STB FD 33388 10-21-97 D 182921

PUBLIC (REDACTED) VERSION

DOJ-1

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief
Donna N. Kooperstein, Assistant Chief

Michael P. Harmonis
Attorney

Transportation, Energy & Agriculture Section
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W.
Washington, D.C. 20530

(202) 307-6357

October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

CSX Corporation ("CSX"), Norfolk Southern Railway Company ("NS"), and Conrail Inc., collectively the "Applicants," have applied to the Board for authorization of the acquisition of control by CSX and NS of Conrail, and for the division of Conrail's assets between them. The United States Department of Justice hereby submits comments as to the likely competitive impact of the proposed transaction, along with the testimony of one witness, Dr. Peter A. Woodward.

PRELIMINARY POSITION OF THE DEPARTMENT OF JUSTICE

Based on the information currently in the record and on its own investigation, the Department believes that the unconditioned acquisition of Conrail and the division of its assets by and between CSX and NS would raise significant competitive problems in at least three markets involving coal-fired electrical utility plants, in which the effective number of competing coal shippers would decline from two to one. The Department therefore has concerns that approval of the transaction as proposed will result in a substantial lessening of competition in these three markets, and likely will urge the Board to impose specific conditions in the form of short segments of trackage rights to prevent the competitive harm.

These comments describe the proposed transaction and the applicable legal standards, discuss the economic framework in which we have analyzed the proposed merger, and summarize the results of the Department's analysis, which is described in greater detail in the testimony of our witness.

DESCRIPTION OF THE PROPOSED TRANSACTION

In what may be the largest railroad breakup in the nation's history, CSX and NS plan to purchase Conrail for $10.2 billion. Together these three railroads accounted for $13.3 billion in sales in 1996. Conrail operates 10,701 miles of track in the East and Midwest. CSX and NS, respectively, operate 18,500 and 14,300 miles of track in the Southeast and Midwest. After the breakup, CSX and NS each would operate more than 20,000 route miles in the eastern United States.

NS and CSX plan to divide Conrail's principal routes, which form an "X" crossing in Ohio, with each railroad operating two of the four legs of the "X". CSX will acquire most of Conrail's main rail line from St. Louis through Indianapolis and Cleveland to New York, Boston, and Montreal. CSX also will acquire most of Conrail's routes in Ohio, Indiana, and Illinois. NS will acquire Conrail's main line from Chicago to Pittsburgh and Philadelphia as well as two lines connecting New York to the current NS line at Buffalo and most lines in Michigan, Maryland, Delaware, and

Pennsylvania. NS and CSX each will gain a route connecting its lines in the Southeast with New York, North America's largest consumer market. CSX and NS will jointly operate tracks and terminals in the New York metropolitan area, New Jersey, and Detroit, as well as in parts of Philadelphia.

While the proposed transaction would create new rail competition, most notably in major markets in New York, New Jersey, and Philadelphia, CSX and NS acknowledge that there also would be markets where shippers would see their options decline from two rail carriers to one. See CSX/NS-18, Vol. 1 at 4. In an attempt to remedy the acknowledged competitive concerns in these markets, CSX and NS have agreed to provide one another with trackage and/or haulage rights, which they contend would permit the continuation of two-rail carrier service wherever possible. See id.

LEGAL STANDARD

The ICC Termination Act of 1995 ("the Act") sets out the framework under which the Board must review and analyze this merger. See 49 U.S.C. §§ 11321-27. In proceedings involving rail consolidations, mergers and acquisitions of control, the Act requires the Board to consider a number of elements in making its essential finding of whether the transaction is consistent with the public interest. 49 U.S.C. § 11324. One element of the public interest is whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. 49 U.S.C. § 11324(b)(5).

It is thus necessary for the Board to determine whether a proposed merger or acquisition of control will produce an anticompetitive effect in any defined market. Although the Board does not sit as an antitrust court in determining compliance with the antitrust laws, the Board must define the economic markets that would be affected by a proposed transaction and then evaluate its competitive effects in order to reach its ultimate public interest determination. The policies embodied in the antitrust laws must be considered in conducting an appropriate balancing test to determine the public interest. See FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 243-46 (1968); Northern Lines Merger Cases, 396 U.S. 491, 511-13 (1970).

It is in this framework that the United States Department of Justice offers its preliminary comments and the testimony of its witness. The testimony of Dr. Peter A. Woodward, an economist with the Department of Justice, analyzes the competitive effects of the proposed transaction.

FRAMEWORK FOR ANALYSIS

The core issue in this competition analysis is whether the proposed transaction likely would create or enhance market power or facilitate its exercise. Market power is the ability of a seller profitably to maintain prices above competitive levels (or reduce quality or service below competitive levels) for a significant period of time. The result of the exercise of market power is a transfer of wealth from buyers to sellers and/or a misallocation of resources. A merger can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms, or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output.

The first step in determining whether a proposed merger would be likely to create, enhance, or facilitate the exercise of market power is to define the markets within which the merging parties compete. In this case the definition of a market begins with the basic service provided by the railroad -- the transportation of a particular commodity from a particular origin to a particular destination. Conrail, CSX, and NS compete for significant amounts of traffic in a large number of markets, and in some of the markets where they compete, they are the only rail carriers who are or potentially could be providing service.

The market, however, may not be limited to rail carriers. Intermodal competition in the form of truck, barge, or sometimes pipeline movements may allow shippers with few rail alternatives to substitute another mode of transportation for the shipment of a commodity from a particular origin to a particular destination. If another mode of transportation is a close substitute for rail, a single rail carrier alone likely would not possess market power in the movement of that commodity; the rail carrier's ability to raise rates would be constrained by the shippers' ability to use another mode.

For some commodities, however, transportation by truck cannot compete with rail because the distance the commodity is shipped is great, the volume of the commodity shipped is large, or the value of the commodity as compared to its weight is small. Water competition is often limited by the geographic location of the shipper or receiver, and sometimes by seasonal factors.

Source competition is also a potential factor in market definition. Source competition could allow a shipper to avoid a supra competitive rail rate between two points by using alternative rail carriers to ship a commodity from a different source or to a different destination. Where there is neither effective intermodal competition nor source competition, the proposed transaction, by reducing the number of rail competitors, likely will increase the merged carrier's market power and result in competitive harm.

In some situations, it may be in the public interest to allow a merger that reduces competition if the transaction is necessary to achieve significant efficiencies, and those efficiencies are great enough to outweigh the higher prices or lower quality that would otherwise occur from the loss of competition. The burden of proving such efficiencies is on the proponents of the merger. See FTC v. University Health, Inc., 938 F.2d 1206, 1222-24 (11th Cir. 1991). Given the difficulty of accurately predicting merger benefits, efficiency claims should be carefully examined, particularly where the potential competitive harm from the merger is great. Claimed efficiencies should be rejected if equivalent or comparable savings can be achieved by other means. See University Health, 938 F.2d at 1222 n.30; Horizontal Merger Guidelines, issued in 1992, revised in 1997 § 4.

SUMMARY OF EVIDENCE

As the Applicants recognize, the unconditioned acquisition and division of the Conrail assets by CSX and NS would raise significant competitive concerns in particular markets, reducing the rail options of shippers in these markets from two carriers to one. See CSX/NS-18, Vol.1 at 4. The Applicants address these competitive concerns by agreeing to provide each other with trackage and/or haulage rights that are said to give many of the affected shippers access to a second railroad. See id. It is the Applicants' position that their agreement on trackage and hauling rights is appropriate to the circumstances, ensuring that "[a]dverse competitive effects from the transaction are essentially non-existent." Id.

The Applicants, however, have not gone far enough, for their remedies would leave either CSX or NS in sole control of a number of critical rail links, and that presents potential problems for certain shippers. Nowhere do Applicants explain why the public interest would be better served by denying the affected shippers continuation of effective two-rail carrier service.

Dr. Woodward in his Verified Statement identifies three significant markets in which the number of competitors effectively would decline from two to one as a result of the proposed transaction. These markets involve coal shipments moving to receivers in **************************. The total volume of traffic in these two-to-one markets is well over $100 million.

Indianapolis Power & Light Company. IP&L's coal-fired Stout plant is situated in downtown Indianapolis on a line of the Indiana Railroad, which is 89% owned by CSX. Stout procures its coal from Indiana mines 110 miles to the south of Indianapolis. Some 90% of that coal in 1996 was originated and delivered by Indiana Railroad, with the remainder originated from mines in the same area by Indiana Southern Railroad and delivered by Conrail via switching service provided by Indiana Railroad. Indiana Railroad (CSX) and Conrail thus compete for coal shipments to Stout, with that competition spurred on by IP&L's ability to build-out from Stout to nearby Conrail lines. Pursuant to the terms of the proposed transaction, however, CSX would acquire Conrail's lines into Indianapolis, and so the CSX-Conrail competition for coal shipments that IP&L now enjoys at Stout would vanish. NS would receive trackage rights into Indianapolis, but NS may not effectively replace the Conrail competition. First, NS does not have Conrail's convenient access to the nearby Indiana coal, which means its delivered costs are higher, which means NS likely could not offer competitive rates on coal shipments to Stout. Second, NS likely would suffer operational problems (slowdowns and the like) in using CSX's congested Indianapolis switching facilities. Conrail too must depend on a competitor for switching services, but its threat to receive a build-out (a threat that NS cannot use as a lever) helps to ensure effective cooperation.

Potomac Electric Power Company. PEPCO operates four coal-fired plants, each served by a single railroad that supplies that plant's full supply of coal. Conrail serves PEPCO's plants in Chalk Point and Morgantown, Maryland. CSX serves PEPCO's plant in Dickerson, Maryland, and NS serves the PEPCO plant in Alexandria, Virginia. Morgantown and Dickerson are by far PEPCO's two most efficient plants, with their relative efficiencies being such that PEPCO readily can substitute power from Conrail-served Morgantown for power from CSX-served Dickerson, and vice versa. CSX and Conrail therefore could constrain each other from imposing significant price increases in the future on coal shipments to Dickerson and Morgantown. Pursuant to the terms of the proposed transaction, however, Conrail would transfer its Morgantown and Chalk Point lines to CSX. CSX then would become the sole rail shipper to PEPCO's three most efficient plants, with PEPCO losing Conrail as a significant constraint on CSX's pricing.

*** ******, ***. *** is an electrical utility company serving customers in ******, ****, *** ********. *** operates a number of coal-fired power plants, including its ****** plant at *****, *******. Much of ******'* coal comes from the *********** **** ** ****** *********, **** ***** *** ******** ******. NS originates and delivers the *********** coal to ****** over the only active rail line to *****. ******* has trackage rights over this line, and so it can and does compete with NS in delivering coal from ********* to ******. Pursuant to the terms of the proposed transaction, however, ******* would transfer its **************** rights to NS, thus eliminating the *******-NS competition that *** now enjoys at ******.

Having thus identified three markets where shippers will see their rail options effectively decline from two to one, Dr. Woodward explains why the surviving carrier in each one of these markets (either CSX or NS) likely will have the ability profitably to raise prices above competitive levels. Dr. Woodward also analyzes the extent to which the CSX-NS agreement on trackage and/or haulage rights provides a competitive remedy. He concludes that the agreement would not be an adequate remedy because the Conrail competition eliminated as a result of the proposed transaction would be replaced with an inadequate substitute or not be replaced at all. Finally, Dr. Woodward explains how the Board could remedy the affected markets by restoring the eliminated Conrail competition through limited application of trackage, connection, and build-out rights. All three of Dr. Woodward's remedies would maintain two-carrier competition in these markets without reducing the claimed efficiency gains that CSX and NS otherwise would achieve from the transaction.

CONCLUSION

The Department submits for the record the testimony of Dr. Peter A. Woodward, who has evaluated the competitive effects of the proposed transaction. Based on the evidence in the record to date and on its own investigation, the Department has concerns that the transaction as proposed will result in a merger to monopoly in at least two markets and the significant lessening of competition in a third market. The Department reserves the right to further comment on the anticompetitive effects and the adequacy of conditions proposed by other parties.

Respectfully submitted,

Michael P. Harmonis

Michael P. Harmonis
Attorney
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W.
Suite 500
Washington, D.C. 20530
(202) 307-6357

Joel I. Klein
Assistant Attorney General
Antitrust Division

A. Douglas Melamed
Deputy Assistant Attorney General

Constance K. Robinson
Director of Operations

Roger W. Fones
Chief
Transportation, Energy and
Agriculture Section

Donna N. Kooperstein
Assistant Chief
Transportation, Energy and
Agriculture Section

October 21, 1997

Before the
Surface Transportation Board
Washington, D.C.

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I certify that I have this 21st day of October, 1997, caused to be served copies of the attached COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE (DOJ-1) on Administrative Law Judge Jacob Leventhal, counsel for the Applicants, and all other Parties of Record on the official service list by first-class mail or by more expeditious means.

Michael P. Harmonis

Michael P. Harmonis
Attorney

REDACTED VERSION

VERIFIED STATEMENT

OF

PETER A. WOODWARD

My name is Peter A. Woodward. I am an economist with the Antitrust Division of the United States Department of Justice (DOJ). This is my third appearance before the Surface Transportation Board (STB) or its predecessor agency.[1] Attached is a copy of my curriculum vitae. This statement evaluates the competitive effects of the proposed division of Conrail assets to CSX Corporation (CSX) and Norfolk Southern Corporation (NS).[2] In particular, it identifies three electric utilities, ***** *********, ************ (*****), Indianapolis Power & Light Company (IP&L), and Potomac Electric Power Company (PEPCO), for which the elimination of Conrail is likely to cause these shippers to pay higher prices for railroad transportation of the coal they purchase. Under the plan of the merger, *****'s ******** generating station will lose 1 of only 2 railroad competitors and IP&L's EW Stout plant (currently served by 2 railroads) will lose competition from Conrail that is not replaced by another railroad. PEPCO will lose 1 of 2

---

[1] I filed testimony on competitive effects and also on trackage and haulage rights in the ICC proceeding Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 38 (ICC served Aug. 23, 1995) (BN/SF).

[2] STB Finance Docket No. 33388. Since my statement concerns competitive effects from combinations of particular Conrail lines with CSX and other Conrail lines with NS, I refer to the division of Conrail as a merger.

railroads serving its most efficient generating stations. The statement also suggests conditions on the merger that would remedy this loss of competition.

This statement contains 5 parts. Part 1 specifies the analytical framework I use to evaluate how competition is affected by this railroad merger. I use the DOJ/FTC Horizontal Merger Guidelines[3] as the starting point for the analysis. Part 2 reports the geographic area measures that are used in the analysis as well as the product definitions. Part 3 describes the *****, IP&L, and PEPCO generating stations adversely affected by the merger as currently structured. Part 4 explains why the utilities operating these stations are likely to face transportation cost increases. Part 5 proposes conditions the STB could grant that would remedy these competitive problems.[4]

1. The Merger Guidelines framework

The economic principles underlying this statement are those of the Merger Guidelines:

> The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time...[5]

The Merger Guidelines apply generally-accepted economic principles to a merger in order to identify markets in which the merger is likely to lead to higher prices for consumers.

---

[3]Horizontal Merger Guidelines, issued April 2, 1992 and revised April 8, 1997 by the DOJ and the U.S. Federal Trade Commission (FTC).

[4]This statement does not evaluate the likelihood that the benefits of almost $1 Billion claimed by the parties to the merger will be realized. Any such benefits can likely be achieved even after providing the specific remedies proposed here to the likely competitive harms identified.

[5]Merger Guidelines, p. 2.

Market power can only be understood in the context of an economically-meaningful relevant market. To find such a market, the Merger Guidelines seek to identify

> ...a group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm...that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory increase in price..."[6]

Purchasers in these markets will be forced to accept this price increase, unless the competition between firms within the market prevents the increase. Any merger that reduces competition between sellers in a market as defined above, creates or enhances market power.

This definition of a market is implemented by evaluating whether a price increase (as defined above) would be profitable to a (hypothetical) monopolist seller. The increase would not be profitable if buyers shifted sufficient purchases to other products, thus reducing the monopolist's sales by enough to eliminate the profitability of the price increase. Buyers might also respond to the price increase by purchasing the product from locations at which the price did not increase. This again, if done in sufficient volume, would make the price increase unprofitable.

Starting from the products sold and areas served by each of the merging firms, the market will be defined once the set of products and geographic areas has been expanded enough so that a price increase would be profitable to a monopolist seller of these products in these areas. At this point, current market participants are identified. To this list are added "uncommitted entrants", or firms that would be likely to enter "within one year and without the expenditure of significant sunk costs of entry and exit, in response to a 'small but significant and nontransitory' price

---

[6]Merger Guidelines, p. 4.

increase."[7] The competitive significance of each of these firms is measured by its market share if it is already in the market, or its predicted market share, if it were likely to enter the market in the event of a price increase. The collective competitiveness of all current market participants and uncommitted entrants is measured by the Herfindahl-Hirschman Index (HHI), calculated by squaring each firm's market share, and then summing. If the post-merger value of the HHI is 1800 or more, an increase in the HHI of 100 points or more is likely to create or enhance market power or facilitate its exercise.[8] The construction of the HHI gives a more-than-proportionate importance to large market shares, and increases the most with a merger of two equal-sized firms to monopoly, reflecting the belief that this merger would, all other things equal, have a greater adverse impact on competition than one in which there remained 2 or more firms in the market. In situations in which most or all of the firms in the market have sufficient capacity to serve a significant amount of total market sales, and no significant disadvantage in obtaining these sales, the analysis considers the number of competitors rather than their market shares. Again, however, it is likely that a reduction in the number of competitors in a market from 2 to 1 is likely to harm competition more than a reduction from 3 to 2 or from 4 to 3.

2. Participants in the market for transportation to a generating station and the effect of competition in this market

For the *****, IP&L, and PEPCO generating stations considered in this statement, coal is the most cost-effective fuel used. The stations use other fuels such as oil and natural gas, but these cost from 2 to 3 times more than coal per unit of energy produced and tend to be used only

---

[7] Merger Guidelines, p. 11.

[8] Merger Guidelines, p. 16.

when lower-cost sources of electricity are unavailable. Consequently, only providers of coal transportation are potentially in the market. My analysis assumes that all railroads that serve a particular generating station are in the market for transportation to this station, as long as each of the railroads has similar access to the type of coal used in the generating station. Generating stations located on or near waterways sometimes receive coal from barges. And it is always physically possible to ship at least some coal in by truck. But trucks are less economical at transportation of bulky, high-volume commodities like coal because a single truck can carry only between one-fourth and one-third as much as a single railroad car. Many shippers do not have the ability to handle the enormous number of vehicles large-volume movement by truck requires. In addition, large-volume movements by trucks are often not feasible because of local traffic considerations. Trucks are also less competitive with railroads when the commodity transported has a low value-to-weight ratio. The transit time disadvantage of railroads generates smaller inventory carrying cost as the value of the product is lower. As discussed below, trucks and barges do not appear to be competitive with railroads for shipment of coal to the generating stations of *****, IP&L, and PEPCO under consideration.

Once all suppliers of transportation have been identified in a particular market, it is necessary to determine in which of these markets the parties to the proceeding are competitors and whether the merger will lead to increased market power by either CSX, NS or any other railroads. If, at pre-merger prices, trucks or barges represent competitive modes of transportation, then rail transportation does not constitute a market and even a merger of all supplying railroads is not likely to lead to increased market power. If the number of independent railroads remains sufficiently high after the merger, the merger is also not likely to increase market power.[9]

3. Generating stations of *****, IP&L, and PEPCO

a. *****

*** ************** is a subsidiary of *******, a utility serving customers in ************, ************, and **************. ******* is a member of the ***********[10] (****). *****'s most economical electricity comes from its ****** and ******, ************ generating stations. The most efficient stations in the rest of the ******* network, ****** and ******, are similar in efficiency and utilization to the top ***** stations.[11] ***** dispatches power according to the relative costs of each generating station, which are affected by delivered fuel cost and plant efficiency.[12] *****'s ****** station, *********** in the ******* system and located in the *********** of the state, at *****, consumed about ** ******* tons of coal in 1996.[13] About ******** tons of this coal comes from the ***************** mine, located in *********, ********************* This ********************* to the coal mine has, in the past, given ****** access to *********

---

[9]This statement uses both the number of railroads as well as their market shares, as the appropriate measures of competition, depending on the particular circumstances.

[10]An interconnection network is a collection of generating stations operated by different member utilities that are connected by transmission lines and metered so that electric power can be generated by one member utilitys generating station and sold to another member utility.

[11] Interview of ***, and *****, on September 19, 1997

[12]ibid.

[13]Interview of *******; ******* FERC 1996 Form 1, p. ***

delivered coal.[14]

The only line railroad line into the ****** station is part of the NS system. NS transports all of the coal that the station consumes. ******, however, has trackage rights over the part of this line from ********* into ******, making it a competitive alternative to NS for coal originating in the *********** mine. As late as *******, ****** actually delivered coal from ********* to the ****** station, using the trackage rights over NS. The current NS track over which ****** has trackage rights originally belonged to *********.

*************, ********, used to operate ********* to *****, but ***** had been unused ****** when ***[15]. ***** had intended to use this line to ******* in order to obtain lower rail rates. *** also tried to reduce transportation costs into ****** by filing complaints with the ICC in *****. *** claimed that ********* by ******* (which was then the only railroad serving ******) *************. The ICC ******** ***** in response to the ***** complaint but did not *********** to ***** in response to *******. The ICC did, however, conclude that ******.[16]

b. IP&L

---

[14]**** interview , op cit.

[15]***********. At this point, *** was receiving coal from both NS and ****** but it is unclear whether the benefit to *** from 2-railroad competition was as great as it was in ****. This benefit is discussed in the next section.

[16]*******. The ICC did this reluctantly, noting that it was possible to use ************************* coal into the station. ***** claimed that it had investigated other methods **** but that it preferred rail transportation.

IP&L, a subsidiary of IPALCO Enterprises, Incorporated, operates the EW Stout generating station in Indianapolis. Conrail and CSX are the only class 1 railroads currently serving Indianapolis and this city represents by far the largest of the "2 to 1" points identified by the parties to the merger.[17] Under the remedy proposed by the parties to this "2 to 1" competitive overlap, NS will receive trackage rights over CSX to Indianapolis into Conrail's Hawthorne Yard (which CSX will acquire, as well as the Conrail lines in Indianapolis) at which point CSX will switch the NS cars to customers such as IP&L.[18] The Stout station is served directly by only 1 railroad, the Indiana Railroad, but is also served by Conrail via reciprocal switch. The Indiana Railroad is owned by CSX.[19] The Stout plant is about 2½ miles from a Conrail branch line and about 3 miles from the Indianapolis Union Belt Railroad (owned by Conrail).[20] In 1996, the plant consumed about 1.25 million tons of coal, all transported by railroad and originating in Indiana mines located about 110 miles south of the plant. The Indiana Railroad supplied 90 percent of the coal from these mines while Conrail supplied the remaining 10 percent through an interline with

---

[17]McClellan V.S., p. 46 (Volume 1 of the Application at 548).

[18]Indianapolis Switching Agreement (Exhibit X of the Transaction Agreement).

[19]The Indiana Railroad is owned by Midland United Corporation which is 89 percent owned by CSX. (Applicants Response to First Set of Interrogatories, First set of Requests for Production of Documents, and First Set of Requests For Admissions to Applicants From Indianapolis Power & Light., p. 25). My analysis assumes that CSX can prevent the Indiana Railroad from acting contrary to CSXs interests.

[20]Interview of *********************, ****************, and ************,*********************** IP&L, on October 7, 1997.

the Indiana Southern Railroad which serves mines in the same area.[21] IP&L is a member of the ECAR interconnection network.

c. PEPCO

PEPCO operates 4 generating stations, each served by a single railroad that supplies all of the station's coal. PEPCO's Morgantown and Chalk Point, Maryland, plants are served by Conrail and in 1996 consumed 2.5 million and 1.5 million tons of coal, respectively. The Morgantown plant is located on the Potomac River and the Chalk Point plant is on the Patuxent River, both of which flow into the Chesapeake Bay. PEPCO's Dickerson, Maryland, plant is served by CSX and in 1996 consumed 1.2 million tons of coal. PEPCO's Alexandria, Virginia, plant, served by NS, last year consumed 730 thousand tons of coal.[22] While they are all fueled by coal, PEPCO's 4 generating stations vary considerably in their efficiency and utilization rates. The Dickerson and Morgantown plants are by far the most efficient and most heavily-utilized PEPCO plants. In 1996 these plants operated at capacity factors of 67.7 and 70 percent, respectively, and had the lowest fuel costs and total expenditures per KWH.[23] At the other extreme, the NS-served Alexandria plant is the least efficient of the 4, and operated at a capacity factor of only 39.3 percent, while the Chalk Point plant operated at only 26.9 percent.[24]

---

[21] ********* and ******interview, op cit, and interview with IP&L counsel, October 3, 1997.

[22] Interview of ************************, PEPCO, *********************, PEPCO, and PEPCO counsel, on August 11, 1997.

[23] ibid; 1996 PEPCO FERC Form 1, various pages.

[24] According to PEPCO representatives, the Alexandria plant is the least efficient PEPCO station. It is unclear why this plant was operated more extensively than Chalk Point, which according to the data is more efficient. But it seems quite

PEPCO is a member of the PJM Interconnection Association (PJM), and in 1996 purchased almost as much electricity as it generated. PEPCO also sold significant amounts of electricity for resale, rather than to final consumers.[25]

4. Market definition and competitive effects of the merger on *****, IP&L, and PEPCO

Competition between 2 railroads to supply coal to a generating station is likely to lead to lower railroad rates than a monopoly railroad would charge, if there are no other competitive modes of transportation. If this competition is eliminated by a merger, the only remaining competition would be from other fuels. But these fuels are far more expensive than coal, at current transportation prices. Railroad witnesses in this proceeding acknowledge the beneficial competitive effects of railroad competition at the generating station level.[26] The introduction of a second railroad to a generating station can result in millions of dollars of savings in annual transportation costs.[27] Consequently, the relevant geographic market could be as small as railroad transportation of coal to a particular generating station.

In some situations, however, it is appropriate to expand this market to include transportation of coal to other generating stations in the utility's network. If stations are

---

clear that Dickerson and Morgantown are significantly more efficient and more utilized by PEPCO than Alexandria and Chalk Point.

[25] 1996 PEPCO FERC Form 1, p. 401.

[26] Fox V.S., p. 13, Sansom V.S., p. 9-10.

[27] See, for example, savings to Houston Lighting and Power resulting from a build-out to Union Pacific (Coal Week, February 24, 1997, p. 1). The rate premium owing to monopoly may be 30 percent or more, according to Ward Uggerud, Chairman of the Alliance for Rail Competition, as quoted in Coal Week, September 8, 1997, p. 8.

connected adequately so there are no transmission limitations, and if they are close together, so that losses of electricity due to transmission are small, a utility may be able economically to substitute the electricity generated by one station for that generated by another. This substitution is limited by the relative efficiencies of the plants, since an efficient plant that faces high transportation costs might still operate at a lower overall cost than a less-efficient plant with low transportation cost. Finally, substitution can occur, of course, only when there is surplus generation capacity available. If these conditions are met, however, it may be appropriate to expand the relevant antitrust market to include all of a utility's generating stations. Obtaining a monopoly of rail transportation into only one of a utility's generating stations may not enable the monopolist to raise price, given the constraint provided by the utility's other plants.

When plants within a utility's network can substitute for one another, sole-served generating stations within the network can create competition between railroads. According to NS witness Prillaman,

> A utility can often secure better terms at a soley [sic] served generating plant by threatening to alter its "dispatch priorities." The utility tells the railroad that, without a favorable deal for the plant in question, the utility will produce less power at that plant and shift generation to one or more of its other plants.[28]

NS witness Fox says much the same thing:

> Plant dispatch competition is often also available to a utility...The utility plays one transportation provider against the other. Because of economic dispatch protocols, the level of burn at any one plant is determined by its rank among all the other plants operated by that utility. The plants are ranked primarily by marginal delivered fuel prices...Thus the net effect of the dispatch protocol is to significantly reduce coal demand at plants that have high rail rates. This

---

[28]Prillaman, V.S., p. 8. He goes on to mention power purchases from other utilities as an additional competitive factor.

potent competitive situation is available to most utilities.[29]

If a merger gives a single railroad a large share of a utility's total coal purchases, particularly a large share at the utility's most efficient and most highly-utilized plants, it is likely to gain considerable market power. The utility's ability to substitute one generating station for another is reduced if a single railroad gains exclusive access to most of the utility's generating capacity, particularly if the remaining capacity is less efficient.

The above analysis indicates that geographic markets may be broader than rail transportation of coal to an individual generating station. I now consider whether the appropriate geographic market may be larger still, and include, via the electrical interconnection network, multiple electric utilities. When electric power can be purchased from other utilities or even non-utility producers, the price of this power may be low enough to constrain the market power of transportation suppliers to the utility's own plants. Participation in interconnection associations enables utilities to benefit, to a certain extent, from the competition between suppliers of bulk power.[30] In particular, during periods of low association electricity demand, the appropriate antitrust market for competitive analysis may be the entire electrical interconnection network. During these periods, all generating stations in the network can potentially supply power to one

---

[29] Fox V.S., p.11.

[30] On the general competitiveness of such power production, see Frankena, M. and B. Owen, Electric Utility Mergers: Principles of Antitrust Analysis, 1994, p. 29. Also see p. 78 for a discussion of an instance when no power was available for sale. PEPCOs use of high-cost generating stations is a clear indication that this is the only alternative PEPCO often has. Transmission constraints also limit the competition available over the network. See, for example, Squires, J., "Electric Power Restructuring: Implications for Railroads," 64 Journal of Transportation Law, Logistics and Policy, 518 (1997).

another, and consequently the providers of transportation of coal (and possibly even nuclear fuel) to all of these stations may be in the market, although their relative efficiencies will still affect the ability of each to compete.

It should be stressed, however, that at other periods of time, economical power will be unavailable. Any factor that increases demand across a network, such as hot weather, will reduce the availability of low-cost power. Electricity may be available during high demand periods, but only at high cost. For example, in July of 1997, the PJM produced a record amount of electricity, but the price of power reached $156.50 per megawatt-hour, more than 8 times the variable cost of power from PEPCO's efficient Dickerson plant ($19.10).[31] Both the overall average and on-peak average price of power from PJM in this month ($28.70 and $37.10, respectively, per megawatt hour[32]) were more expensive than the variable cost from the Dickerson plant. When power costs this much, it can not substitute effectively enough for that from a utility's own generating stations to restrain the suppliers of transportation to those stations from raising prices if they have significantly increased their control of transportation to these stations.

Because utilities and railroads typically sign long-term supply contracts of one year or more, a railroad could not perfectly price discriminate across different periods of the year according to whether it was competing with (1) only those providers of fuels to a particular generating station[33], (2) providers of fuels to a particular utility's generating stations, or (3) all

[31]1996 PEPCO FERC Form 1, p. 403.

[32]PJM Interconnection July Operating Highlights.

[33]For spot market sales, however, the railroad could discriminate in this manner. Anticipating a high cost of power from the network, a railroad with a monopoly over a utilitys generating stations could set a high price for spot sales with

providers of fuels to the interconnection network. But it is likely that a railroad (or any other competitor) would recognize that, overall, it had increased market power if the amount of competition it faced decreased in any of the possible antitrust markets, and raise its price accordingly to take advantage of this reduction of competition. This proposition is supported by the various witnesses cited above and shippers cited below who all say that competition is enhanced by an increased number of competitors at the generating station, utility, <u>or</u> interconnection network level. They believe that there is an overall effect, and this effect causes, on balance, lower prices for the utility even if at times of the year there are sufficient competing sources of electricity to make redundant the competition at a single generating station or even at all of a utility's generating stations.

4a. The loss of one of only two competitors at the generating station level is likely to harm competition for coal shipments to *****

*****'s ****** station has benefited from past competition between ****** and NS. In ****, competition from NS reduced ***'s cost of railroad transportation by ** to ** percent as NS took away the business from *******. ****** had been supplying *** about *** tons of coal annually from the mine. NS signed a ***** contract with *** that expires in ***. NS's current rate could increase at least *** percent before *** would shift to truck transportation.[34] *** could not defeat such a rate increase with power generated elsewhere on the ******** network or power purchased from **** because of ******'s inherent efficiency and ****. And *****'s ***************** instead of ******* suggests that these means are uneconomic, particularly

---

the expectation of little competition from the network.

[34]Interviews of ***, on August 14 and September 19, 1997.

in view of

****

The lack of other transportation options for ***'s ****** station combined with evidence of the benefit it has enjoyed from past competition between NS and ****** indicate that *** has two, and only two, economical transportation options for its coal shipments. ****************************.[35] This ************************** ***************.[36] The transfer of the *********-***** rights to *****************. Given a lack of alternatives, **** is therefore likely to face an increase in rail rates caused by the merger.

4b. Incomplete relief provided by NS to Conrail's exit from Indianapolis is likely to harm competition for coal shipments to IP&L

The transaction is likely to reduce transportation competition at IP&L's Stout plant because of inadequate replacement of existing Conrail competition by NS. Since the only transportation competition to the Stout plant is now provided by the Indiana Railroad (owned by

---

[35]Introduction to the Application, p. **; NS operating plan, p. **; Exhibit **--Agreement for ************** ** (giving *[illegible]* rights ********) are ******s current trackage rights over NSR between *****, ** and *********, **. (p. **) and Attachment ** to the Transaction Agreement, p. **. These citations all ******* indicate that ***** is in ********, and not ************. But *******s current possession of the ****************** to *****, ************ are clearly indicated on **** included in the filing: Exhibit 1, Map A (indicating ********************) the ****** system map showing the ******************** lines and rights as well as Page *** of the NS operating plan which shows *********************.

[36]NS operating plan, p. **.

CSX) and Conrail, it is critical to ensure that the competition the parties intend for NS to provide will be able to replace existing Conrail competition. NS will be able to serve the Stout plant, using switching provided by CSX, but NS is unlikely to replace the competition lost by the disappearance of Conrail for two reasons. First, NS will not get Conrail's convenient access to the nearby Indiana coal fields since it will not be able to connect with the Indiana Southern at Indianapolis, as Conrail does now. NS can connect with the Indiana Southern at Oakland City, Indiana,[37] in the southern part of the state, but NS has a circuitous route from there to Indianapolis of at least 300 miles. Other NS-served mines, such as ones in Illinois or Kentucky, may have suitable coal, but they are at least twice as far from Indianapolis as the mines on the Indiana Southern. A final alternative uses CP Rail, which connects with the Indiana Southern at Beehunter, Indiana, a point north of Oakland City, and significantly closer to Indianapolis. CP could presumably then connect with NS which would take to coal to Lafayette, Indiana at which point NS would travel 85 miles over CSX track to Indianapolis. This alternative (or a CP-NS interline from mines that CP serves directly in Indiana[38]) again involves significant circuity and is at least twice as long as the current Conrail route. This additional distance is likely to raise the price NS will charge to ship coal to IP&L. For example, using 1995 average coal revenue per ton-mile[39] of $.028, and assuming that this reflects a mark-up over variable cost of 100 percent, then variable cost is $.014 per ton-mile. If NS must haul the coal 100 miles farther than Conrail does now, the extra cost to NS would be $1.40 per ton, a significant amount compared to the

---

[37] The Official Railway Guide, September/October 1997 issue, p. C104.

[38] 1995 STB Waybills sample.

[39] Prillaman V.S., p. 20. (Attachment LIP-8).

current price that IP&L is paying per ton of $******.[40] Even if the mark-up over variable cost is 200 percent, then the variable cost is $.093 per ton-mile so the extra cost to NS would be a still-significant $.93 per ton. My conclusion that NS will be significantly disadvantaged by the extra distance is shared by Indiana Southern, as its representative told me that route circuity will not permit either an Indiana Southern/NS or Indiana Southern/CP Rail/NS routing to be competitive with the shorter Indiana Railroad routing[41].

A second disadvantage will be the likely operational problems NS will face in Indianapolis. NS will have to use CSX facilities in Indianapolis. These may be congested and the interchange between NS and CSX is overall likely to be worse than the current interchange between Conrail and the Indiana Railroad[42]. There is also the potential for CSX to use biased dispatching or excessive switching fees to lessen the ability of its only Indianapolis rival, NS, to compete.

Currently, of course, Conrail also relies on a competitor, Indiana Railroad, to provide switching services. But Conrail had an important lever that NS will lack, and that is the ability to receive a build-out from IP&L. Currently, IP&L can construct a line to Conrail for approximately $******* and it can also construct a line to the Indianapolis Union Belt Railroad (owned by Conrail) for approximately $*******. The threat of a build-out has, according to IP&L, served as an effective means of ensuring cooperation between the Indiana Railroad and Conrail so that Conrail is a competitive alternative to the Indiana Railroad. This threat has also provided an

---

[40] IP&L interview, op cit.

[41] Interview of ***************, ***********************, Indiana Southern Railroad, on October 9, 1997.

[42] IP&L interview, op cit.; *********** interview, op cit.

effective ceiling on switching charges from the Indiana Railroad.[43] If the Indiana Railroad did not cooperate, IP&L could build out to Conrail in order to receive coal from Indiana Southern, and bypass the Indiana Railroad altogether. Since the NS rights over CSX to Indianapolis are only bridge rights, NS will not be able to connect to any build-out from IP&L in the Indianapolis area. Consequently, there is no threat of a build-out to encourage operational cooperation or reasonable switching charges from CSX.

Past competition between Conrail and the Indiana Railroad has significantly reduced coal transportation costs for IP&L. In 1996, Conrail, the Indiana Railroad, and trucks were competing for coal deliveries to the Stout plant. The Indiana Railroad matched Conrail's price and won 90 percent of the business, but the competition from Conrail reduced prices about *** percent below the truck price. Had there been no competition from Conrail, the Indiana Railroad would have merely matched the higher truck rate, and not undercut it.[44] This episode strongly indicates that truck[45] competition will not prevent an increase in railroad rates after the merger.

There remains, in principle, the possibility that electricity from other IP&L generating stations or the ECAR interconnection network might constrain the Indiana Railroad from raising prices post-merger. As discussed above, at particular times, power from a utility's other plants or

---

[43] IP&L interview, op cit.

[44] IP&L interview, op cit. Both this estimate of savings of *** percent and *****s estimate of savings of 30 to 40 percent resulting from competition between 2 railroads at a generating station are consistent with the 30 percent savings reported in footnote 27 above.

[45] Barges can not be used at the Stout plant, because of the absence of a navigable river in Indianapolis, according to a letter from *********, IP&L, to ******. (Provided to me by IP&L).

the interconnection network may be inexpensive enough to constrain coal transportation prices at a generating station. But the overall costs of the network and the other stations are so high that IP&L could not use either of these alternatives to prevent the Indiana Railroad from raising the price of transportation to the Stout plant.[46]

The lack of effective non-rail competition for coal transportation to the Stout plant and the inability of IP&L to use other generating stations or the interconnection network to substitute for electricity from Stout suggests that there is no constraint on the Indiana Railroad's current prices to Stout except competition from Conrail. And this competition is not being adequately replaced by NS after the merger. NS will have to haul coal at least twice as far to Stout as Conrail does today, and may face congestion problems in Indianapolis. Since a longer distance increases the variable cost of transporting coal--and the distance will be significantly longer--it is likely to lead to higher transportation bids from NS as it competes against the Indiana Railroad for coal shipments to Stout. Anticipating this, and the lack of competition from other modes of transportation, the Indiana Railroad is likely to raise its own bids for this transportation. Compounding this cost disadvantage to NS is the possibility of operational problems in Indianapolis that IP&L will no longer be able to minimize through the threat of a build-out.

4c. Reduced competition at the utility level is likely to harm competition for coal shipments to PEPCO

When the proposed transaction occurs, CSX, which already serves the PEPCO plant at

---

[46] IP&L interview, op cit.

Dickerson, will acquire the Conrail line to the PEPCO plants at Morgantown and Chalk Point.[47] NS will continue to serve the PEPCO plant at Alexandria. Consequently, CSX will become the sole railroad serving 3 of PEPCO's 4 generating stations, including the most efficient ones at Dickerson and Morgantown. As noted above, PEPCO currently only uses railroads to supply coal to its generating stations, and not trucks or barges, so these alternative methods of transportation are not competitive at current railroad prices. Use of trucks would probably require a transload from another railroad (presumably NS) and a long haul through congested urban areas to the PEPCO generating stations. Since both the Morgantown and Chalk Point plants can be reached by water from coal loading docks in Baltimore or the Norfolk, Virginia area, barges are potential competitors to railroads for delivering coal to these plants. The relevant issue is whether barges (though not now competitive) would become competitive with rail transportation if the railroad transportation price increased after the merger.

PEPCO's ability to use a threat of NS-supplied barges to prevent a price increase from CSX appears, however, to be limited. Using barges to unload coal at Morgantown would require permits both to build an unloading facility and to operate barges in environmentally-sensitive areas. Dredging would also be required. In addition, the facility would cost millions of dollars and take at least 3 years to build. So PEPCO will have no transload competition for 3 years or more, even if it is able to construct the unloading facility. Finally, independent of capital costs, loading costs associated with a transload would increase the variable cost of supplying coal to

---

[47] Sansom V.S., p. 9; Attachment 1 to the Transaction Agreement, p. 3.

