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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

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COMMENTS AND REQUEST
FOR CONDITIONS OF
ORANGE AND ROCKLAND UTILITIES, INC.

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Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
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COMMENTS AND REQUEST
FOR CONDITIONS OF
ORANGE AND ROCKLAND UTILITIES, INC.

I. INTRODUCTION

Pursuant to the procedural schedule adopted by the Board in Decision No. 6 in this proceeding, Orange and Rockland Utilities, Inc. ("Orange and Rockland") hereby submits its comments on the restructuring and transfer of lines of Consolidated Rail Corporation ("Conrail") proposed by Applicants CSX Corp. and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") and Conrail.[1]

[1] On October 8, 1997, Orange and Rockland filed and served its notice of intent to participate and its motion for leave to late-file that notice. Although the motion has not yet been granted, Orange and Rockland requests that the Board accept these comments for filing pending action on Orange and Rockland's October 8, 1997 motion.

Orange and Rockland does not oppose the breakup of Conrail and absorption of its lines into the systems of CSX and NS, but Orange and Rockland urges the Board to impose conditions designed to mitigate adverse effects of the Conrail restructuring on rail service to Orange and Rockland's Lovett Plant. Good cause exists for the imposition of the requested conditions, as set forth herein and in the attached Verified Statement of Orange and Rockland Witness Debra A. Bogin.

II. INTEREST OF ORANGE AND ROCKLAND

Orange and Rockland is an investor-owned electric utility providing electric power and natural gas service to industrial, commercial and residential customers in southeastern New York, northern New Jersey and northeastern Pennsylvania. A key component of Orange and Rockland's generating system is its Lovett Plant, which accounts for more than one third of Orange and Rockland's total generating capacity.

The Lovett Plant, located in Tomkins Cove, New York, burns approximately 700,000 tons of coal per year. All of this coal is currently delivered in unit train service by Conrail, the only railroad serving the plant. Bogin V.S. at 2. If the Conrail merger is approved, the River Line between New York City and Albany, on which the Lovett Plant is located, will be transferred from Conrail to CSX. CSX will then be the only railroad serving the Lovett Plant.

Today, 90% of the coal delivered to the Lovett Plant moves in joint line, NS-Conrail service, under rail transportation contracts between Orange and Rockland and NS and Conrail. It is Orange and Rockland's understanding that, post-merger, NS and CSX will assume Conrail's obligations under those contracts, making only those changes necessary to reflect line transfers and modified interchange points, with rates to be adjusted accordingly.[2]

Assuming this process works as the Applicants say it will, Orange and Rockland will nevertheless be captive at the Lovett Plant to whichever railroad serves that Plant. As a public utility with an obligation to provide service to its customers, Orange and Rockland cannot ignore this proceeding's potential for fundamental changes in the nature of rail service to the Lovett Plant, both in the immediate aftermath of the merger, and over the longer term.

Orange and Rockland has two principal concerns about the Applicants' proposal. First, Orange and Rockland must have reliable rail service at the Lovett Plant. As the Board knows, the recent UP/SP merger has led to service problems, particularly in Texas, that have been so severe that delayed deliveries have led to plant shutdowns and employee layoffs. Orange and Rockland fears similar problems may occur in the East, as CSX and NS absorb Conrail lines into their systems.

Second, Orange and Rockland benefits today from competition between CSX and NS to originate shipments of the "supercompliance" coal required at the Lovett Plant. Unless this merger is appropriately conditioned, that competition will be jeopardized

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[2] See Article 2, Section 2.2 of the Transaction Agreement, in Volume 8B of the Railroad Control Application.

when CSX, one of the two main railroads serving Central Appalachian low-sulfur coal mines, becomes the sole railroad serving the Lovett Plant.

III. ORANGE AND ROCKLAND NEEDS RELIABLE RAIL SERVICE

As explained by Orange and Rockland Witness Bogin, space constraints at the Lovett Plant are such that relatively little coal can be stored in the Plant stockpile. The 55,000 tons of low sulfur coal stored at the Plant when the stockpile is full constitute enough coal to operate the Plant for only eighteen days. Bogin V.S. at 3.

Of the 700,000 tons of coal burned annually at the Lovett Plant, 90% moves in joint line NS-Conrail service, interchanged either at Hagerstown, Maryland or Buffalo, New York. While the Lovett Plant has not been shut down due to problems on NS and Conrail, there have been some close calls. On one recent occasion, the supply of the extremely low-sulfur coal burned at Lovett was exhausted. Orange and Rockland had to burn a combination of higher sulfur coal and natural gas in order to meet the strict clean air standards applicable to Orange and Rockland's system. Bogin V.S. at 4.

Because of those emission standards, Orange and Rockland cannot burn local coals at Lovett. Indeed, even regular low-sulfur Appalachian compliance coal (1.2 pounds of sulfur dioxide per million Btu) produces emissions exceeding the standards Orange and Rockland must meet. Orange and Rockland must therefore obtain "supercompliance" coal from one of the handful of mines in Central

Appalachia known to produce this coal in volumes suitable for unit-train loading.

In view of the difficulties Orange and Rockland has experienced in recent years, and in view of the difficulties UP has had providing reliable service over its lines after its merger with SP, Orange and Rockland is very concerned about the future. Moreover, UP absorbed an intact railroad. In this proceeding, CSX and NS are asking this Board to approve their acquisition of 42% and 58%, respectively, of Conrail. As a result, routings will change, interchange points will disappear, and responsibilities will be shifted to new people in new locations. Problems during the transition are inevitable, and there is no reason to suppose that these Applicants' service problems will be less severe than those experienced by UP.

The Applicants project significant increases in traffic over Conrail's River Line, on which the Lovett Plant is located. See Volume 3A of the Railroad Control Application, at Attachment 13-6, page 448, and Attachment 13-7, page 470. A 19% increase in tonnage is projected, from 41 million tons a year in 1995 to 48 million tons "post-acquisition", or an additional 1.2 trains a day. The Applicants have also stated repeatedly that they intend to seek diversion of large volumes of freight from truck to rail. This will add to congestion on rail lines in New Jersey and New York.

Orange and Rockland understands that in the future, CSX may be able to offer single-line service to the Lovett Plant. This possibility offers advantages and potential disadvantages, as discussed below. However, Orange and Rockland will require joint-line NS-CSX service until at least 2007, when its coal contract with Massey Coal Sales for service from the NS-served Sidney mine expires.

IV. ORIGIN COMPETITION TO SERVE ORANGE AND ROCKLAND WILL BE IMPAIRED

The second major area of concern that the Railroad Control Application presents to Orange and Rockland involves competition among railroads to serve the Central Appalachian coal mines that produce supercompliance coal. As Witness Bogin explains (V.S. at 8-9), most of the supercompliance coal reserves are sourced on NS, not CSX. Indeed, Massey is the largest producer of these coals, and it has advised Orange and Rockland that NS serves 80% of the Massey origins capable of meeting the Lovett Plant's needs. (Id.)

Orange and Rockland is, of course, captive to Conrail at the Lovett Plant today, and the Company will be captive to CSX at Lovett in the future. The Company therefore does not qualify as a "2-to-1" shipper of the kind the ICC and Board have tried to help in recent merger decisions.[3] The fact remains that the competition that exists between NS and CSX in the coal fields of Central Appalachia will be impaired if one of those railroads, CSX, is also the only railroad serving the Lovett Plant.

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[3] Certain competitors of Orange and Rockland, including Atlantic City Electric and PECO, will apparently enjoy service by a second railroad as a result of the Conrail merger. This will give those utilities a competitive advantage.

Orange and Rockland benefits from today's origin competition in two ways. First, Conrail has not used its market dominance over deliveries to the Lovett Plant to force Orange and Rockland to take all of its coal from Conrail-served mines. This is because Conrail does not have access to supplies of supercompliance coal sufficient to meet the Lovett Plant's needs. Bogin V.S. at 7. Conrail hauls only about 10% of the coal burned at Lovett in single-line service.

As a result, Conrail has not sought to interfere in Orange and Rockland's coal acquisition decisions, and Orange and Rockland has been able to benefit from competition between NS and CSX to transport coal from the mines to the Conrail interchange points. Bogin V.S. at 7. Equally important from Orange and Rockland's perspective is the fact that its access to NS-served mines and CSX-served mines induces the mines themselves to compete with one another to provide the best coal at the best price.

With CSX serving the Lovett Plant exclusively, and also serving less than half of the supercompliance coal reserves, this healthy competitive situation will change. No matter how hard NS and the NS-served mines strive to continue their role as Orange and Rockland's principal suppliers, CSX will have the ability to price their services out of the market, by making the delivered price of such coals noncompetitive. Bogin V.S. at 7-8.

CSX will also have an economic and operational incentive to secure the longest possible haul for itself. It is understood by all parties that CSX and NS have paid a multi-billion dollar premium to acquire Conrail. The temptation to recover at least some of the acquisition costs from captive shippers like Orange and Rockland may be irresistible. The simplest way for CSX to accomplish this result, once Orange and Rockland's rail transportation contracts expire, will be to set single-line rates at the profit maximizing level, and then to establish even higher through rates for delivery of NS-originated coal. Absent competition, CSX will be under no compulsion to share with Orange and Rockland any of the efficiency benefits claimed to result from single-line service.

It may be argued that it is in the railroad's interest to maximize Orange and Rockland's generation in order to maximize their revenues. This suggestion rests on the simple but fallacious assumption that railroads price their services to maximize individual shippers' revenue contributions, rather than the overall profitability of the railroad as a whole.

But economics textbooks, and the business sections of newspapers, are full of examples of businesses dropping profitable enterprises because of greater profits available elsewhere. In the railroad context, as Witness Bogin explains, there is no assurance that CSX will not subordinate its "partnership" with Orange and Rockland to a more lucrative partnership with one or more other shippers. The result could be higher rates for Orange and Rockland, more limited access to coal supplies, and inferior service, at a time when the imperative for competitive rates and service by Orange and Rockland itself has never been stronger. Bogin V.S. at 10-11.

Nor is the rate case remedy an adequate substitute for competition. As the Board is well aware, it has no jurisdiction to prescribe rates below the jurisdictional threshold, even where market dominance and rates exceeding stand-alone cost are established. This relief is inadequate if rail competition to serve Orange and Rockland's competitors drives their costs of generation below Orange and Rockland's. The inadequacy of regulatory relief is compounded if the acquisition premium is allowed to inflate the jurisdictional threshold.

V. THE CONDITIONS REQUESTED BY ORANGE AND ROCKLAND SHOULD BE IMPOSED

Under the applicable statutory provisions, set forth at 49 U.S.C. § 11324, the Board may not approve a merger or control application unless it finds that the transaction under consideration is in the public interest. In making this determination, the Board must, at a minimum, consider:

> (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.

49 U.S.C. § 11324(b). Section 11324(c) goes on to provide "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."

In considering whether to impose conditions, the Board adheres to the position adopted by the ICC in Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 ICC 462, 565 (1982):

> [W]e will not impose public interest conditions on a railroad consolidation unless we find that the consolidation may produce effects harmful to the public interest (such as an anticompetitive reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of the possible harm) outweighing their harm to the merger.

The conditions requested by Orange and Rockland meet these standards.

The first condition requested by the Company should generate no opposition. Orange and Rockland urges the Board to retain jurisdiction over implementation of the merger, in order to be able to monitor the actions taken by CSX and NS in absorbing their respective portions of Conrail into their systems. This condition parallels the similar condition imposed in Finance Docket No. 37260, Union Pacific -- Control -- Southern Pacific.

This condition cannot "harm" the merger, since it imposes no additional burdens on the Applicants. It merely enables the Board to keep itself informed of the Applicants' progress in consummating their transaction. The Board would also be in a position to react to any service problems that may develop, but any remedial measures would be taken only after consideration of the views of the Applicants, other railroads, shippers and receivers, and the public.

It is noteworthy that the Union Pacific has entered voluntarily into trackage rights agreements with other railroads, in order to ameliorate its current service problems. Corrective action might have been slower in coming if the Board had not elected to maintain an oversight role when it approved the UP/SP merger.

Of course, the "monitoring" condition in US/SP did not prevent service problems. Orange and Rockland seeks other conditions to accomplish that result with respect to potential service problems at the Lovett Plant, and also to mitigate the potential anticompetitive effects discussed above.

The full benefits of single-line service to the Lovett Plant cannot be realized by Orange and Rockland so long as only one railroad, CSX, can reach the Plant, but shipments must originate at NS-served mines, due to existing long-term coal supply contracts. It appears, however, that the competitive situation could be enhanced without major modifications (i.e., hundreds of miles of trackage rights) to the transactions agreed to by the Applicants.

The revised railroad map in the East provides NS with two routings to within 50 miles of the Lovett Plant, either via Hagerstown, Maryland, eastern Pennsylvania and northern New Jersey, or via Buffalo and Binghamton, New York. Trackage rights for NS over the last 50 miles of the route would preserve the origin competition between NS and CSX that now exists, and would also mitigate any risk of delays or other service problems.

Alternatively, reasonable interchange rates from CSX from the nearest point of interchange with NS (believed to be Oak Island Yard, New Jersey), would permit NS and CSX, and the Central Appalachian mines they serve, to compete based on price and quality. The danger of foreclosure or exclusionary pricing by CSX would be mitigated.

That these conditions would mitigate the cited harms, and benefit Orange and Rockland, its customers, and its coal suppliers, is undeniable. Orange and Rockland knows of no operational barrier to implementation of any of these conditions. They are, in some respects, merely a slight expansion of the shared assets concept put forward by the Applicants as a benefit of the merger.

These benefits also outweigh any "harm" the conditions might cause to the merger. Harm to a merger, properly understood, means an adverse impact on the legitimate interests of the merging parties. Enhancing one railroad's market power over captive shippers, at the expense of other railroads and of coal mines not served by the railroad gaining new monopoly power, is simply not among the goals Congress intended to foster when it authorized the Board to approve railroad consolidations.

The conditions requested by Orange and Rockland do no more than prevent the withholding, as opposed to the sharing, of the efficiency gains touted as a merger benefit by the Applicants. In this respect, there is no "harm" to the merger.

VI. CONCLUSION

For the reasons set forth in these Comments, Orange and Rockland urges the Board to approve the Applicants' Railroad Control Application only if it is conditioned as requested herein.

Respectfully submitted,

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Dated: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, caused the foregoing document to be served by first-class mail on counsel for the applicants and on the FERC Administrative Law Judge assigned to handle discovery matters, as indicated below. Copies have also been served by first-class mail on all parties of record on the official service list.

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VERIFIED STATEMENT OF DEBRA A. BOGIN

I. INTRODUCTION

My name is Debra A. Bogin and my business address is One Blue Hill Plaza, Pearl River, NY 10965. I am currently an Electric Commodity Marketer in the Electric Production Division of Orange and Rockland Utilities, Inc. ("Orange and Rockland", or the "Company").

I joined Orange and Rockland in September, 1991, as Fuel Resources Contract Administrator. My job responsibilities included, among other things, the daily and long term purchase of coal, the scheduling of coal deliveries with the railroads, and coal and rail contract administration and negotiation. I worked in that position until November 1996, at which time I was promoted to my current position. My current job responsibilities include my former duties in addition to the marketing of the electric generation of Orange and Rockland's power plants.

Orange and Rockland is an investor owned utility serving 266,000 electric customers and 113,100 natural gas customers in a 1,350 square-mile region with a population of approximately 675,000 in southeastern New York State as well as in adjacent sections of northern New Jersey and northeastern Pennsylvania. Orange and Rockland has a total internal generation capacity of 982 megawatts from coal, oil and gas steam units, gas turbine units and hydroelectric power. Attached as Exhibit 1 is a map of our service area.

The Lovett Plant, which is now served exclusively by Conrail, is one of Orange and Rockland's two steam generation plants. A photograph of the Plant, which is located in Tomkins Cove, New York, is attached as Exhibit 2. The Lovett Plant consists of three active units, two of which burn coal. These two coal units have a capacity of 372 megawatts, or approximately 38%, of Orange and Rockland's internal generating capacity. The Lovett Plant coal burning units utilize an extremely low sulfur (1.0 lbs. SO_2MMBTu) and high Btu (13,000 Btu) coal, known as "supercompliance" coal. Use of this coal is required to meet the applicable clean air standards.

Orange and Rockland has a long term coal contract (through 2007) with Massey Coal Sales Company for the lesser of 90% of the total coal delivered to the Lovett Plant or 630,000 tons of coal per year. This coal is sourced out of the Sidney Mine in Eastern Kentucky and originates on the Norfolk Southern Railroad ("NS"), with Conrail delivery. Attached as Exhibits 3 and 4 are maps showing the rail lines to the Lovett Plant today, and as projected by the Applicants in the Conrail merger proceeding.

