter in length, faster, has more available capacity and IC's service is more reliable. It cannot be disputed that given UP's present circumstances, its own line between Memphis and Chicago via St. Louis is less efficient than IC's route between the same two points.

According to published news reports, UP is desperate for additional locomotives, operating crews and track capacity and its systemwide on-time performance has fallen to somewhere below 40%. By contrast, between Memphis and Chicago, by virtue of its existing haulage arrangement, IC has available capacity, locomotives, crews and schedules already in place, and IC's on-time performance in that corridor is near 98%. Yet, until it canceled its intermodal service in the Memphis-Chicago corridor altogether last week, UP for the past several months has been doggedly working to divert this time-sensitive traffic away from IC's haulage service to its own less efficient line and service between Memphis and Chicago. How can it be considered rational economic behavior to divert traffic from the <u>most</u> efficient carrier in the nation to what is currently the <u>least</u> efficient carrier in the nation? In the midst of the most serious operational crisis since the Penn Central, UP still put its private interest in maximizing its own revenues ahead of service to its customers. Such behavior may not be consistent with academic theories of how consolidating railroads are supposed to behave, but it is behavior that we have seen time and time again. To achieve internal corporate revenue goals and satisfy Wall

Street expectations, in my experience, consolidating railroads soon succumb to the need to maximize revenues by any means, even at the expense of denying shippers access to more efficient service options.

IC does not expect that shipper service and routing options will be foreclosed by Norfolk Southern as a result of its proposed acquisition of Conrail lines and, accordingly, IC does not seek to have the Board impose such a condition on NS. In a written agreement negotiated several months ago with IC, NS has committed to retaining shipper options via its Illinois gateways with IC. Shipper access to IC's service and capacity via Tolono, Illinois (where IC's north-south mainline crosses NS' east-west mainline) and Chicago will be protected and no condition is necessary.

By contrast, <u>CSXT has expressly refused to make any such commitment</u>. Such refusal, I believe, speaks volumes regarding CSXT's intentions. The expanded CSXT system will face enormous cash flow demands. It will clearly have both the market power and incentive to foreclose shipper access to IC's service and capacity so as to maximize its revenue and accomplish its own internal objectives. The result, IC predicts, will be that shippers' access to IC's capacity and efficient transportation services from the South via the Effingham, East St. Louis and Chicago gateways will be economically foreclosed in favor of less efficient CSXT-IC routes via New Orleans and Memphis.

A proposed condition which, if imposed by the STB, would reasonably assure continued shipper access to IC's capacity, service and routing options on a competitive basis is attached to my statement as Exhibit A.

The alternative to putting such protection in place now is, of course, for the Board to become involved only after service problems develop. This is the situation that the Board currently faces in responding to the UP's service problems. The problem with this after-the-fact approach is that a lot of irreparable damage can already have occurred - as is the case with UP - before any plan can be implemented. Moreover, the worse the problem becomes, the more draconian and disruptive the remedies that may be required to correct it, if it can be corrected at all. In many respects, the remedy of rerouting traffic away from the troubled railroad is the same remedy that shippers could have implemented on their own much sooner and more effectively if their access to alternative efficient service options was assured. In light of the industry's experience over the past several years and the current difficulties in the West, the Board must as part of any decision approving the proposed CSXT acquisition of Conrail lines assure that adequate shipper service options are in place and will be available if CSXT's service turns out to be inadequate.

IC's proposed condition does not require any shipper to choose IC's service. It does not guarantee that any shipper will choose IC's service if CSXT's service is inadequate. It does not guarantee IC a single carload or freight. It does not inhibit CSXT's ability to charge whatever it wants for its services or its ability to provide whatever level of service it desires. Nor would it deprive CSXT of any of the efficiency benefits of its consolidation with Conrail or affect CSXT's ability to compete. It does not in any way materially, affect, let alone threaten, the viability of the expanded CSXT system or any major segment of its traffic base. It would not upset the competitive balance in any market.

Rather, it would provide shippers with the critical advance assurance that their access to efficient, alternative rail service will not be cut off.

This is not about rate or traffic protection. This is about service assurance. This is about putting in place the safety valves that would reasonably assure that the proposed transaction will result in the provision of adequate transportation service to the public. It is up to the Board to put these protections in place <u>now</u> to assure that a third service "meltdown" does not occur.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

D. H. SKELTON, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein and that the same are true as stated.

D H Skelton

D. H. SKELTON

SUBSCRIBED AND SWORN to before me this 17th day of October, 1997.

Patricia Stanczykiewicz

NOTARY PUBLIC

My Commission expires:

OFFICIAL SEAL
PATRICIA STANCZYKIEWICZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/11/01

VERIFIED STATEMENT
OF
JOHN D. McPHERSON

My name is John D. McPherson. I am Senior Vice President - Operations for the Illinois Central Railroad Company ("IC"). In that position, I am responsible for the management and implementation of all aspects of rail operations, including transportation, mechanical and engineering, on IC and its affiliates, the Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company. I joined IC in August, 1993 as Vice President Operations, and was promoted to my current position in April, 1994.

Before coming to IC, I held various operating and transportation positions with The Atchison, Topeka and Santa Fe Railway Company ("ATSF"), where I began my railroading career in 1966 as a switchman. Subsequent assignments at ATSF included trainmaster, superintendent, assistant general superintendent - transportation, regional manager - Eastern lines, assistant vice president - safety and assistant vice president - operations. I graduated from Emporia State University in 1969 with a Bachelor of Science degree in Business, and received a Master of Science degree in Management from the Massachusetts Institute of Technology in 1981.

In this statement, I address the serious issues associated with a segment of rail line between Leewood and Aulon in Memphis, Tennessee which is owned by CSX Transportation, Inc. ("CSXT") and utilized by IC pursuant to trackage rights, and in particular how those problems will affect IC's ability to remain an efficient and effective competitive alternative after CSXT and Norfolk Southern Railway Company ("NS") consummate their proposal to acquire and then divide the assets of Consolidated Rail Corporation ("Conrail"). I have been personally involved in the Leewood-Aulon matter, and am both familiar with and acutely aware of the facts associated with it. As I explain below, IC's proposal to acquire the Leewood-Aulon Line and grant back trackage rights to CSXT (and an existing CSXT tenant) is necessary to address fundamental competitive and capacity issues, but will in no way diminish CSXT's operating capabilities in the Memphis terminal or deprive CSXT or NS of any of the benefits which they seek in the Conrail proceeding.

This statement also describes current operating practices, strategies and goals on IC, and how the innovation and dedication which we have brought to operations has made IC, I believe, the most efficient major railroad in the nation. It is necessary to understand this background in order to understand why the situation at Leewood-Aulon is so troubling to us and so potentially threatening to the future competitiveness and efficiency of the service which IC today provides.

I. IC IS AN EFFICIENT, SCHEDULED RAIL CARRIER

IC's unprecedented success in the railroad industry over the past number of years has been due to a number of key factors: a service offering responsive to customers' needs based on a consistent, well-organized schedule; a low operating ratio that gives us marketplace leverage for growth; a bold and innovative approach to the operating and personnel challenges of the day; an uncompromising commitment to safety (we have received Harriman safety awards in each of the last seven years and are striving to improve even further); and a return on capital that justifies reinvestment in the business. In many ways these components are so woven together that single-minded attention to any one can cause others to deteriorate. IC's management team believes the best overall balance is achieved with intense focus on asset utilization and return on capital. The STB calls this revenue adequacy, and we are the only railroad in the nation to have been found revenue adequate for the last six years in a row. This intense focus on asset utilization drives efficiency and, in turn, service and customer satisfaction.

To compete effectively, we must provide outstanding service and reliability at cost-effective rates. Thus, whether we can be competitive depends in large part on how efficiently we use our assets. One key measure of efficiency used in the rail industry is operating ratio, and IC has had the lowest operating ratio among the major U.S. and Canadian railroads for at least the last seven years.

I am often asked how we consistently maintain the lowest operating ratio in the nation. It's not any one thing. I can give various examples:

(a) Our 24-hour car repair goal;

(b) Our emphasis on preventive track maintenance, including a rail-grinding program that is "aggressive" by industry standards but which significantly reduces rail change-out;

(c) Our innovative super-grain-train program which creates customer-specific, dedicated train sets and which in effect shifts typically unscheduled export grain shipments to scheduled service;

(d) Our investment in technology, for example, our state-of-the-art dispatching system we recently installed, which replaced a system barely seven years old;

(e) The classification of cars outside of major yards to reduce terminal congestion;

(f) We work closely with individual customers on a whole range of operating elements, from loading/unloading practices to their physical track maintenance and structure; and

(g) We actively and successfully market our services and our route structure to other railroads, serving railroads as customers, which improves the utilization of our most expensive physical assets: our tracks and terminals. At the same time, other railroads and their customers benefit from our reliable service and our relatively low cost structure. For example, we perform haulage for the SP between Memphis and Chicago and, for the full year 1996, ran SP's trains 99% on-time.

Contrary to popular belief, controlling costs while improving service to customers are not incompatible goals. Nowhere has this been more dramatically evident than in IC's successful efforts to implement scheduled train service on its rail system. We have largely moved away from the old paradigm of running trains only when some number of cars deemed sufficient has accumulated, or on "schedules" which are that in name only. We operate a substantial number of our system trains in precise scheduled service, and we hold ourselves to the tightest car-performance standards in the industry (giving ourselves only a two-hour margin for our own on-time measurement of manifest traffic). For the 18 months January 1996 through June 1997, our on-time car-delivery for all traffic averaged about 87%. The percentage for time-sensitive traffic is well into the 90s, and as indicated above we deliver SP's haulage traffic on schedule 99% of the time. All of these represent excellent performance in our industry.

By running our cars on schedule, we improve reliability and credibility with our customers while reducing the hidden costs of inefficiency. Precision scheduling actually lowers costs -- and enhances safety -- because of the predictability of when and where manpower and resources are needed. In fact, we are so disciplined in the execution of our operating schedule that we have in turn built an innovative crew-scheduling system around it, which we call Turnaround Service.

Normal crew scheduling of the last 100 years -- and still in place on most railroads -- requires that trainmen be on-call 24 hours a day, seven days a week, that they operate their train as far as their crew districts and hours of service will allow and that they then layover at that away terminal before being called for a return assignment. This system assures that crew members will not know when they will be called next for service, thus depriving them of any ability to rationally or predictably plan their work and other activities. It also assures that they spend half their career away from home.

In sharp contrast, under our Turnaround Service system, opposing trains are synchronized to meet at specified terminals and times to allow the respective crews to swap trains and return home. Crews which bid to this service head home at the end of their workday, instead of heading for a motel room, and know in advance what their work schedules will be. The benefits of this system, not only for IC's own operations, but for employee morale and quality of life, are immeasurable. At a time when critical issues of crew fatigue are being debated across the nation, the implications of Turnaround Service are even more significant. I believe that someday, every major railroad in the United States will operate at least a portion of its trains on some kind of "turnaround" basis. At IC, that future is now.

There is, however, absolutely no benefit to Turnaround Service if the trains do not meet on time in order to swap crews. In fact, an attempt to implement turnaround service on a railroad that is unable to run its trains as scheduled would likely do more harm than good. Therefore, Turnaround Service requires that we maintain a precise schedule of trains with low margins of error, and we have done so. In the railroad industry, this degree of precision scheduling is revolutionary. Shippers like it because the implication of greater service reliability is clear. We have been operating Turnaround Service over much of our system for four years now, a testament to the overall effectiveness of our operation.

Against this background, the issues surrounding the Leewood-Aulon Line are particularly critical. To compete against the newly-combined NS/Conrail and CSXT/Conrail systems, IC will need to maximize all of the service and operating innovations and efficiencies discussed above. Through its control of the Leewood-Aulon Line, however, CSXT will have the ability -- already partially demonstrated -- and new incentive to severely undermine many of the efficiencies that IC has worked so hard to successfully implement. Particularly at a time when the need for adequate rail capacity and transportation service is more acute than ever, the Board cannot and should not allow that to happen.

II. LEEWOOD-AULON: BACKGROUND

The Leewood-Aulon Line is a 2-mile, double-tracked, signaled CSXT rail line extending from approximately CSXT milepost F-371.4 at Leewood to CSXT milepost F-373.4 at Aulon in Memphis, Tennessee, on the Memphis Subdivision of CSXT's Nashville Division. IC operates over the Leewood-Aulon Line pursuant to trackage rights granted in a January 22, 1907 Agreement between IC, The Yazoo and Mississippi Valley Railroad Company ("Y&MV"), Louisville and Nashville Railroad Company ("L&N") and Nashville, Chattanooga and St. Louis Railway Company ("NC&StL"). Y&MV was an IC predecessor; L&N and NC&StL were both predecessors of CSXT. The 1907 Agreement has been amended several times, mostly with respect to the provision of switching service to industries on the Leewood-Aulon Line and other lines covered by the Agreement, but its basic terms continue to govern IC's trackage rights. IC's own milepost designations for the line are milepost 387.9 at Leewood and milepost 390.0 at Aulon.