PEPCO by approximately $** per ton.[48]

In 1993, however, PEPCO did examine the barge alternative and used this threat in negotiations with the railroads. In particular, PEPCO looked into the possibility of using CSX to ship coal to Baltimore or to Newport News, Virginia for transfer to a barge that would deliver the coal to Morgantown. PEPCO examined a similar operation involving NS delivery of coal to Lamberts Point (near Norfolk) for transload to barge.[49] PEPCO advised Conrail of these possible alternatives for PEPCO's coal requirements and believes that Conrail made a rate reduction at Morgantown and Chalk Point in response to this threat. This possibility of rail-barge competition still exists, of course, with NS, but PEPCO believes that having two rail-barge alternatives (CSX and NS) led to a significantly more serious threat to Conrail in the past than one rail-barge alternative (NS) will have against CSX.[50] PEPCO provides several reason for this belief, any one of which would support the prediction that NS will not provide the constraint on CSX that CSX had on Conrail in the past. First, NS may have insufficient capacity at Lamberts Point to load the additional coal that PEPCO would require. Second, PEPCO believes that NS has inferior access to the types of coals PEPCO uses than CSX does. In 1993, NS showed significantly less interest in a rail-barge transload than CSX did. In 1997, in response to PEPCO's request for a rate to Lamberts Point for a transload, NS has not quoted a rate that is low enough to make a transload worthwhile. Finally, while the basic plan today for construction and operation of a barge

---

[48]Interview of ***********, PEPCO, on October 6.

[49]ibid.

[50]PEPCO interviews on August 11, October 6, op cit; Interview of ********, PEPCO, *******************, PEPCO, and PEPCO counsel, on October 10, 1997.

unloading facility at Morgantown may be unchanged from 1993's plan, greater environmental sensitivity--which PEPCO experiences at some of its generating stations now--may reduce the chances of receiving the necessary permits for the facility.[51] At this point, given (1) the reluctance of NS to quote a competitive rate for a rail-barge transload, (2) a number of reasons why NS is less competitive than CSX was for the transload, and (3) a general proposition from economic theory that, even in bidding situations, one can not rely on one bidder to act as competitively as two bidders would, it seems reasonable to conclude that barge competition from NS will not constrain rail rates after the merger as much as barge competition may have done in the past.

If environmental restrictions prevent PEPCO from building a transload facility or NS is unwilling or unable to provide PEPCO a rate to Lamberts Point that both overcomes the transload variable cost penalty and gives PEPCO an incentive to make the significant investment necessary to build the facility, then a rail-barge transload will not be competitive with all-rail transportation for PEPCO. In that case, based on 1996 tonnage used, the merger would increase CSX's share of PEPCO's coal purchases from 20 percent to 88 percent, while NS will supply the remaining 12 percent. If a rail-barge transload is not competitive with railroad transportation, then the merger will increase concentration dramatically (generating an increase in the HHI of 2727 points), and suggesting great cause for competitive concern.

While, at the utility level, the merger would appear to represent a reduction in the number of competitors from 3 to 2, the capacity limitations and relative inefficiency of the NS-served Alexandria plant make it more nearly a "2 to 1" merger. This is because the merger will make CSX the sole supplier to PEPCO's two most efficient plants, Dickerson and Morgantown, as well

[51] PEPCO interview, October 10, op cit.

as to what is arguably PEPCO's third most efficient plant, Chalk Point. As a monopoly railroad serving these plants, CSX will face less of a competitive constraint than exists today and could, unilaterally, expand its economic rents by raising coal transportation rates.

Currently, Dickerson and Morgantown have PEPCO's lowest costs of fuel per KWH of $.014 and $.016, respectively, significantly lower than Alexandria's fuel cost of $.020 (Chalk Point's cost is also low, at $.017) and one of these 2 lowest-cost plants is now served by CSX and the other by CSX's competitor Conrail. An alternative measure of cost is total expenditures per KWH. By this measure, Morgantown and Dickerson are still the leaders, with expenditures per KWH of $.0182 and $.0191, respectively, and far below Alexandria's $.0295. (Chalk Point's expenditures per KWH are $.0273). A railroad seeking to expand its economic rents could, if it controlled access to both of these plants, raise coal transportation rates to take advantage of PEPCO's inability to substitute generation at other generating stations because of these stations' higher cost. Finally, Alexandria has the lowest capacity of the PEPCO plants.[52] Consequently, PEPCO's ability to use power from NS-served Alexandria as a substitute for power from the CSX-served plants will be limited, even if PEPCO ignored the cost penalty at Alexandria. For these reasons, during periods when CSX's only competition at PEPCO will be NS, CSX will likely have both an incentive and ability profitably to raise rates to PEPCO[53].

---

[52]The expenditure and capacity information is taken from the 1996 PEPCO FERC Form 1, various pages.

[53]I am aware that PEPCO is now involved in a rate case involving a recent CSX rate increase at Dickerson (STB Docket No. 41989) and that PEPCOs position in that proceeding is that other PEPCO plants, including both the Conrail and NS-served plants, can not constrain CSX from imposing a significant rate increase at Dickerson (PEPCO interview, op cit, and *********** V.S. from this proceeding, provided to me by PEPCO). Before the

5. The likely harm to competition can be remedied by the limited application of trackage rights

The competition that has benefited ***** at ******** can easily be maintained if the STB requires that ************ receive the ******* rights (under existing terms) ************ ***********. This will maintain the two-railroad competition that currently exists. Competition at IP&L's Stout plant can be maintained by increasing the competitiveness of NS to the level currently provided by Conrail. This can be done by imposing three conditions. The first is to give NS the right to connect with the Indiana Southern at Indianapolis. Second, the lever of a build-out by IP&L should also be maintained by granting NS the right to serve any build-out that IP&L wishes to make to an existing Conrail line. Finally, if a build-out is made, NS should not be required to use the Hawthorne yard, since had Conrail connected to this build-out it would not have needed to run trains through this yard. NS should be granted the right to run trains over CSX from the recommended connection with Indiana Southern directly to the point of any build-out from IP&L.

Competition at PEPCO's plants could be maintained by a grant to NS of trackage rights to serve the Morgantown and Chalk Point plants. This remedy would actually serve to increase competition beyond the current level since both NS and CSX would serve the same low-cost

---

merger, CSX may be able to raise the Dickerson plant rail rate significantly if there is no competition at pre-increase prices. But eventually it is likely that the Conrail-served plants will constrain further CSX price increases. If CSX gains exclusive service to these plants, this constraint will disappear and the only constraint will be the weaker one provided by NS at Alexandria. As explained earlier in my analysis of plant, utility network, and interconnection association competitive constraints, the fact that monopolization over service to an individual generating station may lead to market power does not imply that market dominance over service to a utilitys network of plants will not further enhance this market power.

generating stations. But maintaining a second railroad as a constraint on CSX's ability to raise rates to the most efficient PEPCO plants when PEPCO has no other equally-efficient electricity sources seems to require this remedy. An exact replacement of the lost Conrail competition would require that the Conrail line to Morgantown and Chalk Point be granted to NS rather than to CSX. This relief would require a significant change in the merger agreement that might undermine the seemingly logical partition of Conrail. On the other hand, the operational logic of the agreement is maintained by simply adding the ability of NS to serve PEPCO at these 2 stations. None of the recommended conditions regarding service to the 3 utilities are likely to reduce the ability of CSX and NS to achieve the claimed efficiencies resulting from the merger.

I, Peter A. Woodward, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified to file this statement. Executed on October 21, 1997.

Peter A. Woodward

Peter A. Woodward

PETER ADDISON WOODWARD

600 E Street NW, Room 10-903
Washington, DC 20530
(202) 307-6380, 514-8862 (Fax)
E-mail: woodwapa@justice.usdoj.gov

Date of Birth: November 6, 1960 Marital Status: Married

Academic Background:

B.A., Pomona College, May 1982, cum laude, Major: Economics
M.S., University of Wisconsin-Madison, December, 1986 Economics
Ph.D., University of Wisconsin-Madison, May, 1989 Economics

Fields of Interest: Industrial Organization
Managerial Economics
Econometrics

Current Position:

Economist, Antitrust Division, U.S. Department of Justice, 1991-present.

Previous Positions:

Economist Contractor, U.S. Agency for International Development, Bucharest, Romania, 1996.

Assistant Professor of Business Administration, Amos Tuck School, Dartmouth College, 1989-1991.

Assistant Analyst, Fiscal Analysis Division, Congressional Budget Office, Washington, D.C., 1982-1984.

Testimony:

Verified Statements on Competition and Trackage Rights, ICC Finance Docket 32549 (Burlington Northern-Santa Fe Pacific Merger), May 10 and June 9, 1995.

Volume of Commerce Estimation, U.S. vs. J. Bruil, et. al., December 3, 1993.

STB FD 33388 10-21-97 D 182918

182584
182918

United States Department of Agriculture

Agricultural Marketing Service

P.O. Box 96456
Washington, DC
20090-6456

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

October 21, 1997

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

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Mercury Building
Room 711
Washington, D.C. 20423-0001

Dear Mr. Williams:

Enclosed are comments filed on behalf of the Secretary of the Department of Agriculture (USDA) in 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.

Included as a part of this filing, USDA is providing a detailed analysis of the impact of the proposed merger on agricultural markets. Because this data is sensitive and subject to disclosure rules governing the use of Waybill data, it is submitted as a confidential comment of the USDA. The use and release of this material is left to the discretion of the Surface Transportation Board.

Sincerely,

Thomas A. O'Brien
Acting Administrator

Enclosures

182884
182918

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388

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

COMMENTS OF THE

UNITED STATES DEPARTMENT OF AGRICULTURE

Michael V. Dunn
Assistant Secretary

Marketing and Regulatory Programs

U. S. Department of Agriculture
Washington, D.C. 20250

Date: October 21, 1997

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 33388

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

COMMENTS OF THE

UNITED STATES DEPARTMENT OF AGRICULTURE

These comments are filed on behalf of the United States Department of Agriculture (USDA) in response to the Surface Transportation Board's (STB) decision served May 30, 1997, setting forth its procedural schedule for this merger application.

AUTHORITY AND INTEREST

Through the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 (j)), Congress has directed and authorized the Secretary of Agriculture to participate in proceedings before STB to "assist in improving transportation services and facilities . . . for agricultural products and farm supplies" and to make "complaint or petition to [STB] . . . with respect to rates, charges, tariffs, practices, and services. . . ." In addition, the USDA, through the operations of the Commodity Credit Corporation and foreign commodity donation programs, is a participant in the markets for agricultural products.

Rail service is critical to the economic well-being of this Nation's agricultural and rural economies. Reliable, cost-effective transportation of agricultural products is essential for U.S. agricultural producers and shippers to maintain competitive viability in domestic and export markets. Nearly half of all grain produced in the United States moves to market by rail.[1] In 1995, grain, grain mill products, and other farm products accounted for nearly two million rail car loadings.[2] Agricultural shippers pay $3 billion annually in freight car costs to U.S. railroads to move agricultural products from country, subterminal, and terminal elevators in grain producing areas in domestic and international markets. These figures demonstrate that an adequate and efficient rail infrastructure is essential for the marketing of U.S. agricultural products.

PREFATORY REMARKS

This statement has two parts. In the first part, USDA discusses the recent consolidation of the Class I railroads. We examine the criteria STB uses in its evaluation of the public interest. We suggest that certain costs are not being included in STB's calculation of the public interest and that these costs lessen the net benefits the public gains from railroad consolidations. Most importantly, USDA believes STB must place

---

[1]Jerry D. Norton, Paul J. Bertels, and Freeman K. Buxton, *Transportation of U.S. Grain: A Modal Share Analysis*, (Washington, DC: U.S. Department of Agriculture, Agricultural Marketing Service), July 1992.

[2]Association of American Railroads, *Weekly Railroad Traffic: Revenue Freight Traffic Statistics of Major Railroads*, (Washington, DC: Association of American Railroads. Economics, Policy and Statistics Department), 1996.

more emphasis on maintaining effective competition in the rail industry while pursuing increased efficiency. It is not USDA's purpose to argue points that properly belong in another proceeding, but to place in context the second part of this statement which discusses the proposed acquisition of Conrail (CR) by Norfolk Southern (NS) and CSX.

In addition to this statement, USDA is also submitting a confidential filing with STB. This confidential filing summarizes the findings of a report prepared by a USDA team analyzing the agricultural impact of the proposed acquisition of CR by NS and CSX. The report is confidential because it contains information from the ICC Waybill Sample that is protected by federal regulations.

Part I: Recent Rail Mergers and the Public Interest

Recent Rail Mergers

The proposed joint acquisition of CR by CSX and NS will create two giant eastern railroads. It has generated concern about the impact of the consolidation on agricultural rail traffic in the eastern United States. This latest merger is part of a broader wave of consolidation activity within the rail industry that has reduced the number of major U.S. railroads from 33 in 1982 to just 7 today. If this latest merger occurs, the United States will be left with only six major railroads.

USDA has watched with mounting concern the consolidation of the Class I railroads these past three years. In the proposed merger of the Burlington Northern Railroad (BN) and The Atchison, Topeka and Santa Fe Railway (Santa Fe), we noted our suspicion "that the merger will have significant negative impacts on competition as the number of railroads operating in the Western United States is reduced."[3] USDA did not oppose that merger, but we did ask the Interstate Commerce Commission (ICC) to "make every effort to assure that an adequate level of competition is maintained in those markets and on those routes where competition will likely suffer as a result of the merger."

USDA's statement in the BN-Santa Fe case noted, presciently, that the merger "could stimulate interest in, and might set a precedent for, further railroad consolidation." Soon after the Commission decided the BN-Santa Fe merger, Union Pacific (UP) announced its intention to acquire the Southern Pacific (SP). USDA opposed that consolidation. The Secretary himself highlighted the importance of competitive rail service for agricultural producers and shippers, and the entire rural economy, as well as the adverse effects of continuing consolidation and concentration in the railroad industry.[4]

In both of these cases, USDA believed that protective conditions crafted between selected railroads and shippers were inadequate and that additional conditions were needed to ensure effective competition. Consequently, USDA asked STB/ICC to impose additional protective conditions to mitigate the loss of competition for rural and agricul-

---

[3]Comments of the Department of Agriculture, Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, May 10, 1995.

[4]Brief Comments of the Secretary of Agriculture, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company — Control and Merger — Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, June 3, 1996.

tural shippers. Unfortunately, STB chose to approve both mergers largely along the lines the applicants had proposed.

Statutory Authority and Decisional Standards

We recognize that STB is bound by the statutory provisions codified at 49 U.S.C. 11321-27. Specifically, in deciding a major transaction, one involving two or more Class I railroads, STB must at least consider the five factors specified in Sec. 11324(b) which are listed below,

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

These five factors are subject to some interpretation. Fortunately, Congress has given additional instruction to STB in the form of the rail transportation policy. Added by the Staggers Act, the rail transportation policy (49 U.S.C. 10101) articulates 15 policy goals by which STB is guided. These goals stress the importance of efficiency, effective competition, and limited federal regulatory oversight. USDA believes that the five factors listed in Sec. 11324(b) must be evaluated in light of these 15 policy goals.

Admittedly, the 15 policy goals are somewhat ambiguous if not contradictory. In its attempt to discern the public interest, STB must implicitly assign "weights" to each of these goals. Examining the goals set out in the rail transportation policy, USDA believes that STB has placed too much weight on the achievement of efficiency and too little weight on effective competition.

Of course efficiency is an important policy objective: efficiency is associated with the cost-minimizing organization of economic activity. USDA simply notes that effective competition also has many concrete, salutary benefits. It promotes reasonable rates, minimizes the need for regulatory control, and encourages honest and efficient management of railroads. By contrast, efficiency benefits (including *potential* cost savings) are inherently more speculative. Not only might the proposed benefits of a merger never be realized, but, because of market power, whatever benefits do accrue may not be passed - through to shippers in the form of lower prices.

To USDA, effective competition "to meet the needs of the public" must include effective *intra*-modal competition — the kind of competition that minimizes the number of captive shippers and the need for regulatory control over rates and service. As the number of rail carriers diminishes to just a handful, USDA questions whether the benefits achieved by increasing concentration offset the competitive harms resulting from less effective competition. That is why USDA does not believe that a single, national monopoly serves the public interest as well as effective competition among, say, six to eight major carriers.

By approving mergers that reduce effective competition, STB is forced to assume ever greater responsibility to "maintain reasonable rates." While we have no doubt that the STB is willing to assume this responsibility, it is by no means clear that the present system of oversight is effective in addressing the needs of shippers. Challenging the reasonableness of railroad rates is expensive both in terms of time and money. It is hoped that STB's new procedures will prevent a group like McCarty Farms from languishing for the better part of two decades in a regulatory/legal process.

Calculation of Public Benefit and Competitive Harm

In determining whether a proposed transaction is consistent with the public interest, STB examines the efficiency gains that would result (and which need not be shared with the public). The railroads point to rate reductions that have occurred since deregulation, but a major reason rates have fallen is that all shippers, and grain shippers in particular, are shouldering greater responsibility for car supply and other functions railroads formerly provided. These offsetting costs should not be ignored by the STB when considering the public benefits resulting from a merger. For example, shippers often must make significant capital investments to obtain cost-effective rail service. In the wheat country of the western great plains, for instance, both BNSF and UP are offering multi-car discounts only to those shippers that can deliver 108 car, "unit trains." This is effectively forcing elevators to make expensive investments in sidings, inventory, storage capacity, and loading facilities. USDA believes this is a manifestation of the lack of competitive alternatives for most grain shippers and the resulting market power of railroads, and it again demonstrates the need to maintain effective competition among rail carriers.

Use of Protective Conditions

In general, STB has been reluctant to attach conditions to mergers. This reflects STB's view that conditions generally tend to reduce the benefits of a consolidation, and should only be imposed when strict criteria are met. On the one hand, USDA believes that this reluctance reflects favorably on the STB and is in accordance with the rail transportation policy's call for minimal federal regulatory control over the industry. On the other hand, we believe that STB is again placing too great a weight on potential cost savings, and too little on effective competition. It is also STB policy not to grant protective conditions to "ameliorate long-standing problems that were not created by a merger." However, USDA believes that when a merger is likely to exacerbate long-standing problems, STB can and should impose conditions that promote effective competition.

USDA does believe that any such protective conditions should be operationally feasible and narrowly tailored to address adverse effects of the transaction. No doubt this is STB's position as well, but we believe STB erred in granting BNSF such wide-ranging trackage rights during the UPSP merger. Even now USDA is not convinced that such a broad grant of trackage rights is operationally feasible and we further believe that the protective conditions imposed by STB has restructured the competitive balance among the western roads with unpredictable effects.[5] USDA would prefer in the future that trackage rights granted be limited and spread among multiple railroads. We believe this promotes competition more effectively than reinforcing a duopoly.

---

[5]In Santa Fe Southern Pacific Corp — Control — SPT Co., 2 ICC 2nd 709, 827 (1986), ICC stated its disinclination to grant conditions under these circumstances.

General Comments

The first part of this statement has reviewed the consolidation of Class I railroads these past three years. Admittedly, this trend is not new, but is the continuation of a long-standing public policy aimed at supporting railroad consolidation in order to achieve more efficient provision of transportation services to the public. This policy has been highly successful and is, in large measure, responsible for the improved fortunes of railroads in the post-Staggers period.

But as the number of rail carriers diminishes to just a handful, USDA questions whether the benefits achieved by increasing concentration offset the competitive harms resulting from less effective competition. Therefore, USDA believes that in approving additional mega-mergers, STB must be extraordinarily sensitive to the possibility of competitive harm to shippers of all types, and to agricultural and bulk shippers in particular. STB should use its broad conditioning power to advance the public's interest in competition, and not content itself with imposing the particular conditions a favored few have managed to obtain from the applicants beforehand.

Additionally, USDA believes that a five-year oversight period should be a condition of any major transaction approved by STB. It is surely the case that some examples of competitive harm, causally related to the merger, will only become apparent over time. This is particular true when the competitive harm manifests itself in deteriorating service quality.

Part II: An Assessment of the Proposed Conrail Merger on Agriculture

Background

Conrail (CR), CSX, and Norfolk Southern (NS) compete in ten States for agricultural shipments. For feed grains and grain mill products, competition focuses on movements from the eastern Cornbelt to the feed deficit areas of the East, Mid-Atlantic, and Southeast. For wheat, competition is for shipments to the Northeast milling market, and for export grain from the eastern Cornbelt to Atlantic ports facilities. The three railroads are also the dominant mode of transport for agricultural fertilizers shipped into the eastern Cornbelt.

Of the five Class I railroads operating east of the Mississippi River, CR, CSX, and NS are the dominant carriers. CR, CSX, and NS together account for three-fourths of all eastern rail shipments. The other two Class I railroads are the Grand Trunk Western -- a subsidiary of the Canadian National -- and the Illinois Central.

Food and agriculture, and agriculture-related commodities are an important part of the traffic on eastern Class I railroads. Grain, the major agricultural commodity moved by rail, ranks seventh among the 20 major classes of rail freight hauled by the eastern carriers. Over one-fourth of all U.S. rail grain originations are carried by the five eastern Class I railroads, and rail remains the dominant mode of transport for eastern U.S. grain.

Potential Costs to Agriculture from Consolidation

The CSX-NS agreement to acquire CR jointly would create a small number of duopoly rail markets that previously were served by three railroads.[6] (In no case did an entire Crop Reporting District (CRD) go from having two competitors to just one.) To estimate the potential costs to agricultural shippers and receivers, USDA conducted an analysis of all shipments to and from these markets that involve distances greater than 300 miles. USDA assumed that shipments under 300 miles faced effective truck competition. Competition from the navigable waterways was ignored as the east-to-west and west-to-east nature of the affected shipments limits the competitiveness of water transportation in the affected markets.

MacDonald (1987) showed that corn market CRDs without effective intermodal competition have rail rates that are 15.2 percent higher when the number of competing railroads drops from three to two.[7] Using this estimate of potential rate increases, and accounting for those shipments being double-counted as both origins and terminations in the affected CRDs, USDA estimates:

- The CR breakup, as proposed by CSX and NS, could lead to increased rates on 2.7 million tons of agricultural commodities and inputs. Under the proposed CR breakup plan, grain and oilseed shipments account for 62 percent of the impacted agricultural traffic with corn more than 70 percent of this grain and

[6]The affected markets are as follows: in Indiana, CRDs 1830, 1860; in Maryland, CRD 2420; in Ohio, CRDs 3960, 3990; in West Virginia, CRDs 5420, 5440.

[7]MacDonald, J.M., [1987], "Competition and Rail Rates for the Shipment of Corn, Soybeans, and Wheat," Rand Journal of Economics, Vol. 18, 151-163.

oilseed traffic. Affected grain and oilseed shipments could total 1.7 million tons. Grain mill and feed products would total 289,624 tons and fertilizer shipments 673,484 tons. Food and kindred products could total 249,420 tons and forest and lumber products 328,140 tons.

- The affected shipments of agricultural products and inputs could be expected to experience rate and transportation cost increases totaling $8.2 million per year, using MacDonald's findings. Affected shipments of food and kindred products could experience rate increases totaling nearly $2 million annually. Forest and timber product shipments in the impacted markets could experience rate increases totaling $1.8 million annually. These increases in transportation costs would ultimately be borne by both producers and consumers of these products.

Potential Gains from Consolidation

Mergers and consolidations naturally generate concerns regarding the potential for declines in service and increases in rates. Mergers, however, can also generate savings and benefits for shippers through improved operating efficiencies, passed along in the form of lower rates, and improved marketing opportunities through broader market access.

Under the present proposal to divide CR between CSX and NS, each railroad will gain its own and shared routes into New York City, providing both with single-line service opportunities from Florida to the New York City market. This alone, however, seems unlikely to reduce substantially the domination of trucks over rail for Florida produce shipments. The strength of trucking in this market is tied largely to service-related factors that railroads find difficult to improve. These include timeliness of delivery, size of snipment, and direct door-to-door service.

The CR acquisition could also improve market access for agricultural shippers moving eastern Cornbelt grain and feed products into the southeastern feeding markets. Grain and feed ingredient shipments now originated by CR at elevators and processing plants in Indiana, Michigan, and Ohio must be interchanged with NS or CSX to reach the livestock markets of Alabama, Georgia, North and South Carolina, and Tennessee. The CSX-NS plan would create single-line service to a number of markets particularly in the Southeast and lower Mid-Atlantic that now must be reached through interchange. Single-line service could increase operating efficiencies for the carriers and improve service levels for shippers. The extent to which the gains in operating efficiencies are passed on to shippers as lower rates depends upon the levels of competition in both the origin and destination markets following the merger.

Conclusions

The CSX and NS application to acquire and control CR is the latest in a wave of consolidation activity within the railroad industry. The three railroads compete for agricultural shipment in 10 states including feed grains and grain mill products moving from the eastern Cornbelt to the feed deficit areas of the East, Mid-Atlantic, and Southeast; wheat shipments moving to the Northeast milling market; export grain traffic moving from the eastern Cornbelt to the port facilities along the Atlantic seaboard, and agricultural fertilizers shipped into the eastern Cornbelt.

USDA believes that in evaluating any merger, STB should give at least as much weight to safeguarding effective competition as it does to reducing costs in the U.S. rail network. Evaluated in this light, USDA does not oppose the acquisition of CR by NS and CSX. Our analysis of the proposed merger indicates that the anticompetitive effects were neither large nor widespread. In fact, USDA believes that by breaking up CR's "monopoly" in the Northeast, this merger promotes the kind of effective competition Congress refers to in the rail transportation policy. We hasten to add, however, that while USDA does not oppose the merger, neither do we endorse it. USDA believes that STB should carefully examine the protective conditions requested by protesting parties and impose those conditions that promote effective competition.

Finally, USDA notes that service problems have attended all the recent mergers of Class I railroads. These problems have been particularly severe in the UPSP case. If anything, they strengthen USDA's point that the proposed cost savings from mergers are often elusive, if not illusory. USDA strongly urges that, should STB approve the acquisition of CR by CSX and NS, a "go-slow" approach to implementing the acquisition should be adopted. We would request that STB carefully condition its approval so that service problems are unlikely to manifest themselves. While such conditions may lessen the efficiency and public benefits the applicants hope to gain, these losses seem minimal in light of the disruption shippers are currently experiencing in the UPSP service crisis.

Respectfully submitted,

Michael V Dunn

Michael V. Dunn
Assistant Secretary

Marketing and Regulatory Programs

U.S. Department of Agriculture
Washington, DC 20250

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 21, 1997, he caused a copy of the Department of Agriculture's comments to be served by first-class mail, postage prepaid, on ali parties of record in STB Finance Docket No. 33388.

Keith A. Klindworth
Program Manager
Marketing and Transportation Analysis
Agricultural Marketing Service

STB FD 33388 10-21-97 D 182891

182891

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
P.O. BOX 778
DOVER, DELAWARE 19903

THOMAS R. CARPER
GOVERNOR

D

Via Hand Delivery

Legal Affairs
Ph: (302) 739-4575
Fax: (302) 739-6119

October 21, 1997

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

In accordance with Decision No.12, in connection with the above proceeding, we enclose for filing the original and twenty-five (25) copies of the Statement of the State of Delaware Department of Transportation - Responsive Applications, Comments, Protests, Request for Conditions and Other Oppposition Evidence and Argument submitted in behalf of the Delaware Department of Transportation.

We have also enclosed a 3.5-inch IBM compatible diskette containing the above document.

Respectfully submitted,

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

Frederick H. Schranck
Deputy Attorney General

FHS:mr
Enclosures
cc: Administrative Law Judge Jacob Leventhal
All Parties of Record on the Decision No.12 Service List

DelDOT

182891

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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

State of Delaware Department of Transportation -- Responsive Applications, Comments, Protests, Request for Conditions and Other Opposition Evidence and Argument

Frederick H. Schranck
Deputy Attorney General
Delaware Department of Transportation

Dated: October 21, 1997

Before The

SURFACE TRANSPORTATION BOARD

Washington, D.C.

Finance Docket No. 33388

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

State of Delaware Department of Transportation -- Responsive Applications, Comments, Protests, Request for Conditions and Other Opposition Evidence and Argument

The State of Delaware Department of Transportation provides the following REQUEST FOR CONDITIONS under the rules for Responsive Applications, Comments, Protests, Request for Conditions and Other Opposition Evidence and Argument as part of the proceeding before the Surface Transportation Board (STB). Although the Delaware Department of Transportation is generally supportive of the pending application we remain concerned with several critical community and economic issues. With these issues unresolved we are compelled to qualify our support for the application as proposed at this time. If these issues are addressed to our satisfaction we will support the application.

There are four areas of interest to the State of Delaware. The issues include: the provision of competitive rail access with particular concern for access to the Port of Wilmington, the impact of the merger on rail operations through the City of Newark, the provision and maintenance of access for passenger rail service and the provision of trackage rights for short line railroads enhancing their ability to provide viable service for local intrastate commerce.

COMPETITIVE ACCESS

The State of Delaware is currently served by two Class I railroads, Conrail and CSX. The Operations Plan of Norfolk Southern and CSX indicate that two Class I railroads will maintain operations in our State. In-depth review of the Operations Plan reveals however, that we are being placed at a competitive disadvantage to other states as a result of this application. By way of example, the neighboring states of Pennsylvania and New Jersey will benefit from Shared Asset Areas and improved multiple Class I railroad service to their marine ports.

According to the Operations Plan filed in this proceeding CSX will continue to serve Delaware shippers through its corridor located in the northern portion of our State. The CSX corridor, approximately 23 miles long, serves a very limited number of shippers. The Operations Plan indicates that CSX intends to expand its operations to the Amtrak Northeast Corridor (NEC). Although the expansion of CSX operations onto the NEC appears to extend the geographic area served by two Class I railroads, their use of the NEC does not appear to allow for service to any additional shippers in our State. This expansion only benefits rail operations. It may also represent an attempt by CSX to circumvent the STB's Environmental Impact Statement requirements along the CSX line segment through the state. This will be discussed in more detail in the subsequent section.

The State of Delaware acquired the Port of Wilmington in September 1995 at a cost in excess of one hundred million dollars. The State continues to invest in this economic asset and has appropriated over twenty-five million dollars for on-port improvements with additional items included in the Port's Strategic Plan for the period extending from Fiscal Year 1997 - Fiscal Year 2003. The Port has also crafted a long-range master plan that will guide additional investments over time, establishing a world class operation for our State's gateway to international commerce. The Port is already a vital element in our State's economy with over 3000 direct port-related jobs resulting in a contribution of in excess of ten million dollars in state and local taxes annually. Therefore, it is crucial to our interests that the STB keep our Port in a competitive stance with all of the other Ports along the Atlantic seaboard.

The Port of Wilmington is being treated unfairly in the proceeding as it is being placed at a competitive disadvantage to the Ports of Baltimore, Northern New Jersey and New York. We request the STB either extend the Shared Assets Area from the Pennsylvania and Delaware state line south to the Port of Wilmington or provide rights to CSX to provide rail service to the Port of Wilmington as a condition to this proceeding. These additional rights would enable CSX to provide direct service to additional shippers in and around the Port of Wilmington and maintain equal footing for our Port with the others. Our region's economy, the State, as owner and operator of the Port of Wilmington, as well as shippers who utilize the Port will suffer substantial and irreparable harm without these additional rights. Again, we request that the STB stipulate that access to the Port be decreed a Shared Assets Area or that CSX be provided operating rights as a result of this proceeding. Either of these stipulations will ameliorate our concerns and maintain an equitable, competitive basis for the Port. It will also result in an expansion of the territory in our State that is truly served by two Class I railroads.

CITY OF NEWARK

The City of Newark, one of the largest cities in our State with close to 30,000 residents and also the home of the University of Delaware (UD) with 20,000 students, is bisected by the CSX Rail-line. There are three at-grade crossings with busy city streets that are also major regional arteries. Two of the at-grade Crossings, N College Ave. and Main Street/New London Rd., are located between the residences and the central campus of the UD. CSX freight traffic presents a major intrusion into this community. The Operations Plan lists an additional 1.9 trains per day thought the City. Obviously, this level falls below the STB's threshold for environmental analysis, an increase of no more than three trains per day in non-attainment areas, as part of the proceeding. It is important to note however, that the increased traffic reflected in the Operations Plan submitted as part of the proceeding may only represent a small portion of the real future use of the CSX corridor through the City of Newark. It is our understanding that in today's operating environment Conrail currently utilizes the CSX line to route bridge traffic through our State.

This occurs as Conrail avoids the otherwise higher charges for running on Amtrak's NEC. It is interesting to find that CSX will now also rely on the NEC and pay a per train car fee for use of the NEC when they own a parallel corridor with sufficient capacity nearby.

The use of the NEC appears to be an effective way to present only a slight increase in rail traffic along the CSX line in Newark while avoiding a detailed analysis as part of the regulatory regime of these proceedings. Clearly, there are substantive issues related to community concerns including: increased traffic delays, pedestrian railroad crossing safety, emergency response time, increased air and noise impacts as well as other issues.

The State of Delaware requests that the STB stipulate that CSX adheres to the maximum number of trains they include in their Operations Plan. If the average daily number of trains increases, above the level beyond which this STB proceeding would have mandated a detailed environmental analysis, the STB should require CSX to complete a comprehensive environmental analysis. Grade-separated pedestrian crossings and the construction of a fully grade-separated railroad roadway crossing should be included as potential mitigation measures in this analysis to offset the impact of increased rail traffic in the community.

PASSENGER SERVICE

Delaware residents and businesses rely on the Amtrak Northeast Corridor for access to and from the rest of the country. Over one million railroad trips either originated or were destined to Delaware along the NEC last year. Without a major airport, the railroad is Delaware's principal means of access to interstate travel. In 1989 the State, through the Delaware Transit Corporation (DTC), reinstituted local commuter rail passenger operations between the cities of Wilmington and Philadelphia. This service is provided by SEPTA under contract to DTC. Recently, the service was extended south to Newark. Looking at the Operation Plans it is clear to see that there will be additional pressure for rail freight along this critical railroad line. The State of Delaware has already invested over ten million dollars reestablishing these desirable passenger rail services. Delaware's Department of Transportation has also programmed over ten million additional dollars in their capital plan to upgrade the NEC to accommodate an additional intermediate station at Churchmans Crossing, a vital suburban center of commerce. Intercity and commuter rail services are important links that cater to select travel markets. The concept of "on time performance" is as critical, if not more so, to commuter travel than is "just in time" to the delivery of freight. We request that the STB address the issue of passenger and freight operations to ensure that dispatching, maintenance, capital investments and potential interference with operations do not adversely affect each other. This issue is crucial not only in the short term but in the long term as well. Interstate Route 95 parallels the NEC through our State and the remainder of the Northeastern United States. As additional vehicles congest this critical highway link to our nation's infrastructure, it is important that we can maintain and further develop railroad travel as an attractive alternative travel option.

Similarly, as other principal travel corridors, State Route 1 and US Route 13, in our State develop, it is important that the railroad can become an effective alternative when needed. The majority of land development and new economic growth is occurring in central and southern Delaware, an area currently without rail passenger service. The New Castle and Delmarva Secondary lines, currently Conrail owned, once provided for convenient passenger travel between Dover, Wilmington and Philadelphia. Delaware requests that the STB stipulate that Norfolk Southern either provide or not unreasonably withhold operating rights to the State of Delaware for the purpose of reintroducing passenger service along its entire system including the New Castle and Delmarva Secondary lines.

SHORTLINE OPERATIONS

Delaware contains several shortline operations. The majority of the shortlines are in the southern portion of our State. Small operators operate along these lines. An opportunity exists to create an intrastate or intra-peninsula system connecting the separate shortlines, all of which intersect with the Delmarva Secondary. A system of shortline operations with operating rights along the Delmarva Secondary can allow shortline railroads to move their locomotives and equipment between lines and create a viable alternative to motor carriers for local freight flows. Without provision for inter-operability the shortlines remain separate increments of railroad with limited traffic and value. Increase freight flow on the shortlines, although small in the realm of Class I operations, can go a long way to ensuring the long-term viability of these light density lines. The STB should provide operating rights along the Delmarva Secondary line to the shortline railroads that operate on the Delmarva Peninsula for the purpose of hauling local rail freight. The added traffic for the shortlines should increase the viability of the operations and enhance the resources for the maintenance of the railroad infrastructure.

The State of Delaware appreciates this opportunity to participate in this crucial process and provide issues to be addressed in the proceeding. Clearly an application of this magnitude raises many issues, however with the railroads working with each other as well as the other parties in the proceeding it appears the issues can be resolved and make this acquisition proceed smoothly. Again, thank you for the opportunity to provide this statement and express our concerns.

Respectfully submitted,

F.H. Schranck

Frederick H. Schranck
Deputy Attorney General
Delaware Department of Transportation
P.O. Box 778
Dover, Delaware 19903

STB FD 33388 10-21-97 D 182885 1/3

182885

BEFORE THE Original

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

D

OAG - 4

OPPOSITION, COMMENTS AND
REQUEST FOR
PROTECTIVE CONDITIONS OF THE
OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION
AND PUBLIC UTILITIES COMMISSION OF OHIO

Thomas M. O'Leary
Executive Director
Ohio Rail Development Commission
Alan Klodell
Ohio Attorney General
Transportation Section
Counsel for the Ohio
Rail Development Commission
37 W. Broad Street, 3rd Floor
Columbus, OH 43216

Alfred P. Agler
Director of Transportation
Division, Public Utilities
Commission of Ohio (P.U.C.O.)
Borden Building, 5th Floor
180 E. Broad Street
Columbus, OH 43215

ATTORNEYS FOR STATE OF OHIO
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Doreen C. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 16th Floor
30 East Broad Street
Columbus, OH 43266-0410
(614) 466-4328

Keith G. O'Brien
John D. Heffner
Robert A. Wimbish
Rea, Cross & Auchincloss
1920 N Street, N. W.
Washington, D. C. 20036
(202) 785-3700

DATED: OCTOBER 21, 1997

182885

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

OAG - 4

OPPOSITION, COMMENTS AND
REQUEST FOR
PROTECTIVE CONDITIONS OF THE
OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION
AND PUBLIC UTILITIES COMMISSION OF OHIO

I. INTRODUCTION

In a Decision served July 23, 1997, the Surface Transportation Board (Board) accepted for consideration the primary application (hereinafter, the "Application") and related filings submitted by Applicants CSX Corporation ("CSXC), CSX Transportation, Inc. ("CSXT")[1], Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR")[2], Conrail Inc.

[1] CSXC and CSXT, collectively, will be referred to hereinafter as "CSX".

[2] NSC and NSR, collectively, will be referred to hereinafter as "NS".

("CRR"), and Consolidated Rail Corporation ("CRC")[3] for Board approval and authorization under 49 U.S.C. §§ 11321-25 for, inter alia, (1) the acquisition by CSX and NS of control of CR; and (2) the division of assets owned by CR by and between CSX and NS.[4]

In the July 23 decision, the Board confirmed the procedural schedule previously prescribed for this proceeding. As pertinent here, the Board has required that all parties wishing to offer comments, protests, and requests for protective conditions, and any other opposition evidence and argument must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, the Ohio Attorney General (OAG), Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO)[5] hereby submit these comments and requests for protective conditions in response to Applicants' proposed Transaction.[6]

II. OVERVIEW AND SUMMARY OF POSITION

Because the proposed Transaction before the Board is pervasive in its potential effects and impact on the private and

---

[3] CRR and CRC, collectively, will be referred to hereinafter as "CR".

[4] Hereinafter, CSX, CSXT, NSC, NS, CRR, and CR collectively will be referred to as "Applicants".

[5] Hereinafter OAG, ORDC and PUCO will be referred to collectively as Ohio or State of Ohio.

[6] Hereinafter, the series of transactions proposed in Applicants' Primary application and related supplements shall be referred to as the "Transaction".

public segments throughout Ohio's economic fabric, OAG is joining with PUCO and ORDC in filing these statements on behalf of the State of Ohio.

A. Interest of the Ohio Attorney General

As the chief legal officer for the State of Ohio, the Ohio Attorney General is charged with the duty of enforcing state and federal antitrust laws. Ohio Rev. Code §§ 109.81 and 1331.01, et seq. In fulfilling this responsibility, the Ohio Attorney General (OAG) represents the state and its citizens in antitrust actions in state and federal courts. Additionally, the Attorney General participates in regulatory proceedings involving the application of antitrust principles. As relevant in this proceeding, OAG seeks to maintain and foster rail competition in Ohio and to preserve rail access to shippers and customers utilizing Ohio's rail transportation system. The offices of the Attorney General are located at State Office Tower, 30 East Broad Street, Columbus, OH, 43266-0410.

B. Interest of Ohio Rail Development Commission

The Ohio Rail Development Commission (ORDC) was created as a state agency by act of the Ohio legislature which was signed into law on July 21, 1994. Effective October 20, 1994, the Act combined the staffs of the Ohio Department of Transportation Division of Rail (ODOT Rail) and the Ohio High Speed Rail Authority (OHSRA). ORDC focuses its concerns on economic development, branch-line preservation, highway/rail safety and engineering projects and passenger and commuter rail planning and development. ORDC's offices are located at 50 West Broad Street, Suite 1510, Columbus, OH, 43215.