Orange and Rockland burns approximately 700,000 tons of coal a year at the Lovett Plant, all of which is delivered by Conrail in 10,000 ton unit trains. Currently 90%, or approximately 630,000 tons, of this coal is originated on NS, and Conrail originates approximately 70,000 tons a year. The plan submitted by the Applicants for dividing up Conrail calls for the Lovett Plant to be served by CSX, leaving Orange and Rockland with a two-line NS/CSX haul on this coal.

Orange and Rockland has two major concerns in this proceeding. The first concern is that service problems will certainly worsen, jeopardizing the reliability of generation at the Lovett Plant. The Company's second concern is that reduced competition will constrain or foreclose Orange and Rockland's access to the supercompliance coal required at the Lovett Plant. The result could be less reliable service, higher costs of generation, or both, with adverse impacts on Orange and Rockland and its customers.

II. SERVICE PROBLEMS

Because of the layout of the Lovett Plant, coal storage space is very limited. The coal stockpile can hold a total of 70,000 tons, and cannot be expanded. The Lovett Plant is located at a bend in the Hudson River, and is bounded on the east and north by water. To the south is a quarry, and to the west are hills and the town of Tomkins Cove. See Exhibit 2.

On a regular basis, Orange and Rockland can only store and use 55,000 tons of coal in the Lovett stockpile. This amounts to only 18 days' burn for the Plant. (There is an additional 15,000 tons forming the base of the stockpile, but that is high sulfur coal available for use only in an extreme emergency, given the potential for exceeding SO_2 emission limits if that coal is burned.) Because storage space at the Lovett Plant is limited to an 18-day supply of coal, Orange and Rockland is very dependent on consistent on-time rail service. However, reliable and timely service has not been consistently available, in Orange and Rockland's experience. Although the Lovett Plant has not run out of coal completely, it has come close on a number of occasions.

The most serious incident among many was in February 1994. During that incident, Orange and Rockland was forced to burn some of the high sulfur coal at the bottom of the stockpile, co-firing natural gas to keep the SO_2 emissions down while it was waiting for the next train of coal to arrive. In July 1997, Orange and Rockland was down to an eight day supply of low sulfur coal and was having an extremely difficult time getting consistent loadings from NS and deliveries from Conrail. Experience has shown that at least once each summer and once each winter there is a serious disruption in service by one or both of the railroads.

The problems encountered on NS include a shortage of bottom dump cars for loading at the mine and a shortage of locomotives and/or crews for transporting the trains. The problems on Conrail have included a shortage of locomotives and/or crews for both transporting the trains to the Lovett Plant and then picking up the empty cars. Orange and Rockland and its long term coal supplier, Massey Coal Sales, have frequently complained to both railroads regarding service difficulties.

Orange and Rockland's coal traffic from NS mines can move via one of two routings today. The shortest routing is NS from the mine to Hagerstown, Maryland, for interchange to Conrail. From Hagerstown, Conrail hauls the coal across eastern Pennsylvania and northern New Jersey to the River Line, which runs between New York and Albany. The Lovett Plant is about 25 miles north of New York City. Alternatively, NS can haul the coal from the mine to Buffalo, New York, for interchange with Conrail, which moves the coal across New York State to Albany, and then south to the Lovett Plant over the River Line.

The Buffalo route is approximately 250 miles more circuitous than the Hagerstown route, about 150 miles longer for NS and about 100 miles longer for Conrail than the route through Hagerstown. Despite being significantly longer and presumably more costly in terms of fuel use, the Buffalo routing has been used by NS and Conrail for Orange and Rockland's shipments in recent years. Due to congestion on the more direct Hagerstown route, Orange and Rockland has had to route the trains through Buffalo, in order to improve delivery service.

Service over the River Line to the Lovett Plant also presents its share of problems. According to discussions with Conrail, the single line track along this section of the railroad can only move traffic in one direction at a time. For instance, traffic moves from the north to the south during the morning hours. Orange and Rockland has been informed that there is only a limited "window of time" during which its trains can move. Conrail advises that if that "window of time" is missed, Orange and Rockland will usually have to wait until the following morning for the train to depart the terminal.

Under the merger proposal, the River Line will be taken over by CSX, which will therefore be the sole railroad delivering coal to the Lovett Plant, regardless of the routing from the mine to the River Line. CSX will also take over Conrail's line from Buffalo to Albany, but Conrail's line from Hagerstown to northern New Jersey will go to NS. In addition, NS can reach the northern New Jersey interchanges with CSX by crossing New York State through Binghamton. See the map attached as Exhibit 4.

Orange and Rockland is concerned that, as with the UP/SP merger, service will deteriorate after the takeover. The Applicants project that the merger will result in an increase in traffic on all the rail lines due to the movement of truck traffic off the highways and onto rail cars. Increased congestion may also result from the new routing opportunities that will become available to suppliers and consumers who now ship by rail.

The railroads have difficulty meeting delivery schedules for their current traffic volumes. Unless there are service conditions or guarantees, an increase in traffic will severely affect Orange and Rockland's level of service. The limited coal stockpile at the Lovett Plant and the traffic movement restrictions on the River Line cause Orange and Rockland great concern as to the quality of service that the Company will receive once the merger is approved.

III. REDUCED COMPETITION

A second area of concern for Orange and Rockland is the fact that there will be less competition after the merger to originate the Company's coal than there is today. While the Lovett Plant will be captive to CSX after the merger, as it is captive to Conrail today, the scope of captivity will change to Orange and Rockland's detriment.

Conrail currently originates about 70,000 tons a year for Orange and Rockland, or about seven trainloads a year, and carries that coal to the Lovett Plant in single line service. However, Conrail understands that it has limited access to the very low sulfur Central Appalachian-type coal needed at the Lovett Plant. Accordingly, Orange and Rockland has had a free hand to take advantage of competition among Central Appalachian supercompliance coal mines served by NS and CSX, and has also been able to benefit from competition between NS and CSX to haul coal to the interchange points with Conrail.

In the future, after the expiration of current rail transportation contracts between Orange and Rockland, NS and Conrail, CSX will have a clear incentive to try to foreclose Orange and Rockland's access to coal supplies from any mines that CSX does not serve. CSX may seek to maximize revenues by charging higher rates for single line service from its mines, even though the cost of single line service is bound to be less than the cost of joint line service. No matter how high CSX's single line rates may get, CSX will always be able to insure that the NS/CSX through rate is higher. Even if the NS rate to the interchange point is low, CSX can charge enough for its leg of the interline movement to make the interline movement noncompetitive.

This new market power for CSX can cause serious market distortions, particularly for a utility like Orange and Rockland, which is required to burn unusually low sulfur coal at the Lovett Plant. As explained above, Orange and Rockland has a long term coal contract, that does not expire until 2007, for coal from a mine served by NS. Conrail has not sought to penalize Orange and Rockland for its use of this coal because of Conrail's limited ability to serve origins producing coal with the necessary specifications. Orange and Rockland cannot be assured that CSX will be as tolerant of the Company's use of coal from non-CSX origins.

More fundamentally, Orange and Rockland needs the ability to make coal purchase decisions based on the cost and suitability of the available coal supplies. This enables the Company to benefit from the choices in the marketplace, and allows the most efficient coal producers to benefit from their efficient production capability. CSX should not be allowed to use its market power to steer Orange and Rockland away from efficient mines producing the best coal at the best price and toward less efficient mines producing less suitable coal at higher prices, merely because it has the ability to monopolize Orange and Rockland's rail service. Such action would harm Orange and Rockland and its customers, NS and other railroads, the mines that CSX does not serve, and the economy generally.

Because of the Lovett Plant's specialized coal requirements, Orange and Rockland will be particularly vulnerable to this problem of limited access to coal sources, once the Company's current rail transportation contracts expire. Massey Coal Sales is the largest producer of supercompliance coal in the East, but 80% of Massey's supplies of this coal are served by NS.

Orange and Rockland has checked on other suppliers of this type of coal with the capability to load the unit train volumes needed at the Lovett Plant. Certain producers of supercompliance coal operate mines that are served only by NS. Excessive rail rates via CSX could make coal from these mines noncompetitive, even if these producers, and Massey's NS-served Sidney mine, would otherwise be the Company's preferred producers.

Orange and Rockland's concerns about potential predatory pricing by CSX are two-fold. First, Orange and Rockland has an obligation to its ratepayers to provide economical and reliable power. Market distortions resulting from inadequate rail competition could have a direct impact on the Company's ability to provide the best price possible to its ratepayers. In this regard, the Company also shares the concerns of other shippers that the acquisition premium paid by NS and CSX for Conrail will end up being recovered from captive shippers in the future. This should be prevented.

Second, Orange and Rockland has already introduced electric competition to its system for all classes of customers through its PowerPick™ program. Competition will intensify in the near future, both as a result of the expansion of PowerPick™, and through implementation of full retail competition, for energy and capacity, as part of Orange and Rockland's electric rate/restructuring plan in New York's Competitive Opportunities Proceeding (New York Public Service Commission Case No. 96-E-0900). These changes in the electric industry already place the Company in direct competition with other marketers, including utilities, in its role as a seller of electric power. Any economic disadvantage to Orange and Rockland resulting from a stifled rail market will have an impact on the Company's ability to market the electric power produced at the Lovett Plant, in its own service territory and elsewhere.

Cost aside, the service problems discussed above could have severely adverse impacts on Orange and Rockland and its customers. Because of the layout of the Lovett Plant, there is no way for the current coal stockpile to be increased. Poor service could lead to outages at the Lovett Plant, forcing Orange and Rockland to rely on higher cost purchased power in the short term, and threatening the Company's relationships with its customers over the longer term.

Utilities like Orange and Rockland work hard, and spend large sums of money, to be reliable providers for industrial, commercial and residential customers. When Orange and Rockland discusses concerns like these with railroads, their position is always that they value our business, and would have no incentive to undermine our ability to compete effectively, either by providing Orange and Rockland with poor service, or by charging excessive rail rates or foreclosing our access to coal. This is usually described as "partnering."

I have two problems with these statements. In the first place, CSX will be serving many utilities, not just Orange and Rockland. If CSX can make more money hauling coal to one of Orange and Rockland's competitors than they can hauling coal to the Lovett Plant, what is to prevent CSX from giving a higher priority to its partnership with another utility than to its partnership with Orange and Rockland? In the second place, even if CSX has an interest in Orange and Rockland's survival, the railroad may nevertheless seek to maximize revenues from Orange and Rockland, to the detriment of the Company and its customers.

Finally, Orange and Rockland has had service problems in the past. Those problems are certain to be exacerbated by CSX's attempt to absorb half of Conrail. A UP-type breakdown could overwhelm CSX management, crews, and equipment resources. Orange and Rockland's problems could easily be subordinated to the concerns of larger customers or markets.

IV. REQUESTED CONDITIONS

There are several possible solutions to these problems. At a minimum, the Board should not approve the Conrail breakup without retaining jurisdiction to deal with any problems that may arise. However, such a condition, though necessary, is not sufficient. The Board retained jurisdiction to monitor the UP/SP merger, but catastrophic service problems have nevertheless occurred.

A more effective condition would be fo NS to be able to provide service to the Lovett Plant. This could be done through trackage rights over CSX from northern New Jersey (probably Oak

Island Yard) to the Plant, a distance of about 50 miles. If Orange and Rockland were able to route coal shipments from Central Appalachia to the Lovett Plant in single line service over CSX or NS, the problems cited above would be mitigated.

In the event of service problems due to congestion (or any other cause) on one railroad, Orange and Rockland could ship via the other railroad. At the Central Appalachian origins, Orange and Rockland could negotiate with coal suppliers for the best coal at the best prices, free of restrictions resulting from destination captivity to CSX. Moreover, CSX could not abuse its market power to charge excessive rates to Orange and Rockland, provide inadequate service, or discriminate against Orange and Rockland.

In the alternative, the Board could condition its approval of the merger on the establishment by CSX of reasonable rates to the Lovett Plant from its interchange point(s) with NS. Orange and Rockland could then negotiate a long term contract with CSX for interchange service at mutually acceptable rates, permitting service in NS/CSX interline service that will produce competitive delivered costs for coal at the Lovett Plant. Orange and Rockland's ability to serve its customers, and to compete with other generating companies, must not be compromised by the Conrail merger.

STATE OF NEW YORK)
) ss
COUNTY OF ROCKLAND)

VERIFICATION

Debra A. Bogin, being duly sworn, states that she has read the foregoing statement, which she is qualified and authorized to make, that she knows the contents thereof, and that the statement is true and correct.

Debra A. Bogin

Debra A. Bogin

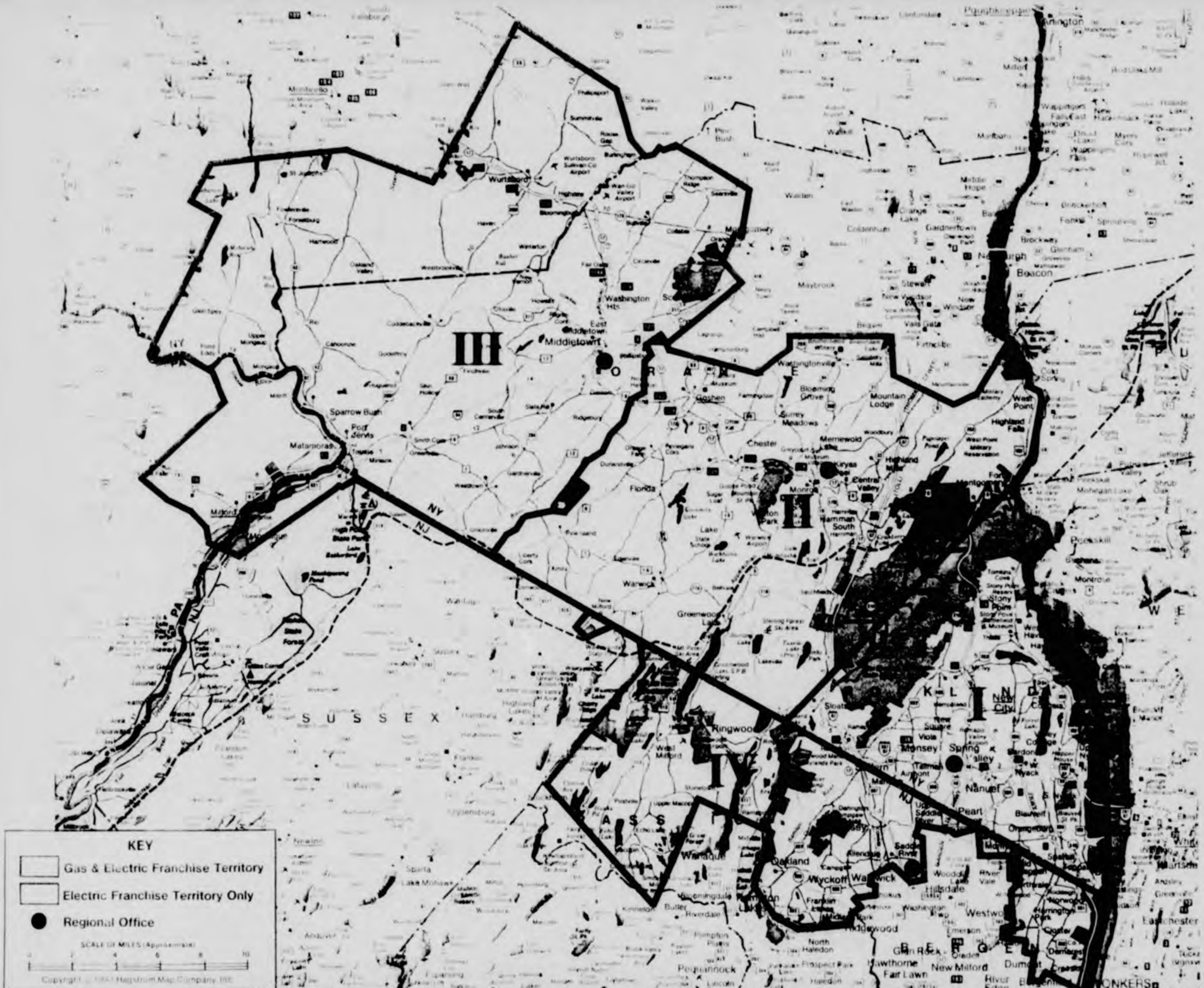
Subscribed and sworn to before me this 20th day of October, 1997.