The Leewood-Aulon Line constitutes the middle portion of an IC belt line around Memphis extending from Woodstock on the north to East Junction on the south. IC-owned tracks extend north from Leewood to Woodstock and southwest from Aulon to East Junction. Woodstock is the connection with IC's main line north to Fulton, Kentucky and Chicago. At East Junction the belt line converges with IC's Grenada District, which extends south through the middle of Mississippi to Jackson. Just west of East Junction is Johnston Yard, IC's principal terminal facility in Memphis. At the west end of Johnston Yard (at appropriately named West Junction) connection is made with IC's Yazoo District, which extends down the west side of Mississippi to Jackson. From Jackson, IC's main line continues south to New Orleans, while a secondary IC line reaches to Mobile, Alabama.

The Leewood-Aulon Line is thus an absolutely critical link in the Chicago-New Orleans route which is the backbone of IC's system -- the "Main Line of Mid-America." As a glance at IC's route map shows, the middle of IC's route structure is shaped like an hourglass. Parallel IC lines extend north from Fulton into Illinois and south from Memphis into Mississippi, but the stem between Memphis and Fulton IC is a single track, high-density main line. IC trains cannot move from the north half of IC's system to the south half without passing through Memphis, and IC trains cannot pass through Memphis without traversing the Leewood-Aulon Line. The only other IC trackage through Memphis, the Riverfront Line into downtown Memphis and past Memphis' Central Passenger Station, is today used only by Amtrak. That track passes through a developed and congested urban area, encounters grade crossings quite literally nearly every city block and posed numerous operational and safety difficulties. Pursuant to a 1995 agreement with the City of Memphis, which owns the land underneath the trackage, the Riverfront Line is available to IC only in the event of "emergencies." Amtrak utilizes the line twice a day to reach its Memphis Central Station.

The Leewood-Aulon Line is thus a literal system "choke point" that affects nearly all of IC's line-haul traffic movements. IC's use of the line reflects its centrality to the IC system. Including local switching assignments, IC operates approximately 28 trains a day over the Leewood-Aulon Line. As one would expect, the line hosts every kind of train movement that IC operates: intermodal, grain, chemicals, mixed commodities. Many of these trains originate or terminate at IC's Johnston Yard, which is located approximately seven miles south of Aulon. IC operates a number of its Turnaround Service trains from Johnston Yard north over the Leewood-Aulon Line to Fulton, Kentucky and return.

Despite the fact that it currently owns and controls the Leewood-Aulon Line, CSXT makes little use of the line compared to IC. In responses to discovery requests served by IC, CSXT has indicated that it operates approximately ten scheduled trains and one or two yard switching operations each day on the Leewood-Aulon Line. UP also operates one train per day in each direction on the line to interchange traffic with CSXT. CSX/NS-89 at 10-11. This is roughly consistent with IC's own information showing that the combined CSXT and UP operations on the Leewood-Aulon Line account for no more than <u>one-fourth</u> of the total traffic on the line. Attached as Exhibit 1 to this statement is a monthly breakdown for 1996 of IC's proportionate use of the Leewood-Aulon Line, based on the wheelage reports that are used to allocate expenses for the line under the 1907 Agreement. (For purposes of the Agreement and expense allocation, UP trains are considered to belong to CSXT.) As those figures show, IC is by far the largest user of the Leewood-Aulon Line, accounting for an average 76% of all traffic.

The Leewood-Aulon Line is located near the end of a long, secondary CSXT line extending from Nashville to Memphis. CSXT's principal Memphis yard facility, Leewood Yard, is located just east of Leewood. CSXT's primary use of the Leewood-Aulon Line is to transfer cars from Leewood Yard to connections with IC, UP and The Burlington Northern and Santa Fe Railway Company ("BNSF") elsewhere in Memphis. Westbound CSXT transfer movements from Leewood Yard to UP and BNSF enter the Leewood-Aulon Line from the east at Leewood and turn west at Aulon onto CSXT trackage extending toward downtown Memphis. The UP interchange trains mentioned above operate to and from CSXT's Leewood Yard in a similar manner.

CSXT currently maintains the Leewood-Aulon Line to FRA Class 4 standards. Until recently, dispatching control over the line resided with local operators stations in a cabin (once known as "RS" Tower) at Leewood. In December, 1996, CSXT abolished the local operator positions and transferred dispatching for the line to CSXT's centralized Dufford dispatching center in Jacksonville, Florida. Train movements on the line are now governed by CSXT's Traffic Control System ("TCS"). There are three significant shippers located on the Leewood-Aulon Line, which CSXT and IC serve in accordance with the terms of the 1907 Agreement and the various amendments to that agreement. IC provides local service to Witco Company and Velsicol Chemical Corporation, with the latter open to CSXT via reciprocal switching. CSXT serves Buckeye Celulose Corporation exclusively.

III. <u>LEEWOOD-AULON: THE PROBLEM AND CONSEQUENCES</u>

As should be evident by now, CSXT has a literal chokehold on IC's operations in Memphis -- indeed, on IC's operations systemwide -- through its control of the two-mile Leewood-Aulon Line. While that line is of little strategic importance to CSXT, it is the absolute keystone of IC's Chicago-New Orleans main line and, I would point out, the only portion of IC's core system that IC does not substantially control. That stranglehold is even more problematic given the competitive posture that CSXT will occupy in relation to IC once the proposed acquisition and division of Conrail is consummated. As I indicated above, we today move substantial amounts of traffic -- 50,000 carloads a year -- to an interchange with Conrail at Effingham, Illinois for movement into the Northeast. The Conrail line at Effingham is to be assigned to CSXT, which will have a natural incentive to force the existing Effingham gateway business to CSXT gateways at Memphis or New Orleans. I have no doubt that IC can effectively compete for that traffic, either on a joint-line basis with CSXT itself or on joint-line routings with NSR via Tolono, Illinois. Our ability to compete, however, is seriously compromised by CSXT's control of the Leewood-Aulon Line. I would repeat that IC has <u>no</u> effective way to avoid that line segment for <u>any</u> of its north-south traffic. All of the efficiency and competitiveness in the world is of no value if the fate of our operations is in the hands of the very party with which we are supposed to be competing.

These are not idle concerns. We have already seen the devastating effect that CSXT's control of the Leewood-Aulon Line can have on the very fabric of IC's operations. As indicated above, last December CSXT removed the local operators at Leewood who previously dispatched the Leewood-Aulon Line and transferred dispatching authority for the line to Jacksonville. The results have been nothing short of disastrous. CSXT's local Leewood operators were knowledgeable about operations in the area and were in frequent communication with IC operating personnel such as the Johnston Yard yardmaster. Information on current and anticipated train movements was exchanged and train movements on the Leewood-Aulon Line were (for the most part) effectively coordinated.

All of that changed last December. Our initial problem, and in many respects the most frustrating, is simply getting in touch with the Jacksonville dispatcher. Calls are placed, and the phone simply rings. IC trains from Johnston Yard approaching the Leewood-Aulon Line stop approximately two miles from the end of the line to call the dispatcher. They do not stop closer to Aulon because of the numerous grade crossings located on the intervening two-mile section of track. As a result, IC crews cannot see the home signal at Aulon and must repeatedly call the dispatcher in Jacksonville just to find out whether they have been cleared to enter the Leewood-Aulon Line.

In the past, the local operator at Leewood would have been watching all of this occur and working to get IC's trains moving. Such attentiveness is absent among the CSXT dispatchers in Jacksonville, who seem content to largely ignore what is happening at a remote -- and apparently unimportant -- outpost on the CSXT system.

The lack of communication between IC operating personnel and CSXT dispatchers in Jacksonville is paralleled by the broader lack of communication between Jacksonville and CSXT's own yardmaster at Leewood Yard. Both tracks of the Leewood-Aulon Line are now frequently blocked at Leewood by switching movements at CSXT's adjacent Leewood Yard. CSXT trains will be doubled-out of the yard across the Leewood-Aulon Line and then will be held there while switching work is performed at the head end. I do not believe, of course, that such train movements across the Leewood interlocking are done without the knowledge of the CSXT Jacksonville dispatcher. But they plainly are not cleared or coordinated with the dispatcher in advance, as IC trains that are told that the Leewood-Aulon Line is clear will often find the line blocked by such CSXT switching movements once they arrive.

CSXT's blockage of the Leewood-Aulon Line has occurred in many other ways as well. Southbound CSXT transfer runs to BN's Memphis yard will simply be held on the Leewood-Aulon Line at Aulon if there is not sufficient room in the BN yard to accept them. Northbound CSXT trains will stop at Leewood Yard, with the tail-end of the train blocking one or both of the Leewood-Aulon main tracks. If Leewood Yard is full or congested, entire trains will simply be parked on the Leewood-Aulon Line. In the most remarkable example to date, CSXT had plans to store an empty coal train on one of the two main tracks of the Leewood-Aulon Line <u>for a month</u>. After the train had sat for a weekend, and after desperate pleading on our part, we were able to convince CSXT to at least allow us to move the train into <u>an IC yard</u> for storage. That is how important the Leewood-Aulon Line is to us, and how obviously unimportant it is to CSXT.

I would reiterate that while this persistent blocking of the Leewood-Aulon Line is occurring, IC crews and operating personnel are having difficulty even reaching the CSXT dispatchers in Jacksonville to resolve these matters. The result is a situation that we feel literally helpless to do anything about.

And the results on IC's coordinated, scheduled train operations have been disastrous. I wish to make clear that if dispatching on the Leewood-Aulon Line was handled on a first-come, first-served basis and CSXT trains were operated in a continuous movement from Leewood to Aulon (as IC's trains do if allowed), our perspective on this issue would be quite different. I am not advocating that IC's interests be elevated above those of other carriers. This is not an instance of having to wait fifteen minutes, or even a half hour, for conflicting train movements to clear. This is a matter of IC trains and crews sitting for <u>one to three hours</u> at a time on a <u>routine</u> basis -- several times a week -- because CSXT trains are simply stopped, or parked, or being held on what functions as IC's <u>main line</u>, while CSXT dispatchers in Jacksonville let the phone ring and do nothing.

Such delays wreak havoc with a railroad attempting to operate a network of trains with defined intervals on a precisely scheduled basis. Remember, we operate approximately 28 trains a day on the Leewood-Aulon Line -- an average of more than one per hour. An IC train delayed for 2-3 hours waiting for stopped CSXT traffic to clear inevitably delays other trains on IC's main line as well. At times we have had as many as 5 trains in a row stacked up in Memphis, waiting to pass through the Leewood-Aulon bottleneck. Thus, far from affecting just one train, such delays cascade throughout the IC system. This is particularly true where train operations are as coordinated with each other as they are on IC. Transit times are increased, connections are missed, on-time performance suffers, service deteriorates and, over the longer term, IC's competitiveness is diminished.

The impacts on IC's Turnaround Service, as a representative example, are particularly severe. IC operates coordinated Turnaround Service trains from Memphis to Fulton, Kentucky and from Centralia, Illinois to Fulton. These crews swap trains at Fulton and return to their home terminal. If the Memphis train is delayed by CSXT on the Leewood-Aulon Line, the Centralia crew arrives at Fulton and waits. If forced to wait too long, they are unable to return to Centralia before "dying" -- exceeding their hours of service under federal law. When that happens, their train is delayed, a new crew must be called -- unexpectedly -- to take the train to Centralia, and the original Centralia-Fulton-Centralia is itself now out of sync, which may necessitate pushing back their scheduled departure for the next day. Of course, all of these things will likely be true for the Memphis-Fulton-Memphis crew that was actually delayed by CSXT as well, but the point is that such delays, and their serious impacts, simply domino up the system.

I readily acknowledge that IC faces occasional delays from other sources which can affect Turnaround Service trains. Yet such delays arise from non-recurring events (such as engine failures or grade crossing accidents or temporary line congestion) that we can and do work hard to minimize. That is a critical point: delays cannot ever be wholly eliminated, but they can be minimized and that is the key to running Turnaround Service and an efficient scheduled railroad. <u>Systemic</u> delays to train operations, however, make turnaround service impossible to implement. And that is precisely what IC faces here: an on-going, routine and substantial delaying of its trains that IC can do <u>nothing</u> about. The efficiencies which we have achieved on IC (not to mention the improved employee quality of life, reduced crew fatigue and elevated employee morale) simply cannot survive this operational pincer applied by CSXT.