C. Interest of Public Utilities Commission of Ohio

The Public Utilities Commission of Ohio (PUCO) is statutorily charged with the responsibility for insuring the citizens of Ohio have access to adequate, safe, reliable and reasonably-priced public utility service. PUCO has regulatory authority over investor owned telephone, gas, electric and water companies in the state, as well as commercial motor carriers and railroads. While much of the rate and service quality jurisdiction with respect to motor carriers and railroads has been preempted by the federal government, PUCO continues to play an important role in supervising their safety of operations. With respect to the railroad industry in particular, the PUCO is responsible for FRA certified inspection activity in the disciplines of hazardous materials, operating practices, track, and motive power and equipment. Additionally, the PUCO, in conjunction with the ORDC, administers the Federal Section 130 grade crossing improvement monies, and separately administers the Ohio grade Crossing Improvement Fund. PUCO's offices are located at 180 East Broad Street, Columbus, OH, 43266.

In this filing the State of Ohio states its opposition to the proposed control and operation of CR lines by CSX and NS unless the Board adopts protective conditions and other measures deemed to be essential to avoid adverse effects upon Ohio shippers, its rail carriers and on its communities. Such measures must include provisions for the remediation of adverse safety and environmental impacts and loss of competition. Ohio urges the Board to adopt oversight measures in the public interest as necessary to preserve adequate competition, and to assure continued availability of essential rail service.

III. BACKGROUND

Currently CR operates over 11,000 route miles primarily in the Northeast and Midwest. It is Ohio's largest railroad operating over 1,700 of Ohio's 5,800 rail route miles. CSX operates an 18,600 mile system east of the Mississippi and is currently Ohio's second largest railroad with 1,460 route miles within the State. NS is a 14,500 system mile eastern railroad and is currently Ohio's third largest railroad with 900 miles of track within the State.[7]

There are 33 other common carrier freight railroads in Ohio in addition to CR, CSX and NS. All of these regional or short line railroads will be affected by the proposed control and operation of CR by CSX and NS. Some of these could benefit from (1) increased traffic and other synergies which CSX and NS expect to realize; (2) increased single-line loads from their respective points of interchange with CSX and NS and access to new corridor services projected by CSX and NS. However, should the Application be approved, small and regional Ohio rail carriers

---

[7] See Map depicting Conrail, Norfolk Southern and CSX Ohio route structure pre-Transaction (Exhibit 1).

will experience substantial losses of traffic and revenue sufficient to threaten bankruptcy in at least one case, and seriously affecting the ability to continue providing essential service in other cases.

Absent resolution of these issues or imposition of protective conditions, consummation of the proposed Transaction would mean loss of competitive rail service, loss of efficient single-line rail service due to a division of CR lines between CSX and NS, and particularly the complete loss of rail service for some customers and communities. These are issues of paramount concern to Ohio, warranting the imposition of remedial conditions by the Board.

Currently, there are 3,900 CR, 2,800 CSX and 3,200 NS employees in Ohio. However, Applicants project that about 450 of these Ohio jobs will be lost through this proposed Transaction. Ohio is concerned that any employees that may be displaced or uprooted by the proposed Transaction will be afforded adequate protection and every consideration that is their due.

Ohio is particularly mindful of serious safety and environmental problems that will directly affect Ohio communities in the event the proposed Transaction is consummated. Ohio is committed to extend every effort to ensure that any adverse safety and environmental issues are thoroughly evaluated and that adequate steps are taken to remediate serious problems that would otherwise affect Ohio communities.

IV. STATEMENT

In a proceeding involving proposed merger or control of two or more Class I railroads, the Board is required to consider at least the following issues:

1) The effect of the proposed transaction on the adequacy of transportation to the public;

2) The effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

3) The total fixed charges that result from the proposed transaction;

4) The interest of rail carrier employees affected by the proposed transaction; and

5) Whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

The statute further provides that the Board shall approve and authorize a transaction when it finds a proposed transaction is consistent with the public interest. 49 U.S.C. § 11324(b). However, the Board has broad authority to impose conditions governing railroad consolidation. 49 U.S.C. § 11324(c). Conditions are imposed when a proposed transaction is demonstrated to produce effects harmful to the public interest (such as a significant loss of competition) that a condition will ameliorate or eliminate. Such conditions must be operationally feasible and produce public benefits. Union Pacific Corporation, et al.--Control and Merger--Southern Pacific Rail Corporation, et al., Finance Docket No. 32760, served August 12, 1995, at 144.

The following comprises the basis for Ohio's opposition to the proposed Transaction unless the Board adopts protective conditions and remedial measures as deemed essential by the State. Absent the requested measures the State of Ohio cannot support a grant of authority in view of (1) adverse curtailment of availability of competitive and efficient rail service for specific Ohio shippers and communities; (2) clear potential for the demise of The Wheeling and Lake Erie Railroad; (3) adverse impact on financial viability of Ohio short lines; and (4) safety and environmental ramification for Ohio communities.

V. COMPETITIVE ISSUES

Prior to approving a railroad merger or acquisition, the Surface Transportation Board ("the Board") must find that "the transaction is consistent with the public interest." 49 U.S.C. § 11324(c). Among the factors the Board is directed to consider in making this determination is "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. § 11324(b)(5). Congress has identified competition as a key element of the national rail transportation policy. One of the elements of the policy is to allow competitive forces to establish reasonable rates for rail transportation. 49 U.S.C. § 10101.

Although it is not bound by the antitrust laws, the Board has recognized that the policies embodied in those statutes provide valuable guidance. Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co. - Control and Merger - Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPCSL Corp. and the Denver and Rio Grande Western Railroad Co., Finance Docket No. 32760 (STB Decision No. 44, served August 12, 1996) at 282 (hereinafter UP/SP). This country's antitrust laws reflect the fundamental premise underlying our free market system that vigorous competition among independent enterprises benefits the public. See, e.g., Northern Pacific Railway Co. v. United States, 356 U.S. 1, 4 (1956) (noting that the antitrust laws were intended "to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.") Because horizontal mergers may threaten this competition, they have been given close scrutiny under the antitrust laws. See, e.g., United States v. Philadelphia National Bank, 374 U.S. 321 (1963).

The Transaction at issue in this proceeding raises significant concerns regarding competition for rail transportation in the State of Ohio. As discussed in the Verified Statement of Wesley W. Wilson (attached hereto as Exhibit 2), Conrail is the largest railroad in Ohio as measured by miles of track. Of the approximately 5,800 total route miles in Ohio, Conrail operates about 1,700. CSX and NS, meanwhile, have the second and third largest rail systems in the state, with about 1,460 and 900 miles of track, respectively. These three railroads combined operate approximately 4,060 of the 5,800 route miles in Ohio.

Conrail is also the largest railroad in Ohio as measured by tons originated within the state. According to the 1995 waybill data, Conrail originated approximately 40 percent of tonnage, while CSX and NS originated 26 and 18 percent, respectively. The three railroads combined accounted for 84 percent of all freight originated in Ohio. As discussed in Dr. Wilson's statement, many local markets within Ohio are even more concentrated.

If this transaction is approved by the Board, the second and third largest railroads in Ohio will be acquiring the largest railroad and dividing its lines between themselves. The next largest railroad, the Wheeling & Lake Erie (W&LE), is far smaller and, as discussed below, its financial viability will be threatened if the application is approved without conditions. Additionally, Ohio has five of the ten locations identified by the railroads as 2 to 1 points (where the number of competing rail carriers will be reduced from two to one).

Clearly, the competitive effects of this proposed transaction on the State of Ohio warrant careful scrutiny by the Board. Unless the Board exercises its authority to impose conditions on the transaction, shippers in the State of Ohio will suffer serious harm as a result of the reduction in competition. A description of specific competitive problems and proposed conditions to ameliorate these problems will follow.

A. 2 to 1 Concerns

As discussed above, Applicants have identified five points in Ohio as locations where the number of rail carriers providing service will be reduced from 2 to 1. These include the cities of Upper Sandusky, Sidney, Avon Lake, Lorain, and Sandusky, OH. See verified statement of James W. McClellan, Vol. 1, at 456. Shippers in these communities face a reduction in competitive alternatives for moving their products or raw materials. Such captive shippers would likely be forced to pay increased rates as a result of this reduction in competition.

As the Board itself has recognized in this proceeding, railroads, like other firms, will seek to maximize their profits. If they possess market power, they will use it. Dec. No. 17, slip op. at 3 (July 31, 1997). This concern over market power is elevated in this case due to the approximately $10.2 billion which NS and CSX paid to acquire Conrail's stock. The Applicants assert that they will pay for this acquisition through cost savings and new business. However, if Applicants' cost and revenue results fail to live up to expectations, then they may be forced to undertake any or all of the following measures:

1. increase rates to "captive" shippers;

2. reduce or defer annual capital expenditures; and

3. abandon marginal or low density lines.

The applicant railroads have proposed to mitigate these competitive concerns through a grant of trackage rights to each other. As discussed in Dr. Wilson's statement, however, trackage rights can only be an effective way to ameliorate competitive harm if specific conditions exist. These conditions include: (1) full access to customers along the route, not simply terminal access; (2) non-discriminatory service terms; and (3) cost based trackage rights fees.

It is thus critical for the Board to closely examine the trackage rights proposed by the applicants to ensure that they effectively mitigate the harm threatened by the reduction in competition and to retain oversight over trackage rights agreements to ensure that the above conditions are met. In prior cases, the Board has recognized trackage rights as an effective remedy. See, e.g., UP/SP at 341. Currently, however, it appears that Burlington Northern-Santa Fe is making little use of the trackage rights which it was granted in UP/SP merger proceeding. While the reasons for this lack of use are not entirely clear, this experience demonstrates the need for careful scrutiny of the terms of the trackage rights agreements and the need to attach a common carrier obligation to such grants.

B. **Wheeling & Lake Erie Railway Company**

The Wheeling & Lake Erie Railway Company ("W&LE"), Ohio's fourth largest railroad (and the largest railroad headquartered in Ohio) has established itself as a valuable transportation asset to shippers located within the State. Its position as a competitive "regional" carrier, and its links to numerous class 1 and short line rail carriers make it an important factor in Ohio's industrial economy. Since its formation in 1990, the State of Ohio has spent about $5 million to help rehabilitate W&LE track and to otherwise help W&LE remain viable. Ohio urges the Board to take the actions necessary to ensure that W&LE will remain a viable presence in the State if the Application is approved. The Board must not permit W&LE to be a casualty of the proposed Transaction.

The W&LE plays various critical roles in the Ohio transportation system. W&LE is the primary rail transportation source for aggregate -- a commodity essential to Ohio's building and construction industry. W&LE provides rail service to many of Ohio's steel producing facilities. As is the case with aggregate producers for whom transportation costs heavily influence the delivered cost of the product, transportation costs are an equally critical element in keeping Ohio's steel industry competitive with the rest of the world. As a smaller regional carrier, W&LE is often the lowest cost transportation alternative for Ohio-based steel mills -- both for inbound raw materials and outbound finished products. Even where W&LE is not a shipper's primary choice, its presence helps to keep rates lower than they would be if a shipper were "captive" to a single carrier or to a single mode of transportation.[8]

For the purpose of this filing it is sufficient for Ohio to make clear that W&LE is an <u>essential</u> component of the rail transportation system in Ohio. As the attached verified statement of George L. Stern (hereinafter, "Stern V.S."[9]) demonstrates with particularity:

1. Various Ohio-based customers depend upon W&LE as their <u>only</u> available source of direct rail transportation.
2. Certain shippers are or may be served by both W&LE and a single class 1 carrier. If the W&LE fails, such shippers lose the benefits of intramodal competition, and become "2-to-1 customers."
3. Many shippers with access only to W&LE rely upon that carrier as a neutral bridge carrier connecting to competing class 1 carriers. In such cases, W&LE serves as an outlet to alternative line-haul options. If

[8] W&LE is also a crucial player in Ohio's agricultural sector. Due to its connection with NS at Hagerstown, Maryland, W&LE is an active and aggressive participant in the movement of grain and feedstocks from Ohio elevators (served only by W&LE) to points in Virginia's Shenandoah Valley and the Delmarva Peninsula.

[9] Verified Statement attached as Exhibit 3.

the W&LE should fail, such shippers may lose the benefit of equal access to competing line-haul carriers.

Ohio unequivocally supports W&LE in this proceeding to the extent that any relief it requests is designed to assure an independent and viable W&LE after consummation of the Transaction. As the Stern V.S. demonstrates, many W&LE served shippers in the State of Ohio will suffer serious competitive harm -- and potentially the loss of essential rail services -- if W&LE were unable to survive financially.

C. **Port of Toledo**

Through close coordination with the Toledo-Lucas County Port Authority (Port Authority) and the Toledo Metropolitan Council of Governments (TMACOG) the State of Ohio is very much aware of the serious loss of competitive service concerns facing the Port of Toledo. Specifically, the Port of Toledo is currently served by both CSX and Conrail but would only be served by CSX after consummation of the proposed transaction (a 2 to 1 situation).

Ohio joins the Port Authority in urging the importance of remedial action to ensure that the Port of Toledo will not lose competitive rail service. Although Conrail's service to the Port has been minimal recently, it does have the right to serve the Port and can be called upon to do so at any time. Specifically, Ohio supports the Port Authority in urging that W&LE be designated to supplant Conrail as the other rail carrier at the Port. In this regard it is Ohio's understanding that W&LE will be seeking remedial measures among which will be a condition enabling it to serve Toledo including the Port facilities. Ohio joins the Port Authority in urging that the Board require applicants to enter into arrangements that will ensure that W&LE will be able to provide rail service for the Port. Even the mere presence of a second rail carrier has the effect of keeping rates and service at a competitive level.

Ohio is also mindful that the Toledo Metropolitan Area Council of Governments (TMACOG) and the Port Authority are very much concerned as to the importance of preserving and utilizing the NS bridge over the Maumee River. NS will acquire the Conrail bridge over the Maumee as part of the acquisition. Consequently, NS has filed to abandon its current bridge over the Maumee as part of its Conrail acquisition filing.

Ohio supports TMACOG's and the Port Authority's efforts to preserve it as an active rail bridge. One way to do this would be to mandate a concession sought by the W&LE: the right to interchange with the Ann Arbor Railroad in Ottawa Yard in Toledo. An efficient route to reach Ottawa yard is over the NS bridge.

D. <u>Neomodal</u>

Neomodal is a state of the art intermodal terminal in Navarre, OH, served by the W&LE. Over $16 million in state and federal funds were spent on the terminal and related road improvements. W&LE itself invested $650,000 in start up costs.

Ohio supports the Stark Development Board and the W&LE in requesting that the Board mandate protective conditions to assure that utilization and viability of the Neomodal's facility not be undermined as a result of the proposed Transaction. (See copy of Gov. Voinovich letter dated October 16, 1997, Exhibit 4). In addition, by fostering utilization of Neomodal, the Board can help to offset adverse affects the W&LE would otherwise experience as a result of the proposed acquisition.

E. Single-Line to Multiple-Line Movements: 1 to 2 Concerns

The Applicants have repeatedly stressed throughout their Application that the proposed Transaction will result in increased efficiencies through greater single-line service for many rail shippers. The Applicants themselves recognize that single line service is far superior to multiple-line (multiple-carrier) service, and that shippers and customers prefer single line service. If approved as it is currently structured, the Transaction will arbitrarily result in a number of non-competitive situations in which Ohio rail shippers that currently receive single-line service via Conrail will be faced with multiple-line service for delivering their products to their present customers. Ohio has characterized instances where shippers will go from single-line service to multiple-line service post-Transaction as "1 to 2" situations.

Undoubtedly one of the most difficult aspects of this Transaction for the Applicants to justify are those "1 to 2" impacts that will literally foreclose cost-effective rail transport. The case of some of Ohio's stone and aggregate producers makes clear that the Applicants have failed adequately to address and resolve these 1 to 2 issues. For the shippers identified below, Ohio requests that the Board impose suitable conditions designed to ensure that each continues to enjoy the same single-carrier service over the same routes that it does today.

As discussed in Dr. Wilson's Verified Statement, transportation costs are a major component of the delivered price of aggregate and other high-volume, low-margin commodities. Any increase in the transportation costs of a shipper of such commodities can prevent the shipper from receiving its costs at the prevailing market place. By raising the costs of certain Ohio shippers through eliminating single-line service, the Applicants are benefiting shippers which are not facing these increased costs. The Transaction as currently structured will thus have an adverse effect on transportation in the markets for these commodities.

Aggregate and stone differ considerably from most other rail-borne commodities. Although aggregate and stone are the sort of heavy cargo not well-suited for truck transport -- and are in this respect like some other "bulk" commodities such as grain, coal, and taconite -- they are commodities that are typically shipped shorter distances than are other goods.[10]

---

[10] Consider for example that one Ohio-based aggregate producer ships its product via Conrail a total distance of only 100 miles. This is a comparatively short rail move, when

Aggregate and stone are among the lowest-rated freight carried by railroads. At the same time, since these are low valued commodities, their transportation costs frequently exceed the origin price of the stone or aggregate itself. For hauls of aggregate and stone, only single-carrier service appears to be an economical alternative.

Applicants have nowhere asserted that, in a "1 to 2" situation, aggregate and stone would move as efficiently and as cheaply as it does under single-carrier circumstances. Indeed, Ohio is unaware of any aggregate or stone transported entirely within a single state that is handled in "joint-line" service between two class 1 rail carriers. Even Chairman, President and CEO of CSX Corporation, John W. Snow, has acknowledged that he is unaware of any such class 1 "joint-line" arrangements involving the movement of such commodities.[11] Ohio challenges Applicants to provide even one example of such a two-carrier arrangement that is as economical as a one-carrier move for shorter hauls of these commodities.[12]

---

compared to other commodities such as grain.

[11] See, Deposition Transcript of John W. Snow, pp. 171-172, attached hereto as Exhibit 5.

[12] The perilous position of these shippers, in fact, demands more than the simple extension of trackage rights to quarry locations (the general relief these shippers will request). It requires that NS, CSX and the shippers work together to ensure that the substitute service can be offered at rates that are at least as low as those currently offered by Conrail. The exercise of trackage rights imposes administrative and operational costs that might not be incurred in traditional single-line service. For this reason, and because smaller "regional" carriers have more flexible cost structures than do

The State of Ohio can identify four Ohio-based stone and aggregate shippers who stand to face a serious loss of business as a result of the 1 to 2 impacts resulting from the Transaction -- Wyandot Dolomite, Inc., National Lime & Stone Company, Martin Marietta Materials, Inc. and Ohio Redland, Inc.[13] Ohio's support for each of these shippers is presented below.[14] Ohio has met with NS and CSX officials in an attempt to preserve the single-carrier service that these shippers now enjoy. Thus far, those negotiations have proven fruitless, and these shippers still face the adverse consequences of one of the more carelessly considered aspects of this Transaction. Neither CSX nor NS stand to lose a single dollar of revenue if they are mandated to provide continued single-line service to these shippers. The simple truth is, without single-carrier service, neither CSX nor NS is likely to move the first ton of existing, but threatened, traffic.

---

class I railroads, competitive solutions that grant trackage rights to such regional carriers may prove to be an especially effective solution.

[13] See Map depicting Aggregate and Coal "1 to 2" Movements (Exhibit 6).

[14] Until recently, Ohio Valley Coal ("OVC") had vigorously pressed its concerns and had sought assistance from a variety of sources in order to address its 1 to 2 situation where OVC was trying to maintain its single-line service to Centerior Energy's electric generating facilities at Eastlake and Ashtabula, OH. Apparently, OVC has been successful in negotiating a satisfactory arrangement with the Applicants such that OVC is no longer seeking relief within this proceeding. Therefore, since OVC is satisfied, the State of Ohio will not pursue any additional remedies for this particular 1 to 2 situation.

1. **Wyandot Dolomite, Inc.**

As is more thoroughly set forth in the Verified Statement of Timothy A. Wolfe (hereinafter, the "Wolfe V.S."), attached hereto as Exhibit 7, Wyandot Dolomite, Inc. ("Wyandot") currently enjoys single-carrier service from Conrail on the movement of aggregate from its quarry in Carey, OH, to a receiver of this commodity in Alliance, OH. The route which this traffic traverses today will be divided between CSX and NS, and neither of these carriers will be able to offer the same single carrier service offered by Conrail today. Ohio is aware that Wyandot will be filing its own request for protective conditions to address this 1 to 2 harm, and Ohio hereby states its full support for Wyandot's requested relief.[15]

2. **National Lime & Stone Company**

National Lime & Stone Company (National) currently transports limestone from its Bucyrus (Spore), OH, quarry to a terminal in Wooster, OH, and to Weirton Steel's facility in Weirton, WV. Also National has a large quarry in Carey, OH, which serves various customers currently located on CR. In all three instances, this traffic moves to and from these points because of the availability of single-carrier ("all-Conrail") service. If the Transaction is approved as currently presented, CSX will serve National's quarry at Spore, but only NS will have access to Wooster and Wierton. If faced with such two line rail

---

[15] Wyandot seeks NS trackage rights to its quarry at Carey, OH.

hauls, National projects that it would lose all of the business currently shipped by Conrail to these locations because of the increased expense and decreased efficiency that would necessarily be involved. Further, trucking is not a viable alternative for the single-line rail service as it would increase the involved transportation costs by up to $6.5 million annually. See Verified Statement of Arnold Kruse (Exhibit 8).

Once again, the Transaction presents unacceptable 1 to 2 consequences that threaten Ohio jobs. National has advised Ohio that it will file an appropriate request for relief in this proceeding. Accordingly, Ohio urges the Board's attention to National's filing, and presses the Board to grant the relief National requests.[16]

3. Martin Marietta Materials, Inc.

Like Wyandot and National, Martin Marietta Materials, Inc. ("Marietta") transports by rail limestone and aggregate products to consumers elsewhere in Ohio and nearby West Virginia. Of particular note here are the movements of aggregate from Marietta's large Woodville, OH, facility to customers located at Hugo and Twinsburg, OH, and the rail transport of lime from Woodville to customers located at Mingo Junction, OH, and Weirton, WV. In all cases -- Woodville to Hugo, Woodville to Twinsburg, Woodville to Mingo Junction, and Woodville to Wierton -- Marietta has single-carrier service via Conrail today.

---

[16] National seeks trackage rights for NS to its quarries at Bucyrus (Spore) and Carey, OH.

(Conrail is, in fact, the only carrier to serve Marietta's Woodville facility.) As the attached verified statement from Stephen P. Zelnak, Chairman and Chief Executive Officer of Martin Marietta (attached hereto as Exhibit 9) demonstrates, while CSX will assume the line serving Marietta's Woodville facility, NS will assume operations over the lines accessing the Hugo, Twinsburg, Mingo Junction, and Weirton customers.

This results, once again, in an unacceptable "1 to 2" devolution in service. Ohio has consulted with Marietta, and has learned that Marietta will submit to the Board its own request for protective conditions. Ohio supports Marietta in its filing, and urges the Board to order appropriate relief designed to ensure single-carrier service over what would otherwise become 1 to 2 routes.

4. REDLAND OHIO, INC.

Yet another Ohio-based shipper that stands unnecessarily to be harmed by the Transaction is Redland Ohio, Inc. ("Redland"), a producer of lime, limestone, and aggregate products, with facilities in Woodville and Millersville, OH. Redland will be submitting its own filing -- an opposition to the transaction or, in the alternative, a request for protective conditions -- setting forth in greater detail the issues of concern to that company. Of particular importance to Ohio are two factors raised in Redland's filing -- (1) CSX's insistence on routing via Toledo -- and by necessity via both CSX and NS -- traffic that could be much more efficiently routed in single-line service via NS; and (2) NS's refusal to grant overhead trackage rights to W&LE that would enable W&LE to have access to Redland's facilities by way of the Maple Grove connection. On these two topics in particular, Ohio supports Redland's filing, and urges favorable action from the Board.

F. <u>Centerior Energy Corporation</u>

Centerior Energy Corporation (Centerior) is a major investor owned electric company headquartered in Cleveland, OH, and serving over a million customers in 18 northern Ohio counties. As pertinent to this application, Centerior, through its subsidiaries The Cleveland Electric Illuminating Company and the Toledo Edison Company, operates five coal fired electric generating facilities in Ohio at Ashtabula, Eastlake, Lake Shore (Cleveland), Avon Lake and Bay Shore (Oregon, OH). Lake Shore, Ashtabula and Eastlake are currently served by Conrail, and Avon Lake and Bay Shore are served by Norfolk Southern. Under the division of Conrail proposed by the Applicants, the Eastlake, Ashtabula and Lake Shore plants will be served by CSX.

The State of Ohio is concerned that the applicants' proposed division of Conrail assets has created a competitive disadvantage for Centerior vis-a-vis power producers in other states. To the extent this threatens the viability of these power plants, Ohio is concerned about the potential economic impact upon Centerior as well as its customers. This issue could have far reaching effects upon this area of Ohio which includes some of Ohio's largest population and manufacturing centers.

Centerior is filing detailed comments which outline the specifics of this problem, and the State of Ohio urges the Board to carefully consider the issues raised. Ohio is particularly concerned that the railroads' creation of "Shared Assets" or "Joint Use Agreement" areas in Detroit, New Jersey and the MGA region appear to have created improved competitive access and additional single line service to power plants in Michigan and Pennsylvania. At the same time, the applicants have eliminated existing Conrail single line access to the Ashtabula, Eastlake, and Lake Shore plants from eastern Ohio coal producing regions, threatening not only the viability of existing coal supplies but also the future of coal development and marketing for this entire region of Ohio. Additionally, this action may ultimately result in a higher delivered cost of coal to these plants.

These issues are of critical importance at this particular point in time as Ohio and other states begin the process of restructuring the regulation of the electric power industry. Fuel costs represent as much as 75 percent of the variable cost of operating a coal fired plant and transportation costs for coal are a key component affecting the competitiveness and viability of generating facilities.

As electric companies increasingly compete across state lines and beyond traditional state or regional markets, the ability to have competitive options for fuel and transportat n become critical to their success and, ultimately, to the customers that depend upon them. The Board must carefully consider whether actions of the applicants related to the proposed transaction have unfairly tilted the level playing field for competitors in this industry. Ohio urges the Board to carefully consider the remedial actions advocated by Centerior and ensure that Ohio's citizens are not unfairly impacted by the merger.

G. Ohio Steel Council Concerns

Ohio supports the filing of the Ohio Steel Industry Advisory Council particularly in regard to its emphasis on the vital importance of keeping W&LE a viable railroad and maintaining competition among rail carriers within Ohio. Ohio also supports Warren Consolidated Industries (WCI) in its request for a condition that will assure effective rail service to its steel plant in Warren, OH. WCI maintains that CSX will not be able to effectively compete for WCI traffic if it does not have direct access to WCI from the Ashtabula dock.

VI. RAIL LABOR

The Transaction will have serious effects on railroad jobs. Chio has assessed the potential consequences of the Transaction upon railroad employees located within the State, and has determined that the Transaction may have serious negative impacts both in terms of jobs lost and reduction in the quality of life for rail employees. The Board must undertake a thorough review of the labor impacts of this transaction as presented by

Rail Labor and other interested parties, and it must be careful to assure that Applicants do not compromise the rail services they provide by cutting too deeply into the rolls of those who are entrusted to keep trains running safely.

Of particular concern to Ohio is the projected net loss of approximately 450 Ohio-based railroad jobs if the Transaction is consummated. The 450 threatened jobs represent about 5% of all of the Applicants' (NS/CSX/CR) Ohio-based employees. An additional 300 positions are slated to be transferred out of the State. Such transfers and job reductions may not be justified, and such action should be carefully assessed to avoid, where possible, the uprooting of Ohio families.

Ohio urges the Board to pay careful attention to the employee reductions Applicants project, and the Board must be careful to assure that it is not approving a Transaction which may compromise the public safety and the safety of railroad employees. In this case, Ohio is guided by the recent developments on the recently expanded Union Pacific Railroad ("UP") System. As the Board is well aware, service failures experienced by UP since its absorption of the Southern Pacific Railroad are now legendary. A reduced UP workforce is now stretched to its limits, and it is certain that fatigue or improper training (or both) have played a part in various accidents that have taken place on the UP system -- accidents that threaten communities and end or forever alter the lives of railroad workers. Ohio strongly urges the Board to heed the warnings of the various rail unions participating in this case as well as the U.S. Department of Transportation to ensure that the Applicants do not repeat history.

New York Dock Conditions

Applicants represent should the merger be approved and consummated as per their application they will make numerous changes in the manner that Conrail presently provides service. For example, Conrail has a major locomotive and equipment maintenance facility located at its Collinwood Yard in Cleveland. Conrail also has no fewer than about 6 significant classification yards located around the State of Ohio. Because NS' and CSX's post merger needs will differ from those of Conrail, there will be numerous operating changes and those changes will in turn affect the employees who work at those job sites.

Ohio is very concerned about these changes and their job related impacts. Conrail is a major Ohio employer and any changes in its operations have the potential to cause job dislocations, loss of employment, and other adverse economic impacts. A review of Applicants' Labor Impact Exhibit attached to the Joint Verified Statement of CSX and NS labor relations officers Kenneth R. Peifer and Robert S. Spenski indicates that Ohio will lose over 450 railroad jobs on account of this merger.

Under section 11323, the Board is statutorily required to consider the effects of the merger on rail carrier employees and to impose labor protective conditions to ameliorate those affects; however, those conditions have only a limited benefit.

As a general rule, the level and type of protection the Board imposes in railroad merger and control cases depends upon the specific transaction involved. For employee related impacts involving the merger or consolidation of rail lines, the acquisition of control of two or more rail carriers, and the purchase, lease, or contract to operate a rail line, the Board prescribes the level of protection articulated in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). Where the affected transaction involves grants of trackage rights or the lease of railroad lines or facilities, the level of protection imposed is that prescribed in Norfolk and Western Ry. Co.-Trackage Rights-BN, 354 I.C.C. 605 (1978), or Mendocino Coast Ry., Inc.-Lease And Operate, 360 I.C.C. 653, 664 (1980), as appropriate. Finally, where the transaction affecting employees involves the abandonment or discontinuance of rail service, the Board will impose Oregon Short Line conditions.[17]

With some minor exceptions, these conditions are very similar and are designed to provide the minimal level of protection needed to provide "a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the former Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c) of this title." The law

---

[17] Established in Oregon Short Line R. Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979).

presently provides up to four years of labor protection for adversely affected employees. 49 U.S.C. 11326(a).

Under the New York Dock conditions, the Applicants may not consummate their control and division of Conrail until they obtain implementing agreements with the affected railroad unions. These implementing agreements can be achieved through voluntary negotiations or can be imposed by an arbitrator in accordance with Article I, Section 4 of the Railway Labor Act.

As a practical matter, New York Dock conditions do not solve many of the adverse employment impacts associated with railroad merger and control transactions. While employees who lose their jobs or are forced to take less attractive railroad jobs with lower pay or poorer working conditions are entitled to protective payments, receipt of labor protection by affected employees is not automatic. In order for an employee to get benefits, he or she must be willing to follow work offered by the carrier even if a relocation would be involved. Entitlement to benefits depends upon following the work promised only to find that work is not available at the new location.

Statutory "labor protection" is at best a safety net designed to cushion the economic impacts of a railroad merger. It does not prevent the personal disruption caused by job relocations or the loss to the community that occurs when many people are forced to relocate. It also does not address adverse economic impacts from declining railroad employment where job losses are the result of a decline in railroad business not connected with the mergers or similar transactions. Accordingly, Ohio requests that the Board consider the impacts of this proceeding on both the affected railroad employees and the State in general and impose the highest level of labor protection appropriate under the circumstances.

VII. ADVERSELY AFFECTED OHIO SHORT LINES

A. Indiana & Ohio Railroad

The Indiana & Ohio Railroad (I&O) recently purchased the Diann (Detroit area) to Cincinnati Grand Trunk Western line from Canadian National. This line makes economic sense only as long as I&O can carry automotive traffic for CN over it for interchange in Cincinnati with other carriers. Efficiency gains made possible by the NS/CSX acquisition of CR, especially in the usage of yard facilities, puts the I&O overhead auto traffic at risk. Further complicating the I&O overhead issue is the fact that while I&O must compete with CSX and NS for automotive traffic, I&O needs to use trackage rights over CSX between Lima and Leipsic, OH, and trackage rights over NS between Springfield and Cincinnati, OH.

Loss of automotive traffic by the I&O to NS or CSX would mean that the 70 mile long Lima to Springfield line would soon be abandoned with loss of service to communities such as Uniopolis, Paris, Jackson Center and Thackery and still other Ohio communities would become "2 to 1" problems including Liberty Center, Delta, Hamler and Quincy.

The State of Ohio understands that I&O will be seeking relevant remedial measures from the Board. Continued viability of I&O in terms of its ability to provide responsive service to Ohio shippers is of considerable importance to the State. Ohio supports appropriate remedial measures to cushion I&O from the adverse diversion of overhead automotive traffic and revenue.

B. RJ Corman Railroad

Among its various operations, the RJ Corman Railroad (RJC) operates a 29 mile long line between Lima and Glenmore, OH. The line is owned by the local county port authorities.

The RJC operation on the Lima to Glenmore line has only one connection to other railroads, Conrail in Lima. The RJC line traffic is overwhelmingly agricultural, grain and fertilizer. Most of the traffic ultimately is carried by either NS or CSX. RJC has an arrangement with Conrail whereby Conrail will carry traffic to CSX or NS in Lima under a low cost haulage agreement. Thus, in effect, the RJC line now has three Class I connections.

The Conrail haulage agreement was not to be the final arrangement for the RJC on the Lima to Glenmore line. RJC had worked out an agreement in principle to buy less than three miles of track in Lima so that RJC would connect directly with CSX and NS. The announcement of the split up of Conrail ended the Conrail sale. At present, CSX is slated to acquire the three miles Conrail was ready to sell RJC. Thus, RJC is facing the prospect of going from a short line with three connections, to a short line captive to CSX.

The Lima to Glenmore line is expected to generate between 1,200 and 1,500 carloads in the next year. The State of Ohio in 1996 agreed to invest over $1 million in Federal Railroad Administration funds to rehabilitate the line. RJC agreed to invest $500,000 in the line. The rehabilitation work is under way.

Ohio understands that RJC will be seeking a protective condition that would effectively maintain the status quo. Ohio joins RJC in urging the Board to impose an appropriate condition that will preserve RJC's effective connections with Class I railroads.

VIII. **ENVIRONMENTAL/SAFETY ISSUES**

A. Fostoria

The small town of Fostoria, OH, has long been a railroad cross-roads where residents have to deal with rail crossing interruptions in their trips to the grocery store or the bank on a daily basis. Such interruptions are particularly a problem when ambulances or fire trucks are delayed in reaching the scene of emergencies by train movements.

The proposed transaction will not create new grade crossings for Fostoria; however, without remedial assurances, it will exacerbate an already bad situation into an intolerable problem as a result of substantial increases in rail traffic. As indicated in their filing, Applicants anticipate that train traffic over the two CSX lines and the one NS main line that intersect at grade in Fostoria will rise from about 90 per day to about 120 per day. In all likelihood the actual number of trains passing through Fostoria will be even higher when NS adds trains to service a new automotive mixing facility it is building east of Fostoria.

Near rail/highway intersection points, there are "iron triangles"[18] in Fostoria which can be almost totally inaccessible to any safety or emergency vehicles when trains are blocking crossings. The map included herein as Exhibit 10 provides graphic illustration of the "iron triangle" problems.

Ohio is concerned that movement of 120 trains a day or more through Fostoria will cause severe safety, environmental and socio-economic problems including:

1) Increased number of grade crossing accidents and deaths.

2) Increased congestion on roads blocked by train movements.

3) Increased problems for fire, ambulance and police vehicles to reach neighborhood emergencies.

4) Increased noise pollution and other environmental problems caused by increase in train movements.

---

[18] An area which is virtually inaccessible to emergency services due to blockage of intersections by trains.

By far the most pressing of the above problems is essential access for emergency vehicles. There have been instances where fire trucks and fire fighters stood helplessly by, blocked by a train from a burning building. Children died as a result. It is standard practice for the City of Fostoria emergency forces to send two separate vehicles out to calls in the "iron triangle" areas because it is likely that the direct access point will blocked and the alternative route, a long detour route, will be the only way to reach the emergency. Attached is the verified statement of Charles L. Dodge (Exhibit 11) which addresses the plethora of problems that will face Fostoria as a result of the increase in train traffic absent effective remedial measures.

Fostoria will become a rail bottleneck as 120 trains a day attempt to move through this City over three intersecting rail lines. That number equates to a train moving through Fostoria every 12 minutes, 24 hours a day. Absent remedial action, that situation will almost certainly mean substantial delays in train movements to the detriment of Ohio shippers and receivers. See Verified Statement of engineering consultant Philip Pasterak who previously served as trainmaster for CSX in Fostoria. (Exhibit 12).

Ohio urges that these serious safety, environmental and rail congestion issues need to be effectively addressed by the Board.

B. Cleveland, Lakewood, Rocky River, Bay Village

There are now hundreds of trains now operating daily in and through the Cleveland area of which about 76 are through trains on mainlines. After the proposed acquisition, there will be about 125 through trains daily on Cleveland mainlines.

CR's current mainline system is characterized as the "Big X" because its major mainlines from New York and Philadelphia to Chicago and St. Louis form a simple X-like cross. The City of Cleveland lies at the intersection of this Big X making it CR's busiest crossroads. After the split up of CR, CSX will have the New York to St. Louis half of the Big X while NS will have the Philadelphia to Chicago portion. Thus, Cleveland will be a major intersection of the new NS and CSX systems. In addition to the 50 daily through train increase in Cleveland, there will also be a reshuffling of trains on various tracks to reflect the new ownership.

A significant problem presented by the reshuffling of trains through Cleveland would be on NS' current mainline through west Cleveland, and the western suburbs of Lakewood, Rocky River, Bay Village, Avon Lake, and other communities into Lorain County. This line currently has about 13 daily trains but would have 34 daily trains after the acquisition. The line passes through some of the most densely populated neighborhoods in the State, especially in Lakewood. There are very few grade separations along the line.

The State of Ohio has been coordinating with Cleveland area communities, some of which are submitting filings on increased daily train issues. Ohio joins with Cleveland and Lakewood in urging the Board to thoroughly document the adverse environmental impacts the proposed increases in daily train service would bring, and to provide for specific remedial actions as necessary to alleviate or solve adverse safety and environmental impacts.

In addition to the west side issue, Cleveland also will be faced with tremendous increased train traffic on several lines on the east side of town. For example, CSX rerouting of trains will increase daily train traffic through the Forest Hills, South Collinwood, Little Italy, University, Fairfax, Kinsman, and South Broadway neighborhoods from a handful to 44 trains. Similarly, NS rerouting of trains will increase daily train traffic from 13 to 34 trains in these very same neighborhoods.

Although the rail lines on the east side of Cleveland are largely grade separated, they are still in close proximity to houses, schools, hospitals, and parks. The tremendous increase in trains will mean more noise, vibration, and pollution as well as a lower quality of life and lower property values.

Ohio joins the City of Cleveland in urging that the Board thoroughly analyze and provide for redress of the adverse environmental impacts which will result from the increased daily train traffic through the east side of Cleveland.

Ohio urges the Board to evaluate re-routing options that would alleviate problems that will otherwise impact on Cleveland. There is a significant amount of excess capacity available on W&LE lines between Canton/Orville and Bellevue, the site of a major NS classification yard. Traffic coming over the Conrail "Pennsylvania RR" mainline that NS plans to route through Alliance to Cleveland could be routed over the W&LE directly to Bellevue with a savings of 9 route miles.

Ohio has, and will continue to work with local governments, NS and CSX to find and implement solutions to the problems raised by increased train traffic through Cleveland. However, to the extent that these problems are not resolved through such efforts, it is essential that necessary provision for remedial action be a condition to any approval of the proposed Transaction.

Ohio is also very much aware that the Cities of Lakewood, Rocky River and Bay Village are filing Preliminary Environmental Comments outlining the serious concerns identified by these communities. State officials support these public safety environmental comments.

While the above-named communities have been closely following the Conrail split-up issues, it is likely that other Ohio communities with fewer resources or less interaction with railroads have not yet adequately addressed the possible environmental impacts of increased daily trains through their city, town, or village. Thus, it is quite likely that other areas face service acquisition related safety and environmental problems that have not yet been brought to light.

The chart below provides an overview of where yet undetected environmental problems may occur. The State of Ohio urges the STB Section on Environmental Analysis to include these communities in its environmental analysis of the Conrail acquisition. For its part, Ohio will contact each of the communities listed and inform them of the SEA's upcoming publication of its environmental assessment and their ability to make comments within 45 days after the assessment is made public.