Joan Marie Smith

Notary Public

JOAN MARIE SMITH
Notary Public, State of New York
No. 01SM5049269
Qualified in Rockland County
Commission Expires Sept. 18, 1999

My Commission expires 9/18/99.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Goshen
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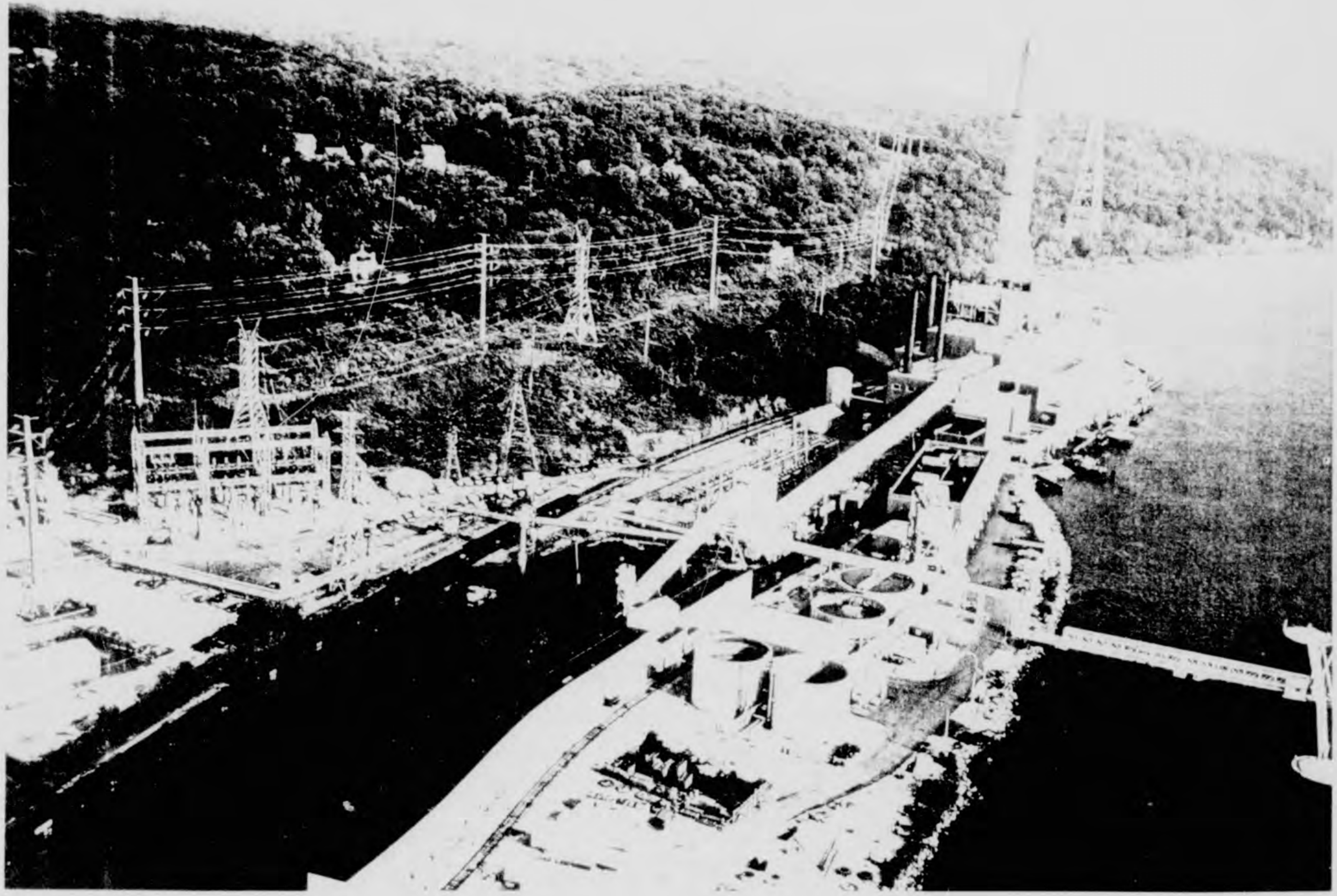
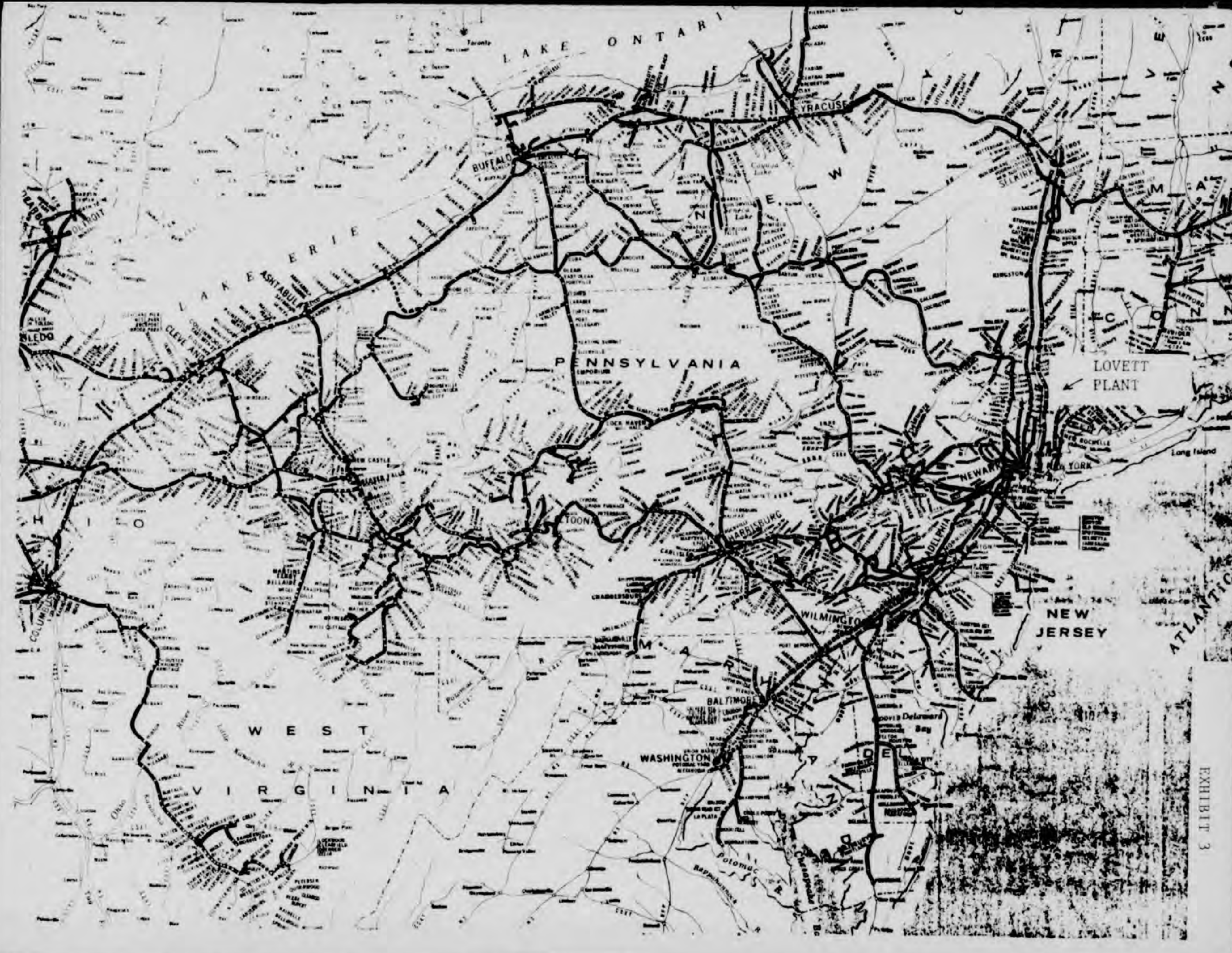
Wurtsboro
Washington Hts.
Warwick
Ringwood
Nanuet
Pearl River
Newburgh
Beacon
Yonkers

EXHIBIT 1

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HARRISBURG
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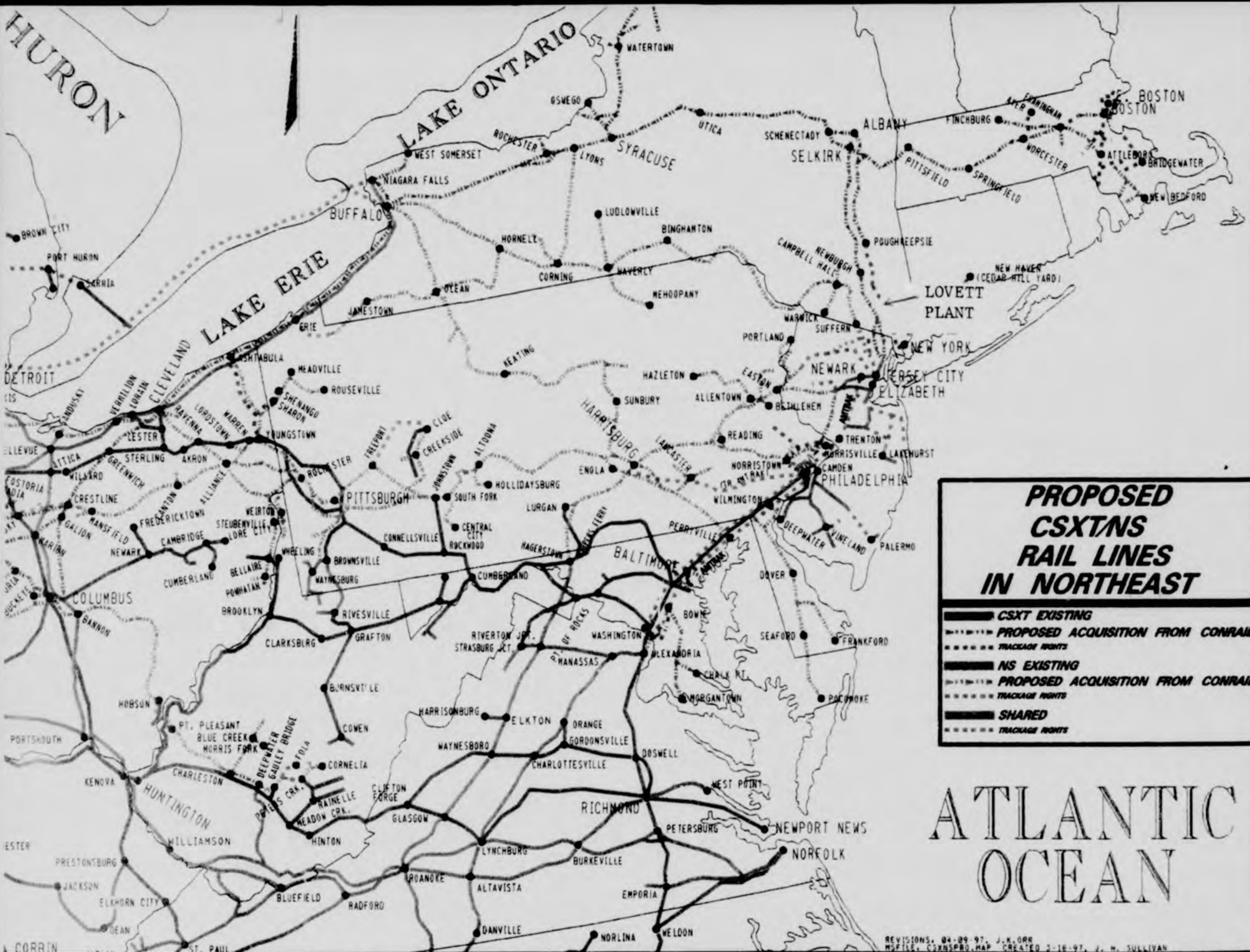
BALTIMORE
WASHINGTON
Delaware
Bay
WEST
VIRGINIA
ATLANTIC
Potomac

EXHIBIT 3



MSFILE. CSXNSPROR.MAP, REF. FILE. CSXNSPRO.MAP

EXHIBIT 4

STB FD 33388 10-21-97 D 182867

182867

National Grain and Feed Association

October 21, 1997

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

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Seventh Floor
1925 K Street, N.W.
Washington, DC 20423-0001

D

Re: STB Finance Docket No. 33388, Statement of National Grain and Feed Association in Support of Application

Dear Secretary Williams:

Enclosed are the original and 26 copies of NGFA-2, Statement of National Grain and Feed Association in Support of Application, for filing in this proceeding. Also enclosed is a 3.5" diskette containing the document with exhibits in WordPerfect format.

Very sincerely,

Geraldine Diver

Geraldine Diver
Executive Assistant, Arbitration and Legislative Affairs

Enclosures

1201 New York Avenue, N.W., Suite 830 • Washington, D.C., 20005 • (202) 289-0873

182867

NGFA-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

* * *

STB Finance Docket No. 33388

* * *

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

* * *

STATEMENT OF NATIONAL GRAIN AND FEED ASSOCIATION IN SUPPORT OF APPLICATION

* * *

DAVID C. BARRETT, JR.
Counsel for Public Affairs/
Secretary-Treasurer
National Grain and Feed Association
1201 New York Ave., N.W., Suite 830
Washington, DC 20005
(202) 289-0873
Counsel for National Grain and Feed Assoc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

* * *

STB Finance Docket No. 33388

* * *

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

* * *

STATEMENT OF NATIONAL GRAIN AND FEED ASSOCIATION IN SUPPORT OF APPLICATION

The National Grain and Feed Association (NGFA®) supports the application of CSX Corporation and CSX Transportation, Inc. (CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS), to acquire control of Conrail, Inc. and Consolidated Rail Corporation. The NGFA's support is based upon the responses of CSX (Exhibit B) and NS (Exhibit C) to questions (Exhibit A) posed to the carriers by the NGFA.

The National Grain and Feed Association (NGFA®) is comprised of 1,000 grain, feed and processing companies that operate 5,000 facilities that store, handle, merchandise, mill, process and export more than two-thirds of all U.S. grains and oilseeds. About 70 percent of NGFA member firms are small businesses – country elevators and feed mills. Also, affiliated with the NGFA are 37 state and regional grain and feed associations, which represent about 10,000 agribusiness firms nationwide.

The NGFA's support of the carriers' application is premised on the belief that the acquisition of Conrail by both CSX and NS has the potential to improve market access and service through single-line, single-carrier service for rail users. Additionally, the NGFA's support is based on the belief that both rail users and the carriers can potentially benefit from post-acquisition efficiencies realized by the carriers where effective competition is maintained.

While the NGFA is supportive of the application filed by CSX and NS, the NGFA also recognizes that some NGFA members directly affected by the carriers' application may have different views based on actual or perceived impacts on particular origins, destinations or markets. Specifically, the NGFA notes that several member firms have expressed concerns over switching rules and rates at locations now served by Conrail. We urge the acquiring carriers to pay particular attention to such concerns when integrating the Conrail lines into their respective operations should approval of their application be granted by the STB.

Finally, the NGFA believes it is extremely important that the Norfolk Southern Corp. and CSX Transportation Co. have specific, relevant and meaningful performance measurements that can be used to monitor the implementation of their acquisition of Conrail. We do not believe it is appropriate for the STB to micromanage the process whereby both carriers implement the acquisition. But the NGFA believes the STB should exercise its oversight authority to monitor post-acquisition performance by both carriers so that rail users receive quality service and effective competition occurs. Indeed, the problems being experienced by rail users in the wake of the Union Pacific/Southern Pacific merger reinforce the need for the carriers, their shipper/receiver customers and the STB to follow through and perform in accordance with statements and assurances provided during the merger application process.

To accomplish this essential objective in the most effective manner possible, the NGFA urges the STB to appoint a Conrail Acquisition Advisory Council charged with the responsibility of developing standards and performance measurements, as well as specific reporting measures, that will provide an accurate portrayal of the implementation by the CSX and Norfolk Southern of their Conrail acquisition plans. The advisory council should consist of a broad representation of rail users that ship or receive freight on the CSX, Norfolk Southern or both, as well as senior executives of the two railroads. Further, the advisory council should endeavor to develop, within the private sector, mechanisms to prevent – or identify and effectively address – obstacles to the most effective and efficient implementation of the acquisition. Further, the NGFA believes that a precondition for the establishment of such an advisory council is that it be subject to federal laws that require its meetings to be publicly announced and open, and that its reports and findings submitted to the STB be broadly and publicly disseminated.

Alternatively, if the STB finds it is unfeasible to form such an advisory council, the NGFA recommends that the STB accomplish the same oversight process by expressly committing to provide an open public forum in which representatives of the CSX and Norfolk Southern, and different industries served by the two carriers, would provide regularly scheduled updates on post-acquisition performance.

Dated: October 21, 1997

Respectfully submitted,
NATIONAL GRAIN AND FEED ASSOCIATION

David Barrett

By: *David C. Barrett, Jr.*
Counsel for Public Affairs/Secretary-Treasurer
National Grain and Feed Association
1201 New York Ave., N.W., Suite 830
Washington, DC 20005
Phone: 202-289-0873
FAX: 202-289-5388
E-Mail: dbarrett@ngfa.org
Counsel for National Grain and Feed Association

CERTIFICATE OF SERVICE

This is to certify that I, David C. Barrett, Jr., have on October 21, 1997 caused to be served a true and correct copy of the foregoing NGFA-2, Statement of National Grain and Feed Association in Support of Application, on all parties that have appeared in Finance Docket No. 33388, by first class mail, postage prepaid, or by more expeditious means, as listed on the Service list in this proceeding.