The story is much the same for IC's highly-efficient locomotive power allocation system. If a train operating from Fulton to Memphis is delayed at the Leewood-Aulon chokepoint and scheduled to transfer its locomotives to a southbound departure from Johnston Yard, then both trains are delayed -- even though the latter one never even moves over the Leewood-Aulon Line.

All of which is to say that the Leewood-Aulon Line can function as a major impediment to the efficiencies which have become a hallmark of IC. From my position at Senior Vice President - Operations, I believe that Leewood-Aulon is the <u>number one</u> bottleneck on IC as a scheduled service railroad. I don't have reason to know whether CSXT is being malicious, opportunistic or just inept in its current "administration" of the Leewood-Aulon Line. I do know, however, that after consummation of the Conrail transaction, we will be competing intensely with CSXT for traffic moving between the south central United States and the Northeast. We have signed an agreement with NSR that facilitates the movement of such traffic with that carrier over the Tolono, Illinois gateway. I believe that we can attract this business, but the incentive that CSXT has to deprive us of such traffic will now be accompanied by the means to do so. The "club" that CSXT holds over IC at Leewood-Aulon is aimed at the very core of the innovations and practices that have made IC an efficient and successful competitor. It is a club that does not serve the public interest, and a club that should be removed.

CSXT's chokehold on IC at Leewood-Aulon also threatens IC's ability to step in and provide rail service and capacity if CSXT's operations should break-down in the post-transaction period. The recent disintegration of service on the UP in the west, and particularly Texas, has been magnified by the fact that there simply were no other rail lines available to handle the traffic. In some instances there may have been other rail <u>carriers</u> available, but few other tracks or facilities.

Interestingly, the somewhat remarkable remedies now being discussed for that situation recognize just such a distinction, and focus not on admitting other carriers to guarantee competition but on assuring that traffic can flow to carriers that have the asset capabilities and operational efficiencies to physically handle the traffic.

CSXT, of course, will insist that what is happening to UP -- and what happened before to BNSF, and before that to UP when it acquired the Chicago and North Western -- cannot happen to it. Such assurances have been made before, and I suppose the Board can choose to take this one on faith. The more reasonable measure would seem to be for the Board to itself assure that options are in place to handle vital traffic flows before such a crisis occurs. IC would clearly serve as one such option, but to what effect given that an ailing CSXT, through its stranglehold on a lifeline of IC's route structure, would necessarily be taking IC down with it? Once again, I don't think the Board should allow that to happen.

Against a backdrop of unprecedented aggregation in the rail industry, I and many others at IC remain convinced that IC can survive, compete and prosper -- but only if we are allowed to. When able to compete, we succeed. When customers are able to access our services, they use them. When we control our operations, we are the most efficient railroad in the nation. The Leewood-Aulon chokehold threatens all of those abilities, and should be remedied in this proceeding.

IV. LEEWOOD-AULON: IC PURCHASE

IC proposes to acquire the two-mile Leewood-Aulon Line from CSXT. IC would assume dispatching of the line, and would continue to maintain the line to FRA Class 4 standards. Indeed, given IC's substantially greater traffic flows on the line, IC has the greatest incentive to assure that the Leewood-Aulon Line is adequately maintained. IC would grant back to CSXT trackage rights on the lines on terms substantially similar to those in the 1907 Agreement governing IC's trackage rights on the line today. Indeed, under the 1907 Agreement CSXT already operates on IC lines south of Aulon as a trackage rights tenant. UP would retain its existing ability to utilize the Leewood-Aulon Line to conduct interchange with CSXT at CSXT's Leewood Yard, with UP's trains considered to be trains of CSXT for purposes of the 1907 Agreement. There would be no change in the existing allocation or structure of local service on the Leewood-Aulon Line.

What would change is the dispatching of the line. IC would dispatch the line from its dispatching center in Homewood, Illinois, where the attention and diligence given to the line would be commensurate with its vital importance to the IC system. If the Leewood-Aulon Line was a small and unimportant assignment in an out-of-the-way location for CSXT's dispatchers in Jacksonville, it will be just the opposite for IC. If necessary, we would restore a local operator's position in Memphis to oversee operation and dispatching of the Leewood-Aulon Line. Such a person would work closely with the yardmasters at both CSXT's

Leewood Yard and IC's Johnston Yard to efficiently coordinate all operations on the line.

Once we acquire the line and assume dispatching control, why won't we do to CSXT what CSXT did to us? Because we can't afford to. It is absolutely essential to us that the Leewood-Aulon Line be congested for <u>nobody</u>. We are by far the largest user of the line, and any congestion which we allow -- or cause -- will hurt us most. I can make an absolute assurance that IC will <u>never</u> store empty trains on the Leewood-Aulon Line. We will dispatch the Leewood-Aulon Line in a manner that does everything possible to assure that CSXT can move quickly and efficiently over the line, because if CSXT can't do so, then neither can we.

IC's purchase of the Leewood-Aulon Line and assumption of dispatching responsibilities should not deprive CSXT of any efficiencies or harm its operations in the Memphis area. While the fluidity of train movements over the line will improve dramatically, there should be no overall change in traffic patterns or volume. I would note in particular that IC's purchase of the Leewood-Aulon Line will have no adverse effect on the benefits which CSXT expects to obtain from the proposed Conrail transaction. I understand that, post-transaction, CSXT expects traffic to increase on its Nashville-Memphis line by 8%. CSX/NS-20, Vol. 3A at 457. Applied to CSXT's approximately 25% share of traffic on the Leewood-Aulon Line, this amounts to a 2% increase in overall traffic on the line -- well within the capacity of the line, and certainly no indication that retention of dispatching on the line is vital or necessary for CSXT's effective implementation of the Conrail transaction.

In sum, IC's proposed condition is operationally feasible and desirable, will not unduly harm or burden CSXT, and will effectively address the competitive and transportation adequacy problems which IC has identified as arising from the Leewood-Aulon bottleneck in connection with the pending Conrail transaction. I reiterate IC's request that CSXT be required to sell the Leewood-Aulon Line to IC as condition to approval of the Conrail transaction.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

J. D. MCPHERSON, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein and that the same are true as stated.

J. D. McPherson
J. D. MCPHERSON

SUBSCRIBED AND SWORN to before me this 17th day of October, 1997.

Patricia Stanczykiewicz
NOTARY PUBLIC

My Commission expires:

OFFICIAL SEAL
PATRICIA STANCZYKIEWICZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:06/11/01

SHIPPER SUPPORT STATEMENTS

American Carriers

Bay Area Piggyback, Inc.

Condea Vista Company

Cross Con Terminals, Inc.

Degussa Corporation

Manufacturers Consolidation Service, Inc.

Mid American Distribution Companies, Inc.

Mississippi Chemical Corporation

Reagent Chemical & Research, Inc.

Simsmetal America

Simsmetal America

Stone Container Corporation

Transportation Consultants, Inc.

Witco Corporation

Zen-Noh Grain Corporation

American Carriers
9955 West 69th Street
Suite 103
Eden Prairie, MN 55344
Phone (612) 942-6090 • Fax (612) 942-6190

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 President for American Carriers of MN, Inc. American Carriers of MN, Inc. is an Intermodal Carrier with annual sales of over $7,000,000. We are a major shipper of intermodal trailers with facilities at Eden Prairie, Minnesota. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, American Carriers of MN, Inc. has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open

The Honorable Linda J. Morgan
October 20, 1997
Page 2

and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Gary A. Nelson

Gary A. Nelson
President

GAN/ss

Bay Area Piggyback, Inc.

560 Lennon Lane • Walnut Creek, California 94598-2415

James L. Francis
Chairman

Telephone (510) 932-1313
(800) 950-9009
FAX (510) 932-8661

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 President for Bay Area Piggyback. Bay Area Piggyback is a Shipper's agent arranging for transportation via exempt intermodal services with annual sales of over $30,000,000.00. We are a major shipper throughout the U.S. Conrail today serves markets, which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Bay Area Piggyback is in favor of the CSX and NS proposed control of Conrail. The CSX and NS railroads have shown to us the benefits in service and competition.

The Illinois Central Railroad has pointed out areas where service and competition will be adversely effected by the proposed control of Conrail. The IC specifically pointed out the impact of economic closure of gateways or creation of operating impediments at Memphis, which will directly impact the flow of commerce.

We believe that the IC plays a vital role in intermodal traffic in their service area and connections with the CSX, NS, BNSF, UP, KCS, WC, CN & CP. We strongly support the Illinois Central's concerns with the CSX and NS proposed control of Conrail. It is important that gateway connections and operating channels be kept open.

Respectfully submitted,

George W. Francis

George W. Francis
President

GWF:par

GF102097.1

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CONDEA Vista Company
900 Threadneedle
Houston, Texas 77079-2990
(281) 588-3000

CONDEA VISTA

October 20, 1997

The Honorable Linda J. Morgan
Surface Transportation Board
1925 K Street NW, Suite 800
Washington, DC 20423

Dear Chairwoman Morgan:

CONDEA Vista Company is a petrochemical company headquartered in Houston, Texas, with annual sales approaching $1 Billion. Three of our production sites are located in Lake Charles, Louisiana. The vast majority of our products are shipped by rail. Many of our customers are in the northeast. Conrail serves markets which are vital to our ability to deliver our products to our customers. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of the proposed takeover of Conrail, CONDEA Vista has studied the material provided by NS and CSX regarding the alleged benefits of the merger. While there may be public benefits to some markets, the markets most vital to CONDEA Vista Company could be adversely affected. We operate in a very competitive marketplace. Transportation is a significant portion of our overall costs. Competitive transportation cost and service are critical to us. We believe that the Conrail acquisition should be conditioned on maintaining competitive alternative routings to the markets that we serve.

The Illinois Central Railroad is a vital link in the transportation route structure from the Gulf Coast to the eastern markets. The ability of CSX to adversely impact that structure through economic closure of gateways is of great concern. We therefore support the Illinois Central's proposed condition of gateway protection to preclude anti-competitive effects of an artificial, economic closure of gateways.

Sincerely,

James J. Hall
Manager, Distribution

P.O. Box 19029 · Houston, Texas 77224-0029

Cross Con Terminals, Inc. 11260 Southwest Hwy. · Palos Hills, IL 60465 · (708) 974-1660

October 17, 1997

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

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

Dear Chairman Morgan:

I, Richard P. Hyland, am president of Cross Con Terminals, Inc. We have an annual sales of over $50,000,000. We are a major shipper of merchandise with facilities throughout the U.S. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Cross con Terminals has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints.

The Honorable Linda J. Morgan
October 17, 1997
Page 2

CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide a neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Richard P. Hyland

Richard P. Hyland
President
Cross Con Terminals, Inc.

Degussa

Degussa
Corporation

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 Andrew J. Polo, Distribution Manager for the Chemical Group, Degussa Corporation. Degussa Corporation is an international leader in the development of Chemicals, Pharmaceuticals, and Precious Metals with annual corporate wide sales of over $2 billion. We are a major shipper of chemicals with facilities at Theodore, AL. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX' s and NS' proposed control of Conrail, we have reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Taking away the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without

65 Challenger Road Ridgefield Park NJ 07660 201-641-6100

Degussa

Degussa
Corporation

artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Andrew J. Polo

Andrew J. Polo
Distribution Manager
Chemical Group

AJP:lf

October 20, 1997

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

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

Dear Chairman Morgan:

I am Chairman & Chief Executive Officer of Manufacturers Consolidation Service, Inc. an Intermodal Marketing Company with annual sales of over $130,00,000. We arrange rail intermodal transportation for over 3,000 manufacturers, brokers, trucking companies and steamship lines. We depend heavily on a competitive railroad structure to move our traffic.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets and we urge your consideration in keeping them competitive in the CSX purchase of a portion of Conrail. We ask that you keep the current CSX-IC gateways and prospective CSX long-haul options competitive from a rate perspective after the sale of Conrail.

We ask that you scrutinize the control CSX exerts over a two (2) mile section of track between Leewood and Aulon in Memphis, Tennessee. This piece of track is an integral part of Illinois Central's main line between Chicago and New Orleans and we believe should be controlled by Illinois Central.

Very truly yours,

Manufacturers Consolidation Service, Inc.

C. O. ~~Turner, III~~
Chairman & President

MANUFACTURERS CONSOLIDATION SERVICE, INC.
618 OAKLEAF OFFICE LANE P.O. BOX 240608 MEMPHIS, TENNESSEE 38124
[illegible] (901) 684-5000

MID AMERICAN
Distribution Companies, Inc.
4607 Humboldt Avenue North
P.O. Box 11660
Minneapolis, MN 55411-0660
Phone: (612) 521-1000
Fax: (612) 529-2551

Keith J Cekalla
Vice President

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 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 Vice President for Mid American Distribution Centers of Mississippi, Inc.. Mid American is a material handling and transportation company with annual sales of over $400,000. We are a major shipper and receiver of lumber and building materials with facilities at McComb, MS. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's an NS' proposed control of CR, Mid American has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to our Company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate or nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic restraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remedied.