POSSIBLE AREAS WITH ENVIRONMENTAL ISSUES

RAIL LINE SEGMENT	COMMUNITY	DAILY TRAINS BEFORE	DAILY TRAINS AFTER
Willow Creek to Deshler	Hicksville	21.4	47.7
Willow Creek to Deshler	Mark Center	21.4	47.7
Willow Creek to Deshler	Sherwood	21.4	47.7
Willow Creek to Deshler	The Bend	21.4	47.7
Willow Creek to Deshler	Defiance	21.4	47.7
Willow Creek to Deshler	Holgate	21.4	47.7
Willow Creek to Deshler	Hamler	21.4	47.7
Willow Creek to Deshler	Deshler	21.4	47.7
Deshler to Toledo	Custar	.6	14.2
Deshler to Toledo	Milton Center	.6	14.2
Deshler to Toledo	Weston	.6	14.2
Deshler to Toledo	Tontogany	.6	14.2
Deshler to Toledo	Haskins	.6	14.2
Deshler to Toledo	Perrysburg	.6	14.2
Deshler to Toledo	Toledo	.6	14.2
Adams, IN to Bucyrus	Convoy	5.9	13.9
Adams, IN to Bucyrus	Van Wert	5.9	13.9
Adams, IN to Bucyrus	Middle Point	5.9	13.9
Adams, IN to Bucyrus	Delphos	5.9	13.9
Adams, IN to Bucyrus	Elida	5.9	13.9
Adams, IN to Bucyrus	Lima	5.9	13.9
Adams, IN to Bucyrus	Lafayette	5.9	13.9
Adams, IN to Bucyrus	Ada	5.9	13.9

RAIL LINE SEGMENT	COMMUNITY	DAILY TRAINS BEFORE	DAILY TRAINS AFTER
Adams, IN to Bucyrus	Dola	5.9	13.9
Adams, IN to Bucyrus	Dunkirk	5.9	13.9
Adams, IN to Bucyrus	Forest	5.9	13.9
Adams, IN to Bucyrus	Kirby	5.9	13.9
Adams, IN to Bucyrus	Upper Sandusky	5.9	13.9
Adams, IN to Bucyrus	Nevada	5.9	13.9
Adams, IN to Bucyrus	Bucyrus	5.9	13.9
Bucyrus to Crestline	Crestline	6.5	14.5
Ridgeway to Marion	Ridgeway	16.1	31.8
Ridgeway to Marion	Mt. Victory	16.1	31.8
Ridgeway to Marion	La Rue	16.1	31.8
Ridgeway to Marion	New Bloomington	16.1	31.8
Marion to Fostoria	Morral	17.8	27.4
Marion to Fostoria	Harpster	17.8	27.4
Marion to Fostoria	Upper Sandusky	17.8	27.4
Marion to Fostoria	Lovell	17.8	27.4
Marion to Fostoria	Carey	17.8	27.4
Marion to Fostoria	New Riegel	17.8	27.4
Marion to Fostoria	Fostoria	17.8	27.4
Fostoria to Willard	Bascom	32.5	54.0
Fostoria to Willard	Tiffin	32.5	54.0
Fostoria to Willard	Republic	32.5	54.0
Fostoria to Willard	Siam	32.5	54.0
Fostoria to Willard	Willard	32.5	54.0
Willard to Greenwich	Greenwich	32.5	35.2
Greenwich to Berea	New London	14.5	54.2
Greenwich to Berea	Rochester	14.5	54.2
Greenwich to Berea	Wellington	14.5	54.2
Greenwich to Berea	Lagrange	14.5	54.2
Greenwich to Berea	Grafton	14.5	54.2
Greenwich to Berea	Berea	14.5	54.2
Berea to Short	Brook Park	13.4	47.2
Short to Marcy	Brooklyn	16.4	45.8
Ivorydale to Dayton	Cincinnati	6.9	14.9
Ivorydale to Dayton	Hamilton	6.9	14.9
Ivorydale to Dayton	Williamsdale	6.9	14.9
Ivorydale to Dayton	Trenton	6.9	14.9
Ivorydale to Dayton	Middletown	6.9	14.9
Ivorydale to Dayton	Carlisle	6.9	14.9

DAILY TRAINS

RAIL LINE SEGMENT	COMMUNITY	BEFORE	AFTER
Ivorydale to Dayton	Poast Town	6.9	14.9
Ivorydale to Dayton	Chautaugua	6.9	14.9
Ivorydale to Dayton	Dayton	6.9	14.9
Bucyrus to Fairgrounds Cols.	Worthington	26	34.3
Bucyrus to Fairgrounds Cols.	Delaware	26	34.3
Bucyrus to Fairgrounds Cols.	Marion	26	34.3
Bucyrus to Fairgrounds Cols.	Tobias	26	34.3
Bucyrus to Fairgrounds Cols.	Monnett	26	34.3
Bucyrus to Fairgrounds Cols.	Bucyrus	26	34.3
Bucyrus to Bellevue	Charfield	26	34.5
Bucyrus to Bellevue	Crothers	26	34.5
Bucyrus to Bellevue	Attica	26	34.5
Bucyrus to Bellevue	Flat Rock	26	34.5
Bellevue to Sandusky Dock	Parkerton	1.4	11.7
Bellevue to Sandusky Dock	Sandusky	1.4	11.7
Airline to Miami	Toledo	55.4	64
Airline to Miami	Woodville Gardens	55.4	64
Airline to Miami	Millbury	55.4	64
Airline to Miami	Clay Center	55.4	64
Airline to Miami	Martin	55.4	64
Miami to Oak Harbor	Elliston	48	61.5
Miami to Oak Harbor	Greytown	48	61.5
Miami to Oak Harbor	Rocky Ridge	48	61.5
Miami to Oak Harbor	Oak Harbor	48	61.5
Oak Harbor to Bellevue	Kingsway	7.7	27.2
Oak Harbor to Bellevue	Fremont	7.7	27.2
Oak Harbor to Bellevue	Clyde	7.7	27.2
Bellevue to Vermilion	Kimball	15.6	27
Bellevue to Vermilion	Shinrock	15.6	27
Bellevue to Vermilion	Ashmount	15.6	27
Bellevue to Vermilion	Vermilion	15.6	27
Vermilion to Cleveland	Lorain	13.5	34.1
Vermilion to Cleveland	Bay Village	13.5	34.1
Vermilion to Cleveland	Rocky River	13.5	34.1
Cleveland to Ashtabula	East Cleveland	13	36.6
Cleveland to Ashtabula	Euclid	13	36.6
Cleveland to Ashtabula	Wickliffe	13	36.6
Cleveland to Ashtabula	Willoughby	13	36.6

RAIL LINE SEGMENT	COMMUNITY	DAILY TRAINS BEFORE	AFTER
Cleveland to Ashtabula	Brentwood	13	36.6
Cleveland to Ashtabula	Mentor	13	36.6
Cleveland to Ashtabula	Painesville	13	36.6
Cleveland to Ashtabula	Geneva	13	36.6
Cleveland to Ashtabula	Ashtabula	13	36.6
Ashtabula to Buffalo	Conneaut	13	25.2
Youngstown to Ashtabula	Plymouth Center	11.7	23.8
Youngstown to Ashtabula	Dorset	11.7	23.8
Youngstown to Ashtabula	Latimer	11.7	23.8
Youngstown to Ashtabula	Brookfield Station	11.7	23.8
Youngstown to Ashtabula	Coalburg	11.7	23.8

C. <u>Emergency Access</u>

Ohio understands that Applicants CSX, NS and CR all maintain an official Ohio-based contact to whom all Ohio rail emergencies are referred. Specifically, Applicants maintain what have become known as "Trouble Desks," which are designed to ensure a prompt response to railroad accidents, discovered track or equipment defects, grade crossing malfunctions, trespassing incidents, vandalism or theft of railroad property, and reported obstructions along railroad tracks. The Trouble Desk is an important component of railroad safety in the State of Ohio, guaranteeing the general public and local law enforcement agencies that potential or existing threats to rail safety will be handled promptly by a well-informed and <u>local</u> railroad contact point. Ohio supports the concept of a State-based Trouble Desk, and opposes any effort by the Applicants to remove such safety contacts from the State.

Ohio understands that NS will retain a Trouble Desk in Ohio much as it does today, and acknowledges the wisdom of NS's decision. On the other hand, CSX has indicated that it plans to transfer the functions of an existing Ohio Trouble Desk to CSX's operating center in Jacksonville, Florida. Such a step is particularly untimely in view of FRA's recent findings in its safety audit of CSXT.[19] Ohio cannot comprehend how removing Trouble Desk functions from Ohio to a much distant location is in any way consistent with CSX's alleged commitment to safety. How can a remote contact in Jacksonville -- quite possibly a contact much less familiar with the Ohio rail network -- ensure prompt and effective responses to reported incidents in Ohio?

A recent grade crossing accident in Garden City, GA, involving an Amtrak train running on CSX trackage, underscores the ineffectiveness of Jacksonville-based Trouble Desk contacts. In the Garden City incident (widely reported in the press), local authorities had informed CSX officials of the grade crossing danger (a truck lodged on the railroad tracks) about twenty minutes before the arrival of the Amtrak train. Despite the advance warning CSX was unable to prevent the accident. Ohio believes that a locally based Trouble Desk can better respond to such incidents. Therefore, Ohio urges that CSX be required to maintain a Trouble Desk in Ohio just as NS has agreed to do.

---

[19] See copy of Traffic World article dated October 20, 1997 (Exhibit 13).

IX. STB OVERSIGHT

The Application currently before the Board promises dramatically to redraw the rail service map for the eastern half of the United States. Assuming the Board approves the Application in a manner that retains the basic outline of the Applicants' proposed Transaction, then the Applicants and the Board together must effectively assure safe and smooth implementation. That assurance should be based upon a plan of phased implementation that is reviewed by the Board prior to any approval of the Application. The Board's responsibility to the public does not end with the service of its final decision on June 8, 1998. Rather, if the Application is approved, the Board must retain jurisdiction in this proceeding and subject phased implementation of the Transaction to a thorough pro-active post-consummation oversight process.

Without a doubt, this Transaction will implement the most complex series of asset divisions, train re-routings, personnel and labor shifts, and capital improvements ever to take place in the rail industry. How well the Transaction unfolds -- or unravels -- will <u>not</u> depend entirely upon the Applicants. The Board must assume a high degree of responsibility and accept a continued and active leadership position to ensure that this Transaction takes place (if at all) in a manner that is least disruptive to shippers, railroad employees, and the communities the Applicants serve or will serve. Ohio urges that the Board ensure that the hard lessons learned out West, occasioned by the

Union Pacific - Southern Pacific merger, do not become the "blueprint" for disaster in the East.

Ohio joins with other affected states in the region to implore that the Board implement, as part of any decision approving the Application, an oversight proceeding which would be initiated post-consummation in a similar manner as was initiated following consummation of the Union Pacific - Southern Pacific merger. In this case, the Board should institute a review extending for a period of at least five years (subject to reopening thereafter upon appropriate showing) that would require a periodic assessment of service, safety, environmental and competitive matters including, inter alia, the assessment of utilization of trackage rights and competitiveness of trackage fees.

Beginning with the date of consummation, the Board should require quarterly reports from the Applicants. Such reports should include updates on all trackage rights agreements, rates, and usage; capital improvement projects; the status of implementation negotiations with all affected rail labor unions; reports concerning the performance of through freight trains; a schedule outlining those projects ongoing or to be undertaken to remedy any unforeseen traffic/terminal congestion; and status reports on environmental mitigation efforts.

Ohio urges the Board to retain the authority, at any time during the oversight phase, to request any additional information from the Applicants or any other party of record where such data is necessary to ensure that the Board can undertake an effective assessment of the Transaction and can, where it deems prudent, impose additional protective conditions. Although it may be necessary at the institution of an oversight proceeding to request interested parties to inform the Board of their intent to participate, Ohio urges that the Board permit interested parties to submit a notice to participate in -- or to withdraw from -- this phase of the proceeding at <u>any</u> time.

Among Ohio's concerns are the safety impacts of a Transaction of this magnitude. The Board need only skim the Applicant's operating plans to see that Ohio is now -- and in the future will become increasingly -- home to some of North America's busiest stretches of railroad. Ohio is very aware of the recent spate of accidents that have occurred along the lines of the merged Union Pacific system, and Ohio is determined not to become another testing ground for rail merger safety "trial and error."

The Board can and must assume a position of leadership in the oversight phase to ensure that environmental and safety concerns are properly identified and promptly remedied. On this subject, however, the Board need not act alone. The Board should provide for the active participation of the Federal Railroad Administration and the various State agencies duly authorized to review and enforce safe railroad practices.

Ultimately, in prescribing an oversight process, Ohio urges the Board to establish an oversight procedural schedule, governing the submission of Applicants' progress reports, interested party comments and/or requests for relief, and Applicants' responses to interested parties. In addition, the Board must establish and carefully abide by a schedule whereby it will respond to all progress reports and requests for relief. Clearly, the Board has established its reputation as a deliberative body and an agency uniquely capable of comprehending the complexities of rail transportation, but it must rise to the challenge inherent in a Transaction of this magnitude as an effective enforcer of its decisions.[20]

CONCLUSION

Unlike other states that stand to gain two competitive Class I rail carriers in place of one, Ohio faces loss of one of the three Class I carriers that currently serve its shippers and communities. While some may benefit from the proposed division of CR lines between CSX and NS, other Ohio constituents face precipitous reduction of competition and outright loss of essential rail services. The very survival of the W&LE is gravely threatened along with its importance as a sole rail carrier for some Ohio shippers, its services as a neutral conduct

---

[20] Clearly, the Board's oversight enforcement options should include the jurisdictional ability (as in the Union Pacific - Southern Pacific merger) to impose additional trackage rights, haulage rights, line divestitures and similar ameliorative relief. Not only should the Board make clear that they will retain the ability to impose such conditions during the oversight phase, but the Board should be much more prepared to utilize its authority in oversight proceedings than it has recently proven willing to do.

providing access to competitive rail service alternatives and its key role in providing competitive balance for shippers served by only one other rail carrier. Ohio aggregate shippers and Centerior Energy face loss of single-line rail service that is essential to each of them. In addition, several short line rail carriers will experience serious diversion of traffic and revenues that will undermine their ability to provide essential rail service for Ohio shippers and to maintain the competitive balance they currently provide.

In all of these instances, there is substantial public need for threatened service and adequate alternative service is not available. These are the very factors that establish a firm foundation and basis for imposing protective conditions that will mitigate the adverse effects of the proposed control and division of CR assets. (49 C.F.R. § 1180.1(d)).

For all the above reasons, Ohio opposes this Application unless the Board adopts adequate protective conditions including but not limited to granting of trackage rights to thwart precipitous loss of rail competition and essential services. Ohio asserts that, in many cases, trackage rights relief is an appropriate remedy for the harms threatened by the proposed Transaction. However, trackage rights, in the absence of Board oversight could bring empty results and could leave much room for abuse. Therefore, if the Application is approved, the Board must adopt the following oversight procedures, post-Transaction, to ensure the effectiveness of any and all trackage rights relief:

a. The Board must confirm that the trackage rights granted or imposed on carriers are fully utilized;

b. The Board must ensure that the applicable trackage rights fees reflect competitively incurred costs;

c. The Board must confirm that the trackage rights permit full and unrestricted access (and not a mere conveyance to a terminal area); and

d. The Board must ascertain that the trackage rights agreements resulting from the Board's decision provide service parity between owning (Applicant) carrier and tenant carrier.

Specifically, Ohio urges adoption of appropriate protective conditions as warranted for each of the following:

1. Wheeling & Lake Erie Railrcad -- Conditions that will assure that it can remain an independent and viable regional carrier.

2. Port of Toledo (a 2 to 1 entity) -- Conditions to assure that it will not lose competitive rail service.

3. Neomodal Intermodal Terminal --
Conditions to assure that utilization and viability of the Neomodal facility will not be undermined as a result of the proposed Transaction.

4. Aggregate Shippers --
   Wyandot Dolomite
   National Lime & Stone Company
   Martin Marietta Materials, Inc.
   Redland Ohio, Inc.

Imposition of conditions that will assure continued availability of single-line rail service as essential for these shippers.

5. Centerior Energy Corporation --
Imposition of protective conditions that will assure continued single-line access to coal suppliers.

6. Ohio Short Lines
   Indiana and Ohio
   RJ Corman Railroad

Imposition of protective conditions to ameliorate the adverse impact of loss of revenue traffic by I&O and to preserve RJC's effective connections with Class I carriers.

7. Ohio also supports the Port Authority and TMACOG in their efforts to preserve for rail

use the NS bridge over the Maumee River and Warren Consolidated Industries in its request for a condition that will assure effective rail service to its steel plant in Warren, OH.

Ultimately should the Board decide to grant this Application after imposition of essential protective conditions, Ohio urges that it must ensure fair treatment of adversely affected rail employees. It is also essential that the Board carefully consider and provide for safety and environmental ramifications that will result from division of Conrail lines between CSX and NS and to provide for thorough pro-active oversight that will ensure that implementation is well planned and phased in increments over a prudent span of time.

Respectfully submitted,

ATTORNEYS FOR STATE OF OHIO
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

____
Doreen C. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 16th Floor
30 East Broad Street
Columbus, OH 43226-0410
(614) 466-4328

KEITH O'BRIEN
JOHN D. HEFFNER
ROBERT A. WIMBISH
REA, CROSS & AUCHINCLOSS
1920 N Street, N. W.
Washington, D. C. 20036
(202) 785-3700

DATED: OCTOBER 21, 1997

CERTIFICATE OF SERVICE

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

Keith G. O'Brien

Keith G. O'Brien

Figure 1.–Conrail, Norfolk Southern, and CSXT - Pre-Transaction

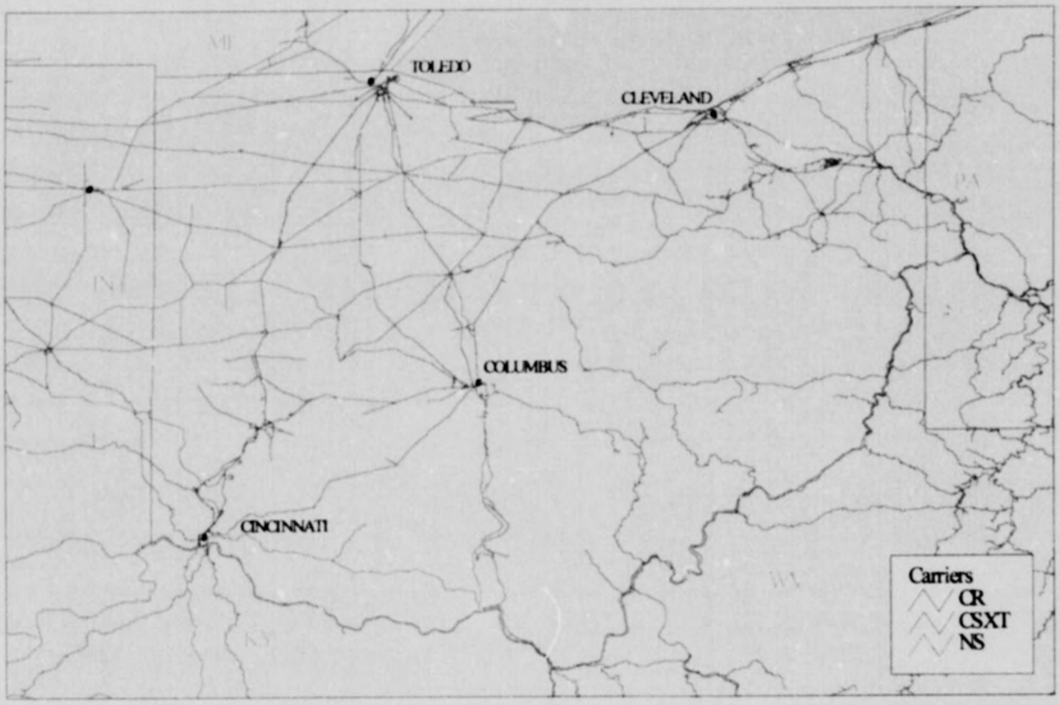


Figure 4.2 Conrail, Norfolk Southern and CSXT - Pre-Transaction.

Confidential Draft Report Prepared for Counsel Regarding Pending Litigation

EXHIBIT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

VERIFIED STATEMENT
OF
WESLEY W. WILSON

In the Matter of

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

STB Finance Docket No. 33388

VERIFIED STATEMENT
OF
WESLEY W. WILSON

I. INTRODUCTION

I. A. *Witness Background and Qualification*

My name is Wesley W. Wilson. I am an Associate Professor of Economics at the University of Oregon. Prior to coming to Oregon in the fall of 1989, I was an Assistant Professor of Agricultural Economics at Washington State University (1986-1989). In addition to these positions, I also held a research assistant/associate position with the Upper Great Plains Transportation Institute (1980-1981) with which I continue to maintain an informal affiliation and for which I have been a consultant on railroad-related matters on several different occasions. In total, I have 17 years of professional research experience. The primary focus of my research throughout those 17 years has been on the analysis of regulatory and pricing issues in transportation economics.

I received my Ph.D. (1986) and my Master's (1984) degrees in economics from Washington State University, and my Bachelor's (1980) degree in economics and accounting from the University of North Dakota. In my Ph.D. course-work, I specialized in econometrics and industrial economics. My research then and now applies theory and econometrics, primarily to transportation issues. My dissertation, "Transport Market and Firm Behavior: The Backhaul Problem", focused on network pricing, regulation and unbalanced traffic flows. I have over 60 papers that have been published with 25 of these in referenced journals. This research has been presented on approximately 50 different occasions. The bulk of the research conducted and presented has been in the area of transportation economics. (My vita is provided herein as Exhibit A.)

While working on my Bachelor's degree at the University of North Dakota, I developed an interest in transportation economics. After receiving my degree, I accepted an offer from the Upper Great Plains Transportation Institute at North Dakota State University. At the UGPTI, I developed my own research program to study the efficiency and partial deregulation of transportation markets with a focus on the movement of North Dakota's agricultural products to market. My interest and commitment to research in transportation continued while a graduate student at Washington State University and as a faculty member at both Washington State University and at the University of Oregon.

In addition to the positions above, I also have served in a variety of other positions. For the Transportation Research Forum, I have served as President, Executive Vice-President, Vice-President for Membership and Council member for the Agricultural Chapter. I currently serve as a board member for the Pacific Northwest Regional Economic Conference. I have served as a council member for the Citizen's Advisory Transit Commission.

At the University of Oregon, I teach or have taught graduate and undergraduate courses in industrial economics, Ph.D. core theory, and graduate and undergraduate courses in econometrics. At Washington State, I have taught or been involved in teaching Principles of Microeconomics, Microeconomic Theory for MBA students, Introductory Agricultural Marketing, and short courses in energy and transportation economics. And, I have won both departmental and university teaching awards for my success in teaching.

In addition to my research, teaching and professional background I also have consulting experience on pricing, mergers, productivity, and the effects of deregulation in railroad markets. While I did not submit testimony in recent merger cases, I conducted analyses for the BN-SF and UP-SP merger as a consultant for the U.S. Department of Justice and the California Attorney General's office. In addition, I am currently involved in assessing reregulation in Canadian rail markets.

In this proceeding, I have been asked by the Ohio Attorney General's Office to assess the competitive impact on rail transportation of the proposed acquisition of Conrail (CR) by CSXT and Norfolk Southern (NS). In preparing my testimony, I have used information taken from the Application, prepared testimonials, the confidential waybill sample, direct contact with shippers and railroads, and a wide variety of public and private sources. All conclusions and opinions expressed in this statement are my own. They have not been produced by or for the University of Oregon and I am not representing the University of Oregon in my capacity as an expert in this matter.

I. B. *Organization and Summary of Findings*

There are several competitive issues of paramount importance to Ohio. First, there is a perceived overall threat to competition, owing to the reduction of Class I carriers that will operate within the state if the transaction is approved. This general concern is bolstered by a number of *specific* instances in which individual shippers will see the number of available Class I railroads fall from two to one. There are also situations in which shippers and receivers will lose access to the currently available single-line service and will, instead, face routings that necessitate interchange. Finally, the long-run viability of competing railroads, particularly the Wheeling and Lake Erie (W&LE), that are non-parties to the transaction is questionable. In some cases, CSXT, CR, and NS have, themselves, proposed remedies designed to mitigate potential anti-competitive effects. In other instances, such remedies, while not yet proposed, are nonetheless available. Finally, in a few specific situations, the proposed transaction will likely result in either reduced competition or lost efficiencies for which no immediate cure is evident.

In the remainder of this statement, I will discuss both the general and specific competitive concerns that I have identified in relation to the proposed transaction and offer policy recommendations where appropriate. The balance of my remarks are organized as follows: In Section II, I briefly discuss transportation markets, the pricing of transportation services, and the potential competitive impacts of any proposed transaction that reduces the number of rail service providers within a region. In Section III, I offer the necessary description of Ohio's railroad networks, both pre- and post- transaction, as well as a description of the rail traffic flows currently observed over these networks. In Section IV, I discuss a number of specific transaction-related competitive concerns and suggested remedies that have arisen in response to the proposed transaction. Finally, in Section V, I provide concluding remarks.

II. RAIL COMPETITION, PRICING, AND THE PROPOSED TRANSACTION

The testimony of CSXT and NS witnesses validates the typical treatment of rail transportation providers as profit-maximizing sellers.[1] However, so long as existing economic conditions provide effective competition in rail-served markets, profit-maximizing firm behavior is perfectly consistent with desirable and efficient economic outcomes. If, however, market conditions seriously inhibit the functioning of competitive forces, these limitations, combined with carrier desires for economic profits, can significantly elevate prices to supra-competitive levels, reduce the volume of transacted services, and distort the usage of valuable resources. Consequently, the desirability of any merger or like transaction depends on whether it enhances competition by increasing the number of alternatives available to shippers or whether it, instead, dampens rivalries, reduces available options, and expands the degree of market power available to transportation providers.

The standard Williamson model[2] examines the welfare effects of a merger by considering the benefits of a merger (e.g., improved efficiency) against the costs of a merger (e.g., deadweight loss from increased market power) *in a specific market*. In this specific

---

[1] In their respective depositions, Raymond Sharp (CSXT) and John Fox (NS) refer to "charging the highest rate possible without losing the business." See Deposition of Raymond L. Sharp, p. 44, STB Finance Docket 33888, August 21, 1997 and Deposition of John W. Fox, p. 100, STB Finance Docket 33888, August 25, 1997

[2] Williamson, O.E., "Economies as an Antitrust Defense: The Welfare Tradeoffs," *American Economics Review*, Vol. 58 (March, 1968), pp. 18-36.

instance, because of the network characteristics of the State and because of the number of separate markets in the State, there are a number of instances wherein market power may increase from the merger (two to one issues) as well as instances in which costs increase from the merger (single-line to multiple-line issues).

Making this determination is sometimes tedious, even when the number of affected markets is small. However, evaluating the consequences of the current proposal is made even more difficult by the fact that railroads, like other producers of transportation, operate over complex networks. The parties to the proposed transaction, therefore, sell their services in thousands of individual markets that are defined by both the geography of the transportation networks and the characteristics of the shipped commodities. Thus, evaluating the impacts of the proposed transaction often requires that network operations be considered separately and that individual markets be made the analytical focus whenever competitive concerns are voiced. At the same time, however, it is necessary to be ever-mindful that the network nature of production links these individual markets and that impacts in one market can easily spill over into markets that are related either by geography or commodity characteristics.

Where a transaction-related anti-competitive concern is identified, the first step toward verifying its merit is the proper definition of the full range of substitutes available within the market in question. Railroads compete with other modes of transportation as well as with each other in most settings. Thus, the appropriate set of available alternatives that defines a particular market may include railroads, motor carriers, barge or pipeline operators, or any of these modes in combination. It is also possible that origin shippers may have access to alternative destination markets or that destination receivers can obtain substitute inputs from other supply sources, so that both product and geographic substitutions may add to the range of available transport alternatives. In the final analysis, a post-transaction paucity of rail competitors may reflect a significant lack of transportation competition. Alternatively, it may have less competitive relevance if there are feasible non-rail alternatives.[3]

---

[3] One caveat is necessary here. Pricing of a transport option may make two alternatives appear to be substitutes when they would not be if both were competitively priced. For example, trucking may appear to be a good substitute for rail service in a particular market only when the rail carrier in question is charging a monopoly

It is also important to gauge the possibility of firm entry in response to any attempt to extract noncompetitive profits. In the case of rail, pipeline, or barge, the probability of extensive new facilities construction is markedly diminished by the large and largely sunk nature of such investments. However, to the extent that motor carriage is an appropriate alternative, entry by trucking firms in response to perceived profit opportunities is a virtual certainty.

Finally, the level of effective competition in a transportation (or any other) market is also a function of the demand conditions evident in that market. In cases where existing customers possess both the willingness and ability to switch providers and/or when new customers are being regularly added to the market, available market alternatives can be an extremely effective means of curbing noncompetitive pricing behavior. Conversely, customer loyalty, switching costs, or sluggish market growth can diminish the impacts (and, ultimately, the sustainability) of a large number of supply alternatives.

While the proposed transaction promises to increase the number of transportation alternatives in some regions of the country, this is not generally the case in Ohio. As will be discussed below, the proposed transaction generally points to the status quo or to a reduction in the number of railroads serving specific markets. Moreover, at least one regional carrier, the W&LE has indicated that the proposed transaction will threaten its financial viability, so that competitive concerns, evident today, could be further exacerbated by the subsequent elimination of currently available railroad service. Finally, in certain instances, the division of Conrail trackage will generate inefficiencies by imposing the need for interchange where that need does not currently exist. Given the possibility of these undesirable outcomes, it is incumbent on Ohio's policy-makers to ensure: (1) that there are sufficient competitive alternatives available to Ohio's shippers where the immediate effects of the proposed transaction would be to reduce the number of available rail carriers; (2) that non-participating rail carriers, such as the W&LE are not unnecessarily or unfairly disadvantaged by the transaction; and (3) that the effects of any inefficiencies attributable to the need for additional

---

price. Whereas, competitively priced railroad service would render that mode entirely dominant. See, Wesley W. Wilson, "Legislated Market Dominance", Research in Transportation Economics, Vol. 4, (1996) pp. 49-67.

interchange are effectively mitigated so that no Ohio shipper is harmed by the transaction's division of Conrail routes.

III. OHIO'S RAIL NETWORK, THE TRANSACTION AND CURRENT NETWORK FLOWS

Ohio rail markets are clearly dominated by Conrail, Norfolk Southern, and CSXT - the three parties to the proposed transaction. Together, these carriers control approximately 85% of the roughly 150 million tons of annual inbound and outbound railroad traffic, while the remaining traffic is divided between two regional Class II railroads (W&LE and BLE) and a Canadian-owned Class I (the GTW). In Ohio, Conrail's dominant share will be divided between its two lesser rivals. As noted above, however, competitive concerns arise from specific market circumstances that may be partially or entirely obscured by aggregate state-wide or even county-level representations.

The remainder of this section provides a variety of statistics that, together, characterize overall railroad operations in Ohio. This general portrayal provides a necessary backdrop for further discussions. It is, however, the details of specific market interactions that provide the sources for the competitive issues described in Section IV.

III. A. *The Current Network, Network Flows, and Transaction Impacts*

Figure 1 provides a graphical representation of CR, CSXT, and NS trackage in Ohio. Conrail, Ohio's largest rail carrier, operates trackage that forms an "X" centered roughly in the Columbus area. Within this X, operations are heavily concentrated in the north and northeastern portions of the state. CSXT's network also runs through much of Ohio and tends to be concentrated in roughly the same areas as that of Conrail (although less densely), as well as around the Cincinnati area. NS's network in Ohio is smaller and less dense than that of either Conrail or CSXT. It runs across the north and also operates corridors running though Columbus and Cincinnati. The proposed post-transaction network is portrayed in

Figure 2. CSX and NS would provide service over roughly the same network as CSX, NS, and CR currently serve. CSX would maintain its areas of concentration in the north and northeast, but also increase the size and breadth of its network in the west, while NS is slated to acquire much of the Conrail operations in the northeast portion of the state.

Aggregate 1995 originating and terminating Ohio rail traffic is summarized in Tables 1 and 2. Roughly 7.5% (145 million tons) of all U.S. rail tonnage either originated and/or terminated within Ohio's borders during that year. This traffic was dominated by coal and iron ore movements to and from Lake Erie harbors, utility coal deliveries, a wide variety of primary metal product shipments and a significant volume of outbound transportation equipment. These general patterns are reinforced by the county-level data provided in Table 3. Clearly, there is a concentration of traffic to and from the Lake Erie region, with the largest overall flows to and from Lucas, Cuyahoga, and Ashtabula counties. Together, these three counties account for nearly one-third of all Ohio traffic. More broadly, twelve of the 25 busiest counties (in terms of rail activity) are on Lake Erie or are contiguous to a county that is on the Lake and only one county with Lake frontage (Ottawa) is not among this top 25.

In 1995, Toledo and the surrounding area in Lucas County received nearly eight million tons of inbound coal. It also received nearly one-half million tons of primary metal products and over 370,000 tons of automobiles (roughly 17,000 rail car loads). Outbound traffic included over four million tons of iron ore, nearly two million tons of coal, nearly half a million tons (nearly 25,000 carloads) of automobiles, as well as like volumes of wheat, metal scrap, and flour and other milling products. Ashtabula and Cuyahoga Counties though only a few dozen miles apart, provide considerable contrast to one another in terms of rail traffic composition. Ports at Ashtabula and Conneaut are dominated by movements of iron ore (pellets) from and coal movements to Great Lakes vessels. On the other hand, Cuyahoga County displayed tremendous diversity in the range of both inbound and originating rail-shipped commodities. In total, 74 different (4-Digit STCC) rail-shipped commodities either originated or terminated in the Cleveland area during 1995.

Apart from the Lake Erie region, the most active area in terms of originating and terminating rail traffic was the area around and to the north of Cincinnati. Hamilton and

Butler Counties together originated or terminated nearly 19 million tons of rail traffic in 1995. Montgomery County added another 1.7 million tons to the area's traffic total. As in Cleveland, the diversity and relatively low volumes of individual commodities points to a pattern of general commerce and manufacturing rather than the transloading of raw materials that is evident at other Ohio locations.[4]

III. B. *Railroads Providing Service and Market Shares*

Tables 4 and 5 report 1995 originating and terminating Ohio tonnages and car loadings by railroad. From these data it is clear the CR, CSXT, and NS dominate state-wide railroad activity, together accounting for between 84% and 85% of all inbound and outbound traffic. The remaining traffic was largely originated and/or terminated by the Wheeling & Lake Erie (W&LE), Bessemer & Lake Erie (BLE), and the Grand Trunk Western (GTW). However, as with traffic flows, individual railroad operations and dominance are extremely localized, so that state-wide aggregations can obscure the true magnitude of concentration in some markets.

In the Toledo area, CSXT carried the largest volume of 1995 traffic, hauling more than 10 million tons of coal and iron ore. Norfolk Southern's traffic totaled more than five million tons and included more than twice as much terminating traffic as originating traffic. Conrail was third in the area with roughly two million tons of inbound and outbound traffic and finally, the Canadian Nation's Grand Trunk Western originated and terminated a little over one million tons of Toledo area traffic. It should be noted that while all three transaction participants currently have a significant presence in Toledo and Lucas County, traffic into and from the area is highly segregated. CSXT handles coal and ore, Conrail

---

[4] Belmont, Harrison, and Jefferson Counties in east-central Ohio also originated and terminated a significant volume of rail traffic in 1995. In Belmont county, both inbound and outbound coal dominated rail traffic. Traffic to and from Jefferson County was reflective of steel-making activity in the area. Other areas within Ohio that had significant volumes of rail traffic in 1995 include Franklin County (both inbound and outbound intermodal and manufactured commodities), Scioto County (outbound coal), Wyandot County (outbound stone), Allen County (outbound grain and chemicals both inbound and outbound), and Washington County (inbound coal and outbound chemicals).

STB	FD	33388	10-21-97	D	182885	2/3

serves many chemical shippers and NS serves the balance of the chemical shippers and provides the bulk of all grain transport.

In the Cleveland area and in Ashtabula County, Conrail is clearly the dominant carrier based on 1995 traffic flows. It handled 6.8 million tons of traffic to and from Cuyahoga County, while the carrier with the second largest presence, CSXT originated and terminated 3.3 million tons. NS moved roughly one and one-half million tons of traffic to or from the County and regional carrier Wheeling & Lake Erie supplied transport for something less than one million tons. At Ashtabula, Conrail delivered or received 8.8 million tons of rail traffic, primarily to and from the Lake Erie docks at that location.[5] During the same time period, regional carrier Bessemer & Lake Erie moved originated or terminated 5.3 million tons of rail traffic to or from Conneaut.

In the pre-transaction Cincinnati area, CSXT is the dominant carrier, handling nearly 70% of the more than 18 million tons of railroad traffic originated and terminated in Hamilton and Butler Counties in 1995. This is particularly true in Butler County where CSXT's 1995 market share was nearly 90 percent. In Hamilton County, market shares are somewhat less severe with CSXT originating or terminating 50 percent of all rail traffic. NS maintained a 28 percent market share, while the remaining 22 percent or rail traffic was divided more or less evenly between Conrail and the Central Railroad Company of Indiana (CIND).

Table 6 provides traffic share data for the 41 Ohio counties that originated and/or terminated more than 500,000 tons of railroad traffic in 1995. In addition to the areas already discussed, these data provide some rough measure of the amount of pre-transaction rail-on-rail competition. In more than 80 percent of these counties, the most prevalent rail carrier originates and/or terminates more than 50 percent of the county's total traffic. In 21 percent of these counties the more prevalent railroad controls 95 percent or more of all traffic. When this information is combined with the very real fact that an operational presence within a county by no means guarantees that the railroad in question can serve a

---

[5] A relatively small portion of this tonnage also reflects coal movements to the Centerior generating facility at Ashtabula.

particular shipper, the fragile nature of pre-transaction rail-to-rail competition in Ohio becomes very evident.

IV. SPECIFIC COMPETITIVE CONCERNS

The previous section provided a summary of traffic flows, pre- and post- transaction over the rail networks of NS, CSXT, and Conrail. The market is heavily concentrated among these railroads and the Application points to further concentration in Ohio at both a state and a county level. Again, however, these aggregations can partially obscure the severity of potentially anti-competitive outcomes. In this section, I focus on some of the specific competitive issues associated with the Application. These fall into three general categories - the effects of the transaction on captive shippers, the plight of short-line and regional railroads, and the transition of some current single line movements to multiple line movements.[6]

IV. A. *Captive Shippers*

Captive shippers are shippers without any economically feasible transportation alternatives to the railroad services provided by a monopoly rail carrier. Even when there are as few as two options available, shippers are assumed to have some opportunity to promote and play upon the rivalry that exists between providers. The shipper with only one alternative, however, is viewed as particularly vulnerable. Thus, while locations where the number of available carriers will fall from three to two will face less competition, economists and policy-makers have been quick to focus on those instances in which the transaction

[6] The enumeration of these concerns is, by no means comprehensive. Some parties that anticipated negative transaction-related impacts elected to negotiate mitigating or compensatory arrangements directly with NS or CSXT. Other aggrieved parties are participating directly in this proceeding, without seeking to coordinate their efforts with those of the Ohio Attorney General. The specific instances cited here, therefore, reflect only a subset of the negative competitive outcomes which may be associated with the proposed transaction.

would reduce the number of available rail carriers from two to one (2 to 1).[7] There are also potential 3 to 1 locations. Specifically, the transaction threatens the solvency of the short-line railroads (W&LE and BLE). Should the Application result in the loss of service from the short-lines, these locations (or locations with these characteristics) would see a reduction of service.

In Ohio, there are some specific verifiable 2 to 1 markets that have generated considerable interest.[8] The greatest concerns include Ford and Ford/Nissan production facilities at Avon Lake and Fairlane, the dock facilities at Ashtabula, and the coal and ore facilities in Toledo. The participants propose to mitigate competitive damage only in Avon Lake, Fairlane and Ashtabula through the extension of trackage rights and shared facilities.

The NS will have rights over CSXT in order to reach the two Ford facilities and CSXT will have trackage rights into the dock facilities at Ashtabula. Moreover, CSXT will also have the use of 42% of the ground storage and other facilities at Ashtabula under conditions of a shared facility agreement between the two surviving carriers.

The coal and ore facilities at Toledo are currently leased by CSXT. Additionally, Conrail has trackage rights into these facilities. Post-transaction, CSXT will be the only Class I railroad to serve these facilities. As noted above, the vast majority of coal and iron ore moving over Toledo is transported by CSXT.[9] Nonetheless, Lucas County Port

---

[7] The efficacy of two rail carriers and the detrimental impacts of a single serving railroad both depend on the availability of alternative rail carriage to or from geographically distinct markets, the availability of non-rail transportation substitutes, and the ability of producers to substitute products for which there are competitive transportation alternatives available. Nonetheless, 2 to 1 markets do provide easily of identifiable evidence of outcomes that cannot possibly benefit the competitive process.

[8] The 2 to 1 representations based on the analysis of waybill statistics are subject to modest qualifications. First, Class III railroads do not face reporting requirements, so that the competitive influence of short-line operations is absent in these measures of increased concentration. Second, because waybill records only represent a sample from a much greater population of movements, it is also possible that a Class I carrier that actually originated or terminated a small amount of traffic at a particular location would not be reflected as having done so. Finally, a carrier with access to a location that did not exercise those rights would not be reflected within the waybill data. It is possible, however, for that railroad to have exercised a competitive influence over rates. While these caveats suggest some amount of caution is advisable, they do not seriously inhibit the use of the waybill statistics for analytical purposes.