David Barrett

David C. Barrett, Jr.

Exhibit "A"

Questions on Proposed Acquisition of Conrail

Submitted To
Norfolk Southern Corporation and CSX Corporation

October 3, 1997

The National Grain and Feed Association seeks and appreciates the responses of the Norfolk Southern Corporation and CSX Corporation to the following questions. Please fax the responses to: (202) 289-5388. Thank you!

1. **Switching:** For traffic involving movement of agricultural commodities (including grain and grain products) on lines currently operated by Conrail, will your railroad provide a commitment to maintain reciprocal switching in markets currently being switched if the Surface Transportation Board approves the acquisition?

2. **Competitive Joint Line Rates:** How does your railroad plan to address the issue of competitive joint line rates? *[e.g., origin shippers now have single-line Conrail service and rates. After the acquisition, the origin shipper may be served by either the Norfolk Southern or CSX, but the destination will be on the line of the other carrier.]*

3. **Locomotive Power and Equipment:** What plans do the Norfolk Southern and CSX have to provide adequate power, cars and crews for transporting agricultural commodities (including grain and grain products)?

4. **Capital Improvements:** Both the Norfolk Southern and CSX have stated publicly that they intend to finance the acquisition of Conrail from revenues generated through expanded traffic and savings generated by improved efficiencies, rather than by increasing rates on movements of agricultural commodities (including grain and grain products). Please confirm that your railroad does not plan to finance acquisition-related capital costs or improvements through significant increases in rates on agricultural commodities.

5. **Service and Rates**

a. **Equipment Allocation:**

(1) What plans does your railroad have for allocating adequate power, cars and crews to grain and grain products traffic to maintain service at current or improved levels throughout your carrier's current and proposed rail system?

(2) What will your railroad's policy be concerning the use of railroad vs. private (shipper-owned or leased) cars on your system?

b. **Local Service:** What plans does your railroad have to ensure that rail shippers and receivers with facilities located on high-speed lines still receive sufficient power, cars and crews to maintain or improve local service?

c. **Intermodal and Diverted Truck Traffic:**

(1) How will increased intermodal traffic, as well as traffic diverted from trucks, affect equipment availability and service for grain and grain products?

(2) Can your railroad provide assurances that its service commitment contracts for piggyback stack train service will not adversely affect its common carrier obligation to provide service for movement of agricultural commodities (including grain and grain products)?

d. **Abandonments:** Given the public statements from Norfolk Southern and CSX that they intend to pay for the acquisition of Conrail through increased business volume and improvements in efficiency, can your railroad provide assurances that it will not use the rail line abandonment process and liquidation of assets as a means of financing or reducing the cost of the acquisition?

f. **Integration of Conrail System:** What specific assurances can your railroad provide that the integration of the Conrail system will be done in a way to avoid disruptions in service that have occurred in the aftermath of the Union Pacific/Southern Pacific merger?

6. **Shortlines:** What will your railroad's policies be concerning service, gateways, equipment and through rates for shortline carriers?

Exhibit "B"

CSX
TRANSPORTATION
John G. Anderson
Executive Vice President -
Sales & Marketing

500 Water Street - J120
Jacksonville, FL 32202
(904) 359-1450
Fax (904) 359-7674

October 10, 1997

Mr. John Bratten
Chairman, Rail Shipper/Receiver Committee
National Grain & Feed Association
201 New York Avenue, N.W., Suite 830
Washington DC 20005

Dear John:

We appreciate this opportunity to respond to your committee's questions. They were thoughtful and seemed to cover all of the issues we have heard from our individual ag shippers.

We understand that your intent is to transcribe the CSX responses and similar Norfolk Southern responses for publication in your fax newsletter to your members in advance of the October 21 filing date. As you and your members have seen from our filing, CSX believes that this transaction is a pro-competitive railroad transaction. We are confident that once approved, the acquisition of 42% of Conrail by CSX will improve service to our customers and expand rail-freight service for shippers in the East.

Specifically, let me try to answer each of the issues that were outlined in your October 3 letter.

1. **Switching:**

CSX has no plans to change reciprocal-switch arrangements. Essentially, we will continue to honor the Conrail switching contracts as they apply to those Conrail lines we acquire. Furthermore, in our filing before the Surface Transportation Board, CSX and Norfolk Southern pledged to honor all existing transportation contracts.

2. **Competitive Joint-Line Rates:**

The plan to divide Conrail, which is essential if two balanced and competitive rail carriers are to be created in the East, yields substantial increases in single-line service routings. But inevitably some traffic now flowing in single-line service on Conrail will end up moving over two carriers.

The operating plans of both carriers assume that traffic now routed single line on CR, but which will be joint line in the future, will be rerouted using joint-line service over an efficient interchange point. Where the traffic is under contract on the split date, those terms and conditions will continue to be honored for the duration of the contract. Because each situation is unique, the needs of each customer impacted by the loss of single-line service will be examined in order to minimize adverse effects.

3. **Locomotive Power and Equipment:**

Locomotives: Agricultural commodities are an important business segment for CSX and we will continue to provide resources to support the growth we seek in this market. Elimination of interchange points, more-direct routings, improved repair-and-maintenance programs, and better servicing practices will allow us to take on our share of Conrail's workload with the CSX fleet (2,773 locomotives) plus our 42% of Conrail's fleet (820 locomotives).

Railcars: By better using and distributing freight cars – our cars, shipper/private cars, leased cars, and foreign-line cars – CSX will be able to handle expected workload with fewer cars, or will have equipment available to handle growth. Velocity improvements – attributable to improved routings, reduced interchanges, and closer reload points – will save the equivalent of 1400 foreign-line cars, 1400 CSX cars, and 750 shipper/private cars. We expect to save another 2800 cars through improved distribution practices. However, we plan to keep all of the combined fleet available initially until we prove that we are getting these estimated efficiencies.

Crews: Traffic forecasts drove our operating-p[illegible] assumptions. Train starts, a component of the operating plan, determine our crewing needs. We will be refining our train and crew plans over the next three months. As we identify train- and engine-staff requirements that cannot be met by the crews that we acquire from Conrail, then we will hire and train after January 1, 1998, to insure that we are ready for split day. Our current plans are to have available crews in excess of those required by the operating plan at startup to ensure a smooth transition and support growth.

4. **Capital Improvements:**

CSXT believes that rail freight rates are established in the marketplace. Our prices today reflect the reality of competition from other railroads, trucks and barges. Going forward, combining our share of Conrail with CSX will save $264 million per year by Year 3, largely through elimination of overhead costs. We also expect to secure growth revenues totaling $414 million by Year 3. The cost savings combined with the net contribution from the growth traffic will provide cash to pay down debt. Our debt-to-equity ratio will go from 63% in the base year to 51% in Year 3. This compares favorably with CSX's normal-year debt ratio of 46%. This paydown does not contemplate price increases, nor will our growth plans allow us to arbitrarily raise prices on grain or any other commodity.

5. **Service and rates:**

a. Equipment allocation:

(1) After the acquisition, CSX will allocate cars and locomotives as it does now—based on customer demand and logistical considerations. In times of shortages and when supplemental capacity is not available, assets will be allocated as we do today. Where demand consistently exceeds supply, our marketers will seek the necessary capital to acquire additional capacity.

(2) CSX has an open OT-5 policy for grain cars, and we will continue that policy.

b. Local Service: Agricultural commodities have been an attractive growth market for CSX and we expect to continue growing with the addition of Conrail shippers and receivers, some of whom may have facilities on high-speed mainlines. Our operating plan will ensure that we provide the local service necessary to serve these important facilities. During the last two years CSX put in place a process to improve service on our local-train-service network. Local trains are scheduled, work is precisely planned, and resources - locomotives and crews – are allocated to support local pickup and delivery. We will spread this best practice to the Conrail lines that we are acquiring.

c. Intermodal and Diverted Truck Traffic:

1. Intermodal-traffic increases will not negatively impact equipment availability and service for agricultural customers. We are investing the necessary capital to upgrade key corridors to handle additional business, and the added capacity will accommodate both AG and intermodal traffic.
2. Our commitment to intermodal will not affect CSX's ability to handle agricultural commodities. As noted earlier, AG is a market that we've enthusiastically grown. Our plans for future growth ensure that the agricultural business gets its share of critical resources.

d. Abandonments: Conrail's rights and assets are being divided between CSX and NS with the intent of expanding and enhancing competition. There is very little redundancy between the existing CSX system and the Conrail lines that CSX will operate. CSX anticipates abandoning only one 29-mile line segment in Illinois – the Danville Secondary between Danville and Paris. There are no customers between Danville and Paris. Customers on either end of the line will be served from our Chicago-Evansville and our Hillsdale-Decatur lines.

e. Integration of Conrail System: CSXT President Pete Carpenter has appointed Michael Ward, Executive Vice President-Finance & Chief Financial Officer to manage the detailed process of integrating Conrail into the CSX system. Mr. Ward has assembled a team of 80 managers organized into eight separate task forces within the railroad and has charted out week-by-week and month-by-month activities necessary to plan for and accomplish the integration of Conrail into the new CSX. For example, key managers have been designated to work in the following areas: Frank Pursley has been appointed the Safety Integration Officer; Paul Reistrup, former President of Amtrak, has been hired by CSX to manage integration of passenger services into CSX; and two former Conrail executives with broad Conrail experience, Gerry Gates and Les Passa, have been hired to work on the operational integration and commercial integration of Conrail into the new CSX.

Our detailed study of the integration problems in the West has allowed us to develop specific plans to address the causes of those problems. We are also using shipper input to many areas of our plan to ensure that we take advantage of lessons learned in the West.

6. **Shortlines**: Shortlines are an integral part of the CSX system and originate significant amounts of grain for us. Shortline agreements in effect with Conrail will be honored by CSX after the acquisition unless otherwise agreed to by the involved parties. Since the terms and conditions of Conrail's commercial arrangements are currently off limits to CSX – because Conrail continues as an independent entity – we do not know the details contained in short-line agreements and are not able to comment on specific terms.

John, we are glad that your committee has gone to the great effort necessary to prepare and agree on these questions. We need customer input to make sure we bring CSX and our part of Conrail together in a way that is smooth and beneficial for your members. Please don't hesitate to call if we can give you further information.

Sincerely,

John

Exhibit "C"

NORFOLK SOUTHERN

Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9216
757 629-2830

L. I. Prillaman
Executive Vice President-Marketing

October 10, 1997

VIA FAX 219/425-5337

Mr. John L. Bratten
Chairman, Rail Shipper/Receiver Committee
National Grain and Feed Association
201 New York Avenue, N.W., Suite 830
Washington, DC 20005

Dear John:

I have been asked by David Goode to respond to your letter of October 3 regarding information that the National Grain and Feed Association is seeking on Norfolk Southern's position on the Conrail transaction. As you know, Norfolk Southern and numerous customers, states, and other interested parties see the Conrail transaction as one of the most pro-competitive transactions in railroad history and we are eager to have NGFA's support before the Surface Transportation Board. We appreciate the opportunity to respond to your members' questions at this time. Additionally we pledge to work closely with NFGA members in the future to expand upon these answers and to address more completely those issues that can be better defined when we have access to specific Conrail agreements and data that are not available to us until STB approves our application.

1. **Switching:** Norfolk Southern and CSX have both committed to honoring all existing Conrail contracts, including current reciprocal switching agreements, if the transaction is approved by the Surface Transportation Board. After closing our transaction, when we have the benefit of operating experience and access to Conrail rate agreements, we will assess the feasibility of establishing a uniform level of reciprocal switch charges across the new Norfolk Southern.

2. **Competitive Joint Line Rates:** Norfolk Southern will work aggressively on rates and service aspects to develop business on an interline basis. All current single-line Conrail rates that will become joint line will be honored until their expiration, and Norfolk Southern commits to negotiate in good faith when the time is appropriate to renegotiate such rates.

3. **Locomotive Power and Equipment:** These are issues central to our ongoing transition planning efforts. Our Locomotive and Freight Car teams are working with CSX to devise an equitable, post-control allocation of Conrail's equipment. The allocation process starts with an initial 58%-42% split followed by negotiating within and between equipment classes to meet commodity group and service needs for each road. Norfolk Southern has 2,153 locomotives with 240 to be received between 1997 and 1998. With the addition of the Conrail locomotives that Norfolk Southern will acquire, NS will have approximately 3,400 locomotives

after the transaction. Norfolk Southern has had a demonstrated commitment to grain and grain products dating back to the "Big John" case, and we are excited to extend that commitment over the 21,400 miles of our new system after the transaction is approved.

4. **Capital Improvements:** Norfolk Southern will finance its 58% of Conrail through expanded traffic volumes leading to higher revenues and savings derived from operational synergies. Our application to the Surface Transportation Board does not include a line item for rate increases, but it does show revenue decreases of $162 million per year to traffic diversions and rate compression. Even with this decrease in projected revenues due to competitive effects, Norfolk Southern expects an incremental revenue gain of $423 million per year. We also expect to make an incremental capital investment in our new system of $471 million over three years to fully realize the geographic efficiencies of an extended system. Finally, we expect to realize expense synergies of $432 million per year due to consolidation effects. Based on these figures, Norfolk Southern plans to reduce its debt to total capitalization ratio to 47% by the end of 2000, which will enable our company to continue its strong commitment to investment for growth and customer service.

5. **Service and Rates:**

   a. **Equipment Allocation:**

      1) Norfolk Southern is focusing heavily on allocating power, cars and crews across our new system to maintain or improve existing service levels. Norfolk Southern is working to model all local and road train schedules across the entire post-transaction system to determine and plan for the attendant crew, power and equipment needs. With the addition of Conrail personnel, Norfolk Southern will have approximately 33,800 employees to run our new system.

      2) Norfolk Southern will maintain our current policy of providing equipment to shippers whenever it makes sense financially for both NS and the shipper. We will honor existing Conrail contracts where discounts are given for using private equipment, and we will review other situations on an individual basis. Overall, we intend to maintain our current policy of not requiring OT-5 authority for private grain cars on Norfolk Southern. While NS operates over 13,600 covered hopper cars, 6,000 to 6,500 are utilized in grain and grain products service. With a 58-42 split of Conrail's fleet of 3,000 hopper cars, the Norfolk Southern will have a total fleet of approximately 15,340 covered hoppers. NS currently also has a five year program to purchase additional super jumbo grain cars. These cars, due to their large cubic capacity and higher load limits, give a 14% improvement in payload.

b. **Local Service:** Our operating plan addresses all of the more than 21,000 miles of road on the new Norfolk Southern system. This plan analyzes service issues and crew, power and equipment availability issues. This includes not only the through-train service on our high-speed mainline routes, but also the local service to industries that is needed to build volume and fill our mainline routes.

c. **Intermodal and Diverted Truck Traffic:**

1) Norfolk Southern has targeted our planning efforts to meet the increases in traffic we expect to result from the synergies of our new system. Our financials, as filed with the Surface Transportation Board, include $98 million in incremental capital investment over three years for equipment purposes so that we can handle projected increases.

2) Norfolk Southern regards the transportation of agricultural products as a growth market, and we will continue our efforts to grow in this market after the Conrail transaction.

d. **Abandonments:** In our application before the Surface Transportation Board, Norfolk Southern proposed four abandonments due to the transaction totaling only 50.7 miles. These segments are Dillon – Michigan City, IN, South Bend – Dillon, IN, Toledo – Maumee, OH, and Toledo – Maumee River Bridge, OH. Outside of these four instances, Norfolk Southern will maintain its normal business practice of reviewing line segment profitability on a regular basis.

e. **Integration of Conrail System:** Norfolk Southern continues to monitor the progress of the Union Pacific/Southern Pacific merger to learn from their experiences. Much of our ongoing analysis is being directed to planning how to integrate the portion of Conrail that Norfolk Southern will operate into our current system. There are currently twelve corporate-wide planning teams addressing broad transition/implementation issues and over fifty departmental teams focusing on specific planning issues. Where appropriate, these teams involve Conrail personnel and we will be reviewing the progress of these efforts with our customers in the days and weeks ahead. Nancy Fleischman, formerly Assistant Vice President Strategic Planning, has been appointed Vice President to coordinate these efforts. A former General Manager, Tony Ingram, and two former Superintendents, Dave Brown and Gene Green, have been assigned to developing our operations planning. They work closely with their Conrail counterparts on a daily basis to gain an understanding of those lines that will come to Norfolk Southern. In addition, Norfolk Southern has retained the services of several consultants with a considerable amount of experience in the rail industry, including former Conrail personnel such as Gordon Kuhn, Victor Hand, Jim Blaze, Mike McClellan and Larry DeYoung.