The Honorable Linda J. Morgan
October 20, 1997
Page 2

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Keith J. Cekalla
Vice President

Mississippi Chemical Corporation
we make things grow

Phone (601) 746-4131 Post Office Box 388 YAZOO CITY, MISSISSIPPI 39194-0388 Fax (601) 746-9158

October 20, 1997

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

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

Dear Chairman Morgan:

I am Manager of Distribution for Mississippi Chemical Corporation with headquarters at Yazoo City, Mississippi. Mississippi Chemical is a major producer of all three primary plant food nutrients with sales of over $520 million. We are a major shipper of nitrogen fertilizers with facilities at Yazoo City, Mississippi. We are served by the Illinois Central Railroad Company. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Mississippi Chemical has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

The Honorable Linda J. Morgan
October 20, 1997
Page 2

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide as effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Lamar Self

Lamar Self
Manager of Distribution

LS/bre

October 17, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Chairman Morgan:

I am Traffic Manager for Reagent Chemical & Research, Inc. Reagent Chemical is the largest marketer of Hydrochloric Acid in the United States, with annual sales of over $80MM. We operate facilities at Institute, WV (Conrail), Natrium, WV (CSX), Gallipolis, WV (CSX), Middlesex, NJ (Conrail), Baltimore, MD (CSX & Conrail), Charlotte, NC (CSX), Savannah, GA (CSX), Jacksonville, FL (CSX), Chattanooga, TN, (NS & CSX), Geismar and St. Gabriel, LA (IC). Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Reagent Chemical has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to Reagent Chemical which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from Eastern markets. Almost 60% of our production is located in the Geismar, LA area and supplies much of our Eastern market. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis, TN is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and

The Honorable Linda J. Morgan
October 17, 1997
Page Two

gateways to Eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede the rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I railroad, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectively submitted,

Edwin E. Vigneaux
Traffic Manager

SIMSMETAL AMERICA
A DIVISION OF SIMSMETAL USA CORPORATION
"Recycling the Past to Preserve our Future"®

P.O. Box 405, 876 E. 4500 N. Road • Bourbonnais, Illinois 60914-0405 USA
(815) 932-7777 • FAX (815) 932-7996

October 17, 1997

The Honorable Linda J Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 Division Manager for Simsmetal America. Simsmetal America is a scrap recycling company with annual purchases of over $90,000,000.00 . We are a major receiver of scrap from the East coast with facilities at Kankakee, Illinois. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Simsmetal America has review the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

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We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX applications.

Respectfully submitted,

E. J. Pumphrey III

E. Pumphrey - Trading Manager
SIMSMETAL AMERICA

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P.O. Box 405, 876 E. 4500 N. Road • Bourbonnais, Illinois 60914-0405 USA
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October 17, 1997

The Honorable Linda J Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 Trading Manager for Simsmetal America. Simsmetal America is a scrap recycling company with annual purchases of over $90,000,000.00 . We are a major receiver of scrap from the East coast with facilities at Kankakee, Illinois. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Simsmetal America has review the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

SIMSMETAL AMERICA
A DIVISION OF SIMSMETAL USA CORPORATION
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(815) 932-7777 • FAX (815) 932-7996

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX applications.

Respectfully submitted,

Larry Simon

Larry Simon - Division Manager
SIMSMETAL AMERICA

Stone Container Corporation FAX

To: Thomas Tisa

Fax # (312) 755-7920 # Pgs. 2

Containerboard From: Tom Pavlini, Containerboard Marketing

Stone Container Corporation

150 North Michigan Avenue, Chicago, Illinois 60601-7568

Thomas G. Pavlini

Vice President-General Manager
Containerboard/Kraft Paper Customer
Service and Logistics

312.580.4747
Fax 312.649.4465

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
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 Vice President-General Manager of Containerboard/Kraft Paper, Customer Service and Logistics for Stone Container Corporation (Stone). Stone is a major multinational paper company operating principally in the production and sale of pulp, paper and packaging products. Stone maintains manufacturing facilities in North America, Europe, Central and South Americas, Australia, and Asia with annual sales in excess of $5.0 billion. In the United States, we operate and ship from 13 paper mills. One such mill is located in Hodge, Louisiana where we produce kraft paper and containerboard. Conrail today serves markets which are vital to the transportation of our shipments. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Stone has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routing to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient.

Stone wants those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its line, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. Stone Container Corporation, therefore, strongly supports Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Thomas G. Pavlini

Thomas G. Pavlini
Vice President-General Manager
Containerboard/Kraft Paper,
Customer Service and Logistics

TRANSPORTATION CONSULTANTS INC.

TCI Trucking and Warehousing
Complete Transportation
Management Services

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 the President of Transportation Consultants, Inc., d/b/a TCI Trucking and Warehousing Services. TCI is a trucking and warehousing company with annual sales of over $6,000,000. We are a major shipper and receiver of general commodities with facilities in Harahan and New Orleans, Louisiana. Conrail today services markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, TCI has reviewed the materials provided by NS and CSX and listened with interest to what those carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Absent the availability of effective competitive, alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the

5000 Edwards Avenue Harahan, LA 70123 (504) 734-0561 Fax (504) 734-7901

rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes.

Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be re-mediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Jack C. Jensen, Jr.
President

JCJ/dl

Witco

Witco Corporation
One American Lane
Greenwich, CT 06831-2559
(203) 552-2000
(203) 552-2010 Fax

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 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 Corporate Logistics Manager for Witco Corporation. Witco is a specialty chemical company with annual sales of over $ 2 billion. We are a major shipper/receiver of specialty chemicals with facilities throughout the US. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Witco has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Absent the availability of effective competitive alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's routings and gateways to eastern markets are in heavy use now and are extremely efficient.

We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fact and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Carmen J. Catanese
Corporation Logistics Manager
Witco Corporation
One American Lane
Greenwich, CT 06731

ZEN-NOH GRAIN CORPORATION

October 20, 1997

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 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 President and CEO for Zen-Noh Grain Corporation. Zen-Noh Grain Corporation is a grain and woodchip exporter from the U.S. Gulf with annual sales of over $2 billion. We are a major receiver of grain at our Convent, Louisiana terminal. Conrail today serves markets which are vital to the transportation of our traffic. The proposed control of Conrail by CSX and NS will directly and substantially affect us.

Since the announcement of CSX's and NS' proposed control of Conrail, Zen-Noh Grain Corporation has reviewed the materials provided by NS and CSX and listened with interest to what these carriers and others have said with respect to the benefits and effects of this control application. Although it appears that the proposed application may provide public benefits in certain markets, there remain, however, markets vital to this Company which we believe would be adversely affected by the merger. Absent the availability of effective competition alternative routings to these markets, we do not believe that the proposed merger can or should be approved.

The Illinois Central Railroad is a vital link in the transportation route structure to and from eastern markets. The ability of CSX to adversely impact IC's route through economic closure of gateways or creation of operating impediments at Memphis is neither appropriate nor acceptable where, as here, CSX's proposed application will enable it to control much of the rail traffic in the Eastern United States. Illinois Central's

CORPORATE OFFICE
P. O. BOX 39 • MANDEVILLE, LA 70470-0039
TEL. (504) 867-3500 • FAX (504) 867-3506

CONVENT TERMINAL
8886 LA HWY 44 • CONVENT, LA 70723
TEL. (504) 562-3571 • FAX (504) 562-3135

STB FD 33388 10-21-97 D 182915 2/2

The Honorable Linda J. Morgan
October 20, 1997
Page Two

routings and gateways to eastern markets are in heavy use now and are extremely efficient. We want those gateways to remain open and available without artificial economic constraints. CSX should not be allowed to close or hamper those gateways through a rate structure which forces traffic to CSX's long-haul routes. Further, Illinois Central's rail line is fast and efficient. The ability of CSX to operationally impede that rail line at Memphis should not be condoned and must be remediated.

We believe that Illinois Central, as a major railroad with the lowest operating ratio of any Class I, a route structure that would provide neutral access to all eastern gateways, and a willingness to invest its capital in its lines, has the necessary resources, commitment and incentive to provide an effective competitive alternative to and from eastern markets that we believe is necessary if Conrail is to be controlled by NS and CSX. We, therefore, strongly support Illinois Central's proposed conditions to the CSX application.

Respectfully submitted,

Zen-Noh Grain Corporation

Richard K. Wilcox

Richard K. Wilcox
President and CEO

RKW/bc

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, a copy of the foregoing **Evidence in Support of Conditions and Responsive Application** (IC-6) was served by overnight delivery upon the Primary Applicants herein, as follows:

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

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

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

and by first class mail, postage prepaid, upon all designated parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997 and revised on October 7, 1997.

Thomas J. Litwiler

STB FD 33388 10-21-97 D 182969

182969

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

October 21, 1997

OCT 2 1 1997
MAIL MANAGEMENT STB

Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

D

Re: STB Finance Docket No. 33388, *CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control And Operating Leases/Agreements—Conrail Inc. , et al.*

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Highly Confidential Comments, Evidence, Request for Conditions and Other Relief of AK Steel Corporation, which has been designated as AKSC-6. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
Attorney for AK Steel Corporation

CONFIDENTIAL MATERIAL
Not available for public inspection
... UNDER SEAL

ENCLOSURES
0400-020

cc: All Parties on the Highly Confidential Service List

ENTERED
Office of the Secretary

OCT 2 1 1997

Part of Public Record

STB FD 33388 10-21-97 D 182958

182958
JSSI-6

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500 TELECOPIER: (202) 371-0900

October 21, 1997

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Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, *CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control And Operating Leases/Agreements—Conrail Inc. , et al.*

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Redacted (to be filed in the public record) Comments and Request for Conditions of Joseph Smith & Sons, Inc., which has been designated as JSSI-6.

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

Respectfully submitted,

J.K. Maser

John K. Maser III
Jeffrey O. Moreno
Attorney for Joseph Smith & Sons, Inc.

ENCLOSURES
4899-020

cc: All Parties of Record

182958

JSSI - 6

REDACTED
(TO BE FILED IN THE PUBLIC RECORD)

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
REQUEST FOR CONDITIONS**

submitted on behalf of

JOSEPH SMITH & SONS, INC.

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Attorneys for Joseph Smith & Sons, Inc.

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 AND
REQUEST FOR CONDITIONS**

submitted on behalf of

JOSEPH SMITH & SONS, INC.

Joseph Smith & Sons, Inc. ("JS&S") hereby submits these Comments and Requests for Conditions on the application of CSX Corporation and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern"), and Conrail, Inc. and Consolidated Rail Corporation ("Conrail") (collectively referred to as "Applicants") to allow CSX and Norfolk Southern to acquire control of Conrail and to divide the ownership, use and operation of Conrail's assets between them. Specifically, JS&S seeks to preserve the potential for two carrier access that it has today. These comments are supported by the Verified Statement of Robert Paul Smith ("Smith V.S."), the President and Chairman of JS&S.

I. STATEMENT OF FACTS

JS&S is a processor of scrap metal. (Smith V.S. at 2) Its primary scrap metal processing facility is located in Capital Heights, Maryland. (*Id.*) Although this facility is bounded on three sides by the rail lines of Conrail, CSX and Amtrak, it is served only by Conrail. A diagram showing the layout of the facility with respect to the rail lines and highways in the immediate vicinity is attached to Mr. Smith's verified statement as Exhibit 1.

JS&S has explored interconnections with the Amtrak and CSX lines in the past. At some time in the past, there was a connection between the JS&S industry track and the Amtrak line. Exactly when that connection was removed is unknown. (*Id.* at 4) Also, just five years ago, CSX proposed a build-in to JS&S from its line on the east side of the facility. (*Id.* at 3) This build-in was not constructed because Conrail reduced its rates. (*Id.*) The details of these interconnections are discussed below and in Mr. Smith's Verified Statement.

II. THE ACT REQUIRES THE BOARD TO IDENTIFY POTENTIALLY HARMFUL EFFECTS OF A TRANSACTION AND GIVES THE AGENCY BROAD POWER TO MITIGATE THOSE EFFECTS

Under Section 11323 of the Interstate Commerce Act, a consolidation or merger of two carriers may be carried out only with the approval and authorization of the Surface Transportation Board. 49 U.S.C. §11323(a). Both the legislative history of the statute and the agency's decisions implementing the law demonstrate that the agency must carefully and broadly consider the potential adverse effects on competition among rail carriers in an affected region. Moreover, where a proposed merger results or may result in harmful competitive effects, the Board *must* impose conditions on the merger to eliminate those effects, as long as the conditions are operationally feasible and will produce public benefits outweighing any harm to the merger.