[9] Anecdotal information, indicates that there were Conrail coal movements in July of 1977. See *Coal Transportation Report*, Fieldston Publications, September 8, 1997, p. 5.

Authority officials indicated during an informal interview that Conrail's mere *ability* to move coal from the docks at Toledo has worked to discipline CSXT pricing practices. These officials further indicated that unless Conrail's competitive influence is replaced, the port will be hurt.

While I am generally supportive of trackage rights as a mitigating strategy, there are three specific conditions that are necessary if alternative carrier access through trackage rights is to provide additional competitive discipline to a specific transportation market. These are: (1) full access to customers, not simply terminal access; (2) service parity between the incumbent and the alternative carrier; and (3) trackage rights prices that reflect competitively incurred costs.

In the cases of Ford at Avon Lake and Fairlane, NS is to receive direct access to the customers, so that the first of the conditions enumerated above will be met. The large volume of automobiles shipped by Ford each year and the magnitude of the revenues suggest that these shippers may be able to use their bargaining power to mitigate market power concerns.[10] There are, however, other locations, where the effectiveness of trackage rights in mitigating market power is far less certain.

In establishing trackage rights prices, switching and line-haul rates must be based on competitively incurred costs if these rights are to facilitate meaningful rail-to-rail competition. Alternatively, NS must be given direct access to CSXT customers. The filed materials provide no indication of the levels at which switching charges will be set. However, historical industry practices in this area have typically resulted in switching costs that bear little if any relationship to efficiently incurred costs. The same issue arises with respect to the line-haul rate that alternative carriers will pay to incumbents for trackage rights. The standard transaction trackage rights agreement proposed by the applicants, has the alternative carrier compensating the incumbent at a rate of $0.29 per car-mile. This rate is tied to an index of railroad costs (excluding fuel costs), so that it may escalate automatically as railroad costs increase. Once again, if trackage rights are to enable effective

---

[10] Ford is, in fact, Norfolk Southern's largest single customer. See "Hot Times on Norfolk Southern's Nickel Plate Line", *Trains*, August 1997, pp. 39-48.

competition, they must be extended at prices that mirror competitively incurred costs. Traffic rights are indeed an effective constraint on market power, but *only if competitive parity is established.* The parties to the proposed transaction have not demonstrated that this is the case. Before policy-makers are to rely on trackage rights as a competitive remedy, they must be provided with the information necessary to independently verify the validity of the agreement in establishing competitive prices.[11] Both with regard to switching charges and the line-haul trackage rights rate, charges that exceed efficiently incurred competitive costs will insulate the incumbent from the forces of competition and serve to perpetuate the inefficient operating practices and/or the accumulation of supra-competitive profits.

IV. B. *Short-Lines and Competition*

A number of Ohio short-line and regional carriers may be affected by the proposed transaction. From a competitive standpoint, however, the most important of these is the Wheeling & Lake Erie. The W&LE is a NS spin-off and is largely an east-west carrier, linking Pittsburgh, Wheeling, Canton, Akron and Cleveland. It operates as far west as Carey, Ohio and in so doing provides nearly 80 percent of Wyandot Dolomite's railroad service between quarries in western Ohio and markets in the eastern portion of the state. The W&LE also reaches the Lake Erie harbor at Huron. In 1995, the W&LE handled roughly nine million tons of revenue traffic. Of this total, roughly 70 percent both originated and terminated on the carrier's own system. The remaining 30 percent consisted of bridge traffic (5 percent) and forwarded or received interchange traffic (25 percent). Table 7 summarizes the interchange traffic.

The W&LE's 1995 bridge traffic accounted for a little more than 470,000 tons or roughly five percent of the carrier's total tonnage. Very nearly all of this bridge traffic

[11] The parties have indicated through informal communications with the Ohio Attorney General's Office that individual line-specific, cost-based rates will be determined post-transaction. They have also, however, indicated that no formal mechanism for verifying these line-specific costs will be forthcoming and there is no indication that any regulatory body will have an oversight role in this process.

reflected shipments that both originated and terminated on CSXT.[12] An interview with W&LE officials indicated that most of this bridge traffic has already disappeared. Any remaining bridge traffic is likely to be fully eliminated by the proposed transaction.

There are, at least, two situations in which current W&LE forwarded or received interchange traffic is placed at risk of a post-transaction diversion. The first occurs at those locations where Conrail and the W&LE share access to a particular shipper. It is highly unlikely (though not impossible) that Conrail interchanges traffic to the W&LE that it could deliver itself, so that any interchange traffic that the W&LE moves to or from that shipper is almost certainly interchanged with either CSXT or NS. Depending on which of these latter two carriers acquires Conrail's trackage and access to the shipper in question, the W&LE's service could become entirely redundant, particularly in cases where the surviving transaction carrier (either CSXT or NS) terminates the traffic.[13]

Secondly, the W&LE could, in fact, lose traffic even when it is the only carrier serving a particular shipper. If a producer of a particular input is located on the W&LE and there is a consumer of this input located on CSXT, and if there is also a second producer of the input located on trackage currently owned and exclusively served by Conrail, then pre-transaction, the two producers would compete head-to-head. Both have rail service; both can interchange traffic with CSXT to reach the consumer of their product; and neither has a particular advantage in doing so. If CSXT is the post-transaction railroad who gains control of the former Conrail trackage and access to its customers, then the competitive parity is destroyed. Under the new scenario, CSXT could offer single-line service between the commodity's consumer and the producer located on the former Conrail trackage, while access by the W&LE-served producer would still involve the expense of interchange. This

---

[12] This traffic largely originated in Ohio and Indiana and terminated in West Virginia. The W&LE routing very probably served the dual purpose of providing a shorter route while relieving congestion at CSXT's Queensgate Yard.

[13] From a cost standpoint, any post-transaction routing that includes the W&LE will contain one more interchange than a routing over the surviving transaction carrier increasing costs of traffic moved by W&LE. Given everything else being the same, the surviving transaction carrier would have theability and the incentive to foreclose W&LE participation purely for strategic reasons.

scenario unequivocally harms the W&LE and the shippers it serves.

Identification of each instance in which the W&LE could lose traffic because of the proposed transaction would be quite difficult. It is, however, possible to point to a few conditions which make the diversion of current W&LE traffic more likely. First, the likelihood of any foreclosure by a surviving carrier is reduced when that carrier is a bridge carrier that neither originates nor terminates the traffic in question. Second, the case in which traffic is lost at a location served exclusively by the W&LE holds only when that location is at an upstream stage of production and, therefore, originates the traffic. Finally, even an originating shipper that is served exclusively by the W&LE could be in danger if the input it produces does not have reasonably unique characteristics that preclude the production of close substitutes at other locations. The waybill records indicate that a significant portion of the W&LE's interchange traffic is coal and scrap steel, two products that are readily obtainable at a variety of locations to be served by post-transaction CSXT and NS.

Again, while the above concerns are not quantified, these concerns, combined with the potentially important competitive role of the W&LE in the post-transaction railroad environment, are sufficient to justify the alternatives discussed below.

The W&LE also is seeking relief from the Surface Transportation Board for the anticipated effects of the transaction. As discussed above, the W&LE *may* lose a significant portion of its current traffic. NS and CSXT, in their transaction filings, have estimated the W&LE's annual revenue losses from traffic diversions at $1 million. W&LE, on the other hand, estimates that it will lose between 25 percent and 30 percent of its total traffic, representing annual revenues that exceed $10 million a year. The potential transaction-induced losses do seem sufficient to threaten the long-run viability of the Wheeling & Lake Erie and this possibility raises a number of additional concerns for residents and shippers within the study region.

There are actually two important and interrelated questions that the current analysis seeks to address: Are there measures available that can help to make possible the continued viability of the W&LE? Further, are these opportunity-enhancing actions simultaneously capable of resolving other competitive concerns within the region? The answer to both questions seems to be yes. It appears that by facilitating the W&LE's entry into various regional markets, policy makers can provide the railroad with ample opportunities to compete for its survival and, at the same time, allay many of the fears of shippers who are wary of the transaction's outcome.

In a recent news report, W&LE Chairman Larry Parsons enumerated a variety of transaction-related concessions that the railroad deems necessary to its future ability to compete.[14] Among these concessions, the W&LE is asking for access to Toledo. It is my judgment that this would provide numerous benefits to both the W&LE and the shipping public. Currently, the W&LE has only limited Lake Erie access through short-term contractural rights at Huron. W&LE access to the coal and ore facilities at Toledo would provide the carrier with a valuable new source of iron ore for east-bound movement and an important outlet for west-bound coal. At the same time, it would largely resolve the concerns currently expressed by area bulk material shippers by providing a competitive alternative to CSXT at the Toledo docks. For Toledo access to be truly effective, however, two corollary actions should also be considered. First, the W&LE should also be afforded the means to compete for the patronage of additional integrated steel producers in eastern Ohio and western Pennsylvania. Second, the W&LE needs on-line access to coal producing locations. Both of these corollary measures could be accomplished through trackage rights over NS and CSXT.

In addition to coal and ore traffic, Toledo would provide the W&LE with at least two other important opportunities. First, this access would facilitate interchange with the Canadian National (through its GTW subsidiary). Second, if W&LE access is extended beyond Toledo to other Lucas County locations, it could provide some amount of additional competition to NS for the inbound movement of grain.

In addition to Toledo, initiatives that provide the W&LE with better access to the Cleveland area and permanent access to harbor facilities at Huron would also strengthen the regional's ability to compete. The W&LE already reaches both locations. It does not,

---

[14] "W&LE Seeks Merger," *Traffic World*, September 8, 1997, pp. 19-20.

however, have waterfront access at Cleveland and access at Huron is through a short-term agreement. The ability to serve the coal and ore loading facilities at Cleveland and assured access at Huron would provide the W&LE with the same competitive opportunities derived from access at Toledo, with one important distinction. For movements to or from eastern Ohio and western Pennsylvania, the rail leg of a vessel-rail combination is shorter than it is for similar movements routed over Toledo. While on a per-ton basis, this may mean less revenue for the participating railroad, it also means that the overall movement is more competitive with coal and ore produced in other regions.[15]

Further potential policy initiatives involving the W&LE relate to intermodal rather than dry bulk commodities. In particular, there are alternatives that would provide the W&LE with additional competitive opportunities while simultaneously addressing the concerns of the Neomodal facility in Stark County. It is unlikely that Neomodal, with its W&LE connection, will receive better post-transaction service from CSXT and NS. Consequently, any initiative that seeks to strengthen service to Neomodal involves rather extensive eastbound and westbound W&LE trackage rights over NS and/or CSXT. Unlike the trackage rights that would connect the W&LE with coal and ore facilities at Toledo or Cleveland, the overhead trackage rights necessary to provide the W&LE with direct access to Class I gateways in the west and port facilities in the east would require the W&LE to operate its trains over hundreds of miles of NS and / or CSXT mainline trackage.

Toward the west, access to Toledo and the potential connection with the Canadian National (CN) is important for dry-bulk commodities and perhaps lumber, but it is of little value for intermdoal traffic, at least given Neomodal's current traffic base. Most Neomodal traffic is interchanged with western U.S. Class I railroads at Chicago, so that W&LE needs traffic rights (most likely over CSX) to these Chicago interchanges in order to provide Stark County with dependable western intermodal service.

Eastbound, there are a variety of options. Neomodal personnel report having had

---

[15] While Cleveland is already an important transload location, its role may be measurably increased if environmental concerns over dredging at Ashtabula and Conneaut eventually cause one or the other of these facilities to be closed.

discussions with the Port of Baltimore that suggest traffic could be routed to that location or to ports in northern Virginia via an extension of the trackage rights that already connect the W&LE to current interchanges at Hagerstown, Maryland. Alternatively, an NS routing could provide the W&LE with access to the extremely busy intermodal facilities at Philadelphia. Any of these three mid-Atlantic routings could provide Neomodal with a viable eastern outlet assuming that W&LE trains receive equitable and expedient handling by the host railroad.

It is also possible to connect Neomodal to the busy and growing Canadian intermodal facilities at Halifax and Montreal.[16] This connection would require trackage rights on either CSXT or NS from Cleveland to Buffalo and interchange with the Canadian National or Canadian Pacific at that point.[17] Given the ability to connect with the CN or CP at Buffalo and depending on the quality of west-end interchanges, it is possible that a W&LE routing could provide an important southern bridge alternative for wintertime traffic in additicn to helping Neomodal.

To summarize, the Wheeling & Lake Erie currently provides an important competitive alternative to a variety of Ohio's shippers. If this current role is to continue, this regional's access to competitive opportunities must be expanded. There are a number of policy initiatives through which the provision of these opportunities could be accomplished. These include: (1) overhead trackage rights that would allow the W&LE to serve harbor and industrial customers in Toledo; (2) overhead trackage rights that improve access to integrated steel producers and coal producing locations in eastern Ohi and western Pennsylvania; (3) access to harbor facilities in Cleveland and permanent access to harbor facilities at Huron; and (4) overhead trackage rights for the movement of intermodal traffic for interchange at

---

[16] The draft at Halifax (55 feet) is five feet deeper than the deepest U.S. east-coast port. Consequently, arriving vessels from Europe routinely call on Halifax before proceeding to American ports. This gives Halifax a several-day advantage in the movement of westbound intermodal shipments and this advantage has spurred tremendous growth in the Canadian facility.

[17] The advantage of using CSXT is that this carrier will possess multiple line trackage, capable of handling considerably greater traffic volumes than Norfolk Southern's mostly single track, former Nickel Plate routing. On the other hand, NS already interchanges a considerable amount intermodal traffic with the CP at Buffalo, so that the facilities and operating practices necessary to affect an efficient interchange are already in place.

Chicago and/or Buffalo and/or Philadelphia and/or Baltimore.

IV. *Single-Line and Multiple Line Rail Movements, Going From 1 to 2*

The Application contains a number of instances in which shippers that currently have single line service will be faced with a multiple line movement in the wake of the proposed transaction. Multiple line movements, in turn, point to higher costs and higher rates which, along with added transit times, can result in the loss of some or all traffic within particular markets. Indeed, an examination of the 1995 waybill data reveals that 77 percent of the 17,141 Ohio waybills were for single-line movements. Moreover, this represented 83 and 86 percent of state-wide carloads and tonnages. Clearly, as the number of rail carriers declines and the economies of single-line service become more pronounced, those shippers who are forced into multiple-line service face an increasing disadvantage.

There are two cases in Ohio of 1 to 2 situations that have drawn considerable attention. The first case involves two (2) producers of aggregates in west-central Ohio (Wyandot County) that ship large quantities of crushed stone to eastern Ohio. The second 1 to 2 routing to gain attention involves the movement of Ohio Valley coal to Centerior Electric's generating facilities at Eastlake and Ashtabula.[18] Wyandot Dolomite and National Lime and Stone Company move aggregates east from Carey and Bucyrus. Post-transaction, both locations will be served by CSXT and Carey will continue to be served by the Wheeling & Lake Erie. The problem that both producers face is that former Conrail destinations will be served by Norfolk Southern, so that a significant volume of eastbound aggregates will have to be interchanged between CSXT and NS at Crestline, Ohio. Again, interchange imposes costs and these aggregate shippers are, therefore, appropriately fearful that the post-transaction rail rates they face to reach customers and distribution facilities on former Conrail trackage will be higher than the rates they currently pay. Given the large share of delivered price that is attributable to transportation costs, these stone producers contend that any

---

[18] Until recently, OVCC had been particularly vocal in its concerns and had sought assistance from a variety of quarters. Apparently, it has been successful in negotiating a satisfactory arrangement with the transacting carriers, so that it is no longer seeking relief within this proceeding.

measurable increase in rail rates would prohibit them from competing effectively in destination markets.[19]

Wyandot Dolomite and National Lime and Stone will both be requesting that the Surface Transportation Board impose trackage rights as a means of mitigating the competitive harms that will arise out of the proposed transaction. In absence of such relief, the viability of their commercial stone operations will be in jeopardy. (See verified statements of Wyandot Dolomite and National Lime and Stone). This mitigating measure would involve NS trackage rights over CSXT from Crestline to the quarries at Carey and Bucyrus.[20]

The position of these shippers, in fact, demands *more* than the simple extension of trackage rights to quarry locations. It requires that NS, CSXT and the shippers work together to ensure that the substitute service can be offered at rates that are, at least, as low as those currently in evidence for the single-line Conrail movement. The exercise of trackage rights imposes administrative and operational costs that would not be incurred in traditional single-line service. Therefore, maintaining or improving rate levels will require CSXT and NS apply a portion of the claimed transaction-related savings to offset any additional expenses that are directly attributable to the substitution of trackage rights for traditional single-line service.

V. SUMMARY REMARKS

The accelerated schedule of these proceedings precludes the comprehensive

---

[19]During informal interviews, representatives of both Wyandot Dolomite and National Line and Stone indicated that at a distance of roughly 100 miles, the transportation cost for crushed stone exceeds the value added during the quarrying process.

[20]Bucyrus is only 12 miles from Crestine, so that the trackage rights necessary for NS to access quarry facilities at that location would be relatively minimal. The distance from Crestine to Carey, however, is roughly 40 miles and the distance from Cleveland to Ashtabula is more that 55 miles.

investigation of the myriad potential effects of the proposed transaction within the study region. Instead, the analysis focused on a relatively small number of perceived competitive concerns. Even so, two conclusions clearly emerge. First, without regard to any potential benefits from the proposed transaction, it is clear that the acquisition and division of Conrail by CSXT and NS will harm competition in some transportation markets. Second, it is evident that there are numerous initiatives available to the Surface Transportation Board through which it could largely mitigate these deleterious outcomes.

Both available data and anecdotal information indicate numerous situations in which the number of rail carriers serving particular shippers will be reduced from two to one or where shippers that currently have single-line service will be faced with costly interchange. While the transacting parties have sometimes offered to mitigate the potential effects of these undesirable outcome through the extension of trackage rights, they have offered no indication that these rights will be extended at the competitively prices that are necessary to ensure that these arrangements afford any genuine relief to shippers. Without verifiable assurances that trackage rights and local switching agreements will be based on competitively incurred costs, these mitigation strategies offer little solace to concerned policy-makers and fearful shippers. It is, however, within the Board's purview to impose conditions that would assure that trackage rights are efficiently priced and such an action would be well-advised.

It is also clear that the proposed transaction poses a non-trivial threat to the financial viability of the Wheeling & Lake Erie Railroad, the one regional carrier that is currently capable of augmenting the competitive rail alternatives available to Ohio's shippers. If this threat goes unchecked, so that the W&LE is vanquished without ample opportunity to compete for its survival, then the competitive concerns arising from increased market concentration will be made measurably worse. Again, however, the Board in its adduction of this proposed transaction can provide the W&LE with the competitive access to new customers and interchange opportunities. In doing so, the Board would simultaneously allay the fears of a number of shippers that are fearful of reduced rail-to-rail competition.

VERIFICATION

I, Wesley W. Wilson, verify under penalty of perjury that the foregoing statement is true and correct.

Wesley W. Wilson

October 16, 1997

VITA

Wesley W. Wilson

Last Revised: October 15, 1997

Office: Department of Economics
University of Oregon
Eugene, Oregon 97403-1285
Telephone: (541) 346-4690
Fax: (541) 346-1243
WWILSON@OREGON.UOREGON.EDU

Home: 4820 Larkwood Street
Eugene, Oregon 97405
Telephone: (541) 683-8092

Citizenship: USA — Birth Date: Feb. 7, 1958

Married: Jo Anna Gray — Children: Kelsey Gray Wilson (8/7/86), Regina Gray Wilson (2/23/89)

Education:

University of North Dakota, B.S.B.A., 1980
North Dakota State University, 1980-81
Washington State University, M.A., 1984
Washington State University, Ph.D., August, 1986

Dissertation: Transport Markets and Firm Behavior: The Backhaul Problem
Fields: Industrial Organization, Transportation, Applied Microeconomics, and Applied Econometrics
Committee: Gregory M. Duncan (Chair), Fred Inaba, and William Hallagan

Professional Experience:

1994-	Associate Professor, Department of Economics, University of Oregon, Eugene, Oregon.
1989-1994	Assistant Professor, Department of Economics, University of Oregon, Eugene, Oregon.
1986-1989	Assistant Professor, Department of Agricultural Economics, Washington State University, Pullman, Washington.
1981-1986	Research/Teaching Assistant, Department of Economics, Washington State University, Pullman, Washington.
1980-1981	Research Assistant, Upper Great Plains Transportation Institute, North Dakota State University, Fargo, North Dakota.

Professional Affiliations:

American Economic Association
European Association for Research in Industrial Economics
Industrial Organization Society
Center for Asian and Pacific Studies
Transportation and Public Utilities Group-American Economic Association
Pacific Northwest Regional Economic Conference

Awards and Honors:

1996 University of Oregon Ersted Distinguished Teaching Award. Finalist in 1991 and 1992 and nominated in 1993.
Pacific Northwest Regional Economic Conference Board Member 1996-present.
Nominated for David M. And Nancy L. Petrone Scholar, University of Oregon 1996.
Faculty Teaching Award, Department of Economics, University of Oregon (1990, 1991, and 1992).[1]
Honorable Mention, Faculty Research Award, Department of Economics, University of Oregon, 1992.

Journal Publications:

Wilson, Wesley W., and Yimin Zhou, "Costs, Productivity, and Firm Heterogeneity in Local Telephone Markets," *Journal of Regulatory Economics,* Vol. 11 (May, 1997) No. 2, pp291-310.

Wilson, Wesley W., "Cost Savings and Productivity Gains in the Railroad Industry," *Journal of Regulatory Economics*, Vol. 11 (January, 1997) No. 1, pp. 21-41.

Wesley W. Wilson, "Legislated Market Dominance," *Research in Transportation Economics*, Vol. 4 (1996) No. 1, pp. 33-48.

R. Thomas Schotzko, and Wesley W. Wilson, "Price Adjustments in Cherry Markets," *Journal of Food Distribution Research*, Vol. 26 (September, 1995) No. 2, pp. 47-53.

Wilson, Wesley W., and Kenneth L. Casavant, "Market Dominance and Market Power: A Case Study of Disaggregate Railroad Pricing Under Deregulation," *7th World Conference on Transport Research - Selected Proceedings*, 1995.

Wilson, Wesley W., "Market Choice, Entry Regulation, and Joint Production," *Review of Industrial Organization,*. Vol. 9 (December, 1994) No. 6, pp. 791-812.

Wilson, Wesley W., "Market-Specific Effects of Rail Deregulation," *Journal of Industrial Economics*, Vol. 42 (March, 1994) No. 1, pp. 1-22 (lead article).

---

[1] I was ineligible for the award in 1993 and both faculty research and teaching awards were discontinued in 1994.

Wilson, Wesley W. and Richard Beilock, "Market Access Decisions in Regulated and Unregulated Markets," *Journal of Regulatory Economics*," Vol. 6 (December, 1994) No. 4, pp-363-380.

Wilson, Wesley W., Merwin C. Mitchell, and Joe A. Stone, "Product Selection and Costs in a Partially Unionized Industry," *Journal of Labor Research*, Vol. 16 (Winter, 1995) No. 1, pp81-95.

Wilson, Wesley W. and Frank J. Dooley, "An Empirical Analysis of Market Access," *Southern Economic Journal*, Vol. 60 (July, 1993) No. 1, pp. 49-62.

Rosenman, Robert E., and Wesley W. Wilson, "Quality Differentials and Prices: Are Cherries Lemons?" *Journal of Industrial Economics*, Vol. 39 (December, 1991) No. 6, pp. 649-655.

Wilson, Wesley W., and Kenneth L. Casavant, "Some Market Power Implications of the Shipping Act of 1984: A Case Study of the U.S. to Pacific Rim Transportation Markets," *Western Journal of Agricultural Economics*, Vol. 16 (December, 1991) No. 2, pp. 427-434.

Casavant, Kenneth L. and Wesley W. Wilson, "Shipper Perspectives of the Shipping Act of 1984, *Transportation Quarterly*, Vol. 45 (January, 1991) No. 1, pp. 109-120.

Wilson, Wesley W. and Frank J. Dooley, "Investment Decisions for Country Elevators." *Agribusiness: An International Journal*, Vol. 5 (September, 1989) No. 5, pp. 449-464.

Dooley, Frank J., Wesley W. Wilson and Leslie M. Bertram, "Changing Costs and Characteristics for Exempt Motor Carriers," *Journal of the Transportation Research Forum*, Vol. 30 (1989) No. 1, pp. 170-77.

Wilson, William W., Wesley W. Wilson, and Won W. Koo "Modal Competition in Grain Transport," *Journal of Transport Economics and Policy*, Vol. 22 (September, 1988) No. 3, pp. 319-337.

Wilson, Wesley W. and Kenneth L. Casavant, "Pacific Northwest Agriculture and the Shipping Act of 1984," *Journal of the Transportation Research Forum*, Vol. 29 (1988) No. 1, pp. 73-79.

Wilson, Wesley W., "Transport Markets and Firm Behavior: The Backhaul Problem," *Journal of the Transportation Research Forum*, Vol. 28 (1987) No. 1, pp. 325-333.

Wilson, Wesley W., "A Model of Firm Behavior and Costs in Exempt Motor Carriage." *Journal of the Transportation Research Forum*, Vol. 28 (1987) No. 1, pp. 200-208.

Dooley, Frank J. and Wesley W. Wilson, "The Effect of Elevator Competition upon Market Areas," *Journal of the Transportation Research Forum*, Vol. 28 (1987) No. 1, pp. 120-125.[2]

Wilson, Wesley W., Frank Dooley, Gene C. Griffin, and Ken Casavant, "The Applicability of the Theory of Contestable Markets to Railroad Competition," *Proceedings of the Transportation Research Forum*, Vol. 27 (1986) No. 1, pp. 131-136.

Wilson, Wesley W., "Interstate Commerce Commission Regulation of Motor Carriers Operating in the State of Washington: An Historical Perspective," *Proceedings of the Transportation Research Forum*, Vol. 26 (1985)No. 1, pp. 209-215.

Wilson, William W., Gene C. Griffin, Won W. Koo, and Wesley W. Wilson, "Dominant Mode Price Leadership in Grain Transportation," *Proceedings of the Transportation Research Forum*, Vol. 25 (1984) No. 1, pp. 322-330.

Casavant, K. L., W. W. Wilson, and G. C. Griffin, "Changing Costs and Characteristics of Operating Motor Carriers: A Case Study of Grain Trucking Firms in North Dakota," *Proceedings of the Transportation Research Forum*, Vol. 23 (1982) No. 1, pp. 294-299.

Book Chapters:

Wilson, William W. and Wesley W. Wilson, "Mergers and Acquisitions in the North American Flour Milling Industry," in *Competitive Strategy Analysis in the Food System*, University of Connecticut, 1991.

Wilson, Wesley W., Gene C. Griffin, Kenneth L. Casavant, and Daniel L. Zink, "Adjusting to a Changing Transportation Regulatory Environment--The Case of Trucking Exempt Commodities" in *Profitability and Mobility in Rural America*, edited by Wm. Gillis, Pennsylvania State University Press: University Park, Pennsylvania, 1989.

Work in Progress:

Wilson, Wesley, "Surface Freight Deregulation and Emerging Issues of Network Technologies: A Survey of Partial Deregulation in Railroad and Motor Carrier Market," *Journal of Regulatory Economics* (an invited survey in progress).

Ellis, Chris, and Wesley W. Wilson, "Endogenous Market Structure for Horizontally Differentiated Products," *Economica* (Revise and Resubmit).

Dodge, Eric, Joe A. Stone, and Wesley W. Wilson, "Wage Premia, Organization Costs, and Market Segments," *Economic Inquiry* (Revise and Resubmit).

---

[2] The *Journal of the Transportation Research Forum* was formerly titled *Proceedings of the Transportation Research Forum*.

Burton, Mark L. and Wesley W. Wilson, "Network Pricing and Vertical Foreclosure in Railroad Markets." (Under Revision).

Brist, Lonnie and Wesley W. Wilson, "Learning by Doing and Economies of Scale in the DRAM Market," (Under Revision).

Figlio, David and Wesley W. Wilson, "Shifting Frontiers or Closing Gaps? Decomposing the Coefficients in Education Production Functions." *Journal of Labor Economics* (Under Review).

Blonigen, Bruce A. and Wesley W. Wilson, "Explaining Armington: What Determines Substitutability Between Home and Foreign Goods?" *Canadian Journal of Economics* (Under Review)

Davis, David and Wesley W. Wilson, "Deregulation, Mergers, and Employment in the Railroad Industry," (Under Revision).

Hays, Sally E. and Wesley W. Wilson, "Reputation and Reputation-Building: Bidding and Repeat Purchases under Asymmetric Information," (Under Revision).

Wilson, Wesley W., "Market-Specific Effects of Motor Carrier Deregulation," (In Progress).

Wilson, Wesley W., "Market Structure and Industry Evolution in the Motor Carrier Industry," (In Progress).

Hunger, David and Wesley W. Wilson, "Entry and Regulatory Distortions in the Electricity Industry," (Under Revision).

Wilson, Wesley W., and Yimin Zhou, "Are Monopolies in Local Telephone Markets Unnatural?" *Journal of Economic Management and Strategy* (Under Review).

Book Reviews:

Wesley W. Wilson, *The Struggle for Auto Safety* by Jerry L. Mashaw and David L. Harfst, *Public Choice*, Vol. 73 (1992) pp. 492-493.

Rodrigues, Julene M. and Wesley W. Wilson, *Regulation and Deregulation of the Motor Carrier Industry*, edited by John Richard Felton and Dale G. Anderson, *Journal of the Transportation Research Forum*, Vol. 32 (1991) No. 2, pp 489-90.

Other Publications and Reports:

Wilson, Wesley W., and David E. Hunger, "The Impact of Restructuring on Oregon Electricity Markets," Grant Report submitted to National Rural Electric Cooperative Association, 1997.

Proceedings of the 1997 Pacific Northwest Regional Economic Conference:

1. "Subadditivity in the Production of Local Telephone Services (joint with Yimin Zhou).
2. "Network Pricing in Railroad Markets" (joint with Mark L. Burton).
3. "School Quality and the Black-White Performance Gap" (joint with David Figlio).

Hays, Sally E. and Wesley W. Wilson, "Reputation, Reputation-Building and Prices," Proceedings of the 1996 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W. and Yimin Zhou, "Cost, Productivity, and Firm Heterogeneity in Local Telephone Markets," Proceedings of the 1996 Pacific Northwest Regional Economic Conference.

Davis, David E., and Wesley W. Wilson, "Mergers and Employment in Class I Railroads," Proceedings of the 1996 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W., "Market Access Decisions in Regulated and Unregulated Markets," Upper Great Plains Transportation Institute Publication No. 96, Upper Great Plains Transportation Institute, North Dakota State University, Fargo, ND, 1993.

Wilson, Wesley W., "Asymmetric Effects of Deregulation," Upper Great Plains Transportation Institute Publication No. 92, Upper Great Plains Transportation Institute, North Dakota State University, Fargo, ND, 1992.

Dooley, Frank J., Wesley W. Wilson, Douglas E. Benson, and Denver D. Tolliver, "Post Staggers Productivity for Class I Railroads," Mountain Plains Consortium Report 91-6, Fargo, ND, 1991.

Wilson, Wesley W., "Market Choice, Entry Regulation, and Joint Production, Department of Economics, University of Oregon WP-115 and Upper Great Plains Transportation Institute Staff Paper Series No. 107, 1991.

Wilson, Wesley W. and Frank J. Dooley, "An Empirical Examination of Market Access," Department of Economics, University of Oregon WP-112 and Upper Great Plains Transportation Institute Staff Paper Series No. 106, August, 1991.

Casavant, Kenneth L. and Wesley W. Wilson, "Evaluation of the Use of Currency Adjustment Factors (CAF) Surcharges in Pacific Northwest Ocean Transportation," Transportation and Marketing Division, United States Department of Agriculture, March, 1991.

Casavant, Kenneth L. and Wesley W. Wilson, "A Preliminary View of the Impact of the Shipping Act of 1984 on Transportation and Marketing of Agricultural Exports," Report submitted to the Office of Transportation, United States Department of Agricultural, Department of Agricultural Economics, Washington State University, August, 1989.

Vidyashankara, Satyanarayana, and Wesley W. Wilson, "World Trade in Apples: 1962-1987," Information Series Report No. 31, International Marketing Program for Agricultural Commodities and Trade (IMPACT), Washington State University, Pullman, Washington, July, 1989.

Vidyashankara, Satyanarayana, and Wesley W. Wilson, "Development of Data on World Trade in Apples: 1962-1987, A User's Manual" Information Series Report No. 31M, International Marketing Program for Agricultural Commodities and Trade (IMPACT), Washington State University, Pullman, Washington, July, 1989.

Rosenman, Robert E. and Wesley W. Wilson, "Information Asymmetries in Cherry Markets," *Papers of the 1989 Annual Meetings of the Western Agricultural Economics Association*, Coeur D'Alene, Idaho, July 9-12, 1989.

Casavant, Kenneth L., Richard Beilock and Wesley Wilson, "An Evaluation of Regulatory Reform in Transportation," *Proceedings of the Twenty-Third Annual Pacific Northwest Regional Economic Conference*, April 27-29, 1989, Corvallis, Oregon.

TengkuAhmad, Ariff Bin and Wesley W. Wilson, "Growth and Market Potential in the Pacific Northwest Apple Markets," *Proceedings of the Twenty-Third Annual Pacific Northwest Regional Economic Conference*, April 27-29, 1989, Corvallis, Oregon.

Dooley, Frank J., Leslie M. Bertram and Wesley W. Wilson, "Backhaul Opportunities for North Dakota Grain Truckers," Upper Great Plains Transportation Institute Publication No. 69, North Dakota State University, Fargo, ND, April 1989.

Schotzko, R. Thomas, Wesley W. Wilson and Donald Swanson, "Demand for Washington Sweet Cherries," Agricultural Research Center Bulletin XB 1007, Washington State University, Pullman, Washington, 1989.

Wilson, Wesley W. and Frank J. Dooley, "Transportation Investment Decisions for Country Elevators." Staff Paper Series No. 92, Upper Great Plains Transportation Institute, North Dakota State University, November, 1988.

Dooley, Frank J., Leslie M. Bertram, and Wesley W. Wilson, "Operating Costs and Characteristics of North Dakota Grain Trucking Firms," Upper Great Plains Transportation Institute Report No. 67, August, 1988, North Dakota State University, Fargo, North Dakota.

Casavant, Kenneth L. and Wesley W. Wilson, "Preliminary Assessment of the Shipping Act of 1984: A Case Study of Pacific Northwest Agriculture," *Proceedings of the 13th Annual Conference on Ports, Waterways, International Terminals and International Trade Issues*," Transportation Research Board of the National Research Council, July 21, 1988, Seattle, WA.

Wilson, Wesley W., "Exporting Selected Northwest Commodities by Containers," *Proceedings of the Agricultural Exporters' Ocean Shipping Workshop: Understanding the 1984 Shipping Act and Ocean Shipping Issues*, May 26, 1988, Fresno, CA.

Wilson, Wesley W. and Frank J. Dooley, "The Location of Multiple Car Rail Shipping Elevators," *Proceedings of the Twenty-second Annual Pacific Northwest Regional Economic Conference*, April 28-30, 1988, Boise, ID.

Wilson, Wesley W., Gene C. Griffin, Kenneth L. Casavant, and Daniel L. Zink, "Adjusting to a Changing Transportation Regulatory Environment--The Case of Trucking Exempt Commodities," Upper Great Plains Transportation Institute Staff Paper Series, Staff Paper No. 83, NDSU, Fargo, ND, 1987.

Wilson, William W., Wesley W. Wilson, and Won W. Koo, "Intermodal Competition and Pricing in Grain Transportation: A Description and Comparison of Methods." Agricultural Economics Report No. 225, Department of Agricultural Economics, North Dakota State University, Fargo, North Dakota, June, 1987.

Wilson, Wesley W., "Transport Markets and Firm Behavior: The Backhaul Problem," *Proceedings of the Twenty-first Annual Pacific Northwest Regional Economic Conference*, April 30-May 2, 1987, Seattle, Washington.

Wilson, William W., Wesley W. Wilson, and Won W. Koo, "Modal Competition and Pricing in Grain Transportation," Staff Paper Series AE 85009, July, 1985, Department of Agricultural Economics, North Dakota State University, Fargo, North Dakota.

Griffin, Gene C., Wesley W. Wilson, and Ken Casavant, "Characteristics and Cost of Operation of North Dakota's Farm Trucks," Upper Great Plains Report No. 51, December, 1984, North Dakota State University, Fargo, North Dakota.

Wilson, William W., Gene C. Griffin, Wesley W. Wilson, and Won W. Koo, "Dominant Mode Price Leadership in Grain Transportation," Staff Paper Series AE 84008, August 1984, Department of Agricultural Economics, North Dakota State University, Fargo, North Dakota.

Wilson, Wesley W., Gene C. Griffin, and Kenneth L. Casavant, "Costs and Characteristics of Operating Interstate Motor Carriers of Grain in North Dakota," Upper Great Plains Transportation Institute Report No. 46, September, 1982, North Dakota State University, Fargo, North Dakota.

Wilson, Wesley W., "Pilot Study of Motor Carrier Services to Eight Rural North Dakota Communities," Upper Great Plains Transportation Institute Report No. 42, November, 1981, North Dakota State University, Fargo, North Dakota.

Wilson, Wesley W., "An Analysis of the Regulated Motor Carrier Industry in North Dakota," Upper Great Plains Transportation Institute Report No. 40, September, 1981, North Dakota State University, Fargo, North Dakota.

Wilson, Wesley W., "Exempt Trucking--The Case in North Dakota " in *Papers and Proceedings of the Trucking in North Dakota Management Conference*, Upper Great Plains Transportation Institute, North Dakota State University, Fargo, North Dakota, 1981.

Presented Papers:

Brist, Lonnie, and Wesley W. Wilson, "Learning by Doing in Dram Markets." Paper presented at the E.A.R.I.E. in Leuven, 1997 and also at the Department of Economics, UCLA.

Hunger, David, and Wesley W. Wilson, "Entry Decisions and Regulatory Distortions in Electricity Markets," Paper presented at the 1997 Advanced Workshop in Regulation and Competition. Lake George, New York.

Figlio, David N., and Wesley W. Wilson, "School Quality and the Black-White Performance Gap," Paper presented at the 1997 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W., and Mark L. Burton, "Network Pricing in Railroad Markets,"

1. 1997 Pacific Northwest Regional Economic Conference.
2. Northwestern University, 1997
3. University of Illinois, 1997
4. Ohio State University, 1997
5. Washington State University, 1997

Wilson, Wesley W., and Yimin Zhou, "Subaddivitivity in the Production of Local Telephone Services," Paper presented at the 1997 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W., "Cost Savings and Productivity in Railroad Markets," paper presented at the Annual Advanced Workshop in Regulation and Public Utility, San Diego, California, July 1996.

Hays, Sally E. and Wesley W. Wilson, "Reputation, Reputation-Building and Prices," 1996 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W. and Yimin Zhou, "Cost, Productivity, and Firm Heterogeneity in Local Telephone Markets," 1996 Pacific Northwest Regional Economic Conference.

Davis, David E., and Wesley W. Wilson, "Mergers and Employment in Class I Railroads," 1996 Pacific Northwest Regional Economic Conference.

Wilson, Wesley W., Kenneth L. Casavant, and Frank Dooley, "Mergers, Cost Savings and Productivity," Paper presented at the 7th World Conference on Transport Research, Sydney, Australia July 21, 1995, also presented at the Department of Economics, Australia National University, Canberra, Australia, July 27, 1995.

Wilson, Wesley W., and Kenneth L. Casavant, "Market Dominance and Market Power," Paper presented at the 7th World Conference of Transport Research, Sydney, Australia, July 19, 1995.

Burton, Mark L. and Wesley W. Wilson, "Network Pricing and Vertical Foreclosure," paper presented at the 14th Annual Advanced Workshop in Regulation and Public Utility, Newport, Rhode Island, May, 1995.

Wilson, Wesley W. and Yimin Zhou, "Technological Progress and Costs in Telecommunication," paper presented at the 14th Annual Advanced Workshop in Regulation and Public Utility, Newport, Rhode Island, May, 1995.

Burton, Mark and Wesley W Wilson, "Regulation and Deregulation of Railroad Rates, presented at the Eastern Economic Associations, 1994, also presented at the Department of Economics, University of Tennessee , 1994.

Eric Dodge, Joe A. Stone, and Wesley W. Wilson, "Unionism in Truck Markets," presented at Western Economics Association, Vancouver, BC, 1994.

Wilson, Wesley W. and Richard Beilock, "Market Access in Regulated and Unregulated Markets," presented at the Western Economics Association Meetings, Tahoe, Nevada, June 23, 1993. Also presented at the Transportation and Public Utilities Group (TPUG) meetings at the American Economics Association meetings, Boston, MA, January 4, 1994..

Wilson, Wesley W., "Market Choice, Entry Regulation, and Joint Production," presented at the Transportation and Public Utilities Group (TPUG) meetings at the American Economics Association Meetings, Anaheim, California, January, 1993. Also presented in the Graduate Faculty of Economics Seminar Series, Oregon State University, Corvallis, Oregon, February 25, 1993.