6. **Shortlines:** Current Conrail and Norfolk Southern shortlines will continue to play an integral part of our plans for growth and enhanced customer service. Norfolk Southern plans to integrate Conrail's current shortline connections into Norfolk Southern's new system under our established program. Our plan is to work with Conrail's shortlines in the same cooperative manner that is currently practiced with Norfolk Southern shortline partners. In this regard, Norfolk Southern has communicated our "Shortline Principles" to current and future feeder-line connections, and we have established an active, on-going line of communication with our rail partners. Conrail shortlines that will connect with the new Norfolk Southern will play an integral role in helping us serve customers and develop new markets. We plan to work aggressively with each one to customize transportation for the involved customers, be it grain, grain mill products or other commodities.

John, we truly believe the Norfolk Southern and CSX acquisition of Conrail is one of the most pro-competitive rail mergers in history based on the facts. We are looking forward to working with you and your members even closer in the future, and we hope to have the support of the National Grain and Feed Association before the Surface Transportation Board. Thank you for this opportunity to respond to these issues.

Sincerely,

Ike Prillaman

L. I. Prillaman, Jr.

STB FD 33388 10-21-97 D 182866

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BALL JANIK LLP

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October 21, 1997

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MAIL
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BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed are the original and 25 copies of APL Limited's Response and Request for Conditions, APL-4, along with file APL.4 on a 3.5-inch IBM-compatible floppy diskette in WordPerfect 5.1. APL Limited ("APL") asks that CSX Transportation, Inc. and Norfolk Southern Railway Company be required separately to negotiate with APL the partition of APL's rail transportation contract with Consolidated Rail Corporation instead of permitting the partition to proceed pursuant to Section 2.2(c) of the Transaction Agreement. The enclosure consists of Volume 1, a public document, and Volume 2, which contains confidential material and is being filed under seal.

Also enclosed with this transmittal letter are the original and 25 copies of a letter of support for APL from NYK Line (North America) Inc. ("NYK"), which was received too late to be included as part of Exhibit D, in Volume 1. Please consider the NYK letter as part of Exhibit D.

BALL JANIK LLP

APL reserves the right to supplement the record with material that applicants supply to APL after October 16, 1997, the date that applicants' responses were due to APL's discovery requests.

Please time and date stamp the extra copy of this letter and the accompanying Response and Request for Conditions. Thank you for your assistance. If you have any questions, please call me.

Sincerely yours,

Louis E. Gitomer
Attorney for APL Limited

Enclosures

STB FD 33388 10-21-97 D 182864 1/3

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Sincerely yours,

Louis E. Gitomer
Attorney for APL Limited

Enclosures

NYK LINE

NYK LINE (NORTH AMERICA) INC.
300 Lighting Way
Secaucus, New Jersey 07094-1588

MICHAEL E. STRICKLAND
SENIOR VICE PRESIDENT
General Manager
Operations Division

TEL: (201) 330-3080
FAX: (201) 330-9751

Surface Transportation Board
Washington, D.C.

Subject: F.D. 33399, CSX Corporation et al., Control - Conrail

Dear Board Members:

NYK Line participates globally with its partners, Neptune Orient Line, Hapag Lloyd and P & O Nedlloyd, in the Grand Alliance. Of a combined Grand Alliance fleet of 38, NYK Line presently operates 16 containerships in loops serving North America ports. As part of the fleet of 38 containerships providing weekly service, the Grand Alliance deploys 17 vessels in transpacific service, 8 vessels in service between Asia and East Coast ports and 13 vessels in Asia to Europe pendulum service (via Panama).

A substantial number of our customers are located in the eastern United States at locations served by Conrail. NYK Line currently relies on Conrail's intermodal service to provide inland transportation between East Coast ports and inland points and connecting service with West Coast carriers at Chicago. NYK Line, through our wholly owned subsidiary, Centennial Express Corp., has a contract with Conrail for this intermodal service.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exist now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CS, not later when their contract expires. That certainly includes NYK line, and it includes APL as well. Neither company should be forced to forego competition from NS and CSX for the duration of our contract terms.

Article II, Section 2.2 (c) also allows NS and CSX, who are competitors, to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

We understand that APL has requested five conditions from the Board prior to approving this transaction. Of these conditions, NYK supports the following four: **First**, the Board should disapprove Article II, Section 2.2 (c) in its entirety. **Second**, if the Board will not take that action, the Board should disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third**, the Board should retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fourth**, the Board should forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at NYK Line include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings.

For the reasons stated above, we urge the Board to adopt the above referenced conditions proposed by APL.

Sincerely yours,

Michael E. Strickland,
Senior Vice President

State of New Jersey

County of Bergen and Passaic

I, LAURA VAN OSTENBRIDGE being first duly sworn, solemnly swears that I have read the foregoing statement, knows the contents thereof, and that the facts are true as stated.

Laura Van Ostenbridge

LAURA VAN OSTENBRIDGE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 13, 1999

Subscribed and sworn to before me at NYK Line, this 28th day of October 1997.
Secaucus, New Jersey

APL-4

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

APL LIMITED'S RESPONSE AND REQUEST FOR CONDITIONS

VOLUME 1 OF 2

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Attorneys for:
APL LIMITED

Dated: October 21, 1997

CONTENTS

SUMMARY

APL Limited ("APL") is an Oakland, California-based company which provides international and domestic transportation with containerships and a fleet of company-owned containers and doublestack railcars. APL is one of Consolidated Rail Corporation's ("Conrail") major customers. With a continuous history of transportation innovations extending back almost 150 years, APL is one of the world's leading international and domestic transportation companies and a service leader in containerized surface transportation between points in the eastern United States and ports in Asia and the Pacific Rim.

APL achieved its competitive leadership in large part due to a contract with Conrail that has in essence created a partnership between APL and Conrail. This partnership has been implemented and developed in a number of ways, including through long-term multi-million dollar investments by APL to develop an intermodal terminal on Conrail property at Kearny, NJ; through mutual commitments, faithfully pursued, to maintain consistent high levels of service for APL; through ongoing, responsive modifications as opportunities for new business arose to the long-term transportation contract that currently does not expire until May 31, 2004; and through a Conrail rate commitment to APL in an encompassing most-favored-nation clause.

Article II, Section 2.2 (c)(i) of the Transaction Agreement between CSX Corporation ("CSX"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation, Norfolk Southern Railway Company ("NS"), and Conrail provides that all transportation contracts with Conrail in effect at the Closing Date shall remain in effect

through their stated term, and NS and CSXT will carry out the obligations under those contracts. Although seemingly innocuous on its face, this provision is in fact impermissibly anticompetitive and contrary to the public interest. Section 2.2(c) actually deprives holders of current Conrail contracts of any competition between NS and CSXT for the duration of the contract term. This situation is in stark contrast to the immediate competition which shippers without Conrail contracts will be able to enjoy following the closing of this transaction. As Section 2.2(c) applies to APL, APL would be unable to avail itself of the competition between CSXT and NS until June 1, 2004.

Section 2.2(c)(ii) further provides that NS and CSXT, who are competitors, will allocate the responsibilities for serving customers under contract to Conrail between them as they see fit and without the shippers' consent. In any normal circumstance, such an allocation would clearly violate the antitrust laws. There seems no reason to make an exception here. APL, along with all other current Conrail contract holders, would see its traffic partitioned between two competitors, NS and CSXT, without any say in the matter whatever. Such a result should not be allowed.

In addition to the anticompetitive restraints imposed by Section 2.2(c) which every shipper holding a contract with Conrail will suffer, allowing the imposition of Section 2.2(c) on APL's contract will effectively deprive APL of the advantages it has negotiated over the years with a willing partner, agreements which take advantage of and depend on Conrail's single system. The CSXT/NS proposal is not the usual situation where a rail acquisition will result in a single system and the assumption of existing contracts. Here, uniquely, the result of the proposal will be <u>two</u> providers in place of one.

Yet, administering a contract intended to be performed on a single system will be unworkable if service is provided by two railroads. Two examples are: (1) the most favored nations provision which APL has negotiated would require inappropriate communications between NS and CSXT, who are competitors, when that provision is triggered by a rate action of one of them; and (2) at dual points served by both carriers, APL would require the consent of both NS and CSXT before any rate adjustments to the contract could be made, creating a situation where one of the railroads could reject a market driven price adjustment.

CSX is one of APL's principal competitors; its ocean carrier and its stacktrain subsidiaries compete head-to-head with APL in a niche market carrying time sensitive commodities from Asia and the Pacific Rim to the eastern United States. CSX Intermodal, Inc. ("CSXI") also competes with APL in the domestic stacktrain market. Yet, the result of allowing CSXT and NS to jointly administer APL's contract with Conrail would substitute for Conrail's dedicated and willing partnership two service providers instead of one, one of which may have a disincentive to continue the partnership relation developed over many years between Conrail and APL. APL fears that, without modification to the contract to protect APL's interests that CSXT would simply do what is required by the written contract, while giving members of its own corporate family the partnership enthusiasm and responsive service adjustments which Conrail extends to APL today.

APL does not fear competition. But APL did not expect NS and CSXT to deprive APL of the opportunity to engage in competitive negotiations with them for the six years following the partition of Conrail. APL also did not expect responsibility for much of its Conrail business to be given to a railroad that has no incentive to promote APL's growth.

Depriving APL of the right to renegotiate its Conrail contract with CSXT and NS separately is wrong. It is anticompetitive. It is not needed for the proposed acquisition work. It is inconsistent with the statements made by CSXT and NS that the transaction will add competition in the affected markets. The Surface Transportation Board (the "Board") should not permit this result. To that end, APL urges the Board to condition its approval of the transaction as follows. Disapprove Article II, Section 2.2(c) in its entirety as anticompetitive and injurious to the public interest or, in the alternative, disapprove the application of Section 2.2(c) to intermodal contracts generally, or at a minimum exclude the APL transportation agreement with Conrail from Section 2.2(c), thereby requiring CSXT and APL and NS and APL to negotiate contracts, rates and service levels on terms and conditions no less favorable than those that APL currently has with Conrail.

In Support of this position, APL submits verified statements from Mr. Timothy J. Rhein, Mr. Alan C. Courtney, Mr. Peter K. Baumhefner, and Mr. Robert F. Sappio. In addition, 11 shippers have filed to support APL's position.

Respectfully submitted,

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Attorneys for:
APL LIMITED

Dated: October 21, 1997

VERIFIED STATEMENT OF TIMOTHY J. RHEIN

Introduction

My name is Timothy J. Rhein, and I am President and Chief Executive Officer of APL Limited ("APL"), a domestic and international transportation and logistics company with headquarters at 1111 Broadway, Oakland, California 94607. The two primary operating companies within APL are American President Lines, Ltd, engaged in international container shipping, terminal operations, and logistics, and APL Land Transport Services, Inc., a land transportation company providing wholesale stacktrain services, retail brokerage services and logistics management services in North America.

I joined APL after serving in the United States Army Transportation Corps, and in my 30 years at APL have progressed through various marketing, logistics, and operating positions, including Vice President, Marketing; Vice President, Logistics; Vice President, North America; Senior Vice President, Marketing and Logistics; President and Chief Operating Officer, American President Lines; President and Chief Executive Officer, APL Land Transport Services, Inc, and President and Chief Operating Officer (APL Limited), prior to my appointment as President and Chief Executive Officer of APL Limited in 1995.

Summary of APL's Position

APL and Consolidated Rail Corporation ("Conrail") have entered a long term contract for Conrail to provide APL with specified transportation services under specified rates and conditions. This contract creates a network for APL in the northeastern United States by offering various types of service between numerous points served by Conrail. Section 2.2(c) of the Transaction Agreement between CSX Corporation ("CSX"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation, Norfolk Southern Railway Company (both referred to as "NS"), Conrail Inc., Conrail, and CRR Holdings LLC arbitrarily divides the service to be provided under transportation contracts and divides the revenues from those contracts, regardless of the entity providing the service, with no input or negotiation with the purchaser of rail services. APL asks the Surface Transportation Board (the "Board"): (1) to condition its authorization of the transaction on the disapproval of section 2.2(c) in its entirety, or as to intermodal shippers, or as to APL, in order to allow free market negotiations between CSXT and APL and NS and APL to determine which of the two railroads will provide specified transportation services to APL under specified rates and conditions; (2) to not override the provisions of rail transportation contracts between Conrail and the users of rail transportation services; and (3) to conduct quarterly oversight in this proceeding until December 31, 2004.

APL's Interest in this Proceeding

APL's initial reaction to the stated intention of CSXT and NS, together referred to as "Applicants," to bring strong two-carrier competition to single-carrier markets in the Northeastern states was optimistic, and positive. At the same time, APL was concerned at the effect on its service of the prospective partition of its service partner, Conrail, which is and has been for years doing an excellent job of meeting our transportation needs at points in its territory.

APL has a special relationship with Conrail, both because of our long-standing contractual relationship and because of the years of joint effort the two companies have put into the development of a superior container service to and from Conrail points. APL is one of Conrail's largest purchasers of transportation, and in turn Conrail is APL's working partner supporting APL's services to and from the key markets of the eastern United States, covering the eastern seaboard from Boston to Baltimore, and inland to Syracuse, Columbus, Harrisburg, Morrisville, and Pittsburgh. APL's Conrail business involves two distinct traffic flows. The first consists of international traffic to and from Asian and Pacific Rim points, and the second consists of domestic North America traffic primarily within the continental United States and also between Canada and Mexico. Conrail is critical to both.

As the details of Applicants' proposed transaction have emerged, our concerns have grown, and we now believe that the transaction, as structured, could well be a formula for disaster for APL and for Conrail intermodal shippers generally, unless the Board corrects a major problem incorporated in Applicants' announced plans. That problem is the transaction provision[1] which would allow Applicants to divide current Conrail transportation contracts between them, as they see fit. This provision gives rise to several concerns.

Our initial concern is service. Conrail now provides integrated coverage, integrated fleet control, a single set of coordinated schedules, committed capacity, and single-responsibility for us in the northeast. This would be replaced with divided traffic, divided service, divided responsibility, dual fleet control, and separate schedules. Our recent experience with the Union Pacific Railroad Company ("Union Pacific" or "UP") acquisition of Southern Pacific Transportation Company ("Southern Pacific"), conceptually a simple transaction uniting two railroads into one, brought, in conjunction with market forces, Union Pacific's service for APL to the brink of collapse. Union Pacific's acquisition was simple and straightforward, whereas Applicants here propose an intricate partition of a single working entity, a much more challenging task. Union Pacific's experience was a painful reminder that major changes in rail service providers, no matter how well planned and seemingly simple, can readily mean extended periods of costly disruption to rail customers. We have every confidence that Union

[1] Transaction Agreement, Article II, Section 2.2(c) contained in Volume 8B of the Application.

Pacific will resolve its current problems in the very near future, but meanwhile we at APL will have experienced revenue losses and cost increases aggregating millions of dollars. The prospect of facing a similar --or worse-- disruption in the northeast is alarming to us, to say the least.

We believe that implicit in Applicants' present plans is a very high probability of service collapse post-acquisition, particularly for intermodal traffic in the congested New York - New Jersey area. NS and CSXT propose to replicate Conrail's service network for APL by dividing Conrail's transportation and terminal and fleet control responsibilities between them, pursuant to some as-yet undecided plan to be produced by a not-yet-complete planning process that has purposely excluded APL. Deposition testimony of Applicants' key operating witnesses, Mr. Orrison for CSXT and Mr. Mohan for NS, shows that Applicants haven't decided how they will handle APL traffic or when they will finish the planning process.[2] See Exhibit E. This is alarming, because the APL service network on Conrail is too important to be so cavalierly treated. APL is willing to work with Applicants to see if we can together create an equivalent network *but we must be part of the process from the start.*

Our second concern, and even more serious for the long-term, is Applicants' proposed unilateral division of our transportation contract between NS and CSXT pursuant to section 2.2(c).[3] This raises three issues of importance.

First, section 2.2(c) would lock APL into involuntary contractual relationships with CSXT and NS until May 31, 2004, the expiration date of our Conrail transportation agreement. Applicants'

[2]Union Pacific at least had comprehensive pre-merger *plans* for the post-merger handling of the business of the Southern Pacific customers.

[3] I understand that CSX and NS will indirectly control Conrail if the transaction is consummated. Conrail will then create two subsidiaries: New York Central Lines LLC ("NYC") to be operated by CSXT and Pennsylvania Lines LLC ("PRR") to be operated by NS. The shared asset operating areas will apparently be operated CSXT, NS, and/or Conrail. For ease of reference throughout my statement, I will just refer to CSXT or NS operations.

present plan would make it impossible for APL to renegotiate new rates and service with NS and CSXT for six years, while companies, including our competitors, who do not presently hold long-term Conrail contracts will be free to negotiate immediately with both NS and CSXT for rates to major common markets in Conrail territory. This is a severe disadvantage to APL in the volatile and extremely competitive world of intermodal transportation and an intolerable restraint on competition.