A. The Statutory Standard

Under Section 11324 of the Act, a consolidation or merger of two carriers, the purchase of one carrier by another, or the acquisition of control of one rail carrier by another, may be carried out only with the approval and authorization of the Surface Transportation Board. 49 U.S.C. §11324(a). The Act, in 49 U.S.C. §11324(b), requires the Board to consider, in a proceeding involving the merger of two or more Class I railroads, at least the following:

> (A) the effect of the proposed transaction on the adequacy of transportation to the public.
> (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.
> (C) the total fixed charges that result from the proposed transaction.
> (D) the interest of carrier employees affected by the proposed transaction.
> (E) 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, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, served August 12, 1996 [*UP/SP Control*]. It should be noted that the ICC Termination Act included the last phrase to paragraph (E) above -- adverse effects on competition "in the national rail system" -- to clarify that the Board must consider the effects of a transaction upon the rail system in the nation generally.

The statute directs the Board to "approve and authorize a transaction . . . when it finds the transaction consistent with the public interest." 49 U.S.C.

§11344(c). The same section also provides that the Board "may impose conditions governing the transaction." *Id.*

In addition to these explicit statutory considerations, the Board is also required by *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944) and the *Northern Lines Merger Cases*, 396 U.S. 491, 510-513 (1970), to weigh the policy of the antitrust laws disfavoring diminution in competition resulting from a proposed merger against the national transportation policy favoring improvements in efficiency from an integrated national transportation system. The agency has noted that, while it does not sit as an antitrust court, the antitrust laws give "understandable content to the broad statutory concept of the public interest." *Union Pacific Corp., et al. -- Control -- Missouri Pacific Corp.*, 366 I.C.C. 462, 485 (1982) [*UP/MP Control*], *quoting FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 338, 244 (1968). Even if a particular transaction would not violate the antitrust laws, the Board has the discretion to disapprove it. *Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison , Topeka and Santa Fe Railway Company*, served August 23, 1995, slip op. at 53 [*BN/SF Control*].

B. <u>The Agency's Policy Statement</u>

As currently codified at 49 C.F.R. §1180.1(c), the Board's policy statement on major rail mergers states that the agency performs a balancing test, weighing the potential benefits to the applicants and the public against the potential harm to the public. The agency's policy statement emphasizes that the carrier must assume "full responsibility for carrying out the controlled carrier's common carrier obligation to provide adequate service upon reasonable demand." 49 C.F.R. §1180.1(a). Moreover, in developing its policy statement, the ICC emphasized that it was 'concerned about *any* significant 'lessening' or 'reduction' in competition caused by a consolidation." *Railroad Consolidation Procedures*, 363 I.C.C. at 786-87 [emphasis added].

In its decision in *UP/SP Control*, the agency noted that, in determining whether a proposed transaction is consistent with the public interest, "we must examine its effect on the adequacy of transportation to the public." *UP/SP Control*, slip op. at 99. The agency also noted that "[i]n assessing the probable impacts and determining whether to impose conditions . . . our concern is the preservation of essential services. . . . An essential service, for this purpose, is a service for which there is sufficient public need, but for which adequate alternative transportation is not available." *Id.*, slip op. at 101. Thus, if implementation of a proposed transaction may, if not otherwise conditioned, result in the *impairment* of essential rail services, the agency has a duty and an obligation to condition the transaction to mitigate or eliminate the likelihood of such a result.

The agency has also consistently emphasized the need to protect the public from any harmful effects on competition resulting from a proposed rail merger. In its decision in *UP/MP Control*, the agency noted that:

> [o]ur analysis of the potential harm from a proposed consolidation focuses on two impacts highlighted by the statutes and policies discussed above: any reduction in either intra- or intermodal competition which would likely result from the consolidation; and any harm to essential services provided by competing carriers . . .

366 I.C.C. at 486. In *Santa Fe Southern Pacific Corporation-Control-Southern Pacific Transportation Company*, 2 I.C.C.2d 709, 726 (1986) [*SF/SP Control*], the agency emphasized that "the effect of a transaction on competition is a critical factor in our consideration of the public interest. . . ." See also, *BN/SF Control*, slip op. at 55.

C. The Board's Power To Condition A Proposed Transaction Is Broad

The Board's power to attach conditions to its approval of a major rail merger is, under the statute, unqualified, and the agency itself has frequently characterized its authority as "broad." 49 U.S.C. §11344(c); *BN/SF Control*, slip op. at 55; *UP/MP Control*, 366 I.C.C. at 562; *UP/SP Control*, slip op. at 144. The agency has observed that conditions generally will be imposed where certain criteria are met. *See, e.g., Union Pacific Corp, et al. — Control — Chicago and North Western*, Finance Docket No. 32133, served March 7, 1995, slip op. at 56 [*UP/CNW Control*]. The agency has determined that if a transaction threatens harm to the public interest, conditions *should* be imposed if they are operationally feasible, ameliorate or eliminate the harm threatened by the transaction, and they are of greater benefit to the public than they are detrimental to the transaction. *UP/MP Control*, 366 I.C.C. at 564.

III. THE EVIDENCE DEMONSTRATES THAT THE PROPOSED TRANSACTION WILL HAVE SIGNIFICANT ANTICOMPETITIVE EFFECTS FOR THE TRANSPORTATION OF JS&S TRAFFIC.

The Board will place protective conditions upon a merger only if the anticompetitive effects sought to be corrected are the result of the merger. *BNSF Control*, slip op. at 54; *UP/MP Control*, 366 I.C.C. at 562-63, 565. One of the ways in which a merger can have anti-competitive effects is by reducing or eliminating horizontal competition. Horizontal competition exists when two or more rail carriers offer competing service within a defined market. *BNSF Control* at 55. If two carriers that provide horizontal service merge, there is a reduction in horizontal competition. An anti-competitive merger will allow the newly combined carriers to exercise market power over the affected traffic. *Id.* at 54.

An examination of competitive constraints upon market power requires consideration of both actual and potential competition. The fact that a shipper is served by only a single rail carrier does *not* automatically mean the shipper cannot benefit from horizontal competition. If a second carrier operates nearby with the capability of extending its track to the shipper, that carrier can be just as effective a competitor as if it actually served the shipper directly. *Union Pacific Corp. - Control - Missouri-Kansas-Texas Railroad Co.*, 4 I.C.C.2d 409, 476-77 (1988). The incumbent carrier will have every incentive to discourage the build-in by pricing its services at a level that will make the build-in unattractive to a challenger. However, if the incumbent carrier fails to respond to a viable build-in threat, the build-in will be constructed and the incumbent carrier will lose the traffic. The shipper benefits in either instance. Thus, the threat of competition alone can have a restraining effect upon a would-be monopolist.

The acquisition and division of Conrail by CSX and Norfolk Southern will have the anti-competitive effect of eliminating horizontal competition for JS&S traffic from and to Capital Heights, Maryland. The horizontal competition that will be eliminated are two prospective build-outs to CSX and to Amtrak's Northeast Corridor line. The result will be a concentration and enhancement of market power in CSX. Thus, JS&S will suffer a serious loss of horizontal competition as a direct result of the proposed transaction.

A. The Proposed Transaction Will Eliminate a Feasible Build-In, Build-Out Option Currently Available to JS&S.

As a direct result of the merger, JS&S no longer will have a build-in or build-out option to CSX. The threat of a build-in from CSX was very real at the time of the merger. A build-in was simply a matter of constructing a short connection (*i.e.*, measured in yards) from a CSX line on the east side of the JS&S property to JS&S industry track. The proposed merger will eliminate this potential competitive threat because CSX will serve JS&S directly over the existing Conrail line.

The viability of a CSX build-in cannot be doubted. CSX, at the end of 1991 and 1992, estimated a track installation cost of and quoted rates to various destinations, assuming a minimum carload commitment over three years.[1] (Smith V.S., Exs. 2 and 3) JS&S pursued the 1992 offer to the point of obtaining credit from CSX and entering into a contract for rail transportation. (*Id.* at 3; Exs. 4 and 5) The contract is an evergreen contract that neither party has ever terminated and, thus, remains in effect to this day. JS&S ultimately did not follow through with construction of the build-out because the threat of losing the traffic was enough to force Conrail to reduce its rates to competitive levels. (*Id.* at 3)

The build-out threat had kept Conrail's rates competitive until approximately one year ago when the rates began to rise significantly once again. The timing of the increases came at about the same time CSX and Conrail publicly announced their intention to merge. (*Id.*) This new circumstance would have rendered the build-out threat meaningless to Conrail. The increase in Conrail's rates after the threat of a build-out was eliminated serves to reinforce the effectiveness of that threat which was illustrated by Conrail's earlier reduction in rates in response to the build-out threat.

Norfolk Southern will obtain trackage rights over the CSX line as part of the proposed transaction. JS&S requests that the Board preserve the CSX build-in threat by permitting Norfolk Southern to build-in to serve JS&S, or JS&S to

---

1 The minimum car commitment over three years rose cars between the 1991 and 1992 CSX offers. Mr. Smith does not recall the reason for the increase, or if any reason was given by CSX. Either figure is easily satisfied by JS&S

build-out to obtain service from Norfolk Southern, at any point along the existing CSX track that borders JS&S on the South and East.

B. The Proposed Transaction May Eliminate The Option For JS&S To Construct An Interconnection With Conrail.

JS&S also has the ability to interconnect with Amtrak's Northeast Corridor line which runs along the northern border of its property. In fact, such a connection once existed although it is unclear when it was removed, other than sometime after 1957. (Smith V.S. at 4) This connection can be restored with minimal obstacles. (*Id.*) Conrail currently provides freight service over the Amtrak line via trackage rights. These rights will be transferred to Norfolk Southern after the transaction. JS&S is uncertain, however, whether it could be served by Norfolk Southern via those trackage rights in the same manner that it could be served by Conrail today. JS&S seeks clarification and confirmation that it will have the same right and opportunity to restore its former interconnection to Amtrak's line as it has today and that Norfolk Southern will have the right and obligation to serve JS&S via that connection.

C. Intermodal Competition for JS&S Traffic Is Limited.

Very little competition is provided from non-rail transportation sources for processed scrap. The only feasible alternatives for JS&S are truck and barge. Both, however, are used only in limited circumstances and have significant disadvantages when compared to rail. The importance of rail transportation to JS&S is illustrated by the fact that of its freight currently moves by rail. (Smith V.S. at 2)

Trucks are competitive with rail, in terms of rates, only for a 150 mile radius. Beyond that, rail has a distinct cost advantage. (*Id.*) Trucks also are used for time-sensitive shipments. (*Id.*) JS&S prefers rail over truck because trucks have a significantly lower load capacity, which also requires more paperwork to process invoices; trucks impede the flow of traffic in the scrap yard; and trucks require immediate loading and unloading, whereas rail cars can be loaded and unloaded when it is convenient. (*Id,*)

Although JS&S has used barges in the past, it does not presently transport by barge. (*Id.*) Barges are disfavored because they are even slower than rail. (*Id.*) Moreover, the ability to use barges is limited to shipments destined to points near navigable waterways. Because JS&S is not located directly on a waterway, it must transload to barges by truck, thereby incurring all the disadvantages of truck transportation discussed above.

These limitations on intermodal transportation options prevent them from acting as a competitive constraint on rail rates to JS&S. This is proven by the fact that Conrail increased rail rates significantly when it no longer believed there could be a build-in threat from CSX. If intermodal options were a true constraint, Conrail could not have done this.

IV. THE BOARD MUST GRANT JS&S' REQUEST FOR CONDITIONS TO ELIMINATE THE ANTICOMPETITIVE EFFECTS OF THE PROPOSED MERGER.

The anticompetitive effects of the merger on the JS&S Capital Heights, Maryland facility can be ameliorated with the imposition of protective conditions upon the merger. These conditions are as follows:

1. Permit Norfolk Southern to build-in to JS&S from its trackage rights over the CSX line that runs along the southern and eastern edges of the JS&S Capital Heights, Maryland facility.
2. Permit Norfolk Southern to provide service to the JS&S Capital Heights, Maryland facility via any future interconnection that may be

constructed between JS&S and Amtrak's Northeast Corridor line, which runs along the northern edge of the facility.

Respectfully submitted,

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Jeffrey O. Moreno
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Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for Joseph Smith & Sons, Inc.

October 21, 1997

VERIFIED STATEMENT OF ROBERT PAUL SMITH

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

**VERIFIED STATEMENT OF
ROBERT PAUL SMITH**

My name is Robert Paul Smith. I am the President of Joseph Smith & Sons, Inc. ("JS&S"). My address is 2001 Kenilworth Avenue, Capital Heights, Maryland 20743.

I joined JS&S in 1963 after studying Business Administration at the University of Miami. Within the company, I have held several different positions. From 1969 until 1974, I was General Manager of Tristate Auto, a JS&S subsidiary. I became Chairman and President of JS&S in 1974 and have occupied both positions ever since.