Wilson, Wesley W., and Frank J. Dooley, "An Empirical Analysis of Market Access," presented at the Western Economics Association at the Western Economics Association meetings, San Francisco, California, July, 1992.

Wilson, Wesley W. and Davis F. Taylor, "Minimizing the Costs of Highway Overloads," presented at the World Conference on Transport Research, Lyon, France, June 29-July 3, 1992.

Casavant, Kenneth L. and Wesley W. Wilson, "Evaluation of the Use of Currency Adjustment Factors (CAF) Surcharges in Pacific Northwest Ocean Transportation," presented at The World Conference on Transport Research, Lyon, France, June 29-July 3, 1992.

Wilson, Wesley W., and Frank J. Dooley, "Cost Savings and Productivity Gains through Deregulation," presented at the Transportation and Public Utilities Group (TPUG) meetings at the American Economics Association Meetings, New Orleans, January, 1992.

Wilson, William W. and Wesley W. Wilson, "Mergers and Acquisitions in the North American Flour Milling Industry," presented as the NE-165 Regional Research Project meetings, Competitive Strategy Analysis in the Food System, Conference, June 3-5, 1991, Alexandria, Virginia (NE-165 Regional Research Project).

Wilson, Wesley W., "Market Power and Deregulation: the Railroad Industry and the Stagger's Rail Act," presented at in the Graduate Faculty of Economics Seminar Series, Oregon State University, Corvallis, Oregon, November 16, 1990.

Rodrigues, Julene M. and Wesley W. Wilson, Regulation and Deregulation of the Motor Carrier Industry, edited by John Richard Felton and Dale G. Anderson, A book review presented at the 1990 Annual Meetings of the Transportation Research Forum, Long Beach, California, October 10-12, 1990.

Casavant, Kenneth L., Wesley W. Wilson, and James Caron, "Pacific Northwest Agricultural Shipper Perspectives of the Partial Deregulation Components of the U.S. Shipping Act of 1984, paper presented at the 1989 Annual Meetings of the Transportation Research Forum, Williamsburg, Virginia, October 11-13, 1989.

Dooley, Frank, Wesley W. Wilson, and Leslie M. Bertram, Changing Costs and Characteristics for Exempt Motor Carriers," paper presented at the 1989 Annual Meeting of the Transportation Research Forum, Williamsburg, Virginia, October 11-13, 1989.

Wilson, Wesley W. and William W. Wilson, "Assessing the Degree of Market Dominance in Transportation," presented at the 1989 Annual Meetings of the American Agricultural Economics Association, July 31-August 2, 1989, Baton Rouge, LA.

Wilson, Wesley W. and Kenneth L. Casavant, "Market Power in International Liner Markets," presented at the 5th World Conference on Transportation Research, July 10-14, 1989, Yokohama, Japan.

Casavant, Kenneth L. and Wesley W. Wilson, "Partial Deregulation of International Shipping: Case of U.S. Shipping Act of 1984 and Pacific Northwest Agricultural Exports," presented at the 5th World Conference on Transportation Research, July 10-14, 1989, Yokohama, Japan.

Rosenman, Robert E. and Wesley W. Wilson, "Information Asymmetries in Cherry Markets: Are Cherries Lemons?" presented at the 1989 Annual Meetings of the Western Agricultural Economics Association Meetings.

TengkuAhmad, Ariff Bin and Wesley W. Wilson, "Growth and Market Potential in the Pacific Northwest Apple Markets," presented at the Twenty-Third Annual Meetings of the Pacific Northwest Regional Economic Conference, April 27-29, 1989, Corvallis, Oregon.

Casavant, Kenneth L., Richard Beilock and Wesley Wilson, "An Evaluation of Regulatory Reform in Transportation," Paper presented at the Twenty-Third Annual Meetings of the Pacific Northwest Regional Economic Conference, April 27-29, Corvallis, Oregon.

Wilson, Wesley W., "Measuring the Impact of Deregulation and the Degree of Market Power: A Case Study of the Stagger's Rail Act and the Railroad Industry," presented at the Department of Economics, University of Oregon, January 17, 1989. Also presented at the Dallas Federal Reserve Bank, June 13, 1989.

Wilson, Wesley W., "Benefits, Pitfalls, and Execution of Writing Assignments in Economics," presented at "Writing Across the Curriculum Reunion Seminar," Compton Union Building, Washington State University, January 6, 1989.

Wilson, Wesley W. And Kenneth L. Casavant, "Pacific Northwest Agriculture and the Shipping Act of 1984." Presented at the Twenty- Ninth Annual Meeting of the Transportation Research Forum, November 9-11, 1988, Toronto, Ontario.

Wilson, Wesley W., "The Impact of the Shipping Act of 1984 on the Level and Volatility of Marketing Costs and the Impact on Exporting Pacific Northwest Commodities," Presented at the Agricultural Exporters' Ocean Shipping Workshop: Understanding the 1984 Shipping Act and Ocean Shipping Issues, October 27, 1988.

Wilson, Wesley W. and Frank J. Dooley, "Elevator Investments in Transportation Facilities," Presented at the 1988 Western Agricultural Economics Association Meeting, Honolulu, Hawaii, July 13-18, 1988.

Wilson, Wesley W., "Exporting Selected Northwest Commodities by Containers," Presented at the Agricultural Exporters' Ocean Shipping Workshop: Understanding the 1984 Shipping Act and Ocean Shipping Issues, May 26, 1988, Fresno, CA.

Wilson, Wesley W. and Frank J. Dooley, "The Location of Multiple Car Rail Shipping Elevators," Presented at the Twenty-second Annual Pacific Northwest Regional Economic Conference, April 28-30, 1988, Boise, ID.

Wilson, Wesley W., "Firm Behavior and Costs in Exempt Motor Carriage," presented at the Twenty-eighth Annual Meetings of the Transportation Research Forum, November 16-18, 1987, San Antonio, TX.

Wilson, Wesley W., "Transport Markets and Firm Behavior: The Backhaul Problem," presented at:

1) the Twenty-Eighth Annual Meetings of the Transportation research Forum, November 16-18, 1987, San Antonio, TX.
2) the Twenty-First Annual Pacific Northwest Regional Economic Conference, April 30-May 2, 1987, Seattle, WA.
3) the Frontiers in Transportation Research Conference, June 4, 1987, Pullman, WA by invitation;

Wilson, Wesley W., "The Theory of Contestable Markets: Applications of Transportation," presented at the Twenty-Seventh Annual Meetings of the Transportation Research Forum, September 22-24, 1986, Seattle, Washington.

Wilson, Wesley W., "Interstate Commerce Commission Regulation of Motor Carriers Operating in the State of Washington: An Historical Perspective," presented at the Twenty-Sixth Annual Meetings of the Transportation Research Forum, November, 12-13, 1985, Amelia Island Plantation, Florida.

Wilson, Wesley W., Gene C. Griffin, and Kenneth L. Casavant," Costs and Characteristics of Operating Interstate Motor Carriers of Grain in North Dakota," presented at the North Dakota Grain Handling, Transportation, and Merchandising Conference, February 16-17, 1982, Bismarck, North Dakota.

Wilson, Wesley W., "Exempt Trucking--The Case in North Dakota," presented at the Trucking in North Dakota Conference, August 12-13, 1981, Grand Forks and Bismarck, North Dakota.

Professional Service:

Board Member, Pacific Northwest Regional Economic Conference, 1996-
President of the Agricultural and Rural Transportation Chapter of the Transportation Research Forum (1989-1990).
Newsletter editor of the Agricultural and Rural Transportation Chapter of the Transportation Research Forum (1989-1990).
Pullman Citizens Advisory Transit Commission (1984-1989)
Transportation Research Forum, Agricultural Chapter/Executive Vice/President (1989)
Transportation Research Forum, Agricultural Chapter/Vice President/Membership (1988)
Transportation Research Forum, Agricultural Chapter Council Member (1987)
Ad Hoc Committee for Economic Evaluation of Highway Investments, coordinated through the State of Oregon, Department of Transportation, Salem, Oregon (1990).
American Agricultural Economics Association, Economics and Statistics Committee (1987-89)
Transportation Research Forum, Coordinator of Outstanding Paper Award, Coordinator of Honorary Student Membership Awards (1987)
Editorial Review Board, *Journal of the Transportation Research Forum* (1990, 1991, 1992)

Referee:

Rand Journal of Economics
Journal of Industrial Economics
Southern Economics Journal
Journal of Regulatory Economics
International Journal of Industrial Organization
Research in Transportation Economics
Transportation Research Record
The Logistics and Transportation Review
Economic Inquiry
American Journal of Agricultural Economics
Western Journal of Agricultural Economics
Northeastern Journal of Agricultural and Resource Economics
Social Science and Humanities, Research Council of Canada
Journal of the Transportation Research Forum
Papers of the Annual Meetings of the Western Agricultural Economics Association
Agricultural and Rural Transportation Chapter of the TRF-outstanding paper award
US Department of Agriculture's National Research Initiative Competitive Grants Program

Western Agri. Economics Association, Reviewer of Selected Papers 1989.
American Agricultural Economics Association, Reviewer for Selected Papers (1987)
Departmental Ad Hoc Committee to choose AAEA-WAEA Outstanding Master's Thesis submissions (1989)
Harper Collins Publishers
University of Oregon Tenure Case
Oregon State University Tenure Case
University of Nevada - Reno Tenure Cases

Departmental and University Service:

Distinguished Teaching Award Committee
Environmental Issues Committee
University Research Committee
Undergraduate Advisor - Department of Economics
Undergraduate Committee - Department of Economics
Qualifying Examination Committee - Department of Economics
Chair, Visiting Speakers Committee, Department of Economics, University of Oregon
Visiting Speakers Committee, Department of Economics, University of Oregon
Search Committee, Department of Economics
Chair, Computer Committee, Department of Economics, University of Oregon
Master's Program Committee, Department of Economics, University of Oregon
Working Paper Coordinator, Department of Economics, University of Oregon
Library Representative, Department of Economics, University of Oregon
Subcommittee for Theory Prelims, Department of Agricultural Economics, Washington State University
Marketing and Extension Committee, Department of Agricultural Economics, Washington State University

Grants and Summer Support:

"The Impact of Restructuring on Oregon Electricity Markets," National Rural Electric Cooperative Association, , 1997, $30,000.

"Export Credit in International Wheat Markets," United States Department of Agriculture (Subcontract with North Dakota State University), 1997, $12,141.

"Minimizing the Potential Impact of Business Activity in Rural Wellhead Areas," Department of Environmental Quality, 1996, $65,000.

"Innovation and Competition in the International Semiconductor Industry," Junior Professorship Development Grant, 1994, $800

"Efficiency and Deregulation of Nonunionized and Unionized Motor Carriers," Junior Professorship Development Grant, 1993, $1000.

"Entry and Exit in International Markets: the Role of Sunk Costs in Trade Hysteresis," Scholarly and Creative Development Award," University of Oregon, 1992, $10,000.

"Asymmetric Effects of Deregulation" and "Minimum Efficient Scale for Short-Line Railroads" Summer research for the Upper Great Plains Transportation Institute, 1992, $7500.

"Cost Saving and Productivity Gains through Deregulation" summer research for Upper Great Plains Transportation Institute, 1991, $7500.

"Minimizing the Costs of Highway Overloads," summer research, Washington State University, 1991, $1500.

"An Empirical Analysis of Market Access" and "Market Choice, Joint Production and Entry Regulation," summer research for the Upper Great Plains Transportation Institute, 1990, $6000.

"Currency Adjustment Factors in International Liner Markets,: summer research, Washington State University, 1990, $5000.

"Assessing the Welfare Benefits of International Trade," funding of $9418 from Office of Grant and Research Development, Graduate School Grant-in-Aid (1989), Washington State University.

"Strengthening the Export Marketing Capabilities of U.S. Cooperative Exporters of Fresh Apples and Apple Products," (with A. Desmond O'Rourke and Vicki McCracken), funding of $37,000 from USDA, Agricultural Cooperative Service (1988-1990).

"Preliminary Review of the Impact of the Shipping Act of 1984 on Transportation and Marketing of Selected Pacific Northwest Commodities," (with Kenneth L. Casavant), funding of $20,000 received from USDA Office of Transportation (1987). Amended in 1988 to $40,000. Extended to 1990.

Washington State University, Office of Grant and Research Development, 1985 Graduate Student Stipend Award.

Washington State University, Office of Grant and Research Development, 1985 Graduate Student Travel Grant.

Analysis of Railroad Rate Structure Since 1958 in North Dakota, for the Upper Great Plains Transportation Institute, Summer, 1982.

Consulting and Verified Statements:

Verified Statements to the Interstate Commerce Commission:

1. Rail Barley Rates from North Dakota to Duluth, West Duluth, Minnesota, and Superior, Wisconsin; 2) Rail Wheat Rates from North Dakota to Duluth, West Duluth, Minnesota and Superior, Wisconsin; 3) Rail Sunflower Rates from North Dakota to Duluth, West Duluth, Minnesota and Superior, Wisconsin; 4) Rail Wheat Rates from North Dakota to Minneapolis, Minneapolis Transfer, and St. Paul, Minnesota; 5) Rail Barley Rates from North Dakota to Minneapolis, Minneapolis Transfer, and St. Paul, Minnesota; 6) Rail Sunflower Rates from North Dakota to Minneapolis, Minneapolis Transfer, and St. Paul, Minnesota, March 24, 1981.

Verified Statement to the Surface Transportation Board:

1. CSX Corporation and CSX Transportation, Inc. and Norfolk Southern Corporation and Norfolk Southern Railway Company–Control and Operating Leases/Agreements–Conrail Inc. and Consolidated Rail Corporation. October 21, 1997.

Consulting:

1. "The Conrail Transaction: Competitive Effects and Mitigation Opportunities for Indiana and Ohio. Ohio State Attorney General's Office. 1997.
2. Bottleneck Pricing Issues in Railroad Markets. Sidley and Austin. 1996.
3. Risk Adjustments in Rate Structures. Canadian Pacific Railroad. 1996.
4. Assessing the Competitive Effects of the UP-SP Merger, California Department of Justice. 1996.
5. Assessing the Competitive Effects of the BN-SF Merger, United States Department of Justice. 1995.
6. Assessing the Competitive Effects of the BN-SF Merger, California Department of Justice. 1995.

Graduate Students:

Current:

Dave Davis (PhD)
Sally Easley (PhD)
David Hunger (PhD)
Mark Goettel (PhD, Business)
Michael Enz (PhD)

Finished:

Lonnie Brist (PhD, Economics)
Yimin Zhou (PhD, Economics). Winner Outstanding Field Paper Award
Heather Tucker (MS, Economics)
Sunnie Chu (PhD, Accounting)

Doug Haines (PhD, Business)
Alex Hauser (Masters, Economics)
Eric Dodge (PhD, Economics)
Eric Konzelman (Masters, Economics) - awarded posthumously
Henry Martin (Masters, Economics)
Kumiko Okuyamo (Masters, Economics)
Julie Vanderlow (Masters, Economics)
Thomas Miller (Masters, Economics). Winner Outstanding Master's Thesis Award.
Ronald Jarmin (PhD, Economics)
Raymond Lui (PhD, Business)
Paul Matthews (Masters, Business)
Hsui Hsui Lai (Masters, International Studies Program)
Johannes Velling (Masters, Economics)
Bum Yoal Lee (Masters, Economics)
Ariff Bin TengkuAhmad, (Masters, Agricultural Economics)
Melissa Harwood-Rom, Melissa (Masters, Agricultural Economics)

Undergraduate Student Research (Economics 401):

1990 Michael Cullen (401)
Ming T. Tjeng (401)

1991 Paul Crowley (401)
Todd Banks (401)
Jeffrey Scarvie (401)
Jeffrey Westerberg (401)
Angele Suralt (401)
Cathy O'Kamura (401, Honors, Department of Economics Outstanding Thesis Award)
John Palmeri (401)
Michael Karotko (401)

1992 Jordan Wick (401, Honors, Department of Economics Outstanding Thesis Award)
Erik Bjorvik (401, Honors)
Rebecca Headstrom (401)
Jeffrey Nomechek (401)

1993 Shawn Goben (401, Honors)
Christopher Lackey (401, Honors)

1994 Nicole Summer (Honors)
Robert Ashley (Honors)
David Kuhn (Honors)

1995 Kioyshi Tanaguchi, (Honor's Paper, co-winner department award for best undergraduate honor's paper, and winner of Transportation Research Forum, best Undergraduate Paper Award, national award).

Sander Mark Hull, (Honor's Paper, co-winner department award for best undergraduate honor's thesis).

1996 Harry Fuhrman

References

Gregory Duncan
NERA
(213) 346-3019

Frederick Inaba
Department of Economics
Washington State University
Pullman, Washington 99164-4860
(509) 335-1940

Kenneth L. Casavant
Department of Agricultural Economics
Washington State University
Pullman, Washington 99164-6210
(509) 335-1608

Ronald C. Mittelhammer
Department of Agri. Economics
Washington State University
Pullman, WA 99164-6210
(509) 335-5557

Joe A. Stone
Department of Economics
University of Oregon
Eugene, Oregon 97405
(541) 346-3902

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

EXHIBIT
3

STB Finance Docket No.33388

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

VERIFIED STATEMENT OF GEORGE L. STERN

My name is George L. Stern. I am currently a Transportation Consultant with an office at 255 E. Brown Street, Suite 110, Birmingham, Michigan 48009. During the last 38 years, I have held various positions in the railroad industry including President and Chief Operating Officer of the New York & Atlantic Railway, President and Chief Executive Officer of the Chicago & Illinois Midland Railway, Assistant Vice President - Operations of the Grand Trunk Western Railroad, Vice President - Operations of the Detroit Toledo & Ironton Railroad and Manager of Distribution, Plastics Division, Vistron Corporation, a division of Standard Oil (Ohio). Prior to that, I was a market analyst with Litton Great Lakes Corporation in Cleveland Ohio. I started my management career in the Operating Department of the Baltimore & Ohio Railroad at Willard, Ohio and rose to Manager of Transportation Planning. As a Transportation Consultant I have conducted more than a dozen due diligence reviews of potential short line acquisitions. I am a graduate of Columbia University School of Engineering and the Harvard Graduate School of Business Administration. I am a Professional Engineer registered in the State of Ohio.

Verified Statement of
George L. Stern

I appear in this proceeding on behalf of the State of Ohio at whose request I have reviewed and analyzed the Verified Statements of John H. Williams and Howard A. Rosen, the Description of Responsive Application of Stark Development Board, Inc., Ohio Rail published by the Ohio Rail Development Commission, the Description of Responsive Application of Wheeling & Lake Erie Railway Company, (WLE-2) signed by Mr. Charles H. White, Jr. on August 22, 1997 and a draft copy of The Conrail Transaction: Competitive Effects and Mitigation Opportunities for Indiana and Ohio prepared by Messrs. Mark L. Burton and Wesley W. Wilson, dated October 1997. I have borrowed considerable material from this latter report including all of the material to be found in Appendix A hereto. I have also talked with current and past employees of the Wheeling & Lake Erie Railway ("W&LE").

My purpose in filing this statement is to raise issues of importance to the State of Ohio in connection with the Inconsistent Application of the Wheeling & Lake Erie Railway Company to be filed coincident with this submission. It is my intention to supplement this statement with data from that Application for resubmission within the 45 days permitted.

The W&LE serves a vital role in the economy of the State of Ohio, which I will address in three respects. First, in some instances, the W&LE is the only rail carrier serving various industries. Without W&LE service, those firms will certainly incur higher transportation costs, possibly jeopardize their very existence. Second, in some instances, the W&LE is the "second" rail carrier serving selected industries, offering rail competition to the "first' rail carrier. If the W&LE were to disappear, those industries would become captive shippers to a single rail carrier, with the possibility of increased rates and decreased service which could endanger their very existence. Third, the W&LE serves as a neutral conduit between competing class I railroads and railroads serving Ohio.

The W&LE is a unique railroad. With its roots, its headquarters and its principal business in the State of Ohio, W&LE has shown itself to be aggressive in promoting growth of industry in the State. For that reason alone, it should be preserved. As a railroad that handled 117,000 loads in 1995, the W&LE is too large to be classified as a Class III short line, yet too small to be classified as a Class I railroad. If financially healthy, as a "Regional Railroad", it should have the strength to offer the equipment and service of a Class I railroad, but have the aggressiveness and flexibility of a Class III. For example, the W&LE established shuttle train service between three plants of Wheeling Pittsburgh Steel in the area of Mingo Junction, operated coke train service from the Pittsburgh area to Cleveland and provided Intermodal service from Stark county to Willard and the west. On a few occasions when CSX was unable to move W&LE traffic, the W&LE, with the use of pilots, ran that traffic all the way to Chicago.

The W&LE has been continuously innovative. It worked with Stark county to attract Federal and State funds to construct an Intermodal ramp which gained the support of President Clinton. When Wheeling Pittsburgh Steel needed a secondary source of iron ore, W&LE leased a rail line and dock in Huron, both of which had been idle for a decade or more and instituted service.

According to a recent article in Railway Age[1] the W&LE has been diligent in controlling its costs, passing its efficiency on to its customers. Its low cost-low rate modus operandi has permitted the stone quarries in the Carey/Upper

[1] "How One regional Railroad Survived a Major Customer's Strike", Railway Age, September 1997, page 12.

Sandusky area to ship stone as far as 170 miles to distribution centers in Eastern Ohio, 70% farther than those quarries would have been able to ship but for the W&LE.

The W&LE has hauled cars of CSX in overhead service when that carrier lacked the track capacity to handle its own traffic. W&LE has moved CSX cars from Benwood to Willard to alleviate congestion at CSX's Queensgate Yard in Cincinnati and to keep CSX competitive in the Ohio Valley market. At one time, this service for a foreign carrier constituted as much as 5% of W&LE's traffic. W&LE has offered to reinstitute this type of overhead haulage for either CSX or NS, issues of potential importance to those carriers in order to avoid the capacity problems experienced by the UP-SP in the West and equally important to the State to alleviate potential congestion at Fostoria and Cleveland. The number of trains slated to run through Fostoria pose a danger to emergency services in that community, and the number of trains passing through the west side of Cleveland pose an environmental hazard in a populous community.

The W&LE has shown itself to be important to the State of Ohio by acquiring rail lines and preserving service that might otherwise be abandoned. Just this decade, the W&LE acquired the Akron & Barberton Belt and the adjacent Akron Cluster when Conrail no longer wished to own the lines. Likewise, it acquired the Canton lines of CSX when that carrier wished to withdraw from this market. And it acquired the CSX line from Martin's Ferry to Benwood and secured trackage rights from Greenwich to Willard to assure the viability of that freight traffic lane.

Let me elaborate upon these themes further.

Verified Statement of
George L. Stern

W&LE'S SERVICE TO CAPTIVE SHIPPERS

As of 1995, roughly 70% of the nine million tons of revenue traffic that W&LE handled both originated and terminated on W&LE's system. If W&LE should terminate operations, the impact of a service disruption on W&LE's captive shippers, the communities, and the State would be devastating.

In 1991, Conrail sought to exit the market in and around Akron, Ohio through disposition of its 50% ownership in the Akron & Barberton Belt Railroad plus some 60 miles of other track which it described as the Akron Cluster. At that time 64 Akron area shippers, with the support of Akron Regional Development Board and the State of Ohio supported acquisition of these lines by the W&LE. Those lines now constitute the Akron Barberton Cluster Railroad (ABC), a W&LE affiliate.

Many of these industries are dependent upon W&LE for rail service. Brown Graves Lumber, an affiliate of Empire Wholesale Lumber, one of the largest privately held wholesale lumber dealers in the Eastern United States, is one of them. Another is Akron Storage & Wholesale, a major receiver of plastic pellets and distributor both in bulk and in "gaylord" boxes. A third is GenCorp (General Latex), a major manufacturer of plastic household goods items located in Magadore, Ohio. Still another is Colter Warehouse, a transloader of plastic pellets and chemicals. In the greater Akron area, there are more than a dozen plastic injection molders dependent upon the W&LE for raw material. Many of these are supported by contracts with Rubbermaid, the world leader in plastic household items and one of Ohio's foremost manufacturers.

The W&LE is the sole railroad serving Gambrines, Ohio where, amongst others, there are two large plants dependent upon rail service. One is a refinery of Ashland Petroleum; the other a recently built plant of Timken Steel.

This list is not meant to be exhaustive, but rather to be an introduction. The W&LE is an important factor in the this zone which encompasses five Ohio counties: Cuyahoga, Jefferson, Lorain, Stark and Summit.

It is essential to all these industries and to the State of Ohio that rail service continue. The W&LE is transporting vast quantities of material in bulk. If the product could not be moved via rail, it would need to move via truck with the attendant noise, congestion, pollution and hazard to the public that entails, not to mention the expense to the city, county and state of additional road construction and repair. Most importantly, rail offers a lower cost and more convenient means of moving product, the usual reasons why products move by rail today. Reverting to an alternate mode, without effective rail competition, will almost certainly result in higher overall costs. Many of these industries are marginal now and cannot afford the increased costs that will surely result. Termination of rail service could ultimately force those industries to relocate elsewhere or even go out of business. The State of Ohio supports a viable W&LE to serve these industries.

W&LE AS THE SECOND CARRIER

In a typical rail merger, where two complete (or nearly complete) railroad properties are combined to form a single carrier, some origin/destination pairs that had been served previously only through a two-line haul will be served now by the single merged railroad. Moreover, no shipper that had pre-transaction single line service will lose that service as a result of the transaction. That is not true here because this proceeding does not involve a merger of complete companies but rather the acquisition and division of Conrail's assets by CSX and NS. Invariably, there will be shippers that lose single-line service when assets are divided.

Such is the case here. One such case involves producers of aggregates in west-central Ohio (e.g. Wyandot County) that ship large quantities of crushed stone to eastern Ohio. A second "2 to 1" example involves the movement of Ohio Valley coal to Centerior Electric's generating facilities at Eastlake and Ashtabula.

There are currently two prominent quarries in Wyandot County, one owned by Wyandot Dolomite and the other by National Lime and Stone. Post transaction, both will be served by CSX at origin but their principal consignees at destination will be served by NS, so that a significant volume of eastbound aggregates will have to be interchanged from CSX to NS at Crestline (and the empty cars on the return route). Interchange imposes costs and these aggregate shippers are, therefore, appropriately fearful that the post transaction rail rates they face to reach those customers and distribution facilities on former Conrail tracks will be higher and service poorer than at present. Inasmuch as transportation costs represent a large part of the delivered price, these stone producers contend that any measurable increase in rail rates could prohibit them from competing effectively in destination markets.

Competitive stone rates are crucial to the State of Ohio because most of this aggregate is used in highway road work, either as a component of asphalt, in concrete or as a sub base. Any increase in costs to the State will directly constrict the State's highway program and could have the perverse effect of increasing highway traffic to cause increased need for highway construction and repair.

While it might be possible to convey trackage rights to NS to serve these quarries, there is no indication that either NS or its labor unions are amenable to use them. NS chose to give trackage rights to W&LE on its Sandusky branch to serve both the Rogers Group Quarry and France Stone rather than serve either quarry itself. It is important to the State that W&LE continue to serve all four of these quarries since the W&LE serves major destination sites in eastern Ohio.

It is self evident that where two entities serve a market, there is a greater probability of competition with its attendant benefits to direct consumers and indirectly the population of the entire State. It is understood that the presence of two rather than one rail carrier in any particular market does not guarantee effective rail-to-rail competition in that market anymore than the presence of only one market participant guarantees monopoly pricing. The efficacy of two rail carries and the detrimental impacts of a single serving railroad both depend on a number of factors including the degree of rivalry or propensity for collusion between railroads, the availability of alternative rail carriage to or from geographically distinct markets, the availability of non-railroad transportation substitutes, the ability of producers to substitute products for which there are other transportation alternatives available, and the overall ability (both knowledge and skill) of shippers to identify and evaluate the range of potential alternatives.

Another example of W&LE's value as a rail competitor is its service for to Wheeling Pittsburgh Steel (hereinafter "W-P"). Faced with the possibility of monopoly pricing on its ore moving ex lake from Great Lakes origins via Ashtabula, OH, W-P utilized the W&LE to move ore from boats docking at Huron, an idle dock on an idle NS branch line by rail to the customer's plant. With this transaction, W-P and the State are concerned that this competitive route is in jeopardy. W&LE leases both the line and the dock on a thirty day basis. Once NS gains control of the dock at Ashtabula and the line from there to Wheeling-Pitt, it has great incentive to cancel W&LE's leases.

The State should request the STB to direct NS to enter into a long term lease or sale of these facilities to the W&LE. In addition, the W&LE should be granted trackage rights to the Lucas County port facilities in Toledo. Huron can only accommodate the pre Poe lock class ore boats (750 feet in length and 77' beam), while Toledo can accommodate the newer 1,000' long, 105' beam ore boats that serve Cleveland, Conneaut and Ashtabula. Access to the larger capacity boats will assure that the W&LE is technologically competitive, which is not only important to Wheeling Pittsburgh Steel, but potentially important to steel mills in Warren, Youngstown and Wierton.

The same logic holds true for the movement of coal in the opposite direction. The W&LE is the only carrier dependent upon Ohio coal. CSX and NS have a greater incentive to move coal from the Monongahela district of Pennsylvania, the Big Sandy district of Kentucky or the coal fields of West Virginia. Unless the W&LE maintains its position in Huron and gains a competitive position in Toledo, NS and CSX have a monopoly at the Great Lake ports of Ashtabula, Sandusky and Toledo and control the traffic going to the B&LE for movement to Conneaut.

Iron ore and coal are not the only commodities calling for sustenance of the W&LE for competitive balance. As a result of this acquisition, CSX would have a monopoly at Akron and Canton were it not for the W&LE. The presence of the W&LE is vital to such important industries to the State of Ohio as Timken and Republic Engineered Steel. As a small example, W&LE moves scrap to both plants from Cleveland, a market most Class I railroads would consider too short.

The W&LE has proven of great importance to opening the market for Ohio grain, particularly feed corn, to the poultry markets of the Shenendoah Valley, by use of its trackage rights on CSX to Hagerstown. While this is not a large move, it is another example of how W&LE provides railroad to railroad competition.

W&LE has likewise been valuable in providing rail competition in its movement of coke from Clairton Works of U.S. Steel to LTV in Cleveland. This move can be enhanced upon expiration of the contract granting exclusive access to the plant to the Union Railroad when U.S. Steel sold it to Transstar, and the STB should insure that W&LE is given equal access to the Clairton plant upon expiration of that contract. This will become even more important as coke ovens are closed at other steel mills in Cleveland. W&LE has also been a major participant in the movement of tank cars of Coal Tar Pitch which moves to a variety of customers.

Potentially, the W&LE could move coke to the Detroit area where Great Lakes Steel shut down its coke ovens several years ago. While NS will serve this market, W&LE is, once again, the main source of potential competition in conjunction with the CN. In fact, W&LE could protect its current traffic to and from Michigan and Ontario with a direct interchange with the CN in Toledo. The W&LE has shown that it is willing to set truck competitive prices in the Cleveland market; it could be expected to do so on cement in conjunction with the Ann

Arbor Railroad and on scrap metal, chemicals and paper in conjunction with the Grand Trunk Western. It is possible the Neomodal site could be a distribution site for finished automobiles, vans and trucks. The STB should grant this right of interchange.

Likewise the W&LE could assure its connection with the CN in Buffalo either by direct access or, at least, with a direct interchange with the Buffalo & Pittsburgh Railroad in New Castle. Not only is this important for maintenance of the current traffic from Quebec, but it opens up the possibility of export/import container traffic through the ports of Montreal and Halifax to or from the Neomodal facility in Stark County. Timken, for example, exports, utilizing 20' containers, through east coast ports, but does not use rail to get there. W&LE is the only railroad to serve this new intermodal facility which serves the adjacent Industrial Park and the surrounding area.

At present, all the traffic from the Neomodal facility moves westward through Willard (CSX) or Bellevue (NS). Unfortunately, CSX has announced that it will build an intermodal facility at Collinwood Yard in Cleveland and NS has announced that it will built an intermodal facility at Crestline, Ohio. Unless the W&LE can offer competitive rates and service, Neomodal will cease to exist. It might be well for the W&LE to obtain trackage rights to Collinwood, but more importantly, it should have trackage rights to the Burlington Northern Sante Fe "El Chico" intermodal terminal and the Union Pacific "Global II" facility in Chicago. At the very least, it should obtain rate and service guarantees in order that Neomodal remain competitive.

It would be even better if the W&LE were given trackage rights to the Belt Railway of Chicago so that Ohio could be assured that its W&LE served industry were assured of competitive rates with not only the BNSF and UPSP to the west, but the Illinois Central to the south and the Wisconsin Central to the northwest and Canada.

W&LE AS A NEUTRAL CONDUIT TO OTHER RAILROADS

The Neomodal Terminal is a state of the art intermodal rail freight terminal funded by Federal Highway Administration and the Ohio Department of Transportation with $17 million in Intermodal Surface Transportation Efficiency Act and Congestion Mitigation Air Quality funds. Neomodal represents a public sector (Stark County), private sector partnership. Neomodal intentionally selected a terminal site located on the W&LE, so as to have direct competitive connections to Conrail, Norfolk Southern and CSX Transportation. As Stark County says in its submission "It is imperative that competitive rail service remain intact. Competitive rates. Reliable service with competitive transit times and direct access to intermodal rail transfer points from more than one Class I carrier are necessary for survival in the domestic and world market."

W&LE AS A CONDUIT TO OTHER CARRIERS

W&LE has shown it has the ability to serve as a neutral carrier to bring traffic to any one of the three Class I railroads in northern Ohio. This is a clear example of the place of neutral carriers, one is of great importance to the State of Ohio. The presence of a neutral carrier will be vital to industrial development such as the Stark County Industrial Park adjoining the Neomodal ramp, in the future. Industry, understanding the importance of two carriers to promote competition has, historically, demanded development sites served by more than one carrier. With the reduction of Class I carriers to just two in Eastern and Northern Ohio, and the great distances apart of their main lines, it will become very difficult to find sites which both can reach. They have little parallel track and don't cross each other very often. Industries will be more favorably inclined to build in Ohio if they can be assured of a viable regional railroad offering nondiscriminatory access to both NS and CSX.

IMPORTANCE OF W&LE TO THE OHIO ECONOMY[2]

In 1995, Conrail CSXT, and NS combined to provide 32% of all Class I railroad transportation in the U.S. measured in ton-miles while employing 42% of all U.S. railroad employees. The three carries, together, serve 23 individual states and connect the U.S. to two Canadian provinces.

The testimony of CSXT and NS witnesses validates the typical treatment of rail providers as profit-maximizing sellers. However, so long as existing economic conditions provide effective competition in rail-served markets, profit maximizing firm behavior is perfectly consistent with desirable and efficient economic outcomes. If, however, market conditions seriously inhibit the functioning of competitive forces, these limitations combined with carrier desires for economic profits can significantly elevate prices to noncompetitive levels, reduce the volume of transacted services, and distort the usage of valuable resources. Consequently, the desirability of the transaction depends on whether it enhances competition and, thereby, further disciplines railroad pricing behavior or whether it, instead, dampens rivalries and expands the degree of market power available to transportation providers.

Economic theory suggests that, under competition, a seller can not impose noncompetitive prices. If it does, its

---

[2] This section is based upon the paper cited in my introduction by Wesley W. Wilson, University of Oregon and Mark L. Burton, Knoxville, Tennessee

customers will seek the commodity or service in question from an alternative seller.

In cases where existing customers possess both the willingness and ability to switch providers and/or when new customers are being regularly added to the market, available market alternatives can be an extremely effective means of curbing noncompetitive pricing behavior.

Given that transportation services are simply an input into other productive processes, and assuming that the full related final markets are, themselves, effectively competitive, the *willingness* of rail shippers to opt for a cheaper transportation alternative hardly seems surprising. In a purely commercial setting, competitive pressures preclude loyalties that result in inefficient expenditures. On the other hand the *ability* to respond to competitively priced transport alternatives is a function of the projected transportation savings and any fixed costs associated with switching to the alternative.

Clearly, switching costs for rail customers are lowest when the available alternative involves the use of another railroad. Consequently, rail merger policy over the past few years has focused on preserving the pre-transaction number of carriers in post-transaction markets. Very often, this has been accomplished through the extension of trackage rights that allow one carrier to operate over a rival carrier's trackage.

At face, this may seem to be an effective remedy to potential increases in market concentration. There are, however, three general conditions that must be met if trackage rights are to effectively enhance the level of competition. These conditions include: (1)the requirement that trackage rights be accompanied by access to the incumbent's customers; (2)the requirement that trackage rights be priced at competitive levels (long run incremental cost); and (3)the requirement that the foreign carrier's train movements be provided with a level of service that is at least as good as the host proves for its own traffic.

As noted earlier, in 1995, the W&LE handled roughly nine million tons of revenue traffic. Of this total, roughly 70% both originated and terminated on the carrier's own system. Of the remaining 30%, roughly 5% was bridge traffic and the other 25% was traffic that the W&LE either originated and forwarded in interchange or received in interchange for delivery to a final destination. A summary of W&LE's 2.3 million tons of 1995 Forwarded and Received Traffic is shown in the table appended.

The W&LE interchanges traffic almost solely with the three other Class I carriers in the east: Conrail, NS and CSX. CSX accounts for about half of the Interchange traffic, NS about 40% and Conrail the remainder. Most of the Conrail traffic is Received from Conrail; for the other two carriers about twice as much is received as forwarded.

It is highly unlikely (though not impossible) that Conrail interchanges traffic to the W&LE that it could deliver itself, so that any interchange traffic that the W&LE moves to or from that shipper is almost certainly interchanged with either NS or CSX. Depending upon which of these latter two carriers acquires Conrail's trackage and access to the shipper in question, the W&LE's service could become entirely redundant, particularly in cases where the surviving transaction carrier either (NS or CSX) terminates the traffic.

Situations in which the W&LE and Conrail share shipper access are not the only ones in which traffic could be diverted away from the regional carrier. The W&LE could, in fact, lose traffic even when it is the only carrier serving a particular shipper. It may happen that, by acquiring a shipper on Conrail, NS or CSX can now offer single line service from a producer to a consumer both of which are on its line, whereas the producer or consumer located on the W&LE is dependent upon joint line service. While this scenario may be one that generates the sort of efficiencies that NS or CSX cite in support of the transaction, it unequivocally harms the W&LE and therefore the shippers it serves. The danger is minimized if the input it produces has reasonably unique characteristics that preclude the production of close substitutes at other locations.

On the positive side, a closer examination of the waybill records detailing the W&LE's interchange movements reveals that in roughly 50% of the cases, none of the eastern three Class I carriers originates or terminates the movement. Much of this interchange traffic is originated or terminated by other short-line carriers, other regionals or western Class I railroads, so that Conrail, NS and CSX only bridge the traffic. On the other hand, a significant portion of the W&LE's interchange traffic is coal and scrap steel, two products that are readily at a variety of locations to be served by post-transaction NS or CSX,

SUMMARY AND RECOMMENDATIONS

In this paper, I have sought to emphasize the importance of the Wheeling & Lake Erie Railroad to the economy of the State of Ohio. I have stressed three reasons for this:

1. The W&LE serves many customers exclusively.

Without rail service, these plants will suffer higher costs which will surely hurt their competitiveness and, may, cause them to move or go out of business. At the very least, it will cause them to increase truck transportation. Since most of the product being moved is heavy bulk goods, increased truck traffic will be detrimental to the health, safety and pleasurable use of the roads of many citizens of Ohio. In addition, local communities, counties and the State will be forced to increase highway construction and repair funding.

2. The W&LE offers an alternative to patrons that might otherwise be "captive shippers" to one of the class III railroads serving Ohio. In this way, they offer the necessary competition to assure Ohio industries rates and service comparable to transportation expenses of their competition. Otherwise they might be forced to restrict growth or, even, withdraw from the marketplace, thus restricting or reducing Ohio employment and economic growth.

3. Even when firms are captive to the W&LE, by its very size and limited service area, the W&LE acts a neutral extension of the firms it serves. In this manner, it extends the reach of both NS and CSX. The ability to offer both carries to firms located on its line is important to keeping existing and locating new industries within the State of Ohio.

Even though the W&LE is considered to be managed well, there is substantial reason to worry that W&LE is "in mortal danger" and "on bankruptcy's brink" [3] from diversions due to

---

[3] Pat Foran, "Industry News", Progressive Railroading, September 1997, page 10

acquisition of Conrail' lines by NS and CSX. The STB should not let this happen.

In order that the W&LE be preserved in a stable manner, it is important that the STB:

* Order all current gateways for interchange between the W&LE and NS and CSX, including all current Conrail gateways, remain open.
* Extend W&LE's lease on the rail line access and dock at Huron.
* Extend W&LE's right to serve stone quarries on NS' Sandusky branch.
* Grant trackage rights to the W&LE to serve the iron ore and coal docks at Toledo.
* Grant trackage rights to the W&LE to permit interchange with the Ann Arbor and Grand Trunk Western railroads with freedom for them to interchange openly with their connections.
* Grant trackage rights to Buffalo for interchange with the CN or, alternatively, to New Castle for interchange with the Buffalo & Pittsburgh.
* Grant W&LE trackage rights to Collinwood. Order that CSX and NS shall establish reasonable schedules for interchange to manifest and intermodal trains at Bellevue and Willard.
* Grant W&LE trackage rights to Wierton Steel.
  Grant W&LE trackage rights to steel mills in Youngstown and Warren.