Section 2.2(c) equally disadvantages all other holders of long term Conrail contracts for intermodal rail service. Each of them would be similarly unable to negotiate new rates and service until the expiration of their contracts while their competitors, unfettered by current contracts, would be free to take advantage of the competition offered by NS and CSXT.

Without section 2.2 (c), NS and CSXT would each be vigorously competing, for example, for APL's business to the New York City metropolitan area. Instead, APL and other intermodal contract holders are being deprived of the competition which has been proclaimed by NS and CSXT as the principal justification for this transaction. This is a restraint on competition which this Board should not sanction.

Second, for APL in particular, in place of APL's long-term cooperating contract partner, Conrail, APL would be arbitrarily handed to two different service partners, one of whom is recognized by APL and the marketplace to be APL's primary competitor. Conrail is a friendly co-operating service provider which works with us to put more business on Conrail. It has been willing, when new business opportunities arose, to be receptive to interpretations or modifications of the contract which would help us to develop new business. On the other hand, CSX's subsidiaries, which are CSXT's affiliates, CSX Intermodal, Inc. ("CSXI") and Sea-Land Service, Inc. ("Sea-Land"), are direct head to head competitors of APL. Because of that, I believe that without strong contractual protection for APL, CSXT lacks motivation to preserve for APL the service quality maintained by Conrail for APL's business and the level of cooperation established between the parties, and in fact CSXT has a legal obligation to its shareholder to promote the business of its own corporate affiliates, not the business of APL.

For APL, the consequence of simply handing over to a primary competitor the responsibility for implementing the Conrail contract, a contract made with a friendly, willing, partner, without allowing APL to negotiate a new contract which can provide the protection APL needs in a completely different partnership environment, would be the suppression of APL's ability to compete. This in turn will seriously impact competition in the United States intermodal market for stacktrain container services, and it is highly likely to be fatally injurious to the present fast-paced competition in the market for time-sensitive surface container service between the eastern United States and Asia and the Pacific Rim. While there are a limited number of domestic stacktrain operators of substantial size providing competition within the United States, there are only two providing effective competition today for time-sensitive container traffic between the eastern United States and Asia and the Pacific Rim. Those two are APL, the service leader, and CSX's subsidiaries Sea-Land and CSXI, which together are number two.

I'm not suggesting that we can't work with CSXT. We can and we will. But we cannot do so under the same contract terms and provisions that we voluntarily negotiated with a non-competing service provider, and remain as competitive as we are now. We will need to negotiate and define the duties and standards of performance and remedies for non-compliance much more precisely with CSXT before a CSXT substitution for Conrail service would work for us. And we will need to negotiate a separate contract with NS for the traffic which we give to it. I am confident that both these tasks can be accomplished, but the process has been seriously hampered by Applicants' claim that they are bound by section 2.2(c). This is an unacceptable response.

Third, our present contract with Conrail was negotiated in the knowledge that we were dealing with a single company and a single system. Transferring a complex contract meant to be administered by one provider to two providers operating two systems is, as a practical matter, unworkable. Moreover, there are certain cases in which obtaining contract interpretations from two providers -- two providers who are also competitors -- regarding the application of the contract could result in the improper exchange of competitive information between NS and CSXT. This is yet one more reason why APL must be allowed to negotiate new separate contracts with both CSXT and NS.

APL requests that the Board find that Applicants' proposal to divide between themselves existing transportation contracts[4] is contrary to the public interest, anticompetitive, offensive to the national Rail Transportation Policy, and should be disapproved. However, if the Board decides that it can approve Section 2.2(c) generally, it should be disapproved as to intermodal and container services, or, at a minimum, disapproved as to APL. APL also requests, if the acquisition is approved, the Board shall make clear that nothing in the Board's approval is to be construed as approving any curtailment of the rights of parties which have current transportation contracts with Conrail, nor should it allow either applicant to discriminate in favor of affiliated intermodal transportation providers, such as CSXI or Sea-Land, to the detriment of independent, non-rail affiliated providers, such as APL.

APL has no desire to stand in the path of Applicants' business transaction, but APL does require that Applicants respect APL's Conrail contract rights in their process. This will require that APL be free to negotiate with Applicants separately for substitute contracts with one or the other

[4]Article II, Section 2.2(c) of the Transaction Agreement.

applicant, or both, to provide APL with rates and service at least equivalent to those APL would have received from Conrail during the remaining term of that contract. APL also asks that the Board exercise continuing oversight jurisdiction until December 31, 2004, to provide an avenue of relief (1) should post-acquisition service become intolerable, or (2) should Applicants, or either of them, engage in other conduct to the detriment of their rail service users.

APL – Service Pioneer

APL and its corporate predecessors have been providing international transportation in world markets for 149 years. For over a century its cargoes were carried, as were ocean cargoes worldwide, in conventional break-bulk ships. APL built its first combination break-bulk and container vessels in 1961, and from its experiences with them concluded that APL's long-range strategy should phase out the conventional break-bulk fleet. APL then began first designing, and then building, completely containerized ships.

In the mid 1970's APL saw the potential for combining the new containership services with domestic rail services to develop a transportation network between interior points in the United States and overseas traffic hubs, in which the handling of freight between ship and shore would be truly seamless. The cargo container used for the ocean transportation could readily be lifted off the ship and loaded onto a rail car, and carried inland, or across the country, to the consignee. The resulting improvement in container handling and domestic transit time also improved the efficient utilization of our vessels.

While the facts establishing the potential were equally apparent to other ocean carriers and to the United States railroad industry, it was APL, keenly aware of the financial risks it was taking in accepting the pioneer's role in an untested concept, that stepped forward, took the lead, and did make the necessary capital investments.

In 1977 APL commenced hiring domestic transportation specialists to make its new international service concept a reality. By 1979 APL had instituted "Linertrains" on cooperating rail carriers, dedicated exclusively to APL traffic and operating on special schedules coordinated with APL vessel arrivals and departures. Coupled with APL's assumption of responsibility for interior terminal operations and extension to them of APL's electronic data interchange ("EDI"), APL established industry pace-setting new standards for international transit times, service reliability, and shipment-tracking.

While these facts may at first seem remote from issues immediately before the Board, in fact they are not. They are an important part of our background, the history of a company with an unbroken line of innovation and pace-setting progress which has, I shall next describe, made a major contribution to the railroad industry, to railroad shippers, and to receivers of containerized shipments, a contribution whose further growth is at risk under Applicants' proposal.

The Development of Stacktrain

Notwithstanding the success of its initial rail-based services, APL continued to be concerned with improving the efficiency of the rail container-transport systems, and reducing the potential for cargo damage while on the railroads. With the cooperation of the railroads and railroad industry suppliers, APL sponsored the design of a double-stack railcar which would increase rail efficiency up to 40% while at the same time reducing, almost to the point of complete elimination, in-train slack action which, with the older rail cars, had been a major source of cargo damage. It purchased 200 of these rail cars in 1984. Dedicated trains and stackcars would not be "humped" in the rail yards, which had been another major source of lading damage, and had a low center of gravity which provided the containers with a smooth, impact-free ride while enabling the railroad to haul more containers per train than was possible with single-level cars.

Although encouraged by the success of the double-stack cars' performance for international commerce, APL's long-range planners wanted to improve the load factor for the trains, an improvement which would benefit both APL and the participating railroads. The planners suggested something which had never before been attempted on a systematic basis: integrating, under single responsibility, domestic and international traffic flows to take advantage of opposing head hauls, thereby reducing empty load factors. Again APL undertook to make the investment and become the service pioneer for this concept. In 1985 APL acquired the freight transportation operations of National Piggyback Services (Brae Corp.) to provide a base of preponderantly westbound domestic freight to help balance the preponderantly eastbound international containers. In order to facilitate the growth of domestic freight, stacktrain added new container options. The first stacktrain services were for 40-foot international cargo containers. In 1986 this was expanded to include 48-foot high-cube domestic containers, and in 1988 it was expanded again to cover 53-foot domestic freight containers. As a consequence of widespread acceptance in the marketplace, containers, not highway trailers, are now becoming the intermodal shipper's preference.

Continued improvements in container handling by APL terminal services, and development of responsive and tightly-coordinated train schedules by APL's rail service partners, brought stacktrain services to the point of being time-competitive with over-the-road truckers for long hauls, opening the door to a new level of opportunities for APL and its rail partners. As stacktrain services expanded, environmental and quality-of-life benefits also resulted, as stacktrain operations are four times more fuel-efficient than over-the-road motor carriers, are significantly safer, and also reduce public highway use by heavy freight trucks.

Today the APL stacktrain network is by far the most extensive of its type in North America. Its routes span 22,000 miles in the United States, Canada, and Mexico, and it schedules over 200 train departures each week. We believe that APL Stacktrain services is also the most respected stacktrain operator in the domestic intermodal industry. It manages a fleet of almost 20,000 APL containers, including 2,750 53-foot containers (the largest inventory in the industry), over 10,000 48-foot containers, and the remainder 45- and 40- and 20-foot containers which alternate between domestic and international use. APL also operates a fleet of 367 of its own stackcars and has 200 more on order for delivery in early 1998. No other non-railroad affiliated stacktrain operator has made its own investment in rail equipment to ensure service integrity, as APL has.

To show the importance of APL stacktrain service to the United States economy,consider that in 1997 APL--

- Will pay in excess of $600 million to North American railroads for stacktrain operations;
- Will move in excess of 680,000 international and domestic containers;
- Will operate 64 stacktrain terminals in 26 states in the United States, in Canada, and in Mexico.

APL's Development of the Synergies of Domestic and International Commerce

APL's greatest strength, overseas, is in Asia and Pacific Rim ports, and in commerce tributary to those ports moving to and from the United States. When APL decided to withdraw from around-the-world and east coast liner services and to develop rail-based transcontinental services in this country with the ports of Seattle, Oakland, and Los Angeles, it concurrently strengthened its Asian business base, both by increased trans-Pacific services and also with networks of feeder services intra-Asia. Coordinating the intra-Asia and trans-Pacific shipping services with domestic rail in the United States, and offering pace-setting through transit times for the combined services, APL has been able to offer a single-responsibility transportation product whose consistency and reliability is such that the marketplace considers APL service to be a premium service, which has attracted major volumes of time-sensitive, often high-value, commodities moving between Asia and Conrail-served points in the Northeast.

The market which APL developed is a distinct and different market from that served by the ocean carriers which only reach the shores of the United States, and it is also different from the solely domestic transportation market serviced by the various intermodal operators (and in which APL competes as well). Its distinguishing characteristics are frequency of service, coordinated rail and ship movements, quicker transit times, and single responsibility coupled with the industry's best user-friendly shipment tracking program. APL stands, in the world markets, for integrity and fair dealing, reliable and frequent schedules, and fast transit times.

In order to increase schedule frequency and reduce costs for its international services APL has entered into alliances with other ocean carriers sailing between certain of the APL-served ports, in which APL is allocated space on their vessels departing on days APL does not sail, thus providing virtually daily scheduled service on APL's main ocean routes.

As a result, APL achieved a substantial market share of time-sensitive surface traffic between points in Asia and the eastern United States. As Mr. Robert Sappio discusses, APL and CSX subsidiary Sea-Land are the dominant competitors for the carrier single-responsibility intermodal transportation market between Conrail-served points in the northeast, and ports in Asia and the Pacific rim. This high end of the market serves shippers of time-critical, high-value goods, and although it may be considered a "niche" market, it is a large and important segment of the total commerce. As Mr. Sappio explains, of the *total* Far East to F tern Region United States import market, considering both the carrier single-responsibility and other-arrangements traffic for a recent test year, APL carried 25.1%, and Sea-Land 9.2%, of all Wearing Apparel; APL 25.5%, and Sea-Land 9.5%, of fashion accessories/handbags; APL 23.4%, and Sea-Land 11.2%, of Piece Goods; APL 24.7% and Sea-Land 16.8% of Refrigerated Shellfish; APL 23.6% and Sea-Land 5.9% of Luggage; APL 12.1% and Sea-Land 12.6% of Footwear; APL 10.3% and Sea-Land 11.6% of Electrical goods, and APL 12.1% and Sea-Land 18.3% of Refrigerated fresh vegetables NOS. The total number of APL and Sea-Land FEU's[5] in these categories -- and this list is not exhaustive of this time-sensitive niche market -- was 38,846. This defined transportation market is a dynamic, fast-moving market supporting businesses in the northeastern United States, both large and small, bringing global commerce to main street in Poughkeepsie as well as to Fifth Avenue in New York City.

There is one significant characteristic of the Asia-to-eastern-United States containerized commerce: the predominant direction of movement, or head-haul, is to the populous eastern United States. Traffic from eastern United States points to Asian points is substantially less, and will not match the eastbound volumes. But when one examines the domestic United States traffic flows adapted to box, van, or container transport packaging, an opposite-direction pattern appears: the predominant flow, or head-haul, is from the Midwestern United States to the western United States. APL's innovative step was to enter the domestic market with the objective of taking advantage of the

[5]Forty-foot Equivalent units

potential synergies of the two very distinct traffic flows. This was not an easy task. Domestic shippers, having organized their traffic handling patterns around conventional dry vans, TOFC trailers, or perhaps DF-boxcars, were very resistant to shifting to containers, which were then perceived as limited-capacity boxes of restricted dimensions, perhaps necessary for ocean transportation, but inconvenient to use in domestic service. It took much hard work, a major investment risk by APL, including design of larger capacity containers, and persistence by APL's sales forces, to demonstrate to the satisfaction of domestic shippers that containers would work for them. The larger critical mass of the combined domestic and international traffic flows meant more frequent trains and more efficient use of APL's terminals, and the blending of domestic and international traffic flows lead to a sharply higher load factor on the services under APL's control. The resultant faster service, coupled with new opportunities to share cost savings with customers, plus an industry-leading shipment tracking service, laid the foundation for APL's commercial growth throughout Conrail's territory.

APL's Business Today Depends on Quality Service from Conrail

APL's experience has been that effective container/intermodal service employing rail carriers requires a rail service partner who is highly motivated to assist APL in maintaining expeditious transit times with consistent and reliable rail service, and who is also willing to offer the flexibility sometimes needed to protect service integrity notwithstanding interruptions from external events.

The continuing flow of revenues a rail carrier can earn from moving APL's containers in a high-density traffic lane is substantial, and APL's business is generally sought after by the railroad industry. In order to maintain a business volume which is reliant on time-sensitive, high-value surface freight, APL needs to maintain a consistently high reputation for service quality. APL will do its part on the high seas and at the ports, and its land partner must do likewise, if the overall APL service package is to maintain its current high level of acceptance in the marketplace.

From experience, APL has found that some railroads are more willing than others to undertake the level of commitment required to maintain a consistent quality service. That requires not only continuing dedication of resources but also a management decision that attainment of certain performance standards shall be a corporate priority. APL will make substantial investments in service relationships with such carriers, investing not only management support but also financial capital, and it is prepared to respond with long-term contractual commitments to continue them.

Conrail has, for over 20 years, been APL's service partner to and from key points in the eastern United States. Conrail is our link to the APL terminals which collectively cover the concentrated eastern consuming markets which are the business base of any nationwide intermodal service.

I have referred to Conrail as our "service partner", because it does more than simply operate trains to APL's markets. Its personnel work closely with us, 24 hours a day, seven days a week, helping to maintain service quality.

Perhaps the most visible example of the APL-Conrail working partnership is APL's South Kearny, NJ terminal, which serves the New York City metropolitan area. APL, in reliance on its long-term contract relationship with Conrail, made a $17.5 million investment for cranes and container-handling equipment on Conrail property at South Kearny. Conrail, in turn, leased the property to APL at nominal rental until the year 2012. Conrail has also made significant capital investments for handling APL's contractual volume commitments at Syracuse, Morrisville, Harrisburg, and Beacon Park (Boston).

The Effect of Section 2.2(c) on the APL-Conrail Transportation Agreement

Section 2.2(c) inflicts significant competitive harm upon APL. First, it seriously handicaps APL's ability to obtain competitive rates and services which APL's competitors are free to seek. Second, it renders APL's current Transportation Agreement unworkable. Third, it does not provide sufficient protections to APL in a contractual setting where its principal competitor, CSXT, also becomes an essential service provider for APL. Fourth, it strips APL of any flexibility to adjust should APL conclude that one provider will be more adept at implementing intended service, than the other.

a. Competitive Harm

Section 2.2(c) requires APL to be bound by its current Transportation Agreement with Conrail without change until May 31, 2004. Any other holders of long term Conrail contracts are similarly impacted by section 2.2(c). The result is that, while APL's competitors who do not hold such contracts can profit by the much vaunted competition which CSXT and NS are offering, APL cannot. This situation puts APL at a severe competitive disadvantage as it does every holder of an intermodal Conrail contract.