As President of JS&S, I direct the company through senior managers in various strategic positions. My responsibility is to guide my senior managers in the direction in which I believe the company should be headed. I am submitting this verified statement to request that certain conditions be placed upon the acquisition and division of Conrail by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("Norfolk Southern") in order to preserve two build-out and interconnection options that exist at the JS&S facility in Capital Heights, Maryland.

JS&S is a scrap metal processor. Its primary facility is located at 2001 Kenilworth Avenue, Capital Heights, Maryland. This facility relies upon rail transportation to fill approximately of its transportation needs, making rail transportation absolutely critical to our business. This amounts to an average of cars per week. Currently, the Capital Heights facility is served directly only by Conrail. Destination points vary over time according to market and freight costs.

Although they are less desirable modes of transportation in most circumstances, we also can use trucks or barges as alternatives to rail transportation. Trucks have the advantage of a quicker delivery for time sensitive shipments and the rates are competitive with rail transportation within a 150 mile radius. Beyond 150 miles, however, rail has a distinct cost advantage over trucks. Even then, however, trucks have a lower load capacity, require the processing of more invoices, impede the traffic flow in our yard, and require immediate loading and unloading. This compares unfavorably with rail transportation, which has greater load capacity, fewer invoices, does not impede traffic flow in our yard, and can be loaded and unloaded at our convenience. We also have used barges in the past, although no traffic currently moves in this manner. Barge transportation tends to be even slower than rail and barges only can haul traffic to destinations that are close to a navigable waterway.

Although the JS&S Capital Heights facility is served directly only by Conrail, it has the potential to access several additional rail lines of other carriers. The facility is bordered by Kenilworth Avenue to the West and by the rail lines of several carriers on the other three sides. Conrail currently serves JS&S from its line running along the South side of the facility. CSX also operates a parallel line on the South side which turns North and continues along the East side of the property. In addition, Amtrak's Northeast Corridor line runs along the North side of the property. A diagram showing these lines is attached as Exhibit 1. Thus, in addition to the Conrail line that currently serves the Capital Heights facility, JS&S also could interconnect with the CSX and Amtrak lines.

In fact, CSX recently has proposed a build-in to the Capital Heights facility. Discussions took place near the end of 1991 and 1992. In a letter dated November 14, 1991 (Exhibit 2), CSX offered us rates over a build-in that was estimated to cost only   A similar proposal was made by CSX in a letter dated December 15, 1992 (Exhibit 3). In anticipation of CSX service, JS&S completed a CSX credit application for freight bill payments (Exhibit 4) and, in May 1993, executed a rail transportation contract with CSX (Exhibit 5). We ultimately did not follow through with construction because we were able to use the build-out as competitive leverage to obtain reduced rates from Conrail.

Until approximately one year ago, the threat of a build-out to CSX kept Conrail's rates at competitive levels. However, over the past year, Conrail has not felt similarly constrained and our rates have gradually increased. Clearly, as merger negotiations with CSX began to take final shape, Conrail knew that the threat of a build-out to CSX would become hollow. This is the best example of the competitive loss that the Conrail acquisition already has begun to inflict upon JS&S. Because CSX will acquire the Conrail line that currently serves the Capital Heights facility, the build-out option to the existing CSX line will be eliminated altogether.

After the acquisition and division of Conrail, I am told that Norfolk Southern will acquire trackage rights over the current CSX line to which the build-out could have been constructed. In order to preserve this build-out option, the Surface Transportation Board should permit Norfolk Southern to serve the JS&S Capital Heights facility from the CSX line via a build-out.

In addition to a possible build-out to CSX, JS&S also has the ability to interconnect with Amtrak's Northeast Corridor line on the North side of the Capital Heights facility. In fact, aerial photographs show that a connection existed until at least 1957 after which it was removed for unknown reasons. Freight service currently is provided over that line by Conrail via trackage rights. The original connection easily could be restored because the Capital Heights property is at the same grade level as the Amtrak rail line and the land remains free of any permanent structures.

After the acquisition and division of Conrail, Norfolk Southern will succeed to the rights and obligations of Conrail to provide freight service along this stretch of the Northeast Corridor. In order to preserve our interconnection option on the Northeast Corridor, JS&S asks the Surface Transportation Board to clarify that Norfolk Southern can and must serve, pursuant to its common carrier obligation, all future interconnections along the line and, in particular, the JS&S Capital Heights facility if we construct an interconnection in the future.

JS&S requests the Board to impose conditions upon the acquisition and division of Conrail that would preserve a build-out option to the Norfolk Southern on the nearby CSX line and will preserve the opportunity to obtain Norfolk Southern service by the reestablishment of an interconnection with Amtrak's Northeast Corridor Line.

VERIFICATION

CITY OF Prince Georges :
: ss: 579-54-1868
STATE OF M.D. :

[NAME], being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

[NAME]

Subscribed and sworn to before me, a Notary Public, this 17 day of October, 1997.

Notary Public

GLORIA MARIE QUEEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 1~~5, 1997~~
2007

My Commission expires:______________

EXHIBIT 1

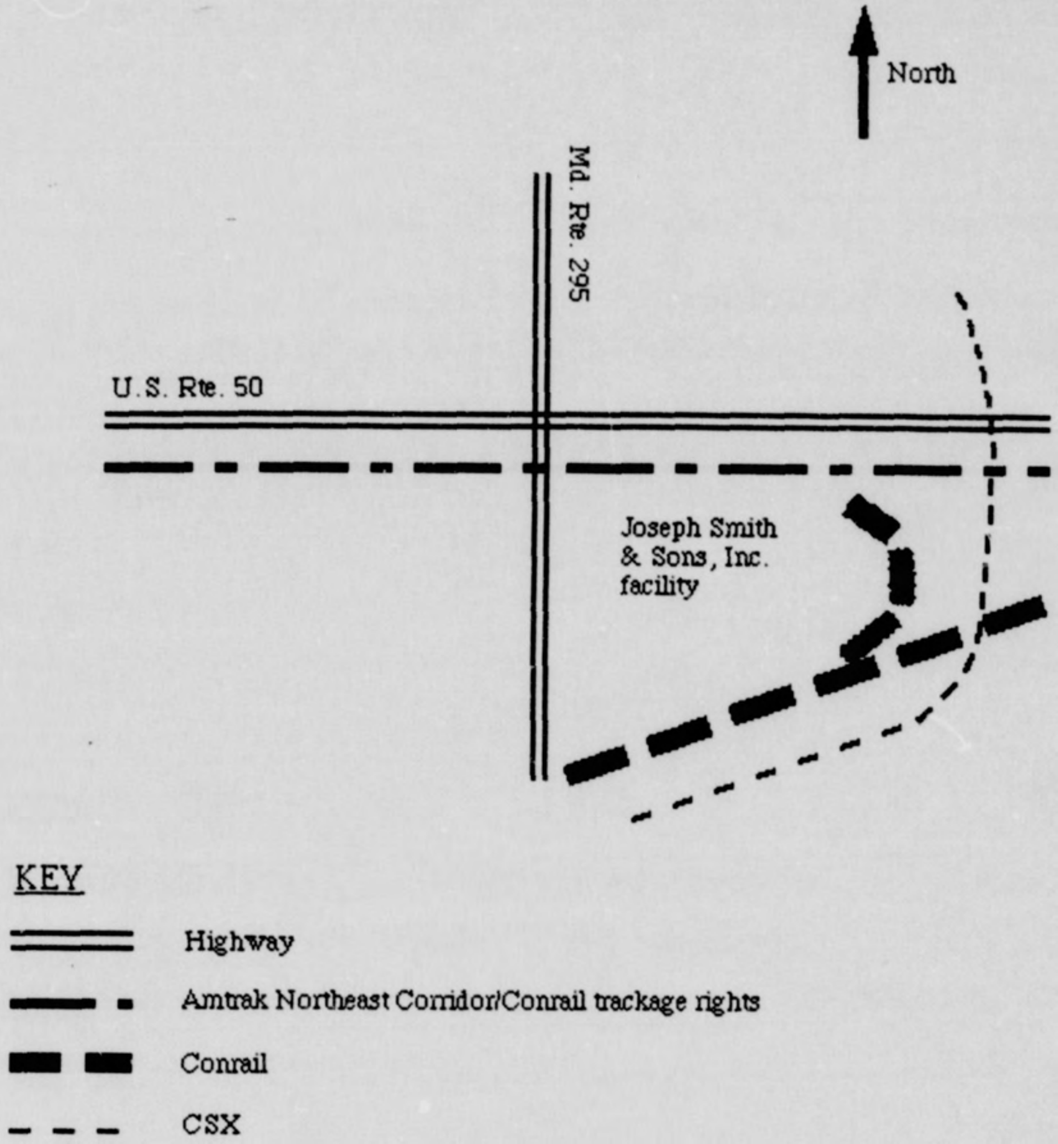
North
Md. Rte. 295
U.S. Rte. 50
Joseph Smith
& Sons, Inc.
facility
KEY
Highway
Amtrak Northeast Corridor/Conrail trackage rights
Conrail
CSX

EXHIBIT 2

REDACTED

EXHIBIT 3

REDACTED

Exhibit 4

REDACTED

EXHIBIT 5

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that I have on this 21st day of October, 1997, caused to be served copies of the foregoing Comments and Requests for Conditions on all parties of record in this proceeding, by first-class mail/postage prepaid, or by hand delivery.

Aimee L. DePew

STB FD 33388 10-21-97 D 182955

182955

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
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Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Highly Confidential Comments and Request for Conditions of Joseph Smith & Sons, Inc., which has been designated as JSSI-5. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

ENTERED
Office of the Secretary
OCT 2 1 1997
Part of Public Record

Respectfully submitted,

John K. Maser III
Jeffrey O. Moreno
Attorney for Joseph Smith & Sons, Inc.

ENCLOSURES
4899-020

cc: All Parties on the Highly Confidential Service List

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UNDER SEAL.

182952

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Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and twenty-five (25) copies of the Redacted (to be filed in the public record) Comments of Union Camp Corporation, which has been designated as UCC-2.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
John K. Maser III
Attorneys for Union
Camp Corporation

ENCLOSURES
6400-000

cc: All Parties of Record

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UCC-2

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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 REQUEST FOR CONDITIONS
OF
UNION CAMP CORPORATION

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Attorneys for Union Camp Corporation

OCTOBER 21, 1997

BEFORE THE
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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 REQUEST FOR CONDITIONS

OF

UNION CAMP CORPORATION

Union Camp Corporation's Dover, Ohio, chemical plant is located on the rail line that runs from Warwick, Ohio to Uhrichsville, Ohio. The section of track on which the Dover plant is located is owned by CSX Transportation, Inc. ("CSXT") and is leased by R.J. Corman Railroad Company ("R.J. Corman"). The proposed acquisition will adversely impact competition for all customers along the leased section of the Warwick-Uhrichsville, including Union Camp's Dover chemical plant, by eliminating all rail competition from carriers other than CSXT. Accordingly, Union Camp respectfully requests the Surface Transportation Board ("STB" or "The Board") to impose a condition upon the proposed acquisition in order to protect competition for rail traffic at Union Camp's Dover facility. The requested condition and the reasons why it must be imposed are detailed in this submission.

I.

STATEMENT OF FACTS

Union Camp Corporation ("Union Camp") owns and operates a chemical plant in Dover, Ohio, that produces products derived from castor oil and tall oil fatty acids. Castor oil is processed into a variety of fatty acids and esters for use within the cosmetics (personal care), plastics, lubricants and detergent industries. Union Camp is the only U.S. based company that converts castor oil into sebacic acid, a dibasic acid used in specialty plasticizers and lubricants. Union Camp's Dover plant ("U.C. Dover") also produces a broad range of dimer acids, polyamides and esters from tall oil fatty acids received from Union Camp's Savannah, Georgia linerboard mill. These products are used in making high performance adhesives, plasticizers and inks. Union Camp has 235 employees at its Dover facility and is one of the largest employers in Tuscarawas County. The Dover facility is dependent on rail for the transportation of castor oil and tall oil fatty acids to the plant.

U.C. Dover is located in the proximity of Mile Post 71 on the rail line between Uhrichsville and Warwick, Ohio. Prior to November 30, 1990, this line was owned and operated by CSXT. In early 1989, CSXT and R.J. Corman filed with the Interstate Commerce Commission ("I.C.C.") an application in Finance Docket No. 31388 so that R.J. Corman could purchase the line from CSXT. After assurances were made to Union Camp by CSXT that the transaction would not harm competition and that it would improve competition, Union Camp provided a statement supporting the transaction.