In addition, the STB should hold open these proceedings for a period of at least five years for imposition of conditions due to damage not foreseen at this time.

George V. Voinovich
Governor

State of Ohio
Office of the Governor
Columbus 43266-0601

EXHIBIT
4

October 10, 1997

Mr. Charles H. West
Chairman
Stark Development Board
116 Cleveland Avenue NW, Suite 600
Canton, Ohio 44702

Dear Mr West:

I am writing to confirm the State of Ohio's support for increased usage of the NEOMODAL intermodal hub at Navarre.

Ohio spent over $14 million on the NEOMODAL facility and related highway improvements. The result is a state of the art intermodal terminal equal to the best facilities in the nation. As I understand it, the Stark Development Board and the Wheeling & Lake Erie Railway have worked together to steadily increase usage of NEOMODAL every month since it opened nearly two years ago.

Still, usage of NEOMODAL by major railroads like Norfolk Southern and CSX, could be greater. In my recent meetings with the CEOs of these two railroads, I personally urged them to increase their use of this facility.

I understand that the Stark Development Board and Wheeling & Lake Erie will soon file petitions as part of the Conrail acquisition proceedings to request that the Surface Transportation Board mandate increased usage of the NEOMODAL facility by Norfolk Southern and CSX. The State of Ohio is a party to these STB proceedings and will file in support of the Stark Development Board/Wheeling & Lake Erie NEOMODAL requests.

Please do not hesitate to let me know how the State of Ohio can further help with NEOMODAL issues.

Sincerely,

George V. Voinovich

George V. Voinovich
Governor

EXHIBIT 5

Post-it™ Fax Note 7671	Date 10/17	# of pages ▶ 2
To Neill O'Brien, Esq.	From	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 659-4934	Fax #	

...tion that's ...rtation Board ... certain shippers which heretofore have had single line service on Conrail being subject to joint line or interline service involving movements over NS and CSXT?

A. Yes, there are some instances like that.

Q. Did you give consideration to that in your statement, Mr. Snow?

A. No, I don't talk in my statement, that I'm aware of, of the so-called two-to-one -- sorry, the so-called one-to-two problem.

Q. Within your experience, Mr. Snow, are there any categories of commodities that would be particularly adversely affected in a change from single line service to joint line service?

A. Not that I'm aware of.

Q. Within your knowledge, are there any joint line movements, where the two carriers are class 1 railroads, of sand?

A. Sand normally travels a fairly short distance. I'm searching my memory of any interchange arrangements we have on sand. I'm not aware of any off the top of my head.

Q. And gravel?

A. The same.

Q. Aggregate?

A. The same. Not aware of any in those cases.

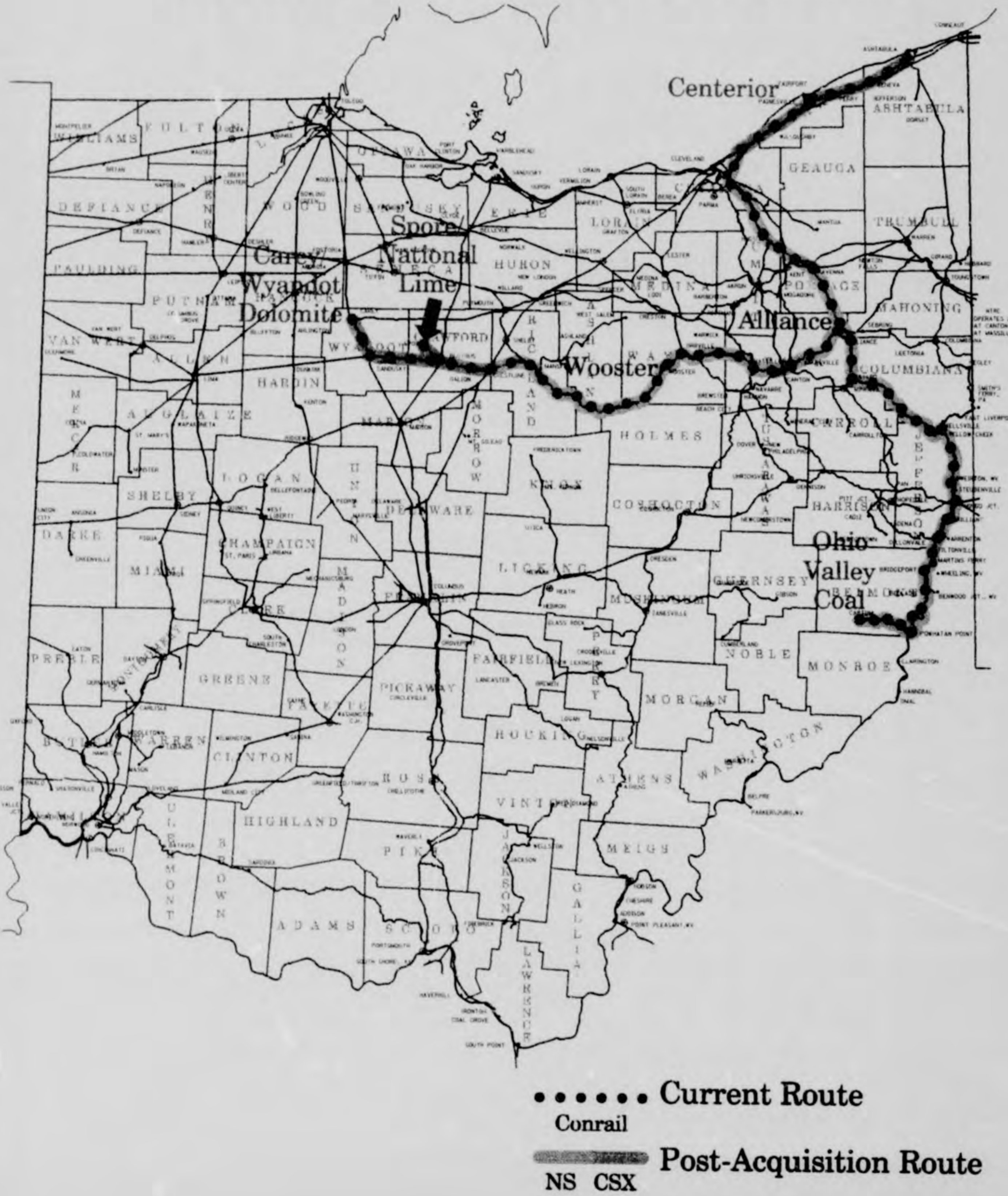
Q. You started to explain, Mr. Snow, that in cooperating railroads can overcome some of the problems that inhere in interline and joint line service. Can you outline what some of those steps of the cooperating railroads might be?

A. The steps that would address directly the problems that you referenced in your questions to me, a special attention, for instance, to the joint line move that's created so that it does not place the shipment or the lading, burden the shipment of the lading with excess time in the yard, would be one that comes to mind. Attention to expeditious handling to give that lading, that shipment, a time profile consistent with single line service.

Perhaps treating it contractually between the carriers in some way that deals with the tracing and tracking and liability issues conceivably. But I think, as I suggested earlier in response to Mr. Stone's questions, that the

Exhibit 6

Aggregate and Coal "1 to 2" Movements



Wyandot Dolomite, Inc.

EXHIBIT

7

GENERAL OFFICE AND PLANT
P.O. Box 99, Carey, OH 43316-0099
Tel: 419/396-7641
Fax: 419/396-6094

SUBSIDIARY
HANCOCK ASPHALT & PAVING, INC.
FINDLAY & CAREY, OH

VERIFIED STATEMENT OF TIMOTHY A. WOLFE
ON BEHALF OF
WYANDOT DOLOMITE, INC.

My name is Timothy A. Wolfe, Executive Vice President of Wyandot Dolomite, Inc., P. O. Box 99, 1794 County Road 99, Carey, OH, 43316.

My duties include the negotiating of contracts for my Company and helping my customers negotiate as well. Also, marketing our product by rail to areas that can be competitively served by rail with our products.

Wyandot Dolomite, Inc. ("Wyandot") is a family business founded in 1949, with approximately 70 employees. We have been in the stone (aggregate) business for 49 years in this same location. We produce limestone aggregates for the steel, construction and ballast business. Wyandot's Carey, Ohio, based quarry was established to take advantage of the rail lines that link us with the industrial centers of northeast Ohio, which now account for 70 percent of our stone business annually.

Wyandot ships approximately 12,000 open top hoppers or 1,200,000 tons annually. We expect to increase this business by 10 to 15 percent per year for the foreseeable future, if the rail merger does not interrupt our being served by two Class I railroads, CSX and Norfolk Southern.

Our customers will generally receive between 100,000 and 400,000 tons a year. We also move a substantial amount of railroad ballast into the midwest states and rail stone via a distribution yard for use in Warren Consolidated Company's steel making process. Wyandot ships approximately 150,000 to 225,000 tons annually on Conrail to our customers, East Ohio Stone Co., in Alliance, OH (approximately 125 rail miles from Carey). This business represents approximately 15 percent to 20 percent of our rail stone sales. And over $600,000/year in revenue which is 12 percent of our total stone revenue.

On this Carey to Alliance traffic handling by Conrail, Conrail provides three times weekly service both to and from Carey. Alliance-bound traffic from Carey moves on Conrail in 35-car blocks. I understand that this traffic is not handled in any sort of "unit train" service, but rather is consolidated with other trains in route to Alliance. (I have discussed with Conrail the possibility of moving this traffic in larger blocks of 50 to 70 cars, with less frequent service. My intent was to find a way to obtain lower rates. I am still interested in such an arrangement if it will help to keep rail costs down.) The rail rate that my Alliance customer is paying Conrail today averages $4.00/ton. This Conrail rate is averaged due to the fact that East Ohio Stone Co. provides 23 of its own rail cars, which accounts for a portion of the cars needed for the movement of this traffic. Unless NS, CSX or the Surface Transportation Board take appropriate action, this business will be lost, post merger, along with 5 to 10 jobs at Wyandot.

Carey, OH, is the largest originating shipping point of intrastate stone movements in Ohio, with over 30,000 railcars loaded annually from this vicinity. If rail service is disrupted, Wyandot's business of moving 12,000 rail cars a year could not be handled by trucks as the quantities and distances are too great and the costs prohibitive. The stone business would be picked up by the producers off of Lake Erie. Michigan and Canada would benefit bringing more stone in on the docks at the flats in Cleveland which in turn would increase prices to the outlying areas and would increase truck traffic out of downtown Cleveland, greatly increasing pollution and causing traffic problems.

The particular harm that Wyandot will experience if the Surface Transportation Board rules in favor of the Conrail acquisition between CSX and NS as it is currently proposed involves the loss of direct, single line rail service that Conrail presently provides. Subsequent to the acquisition of Conrail, shipments originating from Carey, OH, to Alliance, OH, will be relegated to two-line service with the origin being CSX and the destination being NS. Experience dictates that dual line service provided by two Class I railroads will result in higher freight rates logistical problems that will make these hauls inefficient. With these factors, shipments to such eastern points as Alliance would be impossible to maintain, and the result would be a substantial loss of business for Wyandot and reduced employment of Ohio workers. The effects of this stone not reaching market in train load quantities will have a tremendous impact on all construction, ODOT projects, commercial building and residential housing and development. The effect will hurt the people in these industries, but most importantly, it will hit the taxpayers of Ohio in their pocketbooks because they will be paying more for less.

The Board may recall that Wyandot originally offered a qualified letter in support of the Application. I understand, to my regret, that this letter was added with others as a portion of the Application NS, CSX and Conrail have filed. Back in May of this year, I was approached by NS representatives who solicited from me a letter of support. We had several discussions concerning my worries about the Carey to Alliance traffic, and NS ultimately assured me that NS would provide single carrier service between these points exactly as Conrail was doing today. (This, of course, suggests that NS was willing to assume this traffic at or below the rates Conrail is currently charging). In the letter I wrote, I conditioned Wyandot's support for NS and CSX as follows: "If the merger takes place and we are served by both CSX and NS in a competitive and service-oriented manner then we will see great benefits to our business and to the taxpayers of Ohio."

Wyandot has since come to find that we will not receive that which NS had promised in May -- namely single carrier service by NS between Carey and Alliance. I am disappointed by this development, and I feel as if I have received the typical "campaign promise". Naturally, I cannot now support the merger as constructed, and I withdraw my earlier letter of support.

Despite our disappointment at learning that NS would not provide direct rail service between Carey and Alliance, I have had several meetings since with both CSX and NS Representatives. Of particular note was my meeting with Gary Windof, Director - Aggregates for NS on or about August 1, 1997. Although Mr. Windof seemed to appreciate my concerns on the Carey-Alliance business, he would not or could not commit NS to the single carrier service we sought.

He did, it seems, recognize the economic impact that joint line service might have on this route, and he offered what amounted to a one-year rate "freeze" (at existing Conrail rates) on this traffic after the merger took place. This was, to me, at least a recognition that a joint CSX-NS move of Carey to Alliance traffic would be more costly, but Mr. Windof's offer was merely a one-year "stay of execution," and therefore, unacceptable.

In a similar manner, I traveled to Jacksonville, FL, on August 28, 1997, to meet with various CSX personnel, including Derek Smith who is Assistant Vice President - Minerals. While attentive to my concerns, this meeting proved wholly unproductive. The end result of my meetings with NS and CSX is that Wyandot is no closer to preserving the single carrier Carey to Alliance service that it receives today.

The Wheeling & Lake Erie Railway Company ("W&LE") is very important to us because they transport most of the stone we ship by rail. As a result, we very much need W&LE to survive. I have been contacted by representatives from the State of Ohio to discuss the future of the W&LE. Wyandot would like to seek new business opportunities in connection with W&LE. The State of Ohio and Wyandot have agreed to a common course of action, and we are supporting the State of Ohio's October 21st filing, and we understand that the State of Ohio now supports us in our October 21st filing.

We ask the STB to please consider the relief spelled out below for the preservation of 10 miles of Conrail trackage rights from Carey, OH, to Upper Sandusky, Ohio, and single line service to Alliance, OH, that have been ignored by NS and CSX. The preferred solution would be for NS to be obligated to exercise trackage rights over future CSX line between Carey, OH, and Crestline, OH, (where there will be a connection to a NS line to Alliance, OH). Or for someone totally independent of NS/CSX to be designated by us to preserve no less than the trackage rights now held by Conrail, from Carey, OH, to Upper Sandusky, OH, and on CSX trackage from Upper Sandusky, OH, to Crestline, OH.

We cannot afford to lose a Class I carrier at Carey, OH, nor single line access with competitive rates and service to our customers. We also cannot afford to lose the services of the W&LE.

VERIFICATION

COUNTY OF WYANDOT)
) ss:
STATE OF OHIO)

Timothy A. Wolfe, 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.

Timothy A. Wolfe
Executive Vice President
Wyandot Dolomite, Inc.

Subscribed and sworn to before me on this 17th day of October, 1997.

Joyce A. Wyatt

Joyce A. Wyatt, Notary Public

My Commission Expires: May 22, 1999

October 17, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

EXHIBIT
8

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 RONALD W. KRUSE
OF NATIONAL LIME & STONE COMPANY

1. My name is Ronald W. Kruse and I am Vice President of Marketing for National Lime & Stone Company ("National"). My responsibilities include direction and oversight of all sales and marketing efforts for National. I graduated from Ohio Wesleyan University in 1957 and joined National at that time. Since 1957, I have held a variety of positions with National in finance and sales. I was named Vice President of Marketing in 1975 and joined the Board of Directors in 1993.

The purpose of this statement is to: (1) describe the detrimental effect on National and its sales if the proposed acquisition of Conrail and the division of its tracks by CSX Transportation ("CSXT") and Norfolk Southern "NS") is permitted to proceed as CSXT and NS currently propose, and (2) describe the remedy National seeks to preserve its business.

2. National Lime & Stone Company ("National") is one of the largest suppliers of crushed limestone products in Ohio. Founded in 1903, National is headquartered in Findlay, Ohio and operates in Ohio eight quarry and processing locations (at Bucyrus, Buckland, Carey, Delaware, Findlay, Lima, Marion, Upper Sandusky and Wapakoneta), four rail distribution yards (at Wooster, Canton, Tusky Valley (Midvale) and Cadiz) and two truck distribution yards (at Rimer and Westerville, Ohio). National produces and ships more than 11-million tons of crushed limestone per year for aggregates and industrial mineral markets.

Limestone products in the aggregates markets are used for road stone and construction. National's industrial mineral products, for steel, glass, environmental and agricultural markets, include limestone selected by customers for its specific chemical character and limestone processed by drying or calcining to produce dried limestone and lime products respectively.

3. National's products are shipped to its customers via rail and truck transportation as appropriate for each customer given availability of service and relative cost. National has been a long-time substantial shipper on Conrail, CSXT, Norfolk Southern and Wheeling and Lake Erie Railroad ("WLE"). It depends on the rail service of those four common carriers for shipping over 3,000,000 tons per year of stone to its customers. It relies on

"single line hauls" to its customers which are essential for it to ship products to customers at competitive costs to the customers. For larger volume (more than 1,000 tons) and/or longer distance (more than 75 miles) shipments, rail transportation is essential to be cost competitive, whereas truck shipment is feasible only for smaller volumes and shorter distances. Barge shipping is not available to National, as the closest navigable body of water, Lake Erie, is 60 miles from Carey and 50 miles from Bucyrus.

4. National is informed that under current proposals for the division of the Conrail system, there will be a division point at Crestline, Ohio whereby CSXT would acquire and operate Conrail trackage to points west of Crestline and Norfolk Southern would acquire and operate Conrail trackage to points east of Crestline. Under such proposals for the division of the Conrail system, National would be confronted with "two line hauls" from its two largest plants, at Carey and Bucyrus, Ohio. If this were to occur, National would be unable to ship at competitive rates to long-time significant customers of National at points east of Crestline, and, as a result, would lose substantial business. This harm would be compounded if WLE were financially undermined as a result of CSXT and Norfolk Southern acquiring Conrail's trackage rights.

At Carey, National is currently served by Conrail, CSXT and WLE. WLE is an Ohio short-line railroad providing service to only a few destination markets; single-line service to several key destination markets, as described below, is only available via Conrail. Shipments from Carey of dolomitic limestone, selected by customers for its high magnesium and low silica and sulfur content (for which there is only one alternative source in Ohio of comparable chemical content for customers in Ohio), will or potentially will be impacted by the proposed division of the Conrail rail system are set forth below.

The annual freight charges for shipments via Conrail for Carey and Bucyrus exceed $3,000,000.00.

National's shipments from Carey via Conrail to points east of Crestline, Ohio include the following:

- Calcined dolomitic limestone, i.e., lime, to Weirton Steel at its Weirton, West Virginia plant at Sales volumes of $564,005.00, $780,433.00 and $438,953.00 for 1996, 1995 and 199f4 respectively. Weirton pays for the rail freight cost for the shipments which National estimates to be $13.00-$14.00 per ton.
- Dried dolomitic limestone to PPG's Meadville (Stony Point) Pennsylvania plant at sales volumes of $259,505.00, $252,986.00 and $264,802.00 for 1996, 1995 and 1994 respectively. National pays for the rail freight for these shipments at a cost of $14.30 per ton.

Dried limestone to Lesco's plant at Martin's Ferry, Ohio at sales volumes of $374,000.00 and $243,000.00 for 1996 and 1995 respectively. Lesco pays for the rail freight costs for these shipments. National estimates the costs of such shipments to be $12.00 per ton.

National's shipments from Carey via WLE to points east of Crestline, Ohio at a contracted cost of $3.10 per ton include the following:

- Dolomitic limestone to Medina Supply at Medina, Ohio at sales volumes of $2,410,000.00, $2,641,000.00 and $3,333,000.00 for 1996, 1995 and 1994 respectively.
- Dolomitic limestone to National's sales yard at Canton, Ohio representing sales volumes sold to customers from that location at $2,757,233.00, $1,997,393.00 for 1996 and 1995 respectively.
- National commenced shipping to its sales yards at Tusky Valley in Midvale, Ohio in June, 1996 and Cadiz, Ohio in April, 1997.

The freight costs payable to WLE for shipments in 1996 were $3,300,000.00 (and National has budgeted $3,500,000.00 for such costs in 1997).

6. At Bucyrus, Conrail is the only provider of rail transportation available to National. Shipments from Bucyrus that will or potentially will be impacted by the proposed division of the Conrail rail system are set forth below:
   - Limestone to Weirton Steel at its Weirton, West Virginia plant at sales volumes of $776,440.00, $521,393,00 and $373,617.00 for 1996, 1995 and 1994 respectively.
   - Limestone to National's yard at Wooster, Ohio via 50-car unit trains, representing sales volumes sold to customers from that location at

$2,331,020.00 and $1,659,997.00 for 1996 and 1995 respectively.

The annual rail freight costs for the shipments to Weirton Steel from Bucyrus are estimated to exceed $1,100,000.00 and the rail freight charges for the shipment to National's sales yard at Wooster were $970,000.00 in 1996 (National has budgeted $1,300,000.00 for shipments to this sales yard from Bucyrus for 1997).

7. If National were faced with the prospect of "two line hauls" from Carey and Bucyrus to points east of Crestline, Ohio, it would suffer the loss of all the business currently shipped by Conrail from these locations as noted above. It would likewise be prevented from developing new business from these or other customers at locations to the east.

National would also face the possibility of losing the business represented by the shipments from Carey by WLE as noted above.

Moreover, National would lose in its entirety the benefit of its substantial investments in its sales yards in eastern Ohio and the capital committed to operations at Bucyrus and Carey to serve National's eastern customers.

This may be explained more specifically:

- A "two line haul" will result in prohibitive increased rail freight costs, lack of sufficient rail cars and poor service: The costs of a two line haul would necessarily be substantially more than a single line haul as there would be the need for two sets of locomotives and two separate crews, i.e. one set

STB FD 33388 10-21-97 D 182885 3/3

of locomotives and crew for each line, with the attendant cost for each. Since each carrier prefers to use their cars on their own lines, there would be a certain shortage of available cars to serve National at Carey and Bucyrus. The need for coordinating between the two lines for switches of locomotives and transfer of cars would inevitably result in delays and poor service to the detriment of National's ability to deliver timely products to its customers.

- Truck shipments would not be cost competitive or feasible given tonnage volumes and distances.
  - At Carey, National estimates that freight costs to make shipments noted above by Conrail and WLE would increase by $6,500,000.00 due to an incremental increase in freight costs per ton of $5.00. Moreover, in addition to the increased costs, it would not be feasible to ship by truck to customers for those accounts currently served by Conrail and WLE, as it would require in excess of 57,000 truck shipments to cover the annual volumes of the WLE shipments. In addition, the distances to the customer from Carey make truck shipments unfeasible. Weirton, WV is 160 miles from Carey. Meadville, PA (PPG's Meadville Plant) is 250 miles from Carey. Martins Ferry, OH (Lesco) is 180 miles by rail, but would be 210 miles by truck. National also plans to grow its business to the East,

including to PPG at is Mount Holly Springs, PA plant. That plant is over 500 miles from Carey, thus only single-line haul rail shipments would be viable to grow this business to the East.

- At Bucyrus, National estimates that if the shipments currently made via Conrail were by truck the freight costs for such shipments would increase by $1,900,000.00 annually, at an incremental increased freight cost of $4.00 per ton. Moreover, it would take 22,000 truck shipments to cover the annual volume of these shipments.

- If National were faced with the increased freight costs noted above it would lose all of the business currently shipped from Carey and Bucyrus to points east as set forth above as National's customers would have lower cost alternatives for all products sold. National's competitors would be able to ship to these customers at costs lower than National's in one or more of the following ways: (I) single line rail shipments from points east of Crestline, Ohio, (ii) truck shipments from locations closer to the customers than National's plants; and in some cases, (iii) shipment via barge.

- If National were to lose the business outlined above, it would lose the benefit of substantial investments it has made to serve such business:

  - National has invested in excess of $6,200,000.00 to acquire the property and to make the improvements for its sales yards in eastern

Ohio all of which would be worthless if National is unable to ship its aggregate products to these locations by rail via single line hauls.

- National has invested in excess of $6,000,000.00 to make capital improvements at its Bucyrus plant. This investment is predicated on producing limestone products for its sales yards in eastern Ohio. This investment would be rendered useless if National is unable to ship its aggregate products to these locations by rail via single line hauls.
- As a result more than 40 jobs would be lost.

8. National proposes as a remedy that CSXT and Norfolk Southern extend to each other cross trackage rights, at no cost to either party, to enable both to serve National's Carey and Bucyrus plants and to do so on terms to enable price competition for such service.

Sepcifically, National needs Norfolk Southern to have trackage rights to serve the Bucyrus Plant (Spore). Trackage rights would be from Crestline, Ohio to Spore. National also needs Norfolk Southern to have trackage rights from Upper Sandusky to the Carey Plant.

VERIFICATION

I, Ronald W. Kruse, verify under penalty of perjury that I am Vice President of Sales and Marketing for National Lime & Stone Company, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on October 17, 1997.

Ronald W Kruse

(Ronald W. Kruse)

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C. 20423

EXHIBIT
9

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
STEPHEN P. ZELNAK, JR.

My name is Stephen P. Zelnak, Jr., and I am the Chairman and Chief Executive Officer of Martin Marietta Materials, Inc.

This statement is submitted in support of the conditions sought by Martin Marietta Materials, Inc. (Martin Marietta) if the STB were to approve the acquisition of Conrail, Inc. by CSX Transportation and Norfolk Southern Railway. The basis for the requested conditions is concern with the impact to shipments of aggregates and lime from Martin Marietta's Woodville, Ohio, lime plant/limestone quarry. Most of these shipments presently move single-line via Conrail and would need to move, subsequent to acquisition, by CSX origin and NS destination.

Martin Marietta is a New York Stock Exchange company with 1996 revenues of $721,947,000. Martin Marietta is the second largest aggregates supplier in the U. S. and one of the nation's leading suppliers of magnesia products through our direct subsidiary, Martin Marietta Magnesia Specialties (MMMS). Martin Marietta ships approximately 7.5 million tons of material by rail with CSX and NS being the two largest providers of rail transportation services. Martin Marietta is also a major supplier of ballast to CSX, NS and a number of other Class 1 and shortline railroads.

The Woodville quarry and lime plants were established (1) to support our Manistee, Michigan, magnesia operation through the supply of approximately 270,000 tons of lime annually, and (2) to supply lime to the steel industry. Several years ago MMMS began shipping lime fines and limestone aggregate by rail to a number of construction-related customers in what proved to be a successful effort to market by-products. Shipments in 1996 were 580,000 tons (aggregate 520,000, lime 60,000). Tonnages have ranged from 565,000 tons to 860,000 tons.

This tonnage is absolutely critical to sustaining the Woodville operation and is being shipped at extremely marginal rates in order to reduce costs in the face of significant competition, and without acceptable transport economics, could not otherwise be marketed for the benefit of MMMS, its customers, and the local community. All of this tonnage has moved single-line by Conrail, but with the acquisition would become two-line hauls with CSX origin and NS destination. Additionally, Woodville competes with producers who currently ship with single-line Conrail Service who will continue to enjoy single-line service post-merger under NS.

If Woodville rates and service were to remain comparable to present levels, we believe the tonnage could remain at current volumes in spite of competition from lime and aggregate delivered by single-line service and/or by water. However, Martin Marietta knows of no two-line haul situations that involve rates or service equal or comparable to single-line hauls. From our experience, two-line hauls always involve higher rates, with the revenues divided between the railroads, less efficient service because of transit times between rail yards, and consequently a negative impact on shipping cost.

In addition to the MMMS shipments noted above, significant efforts have been made to develop new, rail-based business into historical points that will become single line CSX hauls post acquisition (Greater Detroit and points west and to western Indiana). MMMS has had no success in developing this business because of slag and water tonnage in Detroit and local stone quarries in the other areas. From MMMS review of the lines that will become CSX owned post acquisition, we do not believe we can develop competitive traffic to any degree of significance to offset the probable loss of business entailing a two-line move.

The inherent advantages of single-line service have been repeatedly touted by CSX and NS management as primary reasons for the acquisition of Conrail, Inc. In the case of Martin Marietta's shipments from Woodville, Ohio, we are losing single-line service for a level of tonnage critical to our economic viability. We have endeavored, to no avail, over recent months to reach an agreement with the railroads that would assure us of comparable rates and service. We believe the inability to reach an agreement to continue present rate/service levels affirms the negative economic impact of two-line hauls of aggregates and lime.

Martin Marietta is deeply concerned that shipments from its Woodville facility are at high risk with the proposed acquisition of Conrail. The loss of this tonnage would negatively impact the entire Woodville operation and the earnings of MMMS. It is on this basis that Martin Marietta files its request for conditions to the acquisition of Conrail, Inc. by CSX Transportation and Norfolk Southern. We respectfully request consideration and redress by the Surface Transportation Board of our concerns expressed herein.

Submitted this, the 17th day of October 1997.

Stephen P. Zelnak, Jr.

Stephen P. Zelnak, Jr.
Chairman and Chief Executive Officer

STATE OF North Carolina

Wake County

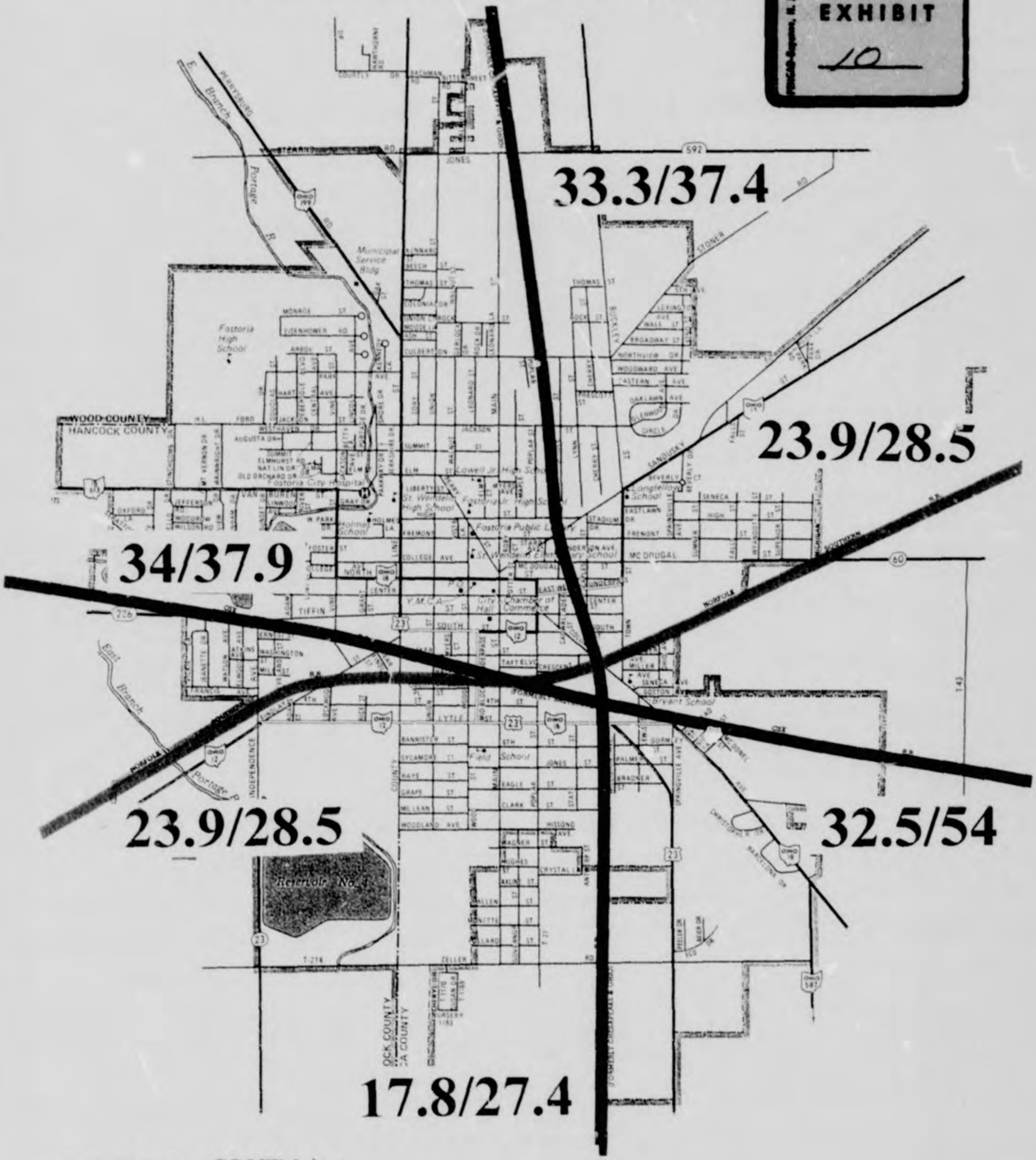
I, Florence [illegible], a Notary Public for said County and State, do hereby certify that, Stephen P. Zelnak, Jr., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

My Commission expires 10/3/2001

TOTAL P.03

Fostoria Rail Traffic Increases

EXHIBIT
10



CSXT Line

NS Line

33/37 Trains/Day Before Acquisition
Trains/Day After Acquisition

EXHIBIT
11

CITY OF FOSTORIA, OHIO

In the Matter of

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

STB Finance Docket No. 33388

VERIFIED STATEMENT OF CHARLES L. DODGE

I. INTRODUCTION

I. A. *Witness Background and Qualification*

My name is Charles L. Dodge. I am employed by the City of Fostoria, Ohio in the position of Administrative Assistant to the Mayor. During my twenty-three (23) years of service to the community I've served in three full time capacities, starting as a Laborer on the Water Distribution Maintenance Crew (6 yrs), Superintendent of Utilities (16 yrs) and my current position since January 1996. Also during the same time frame I've served with numerous organization dealing with community planning and emergency services, ie , Local Chapter American Red Cross (Disaster Action Chairman), Seneca County General Health District (Member and Board President) and the Seneca County Emergency Planning Committee. I am a retired First Sergeant of the Ohio National Guard (Medical Corps) with deployment missions including the "Blizzard of 1978" and more recently "The Lucusville Prison Riots 1993". Both missions dealt with providing emergency services to the community and State of Ohio. My statements herewith draw from that experience, first hand knowledge and interviews with the respective local agencies and public records. I am authorized to provide these preliminary safety and environmental comments on behalf of the City of Fostoria.

PRELIMINARY SAFETY AND ENVIRONMENTAL COMMENTS

The proposed plan for the CSX and NS to acquire Conrail will significantly increase the rail congestion problem in Fostoria, will undoubtably significantly increase traffic safety concerns and negatively impact the ability of the community leaders to effectively provide emergency services to its citizens. The plan will also significantly impact the daily lives of its citizens due to increased inconveniences as a result of delays and increased travel to circumvent rail crossings.

Fostoria, Ohio is a small community, located in Northwest Ohio with a population of approximately 15,000. Situated in the four (4) Townships of Jackson, Loudon, Perry and Washington and the three (3) Counties of Hancock, Seneca and Wood. Fostoria is predominately a manufacturing community with major ties to the automanufacturing industries and Agri-business.

The community currently has twenty two (22) at grade crossings within 45,500 feet or 8.6 mile of mainline rail impacting vehicular/pedestrian traffic. The three (3) grade separations that do exist are located on the highway system through the community and by their location and nature create a channeling effect for all through traffic. The increased rail traffic will undoubtably increase the traffic volumes in an already congested road system due to our citizens avoiding (when possible) the at grade crossing more frequently.

The community leaders have communicated with CXST and NS representatives in an attempt to foster better community relations for the acquisition, improved operational performance by the railroads (maintenance of properties and traffic control of trains), and encourage an atmosphere of a community that can be a model community of cooperative efforts and growth partnerships with the railroads. Attached as Exhibit "A & B".

The community emergency forces have dubbed two (2) areas of the community as the "Iron Triangles", (please refer to Exhibit "D"). The areas get the designation due to the problems of providing Emergency Services relative to ingress/egress isuues as a direct result to train movements. The East side area is defined as the area South and East of the Norfolk and Southern rail line and North and East of the CSXT (Baltimore & Ohio) rail line. CSXT also has a switching yard immediately East of the Columbus Avenue grade crossing. This crossing in particular is of real concern due to the proposed additional traffic which appears to be turning Southbound. It stands to reason that while this activity is proceeding, the NS traffic will be continued through the community. This creates an impasse for ingress/egress into the area in addition to the intolerable frequency of today. The West side area is generally described as the area South and West of the CSXT (Baltimore & Ohio) line crossing W. Tiffin St., and Northeast of Findlay Rd., and boarded on the East by County Line Street.

In particular regards to the "Iron Triangles" our emergency services have no choice but to respond with two vehicles whenever dispatched into the areas. This not only increases the response cost to the community but also increases response times and increases the risk of injury to the responders, not only due to traffic accidents but also to individual safety once on scene due to longer arrival time of the second vehicle. The community has had one (1) death (documentation readily available) which appears to be directly related to rail traffic (news article enclosed). The responding agencies have found it necessary to resort to such activities as to (with assistance from F-Tower) 1. Moving stopped trains; 2. Train breaks; and 3. Last resort-crawling under trains in a stopped position with fire extinguishers all of which adds to the frustrations and significantly increases hazards to all involved.

Exhibit "C" indicates the frequency of emergency and non-emergency responses into the areas by the respective agency as indicated. The exhibit does not indicate the occurrences when a emergency unit is in the area and is impeded in response to another area of the community. Likewise in the case of EMS services impedes in the transport time to the local medical treatment facility.

Exhibit "D" indicates routes of response by the Fire Division, the alternate routes do not guarantee access into the areas, they merely provide a chance of ingress. The Fire Divisions current staffing level is six (6) per shift with a minimum of four (4) on duty, housed in one (1) facility as indicated.

Exhibit "E" indicates the location housing our contracted EMS services, as is evident, two vehicles are necessary for response into the eastern part of the community.

A review of Fostoria Municipal Court records indicate that the CXST has had 95 violations for blocking crossings since 1987 while NS has had 10. Its important to note that the enforcement agencies have not actively pursued these citations, obviously, on an emergency call, the responders are not sitting and timing the blockage. Law Enforcement agencies regularly participate in Operation Lifesaver (sponsored by CXST), however, we must submit, that the effectiveness of the program can be misleading due to the intensity of rail traffic and the inability of the operating engineer to stop the train (while waiting for a clear track) without activating crossing control signals prematurely and sitting. This activity creates a false sense of security and respect to our vehicular/pedestrian public for the crossing.

Records from our School Systems indicate that on a daily basis a total of six (6) buses make a total of 11 trips into the "Iron Triangles" to transport our children to and from school. One (1) bus which transports students from the South East portion of the community (outside the area) indicates that travel through the triangle (the shortest route) is interrupted due to the crossing and therefore utilizes the highway (underpass) system to circumvent, increasing cost, time and distance necessary to transport students. The West side triangle currently has 198 households, 3 business (1 utilizing an EHS on site) and 1 Power Substation. The East side area currently has 98 households, 8 business and 1 church.

The community has indicated its willingness to support the merger, however, the safety issues of the community must be addressed. Financial restraints at the local level do not provide for participation in remedial activities. We request that the Board ensure that alternative, ingress & egress issues be resolved, that the "F" Tower remain as a full-time staffed facility with a dedicated telephone line for emergency use only and that (in the interim) when possible, trains be routed to the Conrail mainline just West, running from Toledo to Columbus.

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF SENECA)

Charles L. Dodge, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

Charles L. Dodge

Charles L. Dodge

Subscribed and sworn to before me this 17th day of October, 1997.

Denise R. Gase Brown

DENISE R. GASE BROWN
Notary Public, State of Ohio
My commission expires August 27, 1998

Seal

Fostoria child dies in house fire

A 6 p.m. fire yesterday at 441 Columbus Ave. killed a 16-month-old boy despite rescue attempts by his brother, police and firemen.

Fire Chief Bernard C. Conine said the fire started on the back porch where fierce wind turned the fire into a blowtorch that completely engulfed the home within five minutes after the fire was noticed.

Killed was Jeniah Barfield. His brother Donnie Stowers noticed the fire on the porch about 6 p.m. and went next door to call the fire in. When he returned to get his brother from the couch in the front room, smoke and heat kept him out.

Chief Conine and Patrolman Ed Peiffer reported having trouble getting by a train; police reported having to call the F tower to clear the tracks so extra firemen and police vehicles could get through to the home only two doors from the tracks.

Conine said the first pumper just beat the train to get to the scene, while Peiffer said the train at 6:03 p.m. kept him from getting across the tracks to the home to see if anyone needed rescuing.

Firemen began looking at the charred ruins for the fire's cause this morning about 8. They said the home, though very old, was well built.