The intermodal market is a fast moving and expanding market. From 1984, when APL began doublestack operations, and accelerating in 1990, by which time other major ocean carriers had developed their own doublestack domestic operations, the intermodal market has burgeoned at astounding speed. Now, in addition to intermodal marketing companies and stacktrain operators, railroads are offering intermodal service directly, and transcontinental truck companies such as Schneider and J. B. Hunt have also entered the intermodal arena. Today, doublestack intermodal movements are the norm in longer-haul markets, and as Mr. Alan Courtney explains, we believe that doublestack service is about to break through into deep market penetration in the traditional second-morning 500 to 750 mile truck market in Conrail's present territory. We want to be part of that breakthrough.

So long as Conrail was the single service provider in the northeast, a long term commitment to Conrail was the best way of enabling APL to build its service to and from Conrail points. However, the CSX and NS acquisition of Conrail changes that situation. There will be competition, and it assuredly will be present in the intermodal market. APL, and other long term holders of intermodal Conrail contracts, must be allowed to take advantage of the competition between NS and CSXT; otherwise, they will be severely disadvantaged in the marketplace as their competitors, unhampered by current Conrail contracts, seek out new rates and services from NS and CSXT in efforts to gain larger shares of the market.

b. Administration of APL's Contract By Two Providers is Unworkable and Poses Antitrust Concerns.

Section 2.2(c) would require transferring a single system contract, made with a friendly supplier, to a dual system administered by two providers, one of whom is affiliated with a competitor. The transportation services provided for APL by Conrail are performed under a Transportation Agreement dated June 1, 1988, and running until May 31, 2004, to which a number of amendments, modifications, and adjustments have been made. I believe both parties recognized that it would not be possible to foresee, :.. 1988, what modifications future events might require to maintain the transportation agreement as a responsive, current document through changing times, but were sufficiently confident of the working relationship to sign up for the long term. In practice, it has worked well, and as events arise that suggest that some modification of the contract would be desirable, Conrail has been a responsive partner that has always been willing to come back to the table and work with us to see what can be done to meet our needs. APL has not always received everything it asked for, but our overall impression from these subsequent negotiations is that we have a willing partner who is genuinely trying to meet our needs within parameters that will also meet Conrail's needs.

However, now Applicants propose that this Transportation Agreement be administered by CSXT and NS, who are competitors to each other and one of whom is a competitor to APL. Upon examination, this result is totally unworkable and creates significant antitrust concerns. For example, APL has, in its Conrail contract, a comprehensive most-favored nation clause between Conrail service points. How can that clause be administered between two competitors, especially when both serve a point such as South Kearny which is covered by the APL-Conrail contract, and both are separately quoting rates to APL competitors to and from New York/New Jersey terminals? How is APL to monitor, in a cost-effective way, the rates extended by CSXT or CSXI for counterpart services, without gaining information about CSXI's commercial business? In order to administer the most-favored-nations clause, are CSXT and NS to meet regularly and discuss the prices they are charging to intermodal shippers at APL common points?

Another example: what will happen at dual points, those served by both carriers, when APL requests a rate change or new rate? What if the railroad which has been assigned the APL transportation is unwilling to make the change, but the other railroad agrees? Does APL require the consent of both carriers? Can APL switch to the second railroad? These are illustrative of the difficult problems interjected by applying section 2.2 (c) to the APL Transportation Agreement.

There are other reasons why simply transferring the current Conrail contract to NS and CSXT will not work:

(1) Existing service monitoring, correction of service deficiencies, and day-to-day coordination of APL's needs will be undertaken by new, untried (in these markets) service partners, one of whom actually stands to benefit from any APL service failures, and will require cooperation with two railroads instead of one.

(2) Modifications of APL's existing Transportation Agreement, routinely agreed to by Conrail today to assist APL in adjusting to changing shipper requirements, will now require the approval of two providers, one a competitor of APL who may benefit each time permission is denied.

(3) New rates and new services will require disclosing target customers and business objectives to, and receiving approval from, the same two providers, who are also competitors of each other and one of whom is a competitor of APL.

(4) APL's terminal services at its South Kearny, NJ terminal will apparently be managed by CSXI, a competitor which has conflicting needs of its own. Other former Conrail terminals used by APL, such as Boston, will become exclusive CSXT terminals.

(5) New train schedules must be negotiated with two new entities which have their own service requirements to meet, one of whom will benefit financially if APL's needs take second place.

c. APL Requires Special Contract Conditions in a Contract with CSXT

Because of the competitive nature of CSX's relationship to APL, special care must be taken in defining the duties and responsibilities and commitments of CSXT, if it is to substitute for Conrail. In the international side of APL's business, there has been, through the burgeoning growth of the container transport age, one stand-out competitor to APL, a competitor also headquartered in the United States, and that is Sea-Land, a CSX-owned company. Sea-Land covers the same ocean routes, the same territories, and the same ports overseas as APL, and it serves the same domestic markets as

APL through its affiliate CSXI. In international operations, Sea-Land is in fact much larger than APL, while APL operates 14 and charters 26 feeder vessels in the Far East operated by others. The trans-Pacific routes of APL, and the connecting intra-Asian feeder routes, furnish approximately three-fourths of APL's total maritime revenues, but those same routes are, to Sea-Land, another traffic lane in a global complex of services. APL's bread-and-butter routes are critical to APL, but constitute just some of many sources of revenue to Sea-Land.

In domestic markets, CSXI is a direct, head-to-head competitor of APL. Although starting later, CSXI has virtually duplicated APL's system. There are few major traffic flows today within the United States, now handled by APL, which could not physically also be transported by CSXI.

An important reason that APL remains such a strong competitor against a railroad-sponsored competitor with greater resources is that APL's current railroads do not have major conflicts of interest in supporting APL. The APL relationship is, to them as it is to APL, a partnership that produces for both partners. With Conrail, APL went through the learning curve, and together they built the service net that works well today for APL and its shippers. It was not easy. Both Conrail and APL people worked through problem after problem together, always motivated by a common desire to make what they were doing work for both companies. And they succeeded.

A good example of this is the third party ocean carrier ("Third Party International" or "TPI") container issue, a service not included in the original contract. As APL's service grew, opportunities arose from time to time for APL to handle containers for a low-volume ocean carrier that did not have an established scheduled service, allowing the third party ocean carrier to use APL's scheduled trains and receive APL's terminal services, rather than contracting directly with the railroads.

Why would the TPI carriers give their business to APL, a competitor? First, not all have expertise in US rail transportation. Second, APL offers one-stop service, avoiding dealing separately with rail carriers, terminal operators, and draymen. Third, APL's scheduled services are equal or superior to the railroads' public schedules, and APL's overall terminal control minimizes the problem of containers missing the train. Fourth, APL provides an inland chassis supply as part of its service and fifth, our corporate integrity and service reputation mean that the TPI carriers are comfortable giving their containers to us to handle.

After negotiations, Conrail agreed to allow APL to include such third party traffic in APL's trains. If Conrail had been a competitor of APL at that time, and stood to benefit by a denial of APL's request, it is obvious to me that the third party containers would never have moved at the rates we were able to offer. The third party containers have since grown to be a respectable proportion of our business, now amounting to about 18% of our international containers on the stacktrains.

APL had sufficient confidence in its own competitiveness, and in its resourcefulness to stay competitive, to independently reach a decision to work with the low-volume third party lines, and to offer them space on our system which allowed them to become stronger competitors.

Conrail, supporting our efforts to grow the business, agreed to our program, even though there were also possible risks for Conrail. This would be highly unlikely with CSXT, whose affili[illegible] CSXI competes directly with APL for TPI traffic, offering rates between west coast points and the east. If APL, entitled only to the rights expressly stated in its current Conrail contract, were to approach CSXI for a rate for new TPI business, it stands to reason that CSXI would simply refuse, and go after the business itself. We are concerned that, without special provisions in a contract with CSXT, we will thus lose the benefit of the partnership which we have had with Conrail and will be served by a provider who may well have a disincentive to work with us when we seek to advance competitive frontiers. The result will be that competition will suffer. That is why APL must be allowed to negotiate new contracts.

d. Maintaining a unified service when the provider is divided

Finally, even if Conrail were being sold to a single entity which planned to install its own new management, we would be concerned that institutional experience would be lost as new managers replaced the experienced managers who have worked with APL, and that service would suffer as a result. We have already been severely affected by unexpected serious service deterioration that has followed the western rail mergers, and we know first-hand how quality can suffer for an extended period of time while new management struggles to place its plans and concepts into effect.

To see Conrail carved and divided into two packages connected by enclaves of joint services, in a process from which APL has been completely excluded, is not only troubling to us, but appears to be a blueprint for disaster. APL witness Baumhefner's Exhibit B shows today's APL terminals on Conrail, the primary service routes on Conrail, and how APL believes ownership and responsibility for operations is proposed to be divided between CSXT, NS, and their respective terminal operators. The present integrated APL network on Conrail will be dismantled by the Applicants under the partition plan which they have described to the Board. In its place, new plans, and new traffic flows are contemplated, adding new volume to lines which our experience tells us are already choke points today. Terminal services are not simply revised; they are re-invented. Existing, proven interchanges are abandoned. We see, as Mr. Baumhefner explains, a clear potential for multiple and continuing service disasters ahead, potentially culminating in gridlock and the melt-down of what had once been a sterling Conrail rail service. If this is to be avoided, APL needs to be part of the planning process for the future handling of its traffic, and the Board needs to retain jurisdiction to act further if the public interest is shown to require it.

APL's Need for New Contracts with Applicants

As demonstrated above, to be able to compete as effectively as it has done in the past in the markets in which CSX and APL are competitors, APL must be freed from the restraints contained in Section 2.2(c). APL is now studying the Applicants' service proposals for compatibility with APL's needs. We anticipate that both CSXT and NS will participate in our business in the future. New contracts will in each case be required, as we would not accept a joint substitution of CSXT and NS as an adequate replacement for the present Conrail contract responsibilities. In CSXT's case, the new contract provisions must contain adequate safeguards for APL, given CSXT's conflicting competitive interest. In NS's case, a new contract will also be required to reflect precisely what NS will do and how it will be integrated into existing services which NS now provides for us.

NS is a good carrier and has worked well with us. We know CSXT's capabilities, and we feel positive about the prospects for new working relationships with both carriers *provided* we first have free and unfettered negotiations with each. What will *not* work for APL is to have NS and CSXT carve up Conrail's contract behind closed doors and then announce to APL what each is willing to do in the future for APL, each professing to assume only those obligations which APL had negotiated with a friendly supplier.

NS and CSXT are each very distinct, separate entities with their own unique corporate personalities, business strategies, and service philosophies. Neither is a clone of Conrail, and neither is substitutable in service contracts such as the APL-Conrail Transportation Agreement without changing the fundamental character of the relationship. Our agreement with Conrail runs for another six and a half years, and APL cannot accept a blind substitution of new partners, one a competitor, to fulfill the responsibilities which Conrail has willingly performed. New service planning, and new agreements with new definitions of responsibilities, are necessary if APL service is to be successful via CSXT and NS at former Conrail points.

To summarize the actions which we request the Board to take:

First, we request that the Board conclude that Section 2.2 of the Transaction Agreement is contrary to the public interest and must be disapproved. In the alternative, APL requests that intermodal/container contracts generally should be excluded from the section's operation or, at a minimum, that APL's contract should be excluded. The public interest would instead best be served by requiring Applicants to negotiate independently with APL and other purchasers of rail intermodal service for a new package of transportation and terminal services which is no less favorable than is provided in the terms of their present Conrail contract. CSXT and NS should be instructed to commence negotiations immediately with APL[6] to assure that the problems described are controlled in a way that allows APL to continue as a viable competitor.

Second, the Board should not enter any findings or orders which can be seized upon to support an argument that what the Board does will override provisions of private contracts between Conrail and its shippers. We do not want to be faced with an argument that our contract rights have been abrogated by a transaction voluntarily entered into by our contracting partner and approved by the Surface Transportation Board.

Third, the Board should provide for continuing oversight of this transaction until December 31, 2004. We ask this because, after a new negotiation with NS and CSXT we do not know to what

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[6] And other intermodal operators similarly situated

extent CSXT and NS will each be the future service providers, or the extent to which they will be acting separately or jointly, or the kind and quality of service that each will actually perform, and whether suppression of competition issues will arise as the parties move forward.

Fourth, we ask that the Board prohibit either NS or CSXT from discriminating, in schedules, terminal services, in space or equipment allocation, or otherwise, in favor of an affiliated stacktrain operator or container transportation provider, to the detriment of any non-railroad affiliated stacktrain operator or container service provider.

State of California)
) ss.
County of Alameda)

I, Timothy J. Rhein, being first duly sworn, solemnly swears (or affirms) that I have read the foregoing statement, know the contents thereof, and that the facts therein are true as stated.

Timothy J. Rhein

Subscribed and sworn to before me at Oakland, California, this 13th day of October, 1997.

Aileen Iverson

Notary Public

AILEEN IVERSON
COMM. # 1027970
Notary Public — California
ALAMEDA COUNTY
My Comm. Expires JUL 29, 1998

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VERIFIED STATEMENT OF ALAN C. COURTNEY

My name is Alan C. Courtney, and I am Director of Customer Processes for the Stacktrain Services Group of APL Land Transport Services, Inc., a subsidiary of APL Limited ("APL"). My business address is 1111 Broadway, Oakland, California 94607.

My responsibilities at APL include Domestic Strategic Planning and Product Development for APL Stacktrain Services. I am familiar with APL's rail based services in North America, the competitive environment in which they are provided, and the characteristics of the markets in which APL and its competitors compete. I shall address the consequences to competition in those markets if this transaction is approved as presently structured by the Surface Transportation Board (the "Board"). My testimony will describe both the specific injury to APL and the specific injury to competition that will follow if the conditions requested by APL are not adopted.

The proposed partition of Consolidated Rail Corporation ("Conrail") to allow two strong, resourceful rail carriers to establish competitive services to points which are now one-carrier cities has the *potential* for enhancing rail competition and providing, in the long term, significant benefits to APL and its customers. APL is not conceptually opposed to the transaction, and looks forward to positive working relationships with both carriers in future years. APL does have serious objections, however, to the *structure* of the transaction, which would make it impossible for APL to compete effectively in the future at former Conrail points.

By "compete effectively" I mean a company that introduces new services, develops new rate programs and brings new traffic flows on rail, raises industry standards, and otherwise is a front runner setting the pace of the competition. There may be those who will be satisfied foraging for the leftovers, but that is not the type of "competition" I have in mind when I discuss APL's future.

My professional and educational experience includes a Bachelor of Industrial Engineering Degree from Central New England College, and a Master of Business Administration degree from California State University. My career in transportation started with the trucking industry, in a series of administrative, sales, accounting, and operating positions with Lee Way Motor Freight and Graves Truck Line until my appointment as Vice President - Marketing and Pricing for Graves. I was subsequently appointed Vice President - Marketing for Pacific Intermountain Express, and Vice President -Marketing for Ryder - PIE. I later spent four years as a consultant in transportation matters, and joined APL in 1986 to assist in the development of its rail intermodal services in North America.

The Stacktrain Concept

I shall first describe the stacktrain concept which APL developed, and explain how it differs from the techniques that preceded it. This is an appropriate prelude to explaining the new transportation market that APL developed, that CSX Corporation's ("CSX") subsidiaries CSX Transportation, Inc. ("CSXT"), CSX Intermodal, Inc. ("CSXI"), and Sea-Land Service, Inc. ("Sea-Land") emulated, and in which APL and CSX have for a number of years defined the competition. This is a market in which competition will be suppressed if the transaction is approved in the form proposed by CSXT and Norfolk Southern Railway Company ("NS").

The concept pioneered by APL was the design and development of double-stack rail cars that raised the efficiency of rail container transport to a new peak. On any given day, there will be approximately 1,200 such cars in APL service in North America. Most are leased by the railroads and furnished to APL to handle APL's volume commitments; 367 of the cars are either owned outright by, or leased to, APL, and 200 additional cars have been ordered by APL for January, 1998 delivery. No independent stacktrain operator has made the direct investments in equipment that APL has made. APL also acquired a fleet of almost 20,000 dedicated double-stack containers and placed them in commercial service for its shippers.

When APL conceived its service strategy of placing reliance on the railroads for overland transportation, it first had to overcome two major drawbacks. These were factors that plagued the railroad industry's reputation and discouraged intermodal shippers.

First was service speed and reliability. The railroads simply weren't fast enough or dependable enough to compete with the speed and dependability of the single truck with its dedicated driver or driver team.

The second was cargo damage. A train of flatcars carrying intermodal trailers would be subject to slack action, the run-in and run-out of the slack in the couplers and draft gear of the intermodal flat cars each time the train picked up speed or slowed or stopped. These impacts could be damaging, especially if your trailer was towards the rear of the train. The effect could be much the same as if a truck driver, on a cross-country run, would, several times a day, back the trailer to an abrupt stop by hitting a stone wall at up to 4 mph. In the process, damage to cargo was a distinct possibility, and in the world of experienced traffic managers, a carrier that is very likely to damage freight is no bargain, no matter how cheap its rates.