At the time, the line in question had the ability to interchange with CSXT at Warwick and with both Norfolk Southern Corporation and Consolidated Rail

Corporation ("Conrail") at Massillon, Ohio. Union Camp's support of the transaction was couched specifically on CSXT's assurances that the acquisition of the rail line by R.J. Corman would provide competition for rail service on the line by allowing access to the other rail systems.

After the time for submitting verified statements and comments had passed, CSXT filed an Amendment to Financial Docket No. 31388 that changed the terms of the transaction so that only the portion of track between milepost 108.4 at Warwick, Ohio and milepost 74.6 at Dover was sold to R.J. Corman. *R.J. Corman Railroad Company/Memphis Line -- Purchase and Lease -- CSX Transportation, Inc. Line Between Warwick and Uhrichsville, OH,* 1989 ICC LEXIS 154, at *1-2 (1969). (Comments from interested parties were required to be submitted by April 10, 1989. Application amended on April 13, 1989.) The portion of line between milepost 74.6 at Dover and milepost 59.5 at Uhrichsville, on which U.C. Dover is located, was leased to R.J. Corman instead of being sold. This Amendment was filed without any prior notice to Union Camp. In addition, the lease agreement that was executed between CSXT and R.J. Corman contains a provision that assesses a substantial penalty when R.J. Corman interchanges traffic to or from points on the leased portion of the line to any carriers other than CSXT. In other words, Union Camp has been deprived, by CSXT's undisclosed modification of the transaction with R.J. Corman, of the very competition that CSXT used to induce Union Camp to support the original application. CSXT admitted to the existence of this anti-competitive provision within the lease agreement in a May 21, 1993 letter to Union Camp. *See* Attachment A

This penalty

provision on R.J. Corman is a hindrance to effective competition on the leased portion of the line and should be removed as a condition of the merger.

Except for the unreasonable and purposely anti-competitive penalty provision imposed on all non-CSXT traffic, Conrail's inter-connection at Massillon provides a viable competitive rail option. This is increasingly true in light of CSXT's reduction in frequency of service and the differential in transit time on many movements. The transit time on castor oil from Port Newark, NJ. to Dover via the CSXT line is 7.5 days, while Conrail's route would only take 4 days. This time differential doubles the shipper-owned tank car cost required for the movement. In addition, CSXT's service has been drastically reduced. For example, CSXT no longer offers Friday or Saturday service between Warwick, Ohio and Willard, Ohio. These service and time problems combined with Conrail's willingness to offer truck competitive rates result in Conrail's existing line being an attractive competitive choice, except for the deliberately anti-competitive CSXT-imposed financial penalty.

In the proposed Conrail acquisition, Norfolk Southern will obtain Conrail's Alliance-Crestline line that has the interchange with R.J. Corman at Massillon. Application Volume 8B at 98.

II.

THE STB HAS BROAD AUTHORITY TO MITIGATE ANTI-COMPETITIVE EFFECTS BY REQUIRING CONDITIONS

When judging an application for control of a railroad, the Surface Transportation Board must make a determination that the transaction is "consistent with the public interest." *Missouri-Kansas-Texas R. Co. v. United States,* 632 F.2d 392, 395 (5th Circuit 1980), *cert. denied,* 451 U.S. 1017 (1981). *See also Union Pacific Corporation, et al -- Control and Merger -- Southern Pacific Rail*

Corporation, et al., Finance Docket No. 32760, slip op. at 98 (1996). In determining the public interest, the Board balances the benefits of the merger against the competitive harm that cannot be mitigated by conditions. 49 CFR §1180.1 (c). The Board has broad authority to impose conditions on consolidations, particularly when the conditions sought might be useful in lessening anti-competitive effects. 49 CFR §1180.1 (d). The Board normally requires a showing of harm to essential services[1] as well as requiring that "the condition: (i) Is shown to be related to the impact of the consolidation; (ii) is designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the consolidating carrier; and (iv) would not frustrate the ability of the consolidated carrier to obtain the anticipated public benefits." 49 CFR §1180.1 (d) (1). When it is claimed that the proposed transaction will have a direct effect on competition by eliminating competitive alternatives available to the public, the agency does not require a showing of harm to essential services before it will impose conditions. *Railroad Consolidation Procedures, General Policy Statement,* 363 I.C.C. 784, 789 (1981).

III.

APPROVAL OF THE PROPOSED MERGER WILL HAVE SIGNIFICANT ANTI-COMPETITIVE EFFECTS FOR THE TRANSPORTATION OF UNION CAMP TRAFFIC AT DOVER

Both CSXT and Norfolk Southern have professed that in order to pay for this multi-billion dollar acquisition of Conrail they must *grow the business.* In order to accomplish this, they will have to provide rates and service that are competitive with other modes of transportation. In the case of Dover, Ohio a number of shipments that previously moved via rail have already been converted to

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[1] An essential service is a service for which there is a sufficient public need and for which adequate alternative transportation is not available. 49 CFR §1180.1 (c) (2) (ii)

motor carriage because of inadequate service by CSXT. Thus, it would seem particularly important that Norfolk Southern be permitted to fairly compete for this traffic and capture motor carrier volumes that Conrail was unable to secure because of the draconian penalty clause imposed by CSXT.

In the present proceeding, as in the past, CSXT professes to be in favor of open competition for rail services. But similar assertions in the past have not been proven out by CSXT's actions. In the Sale/Lease Agreement for the Warwick to Uhrichsville line, CSXT maintained that the transaction would open up competition for rail services on the line. CSXT solicited support from Union Camp for the transaction by making claims that the transaction would promote competition. Upon gaining Union Camp's support, CSXT changed the nature of the transaction and created a penalty clause that virtually destroys any chance for meaningful rail competition. This set of facts should illustrate to the Board that CSXT is not seriously committed to promoting open competition and that CSXR's assertions should not be trusted.

IV.

THE BOARD MUST GRANT UNION CAMPS REQUEST THAT THE PENALTY PROVISION BE REMOVED AS A CONDITION OF THE PROPOSED MERGER

The penalty provision within the Lease/Sales Agreement with R.J. Corman has been a purposeful and effective anti-competitive ploy by the CSXT to exclude any competition for rail service on the leased portion of the Warwick-Uhrichsville line. Without such rail competition and with the declining CSXT service, the motor carriers will continue to eat away at the market share of transportation volume available in Tuscarawas County. This, in turn, creates a dreadful spiral of fewer rail movements requiring higher rates and resulting in even more truck diversion. This type of situation is not in the best interest of the general public.

Union Camp wants to actually increase rail movements at Dover, Ohio, which is consistent with its support of the original R.J. Corman application and the stated objectives of CSXT and Norfolk Southern in this merger application. Both CSXT and Norfolk Southern have publicly stated that they welcome fair competition. So be it!

By requiring the removal of anti-competitive penalty provisions from the R.J. Corman Sale/Lease Agreement, the Board would provide Union Camp and other shippers located on the leased portion of the Warwick-Uhrichsville line with true competition for rail service from both applicants who are seeking to extend their respective franchises by acquiring Conrail. Failure of the STB to require CSXT to drop the penalty provision as a condition of the merger would destroy any competition that currently exists and would ensure that no meaningful rail competition will exist in the future. Class 1 railroads should not be permitted to adopt or maintain such anti-competitive provisions in either mergers or when selling off branch lines to short lines.

In Summary this request:

1) Does not require any additional investment in rail facilities.

2) Fosters true rail to rail competition

3) Will assist in keeping good revenue shipments on rail.

4) Is in the best interest of the general public.

Respectfully submitted,

Frederic L. Wood
John K. Maser III
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1100 New York Avenue, N.W., Suite 750
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(202) 371-9500
Attorneys for Union Camp Corporation

DATE: OCTOBER 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have on this 21st day of October, 1997, caused to be served copies of the foregoing Comments on all parties of record in this proceeding, by first-class mail/postage prepaid, or by hand delivery.

Frederic L. Wood

Frederic L. Wood

ATTACHMENT A

REDACTED

STB FD 33388 10-21-97 D 182946

182946

DONELAN, CLEARY, WOOD & MASER, P.C.

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October 21, 1997

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OCT 21 1997
MAIL MANAGEMENT STB

Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation, et al, Norfolk Southern Corporation, et al. -Control And Operating Leases/Agreements --Conrail Inc., et al.

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and twenty-five (25) copies of the Highly Confidential Comments of Union Camp Corporation, which has been designated as UCC-1. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
John K. Maser III
Attorneys for Union
Camp Corporation

ENCLOSURES
6400-000

cc: All Parties on the Highly Confidential Service List

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STB FD 33388 10-21-97 D 182939

182939

DUPX-02

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORP. et al. - Control and Operating Leases/Agreements - Conrail Inc. et al.

COMMENTS BY

E.I. DUPONT DE NEMOURS AND COMPANY, INC.

E.I DuPont de Nemours and Company, Inc. (DuPont) is a forty three billion dollar, diversified chemical and energy corporation. It currently operates about two hundred manufacturing sites world wide and employs just under one hundred thousand people. DuPont owns Conoco, one of the world's largest petroleum companies and half of Consolidation Coal Company (Consol), the largest coal company in the United States. DuPont is also the second largest container shipper in the United States with annual exports of about four billion and imports of about one billion dollars, respectively.

Rail transportation is critical to DuPont's domestic and export activities. DuPont's U.S. rail transportation bill currently exceeds two hundred million dollars annually for its chemical and specialties (C&S) businesses alone. Expenditures for rail transport for Consol and Conoco exceed DuPont's C&S

expenditures. In addition, DuPont owns or leases over seven thousand rail cars and makes over fifty thousand rail shipments each year.

DuPont estimates that seventy five percent of the North American sales of its five largest strategic business units are directly linked to rail. In addition, because of the large volumes and nature of DuPont products, for at least seventy-five of these rail shipments there is no practical or economic alternative. Further, rail transport is a substantially safer mode for transporting many of the company's regulated bulk products.

DuPont, and other U.S. manufacturers, are heavily affected by global competition. Although the Company's products are utilized in virtually all of the world's manufacturing, mining and agricultural activities, DuPont does not enjoy a government sanctioned monopoly in any of its product markets. Product quality, price, timely service, and availability remain crucial to the Company's global competitiveness and its continued success and growth. DuPont must be able to provide its customers with the right product, at the right price, and at the time and place designed by the customer if it is to survive and prosper.

In the late 70's the United States rail system could best be characterized as a fragmented, financially weak, largely inefficient, neglected, and arguably unsafe transportation network. Today, freed from the shackles of government economic regulation by the passage of the Stagger's Rail Act of 1980, the system has evolved into a financially healthy, reasonably efficient and safe transportation system. It has become a "national treasure" and affords a significant competitive advantage to U.S. industry. However, this has not been accomplished without pain and it has not been all positive.

In the early 1980's, immediately following the passage of the Staggers Act, the rail market place was composed of well over forty class I railroads and a multitude of smaller feeder lines. In-kind competition abounded and the shipping community and consuming public had a multitude of transportation alternatives. This, in turn, kept prices low and provided sufficient incentive for railroads to improve their technology and efficiency, to reinvest in the infrastructure, and be reasonably responsive to the needs of its customer base.

By the mid 1990's, however, in-kind competition had been substantially curtailed. Mergers and acquisitions reduced the forty plus class one railroads to four and this number may soon become two. Shippers and consumers ("captive" and otherwise) have become more and more dependent upon a single rail provider to move their bulk, hazardous, and/or containerized goods to market. In such an environment, normal incentives and constraints, imposed by a competitive marketplace, are no longer as effective as they once were.

Although the current U.S. rail system is still the envy of the world and provides a significant advantage to this country's manufacturers, agricultural and mining interests, recent events have graphically demonstrated how fragile this advantage can be and how quickly our "national treasure" can deteriorate and become a "national disaster".

In recent days, the media has been filled with anecdotes of lost rail cars, almost-unbelievable delays in transit, filled cars shuttling about in a seemingly endless fashion with no apparent destination, yards so congested that cars cannot be located or retrieved and many other scenarios that stretch our ability to believe. No longer the sole interest of trade or the local news in highly impacted areas, these events have now captured the attention of the most widely consulted and highly influential instruments of our national and financial communication.

Since April of this year, DuPont has seen an accelerating erosion in the level of rail service. This has been attributed to the most recent product of this country's rail merger activity - the Union Pacific/Southern Pacific Railroad. Significant delays in transit, averaging 40%, have increased DuPont's inventories and strained the capacity of its large rail fleet to the limit. Customer complaints related to delivery issues have increased, and the Company's ability to make export deadlines has been sorely tested. In recent months alone (through October 1, 1997), DuPont estimates that it has lost over sixteen million dollars as a direct result of these merger related service failings.

DuPont and other U.S. manufacturers are very concerned that the pending break up and acquisition of the Conrail system by CSX and Norfolk Southern (NS) not repeat the unfortunate operating experience of the recent UP/SP merger and result in even higher prices, deteriorating infrastructure, declining and non-responsive service, and increased transportation safety risks.