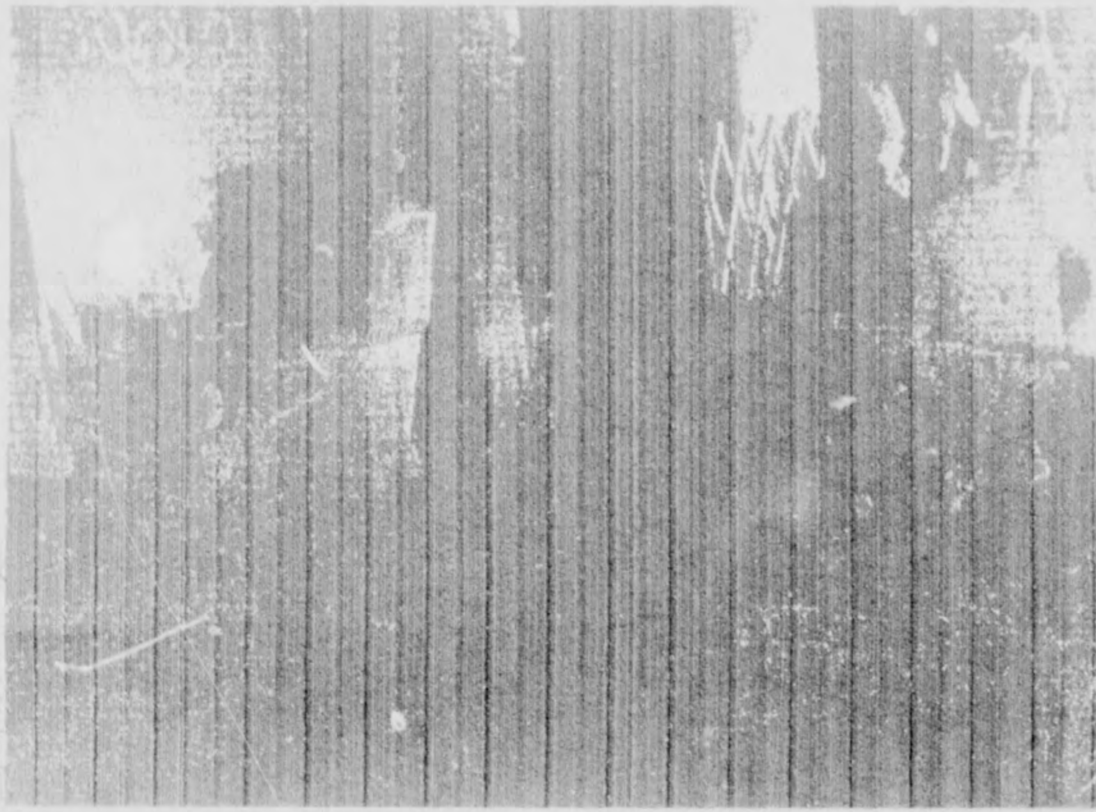
Other information including funeral arrangements were not complete this morning. The baby is now at Mann Funeral Home.

The Review Times

8 PAGES — FOSTORIA, OHIO, SATURDAY, OCTOBER 20, 1973 — CARRIER DELIVERY 50 CENTS WEEK — STREET SALE [illegible]

...arkplug ...nt sale ...proved

Where a baby died



Fo... dies

Nixo... hear...

WASHINGTON (AP) ...

CITY OF FOST RIA M YOR'S OFFICE

"Why Not Be the Best"

EXHIBIT A

James E. Bailey
(419) 435-8282
FAX (419) 435-4192

213 S. Main St.
P.O. Box 1007
Fostoria, OH 44830

EXHIBIT "A"

CONFIDENTIAL

September 8, 1997

TO: CSX Transportation Steve Watson Bob Gardner

RE: Proposal concerning construction, closing of crossings, and letter of support for acquisition of Conrail

1. CSX would build and pay for the necessary upgrade and would reopen the Zeller Road crossing.

2. CSX would construct (a) an underpass or overpass at Columbus Ave. or Lewis St., (b) an overpass or underpass on W. Tiffin St., and (c) an overpass or an underpass on East Culbertson St. or Jones Rd.

   a. Columbus Ave.\Lewis St. - would provide access to an area that is often completely blocked - no fire or police protection access

   b. W. Tiffin St. - would provide access to an area to which all access within the City is often blocked - fire or police protection often requires a long drive through the countryside

   c. E. Culbertson St\Jones Rd. - would provide the only overpass or underpass in the N. End of the City - near likely site of future N. End fire station

3. The above construction would allow closing of crossings at:

Lewis St.	W. Tiffin St.	E. Culbertson St. (if underpass on " " is built)
Columbus Ave. (depending on location of underpass)	Adams St.	Cleveland St.

4. The City would agree to the following two crossing closings on the north\south line if a N. End overpass or underpass is built and access road is built.

   Fremont St. High St.

5. The City would agree to close the crossing at S. Countyline St. if access roads could be upgraded to handle trucks.

6. When a written agreement is signed by the City and CSX, the City would write a letter of support to the Surface Transportation Board for the acquisition of Conrail.

James E. Bailey

EXHIBIT B

700 Horizon Building
143 West Market Street
Indianapolis, IN 46204
(317) 267-3003
FAX (317) 267-3006

CSX TRANSPORTATION
Stephen L. Watson
Regional Vice President - State Relations

EXHIBIT "B"

VIA FAX: 419-435-4192
CORRECTED DATE

October 10, 1997

The Honorable James E. Bailey
Mayor
City of Fostoria
213 South Main Street
P. O. Box 1007
Fostoria, Ohio 44830

Dear Mayor Bailey:

Please refer to our September 8, 1997 meeting where the City outlined its concerns regarding the Conrail acquisition and proposed a number of rail/highway grade separations to maintain adequate Fire/Police access to certain areas of the City.

As promised in our meeting, CSX conducted an engineering feasibility analysis of each of the proposed separation projects on September 24, 1997. The results of that analysis follows:

Columbus Avenue/Lewis St.

The field inspection found that there is insufficient area to construct an underpass or an overpass due to the close proximity of homes, businesses, Lytle Street underpass and F Tower Interlocking. However it appears that sufficient area exists to construct a new road and overhead bridge over CSXT's tracks about 1/2 mile east of the Columbus Avenue road crossing. The proposed roadway would begin near the intersection of Columbus Avenue and Dillion Street and run north over CSXT's tracks. After crossing over the CSXT's track the roadway would turn west and tie into the end of Boston or Seneca Avenue. The Order of Magnitude Estimate for the roadway and bridge is $5 million.

West Tiffin St.

The field inspection found that due to the angle of the roadway to the tracks and adjacent roadways and the proximity of homes, there was insufficient room to construct an underpass or an overpass. An alternate location on CSXT is unavailable due to the reservoir located north of the tracks.

of the tracks.

East Cumbertson St./Jones Road

The field inspection of East Cumbertson St. found that sufficient room exists to construct an underpass at this location provided several homes can be purchased and the entrance of Poplar Street to East Cumbertson be relocated west. The Order of Magnitude Estimate for the underpass is $9 million.

A field inspection of Jones Road found that due to industries adjacent to CSXT's track and Jones Road, insufficient room exists for an underpass.

We encourage the City to consult with the Ohio Department of Transportation to enlist their advice and financial support for the Columbus Avenue and East Cumbertson Street separation projects.

As we discussed in our August 12, 1997 meeting, CSXT has examined the prospect of establishing a dedicated line of communications between the City's Fire/Police dispatcher and our operator at "F" Tower. This communications link would allow the City to coordinate emergency fire and police movement over CSXT and NS railroad crossings.

CSXT will install telephones in the offices of the City's emergency vehicle dispatcher and CSXT's "F" Tower (Fostoria) operator. These telephones will be limited to dedicated direct communications between the City and CSXT to coordinate movement of emergency vehicle access across CSXT and NS.

Additionally, the CSXT Tower operator will be issued permanent instructions/rules governing train movement in the City to coordinate a clear route for emergency vehicles over NS and CSXT trackage.

Providing you concur, we will arrange for a Memorandum of Understanding between the City and CSXT to cover this arrangement.

Regarding the City's request to re-open Zellar Road (closed in 1983), our records indicate that this former crossing intersected our rail yard and mainline to Columbus. A field inspection conducted on September 24, 1997 found a number of tracks still in place and actively used and a mainline train occupying the location where the proposed crossing would be located. Reopening Zellar Road would seriously inhibit our ability to operate expeditiously through the City and would create a significant public safety problem.

The Honorable James E. Bailey
September 10, 1997
Page 3

We very much appreciate the opportunity to respond to your concerns and would be happy to meet with you and state officals to discuss the technical aspects of the proposed separation projects in greater detail.

Sincerely,

Stephen Ponder

cc: Mr. Tom O'Leary Ohio Rail Development Commission
Mr. Jerry Wray Ohio Department of Transportation

EXHIBIT "C"

Fostoria, Ohio

Dispatched Frequencies "Iron Triangles"

Agency	1997	1996	1995	1994	1993
Police	206	302	292	227	317
Fire	21	26	23	15	
EMS	13	25	23		

EXHIBIT D

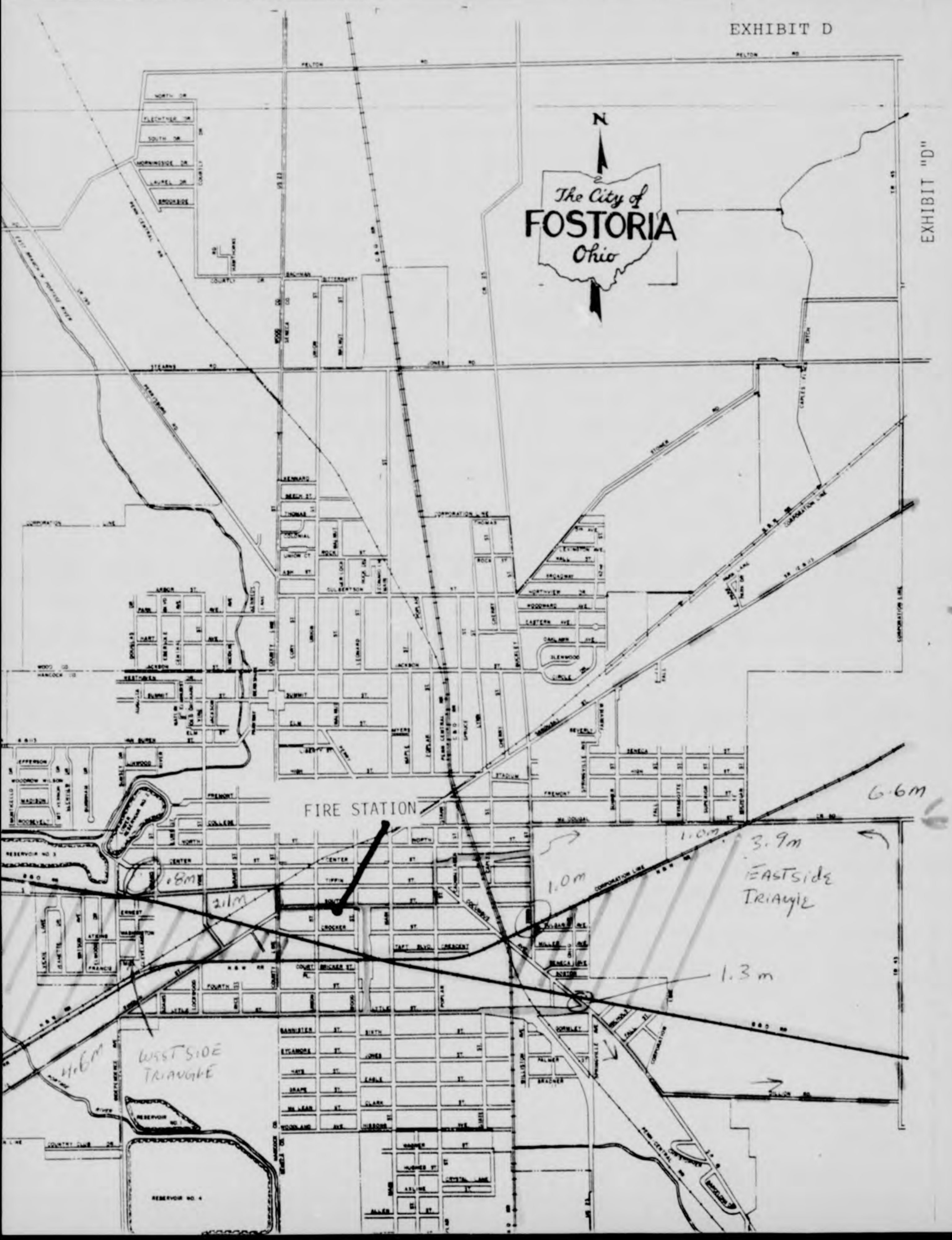

N
The City of
FOSTORIA
Ohio
EXHIBIT "D"
FIRE STATION
6.6M
1.0m
3.9m
EASTSIDE
TRIANGLE
1.0m
.8M
2.1M
1.3 m
4.6M
WESTSIDE
TRIANGLE
RESERVOIR NO. 4

EXHIBIT E

EXHIBIT "E"

CONRAIL ACQUISITION IMPACTS ON FOSTORIA
VERIFIED STATEMENT
OCTOBER 17, 1997

EXHIBIT
12

Although no Conrail-owned trackage exists in the City of Fostoria, Ohio, the City will be greatly affected by changing rail traffic patterns influenced by the acquisition. The purpose of this document is to identify issues, evaluate impacts of the revised Operating Plan filed by Norfolk Southern (NS) and CSX, and consider alternative means of mitigating these impacts.

Author

The author of this document is Philip G. Pasterak, P.E., of Parsons Brinckerhoff Ohio, Inc.(PB), in Cleveland, Ohio.

Relevant Experience

PB is one of the world's leading transportation planning and engineering design consulting firms. This experience includes numerous railroad-related projects for both public and private clients.

Mr. Pasterak's personal experience in rail planning, engineering, and operations covers more than 16 years. This includes seven years' experience as a CSX Transportation engineering management supervisor in Ohio and Michigan, four of which was in Fostoria. He has provided consulting services in Cleveland and the eastern United States (Ohio, Michigan, New York, Virginia, and others) for 10 years, including planning and design for rail operations and facilities, intermodal facilities, passenger services, and other aspects of the rail industry. He is currently Vice President of PB's Cleveland office. He also has worked as a transportation planner for NOACA, the Cleveland area metropolitan planning organization, and has seven years' experience as Vice President in charge of operations on a growing non-profit excursion railroad.

Physical Conditions

Fostoria is located at the junction of three distinct rail lines:

- Norfolk Southern Lake Division Fostoria District (oriented generally east-west, connecting Bellevue to Chicago). Traffic includes a wide range of commodities, including coal, general merchandise, and some intermodal traffic.

- CSX former B&O (oriented generally east-west, connecting Pittsburgh to Chicago. Traffic includes all types, with significant intermodal traffic.

- CSX former C&O Columbus subdivision(oriented generally north-south, connecting Columbus and Toledo). Traffic is primarily coal south of Fostoria, with significant other traffic north of Fostoria.

The lines and the current/projected traffic levels are shown on the attached Exhibit N. Each line is double track within the City, and the lines cross each other at grade in the southern portion of the City. Because of this arrangement, rail traffic can generally pass through the City on only one line at any given time, although it is possible for two trains (one on each of the two tracks) on the same line to operate simultaneously. About 80 daily trains pass through the City, including both through movements and movements using connecting tracks.

The rail configuration is complicated by active connection tracks joining the lines, especially those joining the two CSX lines. Currently, a significant amount of rail traffic changes direction in Fostoria via the four CSX connection tracks, which are designated by physical location (northeast, southeast, etc.) relative to the B&O/C&O crossing. This crossing is also the location of the building housing the operating control point for the area, called "F" Tower. Although dispatching on all lines is handled remotely from central offices, the crossings and connections themselves remain under the control of an operator at "F" Tower, who takes direction and input from the individual dispatchers.

These connections and their common uses are described as follows:

- Northeast Connection: Heavily used by Willard-Toledo/Michigan trains, including significant automobile industry traffic.
- Southeast Connection: Used by Willard-Columbus merchandise and coal trains.
- Southwest Connection: Used by local freight movements and unknown number of through trains.
- Northwest Connection: Previously heavily used by Cincinnati-Deshler-Fostoria-Toledo trains. Traffic on this connection has likely decreased as a result of CSX's increasing use of the direct Deshler-Toledo line.
- NS Connections: Join both former B&O and former C&O to NS in the northeast quadrant of the crossing. Traffic is relatively light, consisting of transfer movements between the two railroads.

Movements on these connection tracks require significantly longer time to pass through the City, since speeds are generally limited to 15 mph over the connections themselves because of high curvature (order-of-magnitude 15 degrees) and short-length turnouts. Trains must slow to this speed while approaching the area, and cannot begin to accelerate until the entire train has traversed the connection.

Issues and Impacts

This statement is intended to address two potential types of impacts. One is the local impact on the City of Fostoria itself, and the other is on the overall rail network in northern Ohio.

Local Impact: This document does not address the details of safety impacts, which are best described by the City administration. In general, however, as the exhibit shows, the rail lines divide the City into six sectors. The four largest sectors are connected to each other by three roadway underpasses, but two sectors can become isolated by moving or stopped trains.

These two sectors, which appear to be most at risk, are located east and west of town, between the NS and former B&O lines. Based on observation and past practice, trains awaiting clearance to proceed through Fostoria typically are held west of Findlay Street and east of Columbus Avenue, which could keep these two roadways open to provide access to the two sectors. However, moving trains (some at slow speeds) and trains stopped clear of the crossings but within the limits of the electronic crossing circuit detection systems (thereby activating crossing warning systems including gates) can still block access for emergency vehicles. The proposed increase in rail traffic volume from about 80 to more than 105 daily trains (over 30%) can be expected to heighten this risk.

Northern Ohio Rail Network Impact: Following the Conrail acquisition, according to the proposed Operating Plan, both CSX and NS will each have a primary and a secondary Chicago-East Coast route traversing northern Ohio. This is a total of four main lines, two of which cross at Fostoria. Similarly, northern Ohio will include three main north-south routes, one of which crosses at Fostoria, while a second (CSX via Deshler) is operationally related to Fostoria. This means that operating conflicts and congestion at Fostoria are likely to have significant spill-over effects on the rail network in northern Ohio. This will affect the numerous stakeholders in terms of environment impacts, safety hazards, and competitive issues.

Alternatives

Three general approaches to minimize or mitigate the effects of rail congestion in Fostoria appear worthy of further consideration. These are:

- the re-routing and re-distribution of traffic onto other rail lines in the region,
- the minimization of travel time for rail traffic through Fostoria, and
- local roadway access and safety-related improvements in Fostoria.

Regional Re-routing: The Operating Plan dramatically reduces traffic levels on the Conrail Columbus-Toledo Toledo Line, even though this is a relatively direct through route. It is suggested that impacts on Fostoria could be minimized by diverting some traffic from the CSX Columbus subdivision to the Toledo Line.

Minimize Travel Time through Fostoria: The number of trains operating through Fostoria is proposed to increase from what appears to be about 80 to about 105, depending on the distribution of trains using the various connection tracks. While this increase is of concern, the relative distribution of traffic on the connection tracks will have a particularly significant effect on the amount of rail congestion (and thereby roadway congestion and delays at crossings).

This is because at maximum speeds of 15 mph through the connection tracks, the amount of time required for a lengthy train to pass through a two-mile segment of Fostoria could easily exceed 10 minutes, while a through train traveling at 45 mph could pass through the same segment within about three minutes. This example is intended to be illustrative, and may not accurately reflect current average travel times. Regardless, it is apparent that the total travel time for all trains through Fostoria is likely to decrease as the number of CSX trains using the connection tracks is minimized.

This could be accomplished by:

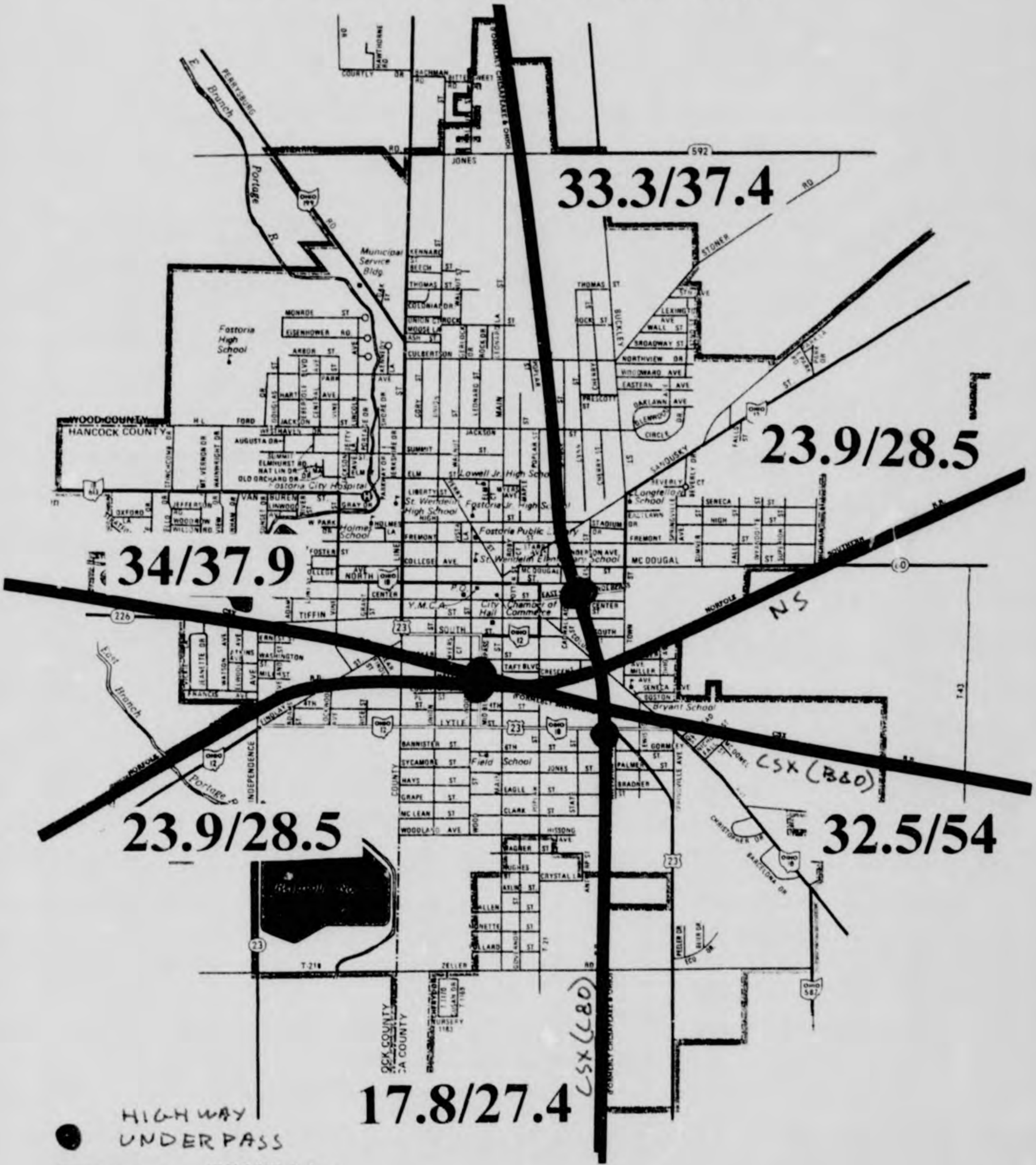
- routing Chicago-Toledo or Cincinnati-Deshler-Toledo traffic via the line north from Deshler, minimizing traffic on the northwest connection.
- considering routing some Willard-Toledo traffic via Deshler, decreasing traffic on the northeast connection.
- considering routing some Columbus-Willard traffic via Greenwich, decreasing traffic on the southeast connection (depending on the need re-classify trains at Willard).
- It is my understanding that a connection from the CSX Columbus Subdivision to the westbound Upper Sandusky-Chicago CSX line may be constructed. If so, routing Columbus-Chicago traffic via Upper Sandusky rather than via Fostoria will minimize traffic on the southwest connection.

Local Roadway/Infrastructure Improvements: Local improvements that could be considered include additional roadway underpasses, which will mitigate the problems of congestion on the local roadways, but would have minimal effects on decreasing congestion on the regional rail network.

Recommendations

The proposed Operating Plan does not address the possible impacts of congestion at Fostoria on the City itself nor on the regional rail network. At minimum, these impacts should be reviewed and evaluated, and alternatives including those identified here considered.

Exhibit N
Fostoria Rail Traffic Increases



CSXT Line
NS Line
33/37 Trains/Day Before Acquisition
Trains/Day After Acquisition

VERIFICATION

STATE OF Ohio)
) ss:
COUNTY OF Cuyahoga)

Philip G. Pasterak, being duly sworn, deposes and says that he has read foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

Philip G. Pasterak

Subscribed and sworn to before me this 17th day of October, 1997.

Notary Public of Cleveland

My Commission expires:

ANNIE P. HOGAN, Notary Public
State of Ohio
My Commission Expires Sept. 13
Recorded in Cuyahoga C

EXHIBIT
13

SAFETY

CSXT in FRA Crosshairs

BY JACK BURKE

Agency says railroad downplays safety, intimidates workers, mismanages crews

Chicago

CSX Transportation was preparing last week to put the best face possible on a Federal Railroad Administration safety audit that criticized the railroad for emphasizing train operation over safety, harassing and intimidating employees, lacking adequately trained employees, mismanaging crews to the point of fatigue and a host of other problems.

FRA Administrator Jolene Molitoris, as she did with a similar report on Union Pacific last month, was scheduled to be at CSXT's Jacksonville, Fla., headquarters last Thursday to deliver personally her agency's report on CSXT. A series of incidents this past summer on CSXT triggered the FRA audit of that railroad. Those accidents resulted in one fatality compared with the seven deaths in three derailments that sparked the FRA blitz of UP.

The timing of this most recent report could prove far more of a problem for CSXT. In comments due this week at the Surface Transportation Board on the carve-up of Conrail by CSXT and Norfolk Southern, FRA may ask that many of its safety recommendations to CSXT be formally included as conditions to any approval of the dual takeover.

CSX Corp. Chairman John Snow appeared to be addressing that possibility in remarks prepared for his welcoming of the FRA head. In his introduction of Molitoris, Snow was to have said, "Some will say this is a difficult day for our company. I disagree. I believe we will look back on this day and note with pride that this joint review process has paid huge dividends, not only in safety, but also in our ability to serve our customers."

Snow was set to promise that the inclusion of its part of Conrail in the CSX system "will be seen as a model for joining two great railroads together to produce the safest railroad in the country. We have been hard at work on the plan for this integration and let me assure you, once approved, we will do nothing that compromises safety or service."

The FRA report on CSXT also comes — ironically enough — on the heels of a $2.5 billion judgment against the railroad by a Louisiana court for a decade-old incident that resulted in no significant injuries. One of the railroad's prime defenses in that case is that it acted in complete accordance with federal safety regulations. The company is appealing the judgment.

> SEVERAL INSTANCES OCCURED IN WHICH CSXT MANAGERS ORDERED TRAINS TO MOVE WITH CLEAR KNOWLEDGE THAT NONCOMPLYING OR DEFECTIVE CONDITIONS WERE PRESENT.

The FRA report, a draft of the executive summary of which was obtained by *Traffic World*, said the agency "found an atmosphere on CSXT where some CSXT field managers failed to demonstrate full commitment to safety." FRA said it had noted "several instances in which CSXT managers ordered trains to move with clear knowledge that noncomplying or defective conditions were present," and observed that it was processing liability cases against individuals engaged in willful violations of its rules.

The rail agency charged that CSXT employees in various departments feel "harassed or intimidated when they raise safety concerns that might interfere with train operations." The agency also charged that CSXT's communications infrastructure is not sufficient to eliminate known hazards, a charge the agency backed up by citing an incident from only a week earlier that involved an Amtrak train operating over CSXT track. When a lowboy truck became lodged on a grade crossing near Savannah, Ga., on Oct. 9, a local policemen warned CSXT of the hazard. FRA said its early investigation showed the officer called CSXT's dispatching center 30 minutes before the Amtrak train struck the truck and derailed, the crew of the train never having received word.

In addition, FRA found CSXT lacking in such areas as maintenance of pole lines and insulated rail joints, training and testing of operational employees, record keeping, accident reporting, accuracy of train consists, placarding of hazard materials cars, track and locomotive inspections, and intermodal securement.

"During inspection on some subdivisions, FRA found defects which shouldn't be found on a major Class 1 railroad, including overgrown vegetation, saturated subgrade, defective rails," said the report, adding that defective rail had caused nine CSXT derailments in 1996.

As was the case with UP, the agency criticized the railroad for mismanaging crews. "Inefficiencies in crew calling add to extended days and fatigue for operating crews," said the report. "Cumulative fatigue, morale problems and safety shortcuts frequently result." The report claimed CSXT's automated crew calling system was prone to malfunction in such a way that train crew members would be called every 20 minutes during their off-duty hours, a problem the agency said was corrected only after it brought the matter to CSXT's attention.

CSXT took pains to emphasize that it had already taken steps to correct some of the problems, including enhancing procedures to ensure compliance with hazmat regulations, revising standards for securing intermodal trailers and containers, and hiring additional crews and management. •

STB FD 33388 10-21-97 D 182882

182882

U. S. Department of Justice
Antitrust Division

325 7th Street, N.W., Suite 500
Washington, DC 20530

October 21, 1997

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Seventh Floor
Washington, DC 20423-0001

D

Re: Conrail Control Case -- STB Finance Docket No. 33388

Dear Secretary Williams:

I am enclosing for filing an original and 25 copies of the Comments of the United States Department of Justice (DOJ-1), including the verified statement of our witness, Dr. Peter A. Woodward. Our Comments contain highly confidential material and so they should be filed under seal. I am also enclosing 25 copies of a public (redacted) version of our Comments. Finally, I am enclosing four 3.5 inch disks containing the highly confidential and public and versions of our Comments and verified statement in Word Perfect 6.1 format.

We are serving the highly confidential and public versions of this filing on the Applicants and all other Parties of Record known by the Department to be entitled to access to highly confidential material under the protective order in this proceeding. All other Parties of Record who are not on the highly confidential restricted service list will receive the public version of this filing.

Thank you for your assistance in this matter. If you have any questions please feel free to call me at 202-307-6357.

Sincerely yours,

Michael P Harmonis

Michael P. Harmonis
Attorney
Transportation, Energy and
Agriculture Section

Enclosures

cc: The Honorable Jacob Leventhal
Parties of Record

STB FD 33388 10-21-97 D 182876

182876

Anderson & Pendleton, Chartered Attorneys

1700 K Street, N.W., Suite 1107
Washington, DC 20006
202 659-2334
Fax: 202 659-0156
e-mail fgmckenna@juno.com

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

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

October 21, 1997

The Honorable Vernon A. Williams,
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Mr. Williams:

Enclosed for filing in the above captioned docket are an original and twenty-five (25) copies of statement filed by Counsel on behalf of the West Virginia State Rail Authority, a party of record in the above proceeding. Also enclosed is a 3.5 inch disk containing the text of this pleading in Word Perfect 6.1 format.

Respectfully submitted,

Francis G. McKenna

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX-NORFOLK SOUTHERN-CONRAIL

RAILROAD CONTROL TRANSACTION

Comments and Request for Conditions

The West Virginia State Rail Authority ("WVSRA") is an agency of the State of West Virginia. One of its statutory responsibilities is to ensure that there is adequate rail transportation to serve the needs of the citizens of the State of West Virginia.

WVSRA has reviewed the Application and accompanying Schedules and Exhibits filed in this proceeding by Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS"), Conrail Inc., and Consolidated Rail Corporation ("Conrail") and CSX Corporation and CSX Transportation, Inc. ("CSX") requesting STB approval of the joint acquisition of Conrail by CSX and NS.

WVSRA believes that approval of the Application, with certain minor modifications discussed below, would be in the public interest. Those modifications are:

1. Approval of trackage rights for Wheeling & Lake Erie into locations in West Virginia, as discussed below.

2. Approval of trackage rights for NS into the B&O Coal fields, as discussed below.

3. Approval of trackage rights for CSX on the presently existing Conrail West Virginia Secondary ("WV-2") line from Point Pleasant to Charleston, West Virginia. This line is

presently being purchased from Conrail by NS.

4. Approval of an interconnection between the end of line on the Elk River Railroad at Falling Rock, West Virginia to the Conrail line in Charleston, West Virginia, with a joint service opportunity with NS and CSX.

5. That the STB institute oversight procedures to ensure that the State of West Virginia industries and the jobs of its citizens are not put in jeopardy by service failures brought about by the joint acquisition of Conrail.

Background

The nature of the topography of West Virginia and its industrial economy is such that the State is heavily dependent for its continued economic well being on the existence of efficient and competitive rail service. West Virginia is now served by all three of the parties involved in this proceeding. Although there is little direct competition within the State between the parties for traffic, i.e., only a very limited number of shippers are served by more than one carrier, because of routing options, the parties are in competition for a substantial amount of the traffic that originates and terminates within the State.

In addition to these three Class I carriers, the State is also served by a number of short line railroads. The major short lines are the Wheeling & Lake Erie Railway ("W&LE"), the South Branch Valley Railroad ("SBVR"), which is owned and operated by the State of West Virginia, the Winchester and Western Railroad Company ("WW"), and the Elk River Railroad ("Elk River").

At the present time, the parties to this transaction own and operate 2,408 route miles within the State. Of this amount, 240 miles (10%) is owned by Conrail, 1587 (66%) is owned by CSX and 581 (24%) is owned by NS. Assuming the transaction is approved, all of the trackage in the State of West Virginia now owned by Conrail will be taken over by NS. Post transaction 65% of West Virginia route miles will be controlled by CSX and 34% by NS. Of the route miles operated by the Class III carriers, SBVR owns and operates 52 and WW 24 miles. W&LE has 4.5 miles within the State.

Elk River has 61 route miles interconnecting with CSX at Gilmore, West Virginia. Elk River has received authorization from the STB to construct a 30-mile extension to interconnect with the Conrail line at Falling Rock, near Charleston. At the time this transaction was announced, Elk River was negotiating with Conrail to acquire the Conrail line between Charleston, WV and Reamer, WV which would have allowed this interconnection.

Elk River has requested that the Board condition its approval of this transaction on a commitment by NS to (1) grant CSX shared use of the Point Pleasant to Charleston line; (2) to negotiate with Elk River in order to complete the interconnection with the Conrail line at Falling Rock and to put in place a reasonable interchange arrangement which will allow traffic to move off of the Elk River line onto WV-2 to destinations on either CSX or NS.

Wheeling and Lake Erie Railroad

The Wheeling and Lake Erie Railway is a Class II railroad which was formed in 1990 as a NS spin off and provides Norfolk Southern with a joint line partner to compete with Conrail and CSX in Ohio, West Virginia and Pennsylvania. The acquisition of Conrail by NS will transform W&LE into a competitor of NS and will obviously result in the loss of revenue to W&LE. W&LE is of the view that if the transaction is approved as presently configured, it will lead to the bankruptcy of W&LE in the very near future. W&LE has requested that if the Board approves the transaction, it do so subject to a number of conditions.

We do not propose here to endorse the imposition of all of the requested conditions since W&LE and the Applicants are in a much better position to put forth their arguments concerning their merits. However, in our view it would be in the public interest to keep W&LE alive as a viable competitor and provide it with a traffic base which would allow it to make a profit. To this end, we believe the Board needs to restructure this transaction to provide access by W&LE to the West Virginia market so that W&LE can offer competitive service to shippers in West Virginia. We believe that providing this service would give W&LE sufficient traffic to assure its continued existence as an independent carrier.

B&O Coal fields

Currently, coal producers in north central West Virginia on former B&O lines are served only by CSX with single line service only to CSX destinations. Likewise, coal producers in southwestern Pennsylvania on the former Monongahela Railway are served only by Conrail with single line service only to Conrail destinations.

Under the proposed agreement, NS will assume control, and will operate and maintain the former Monongahela Railway, including the Waynesburg Southern, subject to a joint use agreement which will provide CSX equal, perpetual access to all current and future facilities located or accessed from the former Monongahela Railway (See Applicant's Exhibit 13.4-6).

Both NS and CSX will be able to separately provide transportation service with their own equipment and crews to all customers on the Monongahela.

The Monongahela coal producers will have single line service to all points served by CSX and NS.

This will place producers on the B&O lines at a competitive disadvantage since they will still have single line service to CSX destinations only. In order to reach points served by NS, these producers will be required to interchange traffic between the two railroads which will result in potential bottlenecks and higher freight rates. Shifting the competitive balance in this way, the transaction creates the potential for a shift of production out of the B&O coal fields. This would lead to a significant loss of employment in that part of our state.

Kanawha Valley

The Conrail West Virginia Secondary line ("WV-2") between Point Pleasant and the coal fields east of Charleston, follows the Kanawha River through a major industrial area of West Virginia. Various industrial plants are located on the line including several large chemical plants that are dependant for continued operation on competitive rail service for the shipment of both inbound and outbound products.

The acquisition of the Conrail line by NS will mean improved access to many markets in comparison to the current situation. However, shippers in this area feel they will still be at a competitive disadvantage to competitors in other parts of the country. This is particularly true of the chemical plants that compete with producers in New Jersey where CSX and NS will have a joint operation.

If WV-2 is served jointly by both CSX and NS, Kanawha Valley shippers will have single line service to markets served by both carriers just as their competitors in other areas of the country will have.

Passenger Service

West Virginia's Eastern Panhandle has seen tremendous growth in population. Many of these people have jobs in Washington, D.C. and must commute to work. The WVSRA participates with Maryland's Mass Transit Administration in the operation of MARC commuter train service between Martinsburg, West Virginia and Washington, D.C. WVSRA maintains stations at Harpers Ferry, Duffields and Martinsburg, West Virginia.

CSX now operates 18 commuter trains per weekday over the existing CSX Metropolitan Subdivision between Union Station in Washington and Brunswick, MD. Of these trains, five operate beyond Brunswick and serve stations in West Virginia.

Amtrak's "Capitol Limited" operates daily between Washington, D.C. and Chicago, IL. It passes through the Eastern Panhandle with stops at Harpers Ferry, WV and Martinsburg, WV.

CSX has stated in its Application that it intends to increase the number of freight trains operating over the route on which the commuter trains now run by seven to eight trains per day.

CSX and the Maryland Department of Transportation have agreed to a change in scheduling which will take effect in November 1997 and allow CSX to increase its daytime freight operations from a window of 3.5 hours to seven hours.

Under the new agreement there will be minor scheduling changes, but no decrease in passenger operation on the Brunswick Line to West Virginia.

Given the difficulties already being experienced by CSX and MARC in scheduling commuter service, we are concerned that the increased freight traffic will make it even more difficult for CSX to accommodate the commuter trains. Amtrak's "Capitol Limited" will have greater difficulty in maintaining its schedule between Pittsburgh and Washington.

Safety and Service Considerations:

A review of the Application indicates that substantial improvements in safety and service are promised. However, significant difficulties may stand in the way of achieving those improvements. According to the Application, new crew districts will be established and new terminals created. The Application anticipates that the CSX and Conrail crews "will be mixed and blended and will operate over rail lines without regard to former seniority districts or corporate boundaries[1]."

The acquisition contemplates the elimination of a layer of supervision of maintenance of way employees and also contemplates the elimination of various supervisory levels in other areas throughout the new CSX system.[2]

If things go according to the plan set out in the Application, improved competitive service throughout the eastern United States will occur which will benefit shippers and the public.

Although it is hoped that these results will occur, there are serious concerns that both safety and service may not improve unless extreme care is taken in implementing the consolidation.

Federal regulators have recently completed an audit of CSX following a series of accidents. They found over worked employees, track and signal defects, and a management culture that, according to FRA, has led some front-line managers to put train operations ahead of safety.

The report noted serious defects in the condition of the CSX physical plant and cited numerous violations of FRA safety regulations. CSX may have too few employees to maintain track and communications facilities properly and to dispatch trains and crews.

The Conrail acquisition will result in new traffic patterns that completely change historic operating patterns. These abrupt and radical changes could lead to the types of service

---

[1]Application, Volume 3A page 488

[2] Application, Volume 3A page 493-496

failures encountered recently on the Union Pacific. We ask that the STB institute oversight procedures to ensure that our state's industries and the jobs of our citizens are not put in jeopardy by service failures brought about by the joint acquisition of Conrail.

Summary and Conclusion

49 U.S.C. §10101 sets forth the Rail Transportation Policy of the United States, which to say the least is a many faceted thing, but which provides, in part, that in regulating the railroad industry it is the policy of the United States "(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers " (12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination."

49 U.S.C. §11323(b) requires the Board to consider "(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."

49 U.S.C. §11324(c) provides that "The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities."

To the extent that the sale of rail assets and operating rights from one carrier to another may be require to improve rail transportation for the shippers on the line, the Board has the power to order such a sale or grant operating rights.(49 U.S.C. §11102.)

We believe here that there is little doubt that the elimination of a competitor in the West Virginia market (Conrail) and the probable elimination of a second competitor (W&LE) would justify the imposition of the conditions set out above and requested herein.

Respectfully Submitted

WEST VIRGINIA STATE
RAIL AUTHORITY

Francis G. McKenna
Special Attorney General
State of West Virginia

CERTIFICATE OF SERVICE

I hereby certify that I have this 21 day of October, 1997, caused copies of the foregoing document to be served by first-class mail upon Administrative Law Judge Leventhal and upon all parties of record, as listed on the official service list issued by the Board in this proceeding.

Francis G. McKenna