The Chemical Manufacturers Association (CMA) and the Society of Plastics Industries (SPI) have jointly conducted extensive studies of the pending Conrail merger. CMA and SPI have identified several specific economic areas of concern. These include:

- implementation of the overall transaction by NS and CSX, including integration of Conrail's facilities, operations, and collective bargaining agreements into NS's and CSX's respective systems;

- operation and management of the Shared Asset Areas (SAAs);

- the unique division of the non-SAA portions of Conrail's established route structure between NS and CSX; and

- potential shifts of inter-territorial traffic to non-traditional gateways (i.e. Memphis and New Orleans).

In response to these and other concerns, CMA and SPI have outlined, in their comments to these proceedings, a number of Pre-Implementation Conditions, SAA-Related Conditions, and Other Competition and Service Conditions which, if implemented, would alleviate many of their reservations.

DuPont shares the perspective, adopts the factual statements, and fully supports CMA and SPI's efforts in their request that the proposed pre- and post-merger conditions, set forth in the associations' respective comments to these proceedings, be implemented as a condition precedent to the approval of the proposed merger by the Surface Transportation Board (STB or Board).

DuPont also strongly endorses CMA and SPI's call for submission to the Board, and gradual implementation, of a well thought-out and structured operations integration plan from both acquiring railroads. Such a plan should contain, at a minimum, detailed operational plans governing and assigning operational responsibility to the participating parties within the SAA's, resolved and settled collective bargaining agreements with all impacted and unionized rail employees, and full and timely integration of the acquiring railroad's information systems. These elements, and others mentioned by CMA and SPI, must be in place <u>before</u> the Board consents to the merger and/or before the railroads begin their operational implementation, as appropriate. In this regard, DuPont recommends that the Board obtain and utilize the services of "independent rail service experts" to make appropriate recommendations and otherwise assist it in conducting its evaluation and review of the acquiring railroad's operational plans. These "independent service experts" could also be included in the ranks of the "Rail Service Committee" reference below.

The Board should also establish the means and reserve to itself the right to oversee the implementation of the plan and the future operation of the dismembered and acquired railroads. The oversight period should be at least five years in length and require periodic and timely reporting of issues concerning railroad economics and efficiency, safety, service, and infrastructure integrity.

Norfolk Southern and CSX, in their public pronouncements, their statements to financial analysts, their filings with the STB, and their various (public and private) conversations with their customers, have indicated that post-merger service will improve, safety will not be compromised, and that rates will generally remain at their current competitive levels. Recent rail experience in the West, however, indicates that achieving these goals is not easy and will require significant resources, personnel and high level attention from all concerned.

Safe, reliable, efficient, and predictable rail transport at a competitive price is essential if DuPont and other domestic manufactures and producers are to properly serve their U.S. and global customer bases. Modern management practices such as "Supply Chain Management" place an even larger premium on reliability, predictability and efficiency. Reduced inventories, thin and shrinking margins, rapidly advancing technology, and the emergency of a truly global marketplace make access to such services even more essential than ever before.

In light of these concerns, DuPont strongly recommends the Board to create, appoint, and oversee, in a timely fashion, a "Rail Service Committee" made up generally of knowledgeable shippers, consumers, academics, rail carrier personnel (including class II and III railroads) and government experts (FRA, STB etc.). The Rail Service Committee's principle function will be to identify and define appropriate "benchmarks" or "service metrics" against which the merged and/or absorbed railroad's future performance will be measured. These metrics would be adopted and used by the STB in its five year, continuing oversight of the Conrail acquisition. If the acquiring railroads (NS and CSX) fail to meet these service based "benchmarks" or "metrics", the STB would be obligated, again in a timely manner, to craft appropriate "emergency service orders" designed to insure compliance with appropriate financial and other penalties being imposed for continued failure.

Service metrics might include such factors as on-time pick up and delivery, preservation of or improvement in existing transit times, minimum system-wide loss and damage standards, standards governing availability of rail cars, minimum time frames for switching rail cars, timely issuance of Bills of lading, timely quoting of rates and charges, currency of receivables, and the like.

The Board's attention is also requested in the area of routing flexibility. Currently, the Conrail system contains extensive inter- and intra-territorial routing flexibility which can be and is used to increase operational efficiency and enhance the shipper's offerings in their marketplace. The acquiring railroads should be required, as a condition of approval of the acquisition, to continue to cooperate with shippers in designing the routing which best reflects the shipper's market based requirements and returns a reasonable return to the involved carrier. Routing should not be used to increase the carrier's revenue at the expense of the shipper or its customers or the efficiency of the overall system.

Safety has also become a major concern. Although not involved in any of the rail incidents in the West, DuPont is aware of several recent derailments and their associated deaths. This is of particular concern to DuPont since a significant portion of its shipments are hazardous. To alleviate this fear, DuPont recommends that the Board create, appoint and oversee a "Rail

Safety Committee" consisting of knowledgeable shippers, hazardous materials experts, experienced rail operations personnel, and government safety experts (FRA, RSPA, NTSB etc.). The Rail Safety Committee's principle function would be to establish and maintain, in a timely fashion, "benchmarks" and "safety metrics" against which the safety performance of the acquired railroads would be measured.

The resulting safety metrics would be used by the STB or other designated government agency in its oversight function of the acquired and merged railroads. If the acquiring railroads (NS and CSX) fail to meet these safety based "benchmarks" or "metrics", the STB or other government entity (FRA) would be obligated, again in a timely manner, to craft appropriate "emergency safety orders" designed to insure compliance with appropriate financial and other penalties being imposed for continued failure.

Safety metrics might include such items as number and severity of derailments, collisions, or other similar accidents, number and severity of hazardous materials releases, personal injury occurrence and severity, non-rail property damages, environmental releases and severity of the resulting damage, loss and damage statistics and the like.

DuPont is also concerned over the lack of definition and clear establishment of legal and practical responsibility of and for rail operations within the newly created Shared Asset Areas (SAA).

At present, it is unclear who will be legally and operationally responsible for rail operations conducted within the SAA's. Further, if the operating entity within the SAA is not deemed to be a "common carrier", with all of the responsibilities, benefits, and obligations of a common carrier, shipper's and the public's remedies for lost or damaged cargo, environmental harm, and other related injuries or damages could be significantly adversely impacted. Finally, if shippers are not afforded direct access to the operators within the SAAs, customized services and other operational improvements along with cost saving efforts associated with implementation of Supply Chain Management, or other modern logistics processes, will be thwarted.

The legal responsibilities of SAA operators must be clearly defined and established. Either the SAA operators must be provided with sufficient financial assets and independent decision making authority to operate in partnership with their customers as responsible "common carriers" or, alternatively, the acquiring carrier upon whose line the cargo is scheduled or actually moves must stand in the shoes of the SAA operating entity, must assume its liability, and must legally and practically recognize the operating entity as its agent.

Finally, in the area of economics, DuPont recognizes that significant new, non-operating debt has been created through the acquisition process for NS and CSX. This debt will have to be repaid with interest. NS and CSX have indicated that they will be able to satisfy this additional "acquisition debt" without adversely impacting the integrity of the rail infrastructure, service levels, rates, or safety. They have stated that they will gain the required revenue through expansion of their existing markets and the capture of freight currently moving by motor carrier. NS and CSX may well be correct in their prediction. However, if they are not, the STB, in its order, should ensure that the shippers are not called upon to pay for this extra "acquisition debt" through increased rates, decreased service levels, increased safety risks, or neglect of the underlying rail infrastructure. Further, the STB should ensure that critical operating and supervisory personnel, currently employed on the Conrail system, are not "encouraged to leave" or otherwise dismissed by the acquiring railroad, in a misguided effort to reduce costs, before all of the service elements of the acquired railroad are fully integrated and demonstrated to be working efficiently and well.

The task of reviewing the proposed dismemberment and acquisition of the Conrail system by Norfolk Southern and CSX is not easy. DuPont fully appreciates and recognizes that not all affected persons will be fully satisfied with the Board's decision - regardless of its content. However, DuPont is confident that the Board is cognizant of the critical role the rail transportation system plays in maintaining the health and growth of the United States economy and the standard of living enjoyed by United States consumers.

DuPont is ready and anxious to join with the STB, the involved railroads, shippers, consumers and other affected persons to ensure that our national rail system remains a "national treasure" and that the competitive advantage it affords U.S. industry, mining and agricultural interests and the consuming public is preserved and enhanced.

We thank the Board for affording us the opportunity to participate in these proceedings and stand ready to assist it in its deliberations and oversight proceedings.

Respectfully submitted,

William A. McCurdy Jr. BRW

William A. McCurdy, Jr.
Logistics and Commerce Counsel
E.I. du Pont de Nemours and Company
1007 Market Street
Wilmington, DE 19898

Attorney for E.I. du Pont de Nemours and Company

October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have on this 21st day of October, 1997, caused to be served copies of the foregoing Comments on all parties of record in this proceeding, by first-class mail/postage prepaid, or by hand delivery.

William A. McCurdy Jr. PZW

William A. McCurdy, Jr.

STB FD 33388 10-21-97 D 182933

182933

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October 21, 1997

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MAIL
MANAGEMENT
STB

<u>Via Hand Delivery</u>
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, <u>CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control and Operating Leases/Agreements—Conrail, Inc., et al.</u>

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and 25 copies of the Comments of Cargill, Incorporated, which has been designated as CARG-5. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 6.0 format.

Respectfully submitted,

John K. Maser III

Attorney for Cargill, Incorporated

ENTERED
Office of the Secretary
OCT 2 1 1997
S Part of Public Record

Enclosures

cc: Ronald E. Hunter, Esquire
1200-191

182933

CARG-5

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 BY CARGILL, INCORPORATED

William J. Burns
Vice President - Transportation
Cargill Grain Division
Cargill, Incorporated

Ronald E. Hunter, Esq.
Senior Attorney
Law Department
Cargill, Incorporated
15407 McGinty Road West
Wayzata, Minnesota 55391

October 21, 1997

Cargill, Incorporated ("Cargill"), an interested shipper in this proceeding, through its Vice President of Transportation, Grain Division, William J. Burns, submits the following comments regarding the proposed acquisition and partition of the assets of Conrail Inc. and Consolidated Rail Corporation ("Conrail") by CSX Corporation ("CSX") and Norfolk Southern Corporation ("Norfolk Southern"), which is under consideration by the Surface Transportation Board ("STB") in Finance Docket No. 33388.

Cargill is a privately held company, in continuous operation for more than 130 years, with its base in the merchandising and handling of agricultural commodities. Over the years, the company has expanded into a world trading and processing company. Currently, Cargill's major businesses include merchandising of a wide range of agricultural and other bulk commodities; processing oilseeds, corn, wheat, fruits and vegetables; processing poultry and red meats; the production and sale of farm inputs, including seeds, feeds and fertilizer, financial trading; financial services; and agricultural consulting services. Cargill's annual world-wide sales have exceeded $50 billion and the company employs 79,000 people in 70 countries. Cargill's transportation assets include more than 16,000 railcars of various types, numerous ocean vessels and a barge line with more than 900 barges.

In 1996, which is reflective of a continuous upward trend over the past years, Cargill purchased more than $700 million of rail transportation services, including more than 22,000 cars shipped on Conrail. Thus, Cargill has a very substantial interest in the future competitive viability of rail services in the regions currently served by Conrail.

Cargill supports this transaction. Effectively implemented, this transaction will add to the competitive balance in the Eastern United States, and provide new and more efficient routings of all rail freight. The potential overall benefit to the shipping public is clear. The Surface Transportation Board should approve the Application. Cargill also suggests that the Board consider some additional modifications in order to make implementation of the transaction better for all.

The resolution of labor issues has proven to be particularly disruptive and time consuming following previous mergers. This problem needs to be addressed and resolved at the very early stages of this transaction. The Surface Transportation Board should, upon request by Applicants, require the labor organizations to participate in the negotiation and arbitration process for obtaining labor implementing agreements, in order to assure that implementing agreements are in place on or shortly after the effective date of a Board decision approving the transaction.

In order to ensure a smooth transition, there should be a period of time, after the Board's approval decision is served, for CSX's and Norfolk Southern's management to complete the design, and to approve final implementation, of plans to achieve effective day-to-day operation of both systems after the breakup of Conrail. Among other things, this period would be used for the phase-in of all information technology programs. In the Western mergers, this area caused many problems. There is an opportunity to avoid these problems in this transaction.

William J. Burns

William J. Burns

(99441)

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a copy of the foregoing Comments of Cargill, Incorporated by first class mail, postage prepaid, on all parties of record in this proceeding this 21st day of October, 1997.

John K. Maser III

John K. Maser III