APL tackled these two drawbacks and overcame them. The stack cars it helped design consisted of articulated units that had no slack, or loose motion, between the platforms, and very limited slack between cars. Their low center of gravity reduced sway and oscillation, providing a ride which was even smoother, and more damage-free, than the trucks could provide. Reliability and speed were tackled by developing a critical mass of traffic to support dedicated trains, or scheduled blocks, and then working attentively with the railroads to maintain consistent, reliable performance. As a consequence, the stacktrain became fully competitive from a service standpoint with the long-distance trucker, and the advantageous economics of the stacktrain helped swing long-haul traffic back onto the rails. The nation's shippers benefitted by reduced transportation costs, greater equipment supply, and enhanced competition.

APL undertook the business risk of committing to railroads to deliver volumes of traffic in return for dedicated train services and rates that reflected the efficiencies of the block tenders that APL would make.

To the public, through independent rail intermodal marketing companies ("IMCs"), APL offered a seamless transportation service that moved from railroad to railroad under the single responsibility of APL, creating a national network under APL's banner. APL offered a service package that included the container, a slot on a scheduled train, and dependable and fast service. All this was offered at a price that reflected the benefits of APL's volume contracts with the railroads, and provided constant monitoring and instant tracing capability for each container which APL moved.

APL's efforts thus provided the IMCs with a wholesale stacktrain service with major service advances and cost savings. Their alternative procedure would be to obtain a container from a non-affiliated leasing source, and contract with one, two, or three railroads separately for the transportation which each would provide. The IMC would then follow the shipment from railroad to railroad, monitoring the interchanges to make sure they took place in a timely manner and getting on the phone, telex, or e-mail when they did not, and then make sure that the destination line had the container unloaded and available at the time expected by the delivering drayman. And when all this had been done, the cost savings, if any, would be small compared to the inconvenience and risk of delay which separate contracting, and separate responsibility of the transportation providers, entailed.

The APL innovation thus provided monitored single responsibility service which was indifferent to railroad interchanges. Two- and three-line rail hauls under APL responsibility were, to the shipper, no different from single-line hauls. While others struggled to achieve a seamless transportation service for the shipping public, APL Stacktrain Services produced it every day.

It should not be necessary to dwell at length on the benefits to the public that the APL Stacktrain Service has produced. APL was the risk-taker who pioneered in bringing the elements of transportation together, offered single responsibility, and undertook the risks of equipment ownership as well as the risks of generating a sufficient traffic volume to keep the participating railroads satisfied with their revenues and motivated to provide high levels of service reliability.

Since 1984, the domestic intermodal transportation market has changed rapidly and has grown dramatically. The first doublestack trains began that year, carrying 40-foot containers which were used for both international and domestic cargo. Roughly two years later, 48-foot containers were introduced by APL to handle purely domestic cargo. Two years after that, 53-foot containers were introduced by APL to help expand the domestic market. From being an adjunct to the international market, doublestack service rapidly became an attractive alternative for the domestic shipper.

This is demonstrated by the increasing volumes of containers and trailers shipped intermodally, volumes which have grown significantly each year. In 1995, 7.7 million intermodal shipments were made, according to the Association of American Railroads. In 1996, that number was over 8 million and in 1997, it is projected to be over 9 million.

It is also demonstrated by the decreasing use of trailers in TOFC/COFC service. Starting in about 1990, as trailers were taken out of service, they were not replaced at the same rate. On the other hand, the size of the national container fleet has increased rapidly. Between 1996 and 1997 alone, the Intermodal Association of North America reported that the number of trailers had declined 3.2% while the number of containers had grown 15.8%. In 1994 trailers made up 40.2% of the intermodal loadings with containers making up 59.8%. By 1997, trailers had decreased to 36.1% of the total fleet with containers reaching 63.9%. That trend is predicted to continue.

With this increase in doublestack container transportation came an increase of competition into the intermodal transportation market. The nation's railroads expanded their doublestack service offerings to their customers, either working directly with the beneficial owners of cargo or with their agents, the IMCs. Some ocean carriers have developed their own stacktrain operations, often through U.S. subsidiaries, to handle their domestic transportation. In order to make such operations economical, these stacktrain operators also solicit business from other ocean carriers who do not have their own stacktrain operations and compete for purely domestic business as well. There are also independent stacktrain operators, such as Interdom. These stacktrain operators all compete in the principal market lanes. Of course, the largest stacktrain operators are APL and CSXI.

Truckers such as Schneider, J.B. Hunt, Werner and Swift also have realized the value of doublestack rail service, and they now utilize intermodal rail service as part of their offering to their customers. RoadRailer equipment is used by both Triple Crown Service Company, a subsidiary of Norfolk Southern Corporation ("NSC") and by Swift Transportation, a motor carrier headquartered in Phoenix, AZ, to serve intermodal traffic.

The result of all this is that there are multiple levels of competition in the intermodal environment. Railroads compete with other railroads. Railroads compete with trucks. Over the road trucks compete with trucks utilizing rail intermodal service. Stacktrain operators compete with other stacktrain operators, with motor carriers and with rail carriers. IMCs compete with each other and with motor carriers.

As an example, Beneficial Owner ABC has a shipment to make from X to Y. ABC can select between about ten IMCs to handle its business. Each of those IMCs is in turn leveraging the competition between APL, Burlington Northern and Santa Fe Railway Company, CSXI and Union Pacific Railroad Company's EMP program for rates, equipment and service to handle that business. The IMCs will play each of the railroads against each other and against APL. Shipper ABC can also select from among high-service motor carriers who can offer over-the-road trucking or from among the three or four motor carriers who compete for the business offering intermodal service. The motor carriers compete both among themselves and also with the IMCs. The IMCs both work with motor carriers offering substitute truck brokerage service and compete with the motor carriers.

The result of these multiple levels of competition is that intermodal transportation is highly dynamic. APL consistently offers new products, new services, and new equipment. Indeed, APL makes the market; our competitors copy it. They are able to quickly replicate APL's innovations at lower prices because they bear no risk in innovation and no development costs. In such a highly competitive market, price is the most significant factor, and prices have been declining as competition has increased. If an intermodal transportation provider has significantly higher costs or a service disadvantage, it will not survive in such a highly competitive market. If APL cannot obtain competitive rates, it will no longer be able to introduce innovative products and services; that result will directly affect competition in the intermodal market. That is why it is critical to APL to be able to negotiate <u>now</u> with CSXT and NS and why it cannot be bound to its Conrail contract while APL's competitors are free to negotiate with these two rail providers for rates and service in the Northeast.

APL and CSXI

With regard to the stacktrain segment of the market, successful innovators produce emulators, and thus after APL Stacktrain's successful launch CSXI followed in APL's footsteps, duplicating APL's coverage between principal traffic centers, but with one important difference. Unlike APL, which is independent of the railroad industry and owes allegiance to no single railroad, CSXI is owned by CSX, which also owns CSXT. Today, APL and CSXI are the two national stacktrain operators, competing head-to-head in every major transportation corridor in the United States. My Exhibit "A" is a schematic diagram showing the APL and CSXI terminals in Conrail territory, the primary stacktrain service lanes operated by each, and the primary western terminals with which the services of each company connect.

CSXI's personnel are alert, aggressive, and tough competitors. The two companies solicit the same accounts. CSXI watches APL's business closely, and is quick to move in if it senses any weakness in APL's relationship with a customer.

Outside CSXT's territory, where the rail operators are neutral to both providers, we believe APL is currently ahead in traffic volume and customer acceptance. We also know that we cannot afford to rest for a moment, because the field of intermodal transportation is volatile and intensely competitive.

Why the Transaction, as now Structured, will Suppress Present and Future Competition

From the foregoing it should be apparent that any plan that places CSXT and CSXI in unfettered control of APL's services or costs would destroy APL's ability to compete effectively in any traffic lane in which APL must rely on its competitor.

This point should not require an extended demonstration. APL's services in the Northeast rely upon Conrail, a willing and cooperative partner, to move our cars and trains, and to provide support services for our terminal operations. Mr. Peter K. Baumhefner describes the operating support which Conrail gives APL, including the tightly-controlled schedules and terminal container transfer times ("toupee and filet" service), the management commitment to move APL's traffic on schedule, and the innovative responses of Conrail's managers when problems arise. I shall not repeat his points here.

Visualize, if you will, that the responsive, cooperative rail service provider is replaced by our prime competitor. I do not know if CSXT will claim that CSXI operates autonomously, but we do know that in our context, it doesn't. Specifically we know that CSXI competes with APL for freight moving in 48-foot and 53-foot domestic containers as well as for the business of third party ocean carriers. From our perspective CSXT and CSXI are one and the same, because CSXT has delegated to CSXI responsibility for dealing with stacktrain operators such as APL on all matters of the service relationship, including rates, schedules, service, and complaints.

If APL wants a schedule change for a CSXT service, we would ask CSXI. If we want a new rate, we would ask CSXI. If we would have complaints, we take them to CSXI. If we want a favor, we would ask CSXI. In each case we are required to deal directly with our primary competitor. I hope I don't have to go into detail to make my point, because the very *structure* of that relationship-- having services rationed to you by your prime competitor-- by definition eliminates competition. CSXT and CSXI might make a strategic decision to keep APL alive but powerless in the controlled market, but APL's role thereafter in that market would not and could not be innovative, pace-setting, or aggressive, and APL's market share would be limited to whatever CSXT and CSXI would tolerate. From the standpoint of a strategic planner, any scheme which would allow your primary competitor to control your market share means that a business cannot afford to take risks or make significant investments in that market.

CSXT would no doubt argue that if it took over all or part of the APL-Conrail contract it would continue to give APL whatever the contract required it to supply, so that APL has no cause for concern. But APL did not negotiate a contract with CSXT, it negotiated with cooperating partner Conrail, and much was left unsaid because we did not have to spell out every detail we expected Conrail to attend to as part of the overall service. Substitution of CSXT drastically alters the relationship, and would give us a partner who, when presented with a new challenge or request, instead of responding "let's see what we can do", may well respond with, "let's see what the contract says I have to do for you".

By drawing attention to the structural impossibility of keeping competition alive if CSXT takes over the unchanged APL-Conrail contract, I do not mean to imply that CSXT could not be an effective service provider for APL. I am sure that it is possible to negotiate a contract to substitute CSXT for Conrail which will alleviate APL's concerns. But it would require careful attention to detail and express statements by CSXT as to the responsibilities it would accept, and clear provisions for summary enforcement of remedies should CSXT fail to perform. However, that contract is not in place today.

I have been told that section 2.2(c) of the Transaction Agreement allows CSXT and NS to divide the APL contract without input from APL. I believe that as a consequence, a large portion of the contract will probably be taken over by CSXT, which leaves me incredulous. It is as if United Air Lines were abruptly told that all its services east of Chicago, to New York, Philadelphia, Boston, Washington, etc., would from now on be flown by pilots from American, with American Airlines to provide all terminal services, baggage handling, food service and special meals, aircraft towing and de-icing, control tower services, and aircraft maintenance. Were that to come to pass, it is a sure bet that, if United is number one in any of those markets, it wouldn't be six months from now.

This brings me to a comment on the effects on APL if Applicants' transaction, including CSXT's assumption of responsibility for performance in APL's major markets, is adopted. Mr. Baumhefner has explained the importance of Conrail's flexibility, and route options, in maintaining schedules. That will be lost with CSXT and NS partitioning Conrail. When lines are overloaded APL will just have to sit and wait in line with all the other trains. The heavily-congested and frequently overloaded River line, which CSXT proposes to use for its intermodal trains to South Kearny, will have more traffic added to it and will become unsuitable for intermodal or other premium service, and APL's trains will routinely sit and wait in line and miss commitments. The new, slower, more complex interchange at Chicago will aggravate the process. Use of CSXT's single-track line east of Chicago will slow the APL trains even more. Operational uncertainty and congestion in the shared assets area will add to the impediments facing the APL trains. As Mr. Baumhefner points out, the delays that APL trains encounter will not necessarily be experienced by CSXI stacktrains, for railroad management still has the power to establish priorities for handling trains through areas of congestion, up to the point that gridlock threatens and all trains must be treated equally in order to keep the line open. Put these factors together, and APL faces the prospect for its stacktrains that the clock would be rolled back, to before stacktrain, back to the days when shippers viewed rail service as erratic, unreliable, and undependable, and looked to the trucks when transit time mattered. Applicants' proposal, as it now stands, means destruction of APL stacktrain as an effective competitor.

The situation could be salvaged, if the Applicants would only talk to us, enter into negotiations, and work out plans for maintaining APL service while allowing them to carve-up Conrail. Since they won't do this, the Board must step in, and require Applicants to negotiate the details of an appropriate replacement service. We're ready and willing to talk. We want to work with them. We're not trying to be obstructionist. We have many ideas to preserve APL's existing rights and still allow Applicants to pursue their division of Conrail.

The Impact of the CSXT-NS Partition on Future Market Opportunities

In the past APL has worked effectively with Conrail to develop new opportunities and new markets. Some of these opportunities produce results; others haven't. But Conrail has always been willing to work with us on them.

One potential market which has been a struggle in the past for rail but which now has the potential to provide significant market share is the 500 to 750 mile second-morning truck market. APL has studied this market over the years and has worked with Conrail on this market in the past. Although prior attempts have not been totally successful, the market is rapidly changing. The trucking industry has been under increasing pressure in recent years, the effect of which is to curtail the supply, and raise the cost, of trucking. Capital costs, insurance costs, fuel prices, driver pay, and state and local taxes on trucking are rising. At the same time, the proven advantages of stacktrain service have become established in the shipping community. Shippers are more receptive to using stacktrain service when it is time- and cost-competitive.

The 500 to 750 mile second-morning truck market is a market which both CSXT and NS have expressed interest in entering. Of the top 50 traffic lanes in the 500-750 mile mileage bracket as determined by the Transearch Data Base, 48 are now served by Conrail at origin, destination, or both. The potential is there.

With Conrail, our friendly partner, APL could venture into this market once again, working to develop programs to move this business from truck to rail. With CSXT as APL's rail provider, such a result is unlikely for several reasons if CSXT and NS are allowed to simply partition APL's current Conrail contract. First, the present Conrail contract does not <u>require</u> Conrail to operate new service programs not currently set forth in the contract. Second, CSXT is much more likely to use its own subsidiary, CSXI, to promote rail intermodal competition in this new market than to work with APL on developing new programs.

This is just one example of the reason why APL needs to be able to negotiate with CSXT on an independent basis; in order to take care of APL's existing and future needs. It must build protections into any arrangement it has with CSXT or APL will be unable to offer the innovative competitive programs for which it is justly known.

I see Applicants' proposal as suppressing new stacktrain competition at the latent stage, before it ever has an opportunity to develop, and retarding its development by several years. While we are rightfully concerned over the impact of Applicants' proposal on *present* service and operations, I believe the Board should also be aware of its suffocating effects on potential stacktrain competition in the northeast, and should be supportive of all efforts of stacktrain operators such as APL to keep service expansion and innovation alive.

As a first step, that requires freeing us from the involuntary linkage to one or another purchaser which Applicants have proposed in the transaction. See Exhibit E, the deposition of Mr. McClellan.

Next, APL must negotiate replacement contracts with NS and CSXT, after thorough exploration of our service needs, and a mutually clear understanding is reached as to what the replacement contracting railroad will do for us. This negotiation must precede any attempt to substitute another railroad for Conrail.

State of California)
) ss.
County of Alameda)

I, Alan C. Courtney, being first duly sworn, solemnly swears (or affirms) that i have read the foregoing statement, know the contents thereof, and that the facts therein are true as stated.

Subscribed and sworn to before me at October 16, 1997, this ________ day of October, 1997. at Oakland, CA.

Beatrice L. Bitner
Notary Public

AH971013LTSaa-1040ai-csx

BEATRICE L. BITNER
Commission # 1083758
Notary Public — California
Alameda County
My Comm. Expires Jan 20, 2000

VERIFIED STATEMENT OF PETER K. BAUMHEFNER

My name is Peter K. Baumhefner, and I am Director of Stacktrain Operations for APL Land Transport Services, Inc., a subsidiary of APL Limited ("APL"). I am accountable for the performance of APL's stacktrains in North America, which run on the following primary rail carriers: Canadian National Railway, Consolidated Rail Corporation ("Conrail"), Transportation Ferroviara Mexicana, Norfolk Southern Railway Company ("NS"), and Union Pacific Railroad Company ("Union Pacific" or "UP") (including the Southern Pacific Transportation Company ("Southern Pacific")). The primary stacktrain routes are depicted on Exhibit "A".

My office at APL's headquarters in Oakland, California, is staffed from 03:00 hrs. to 23:00 hrs. every business day, 07:00 hrs. to 19:00 hrs. on weekends, and outside those hours a staff member is always available via pager and cellular phone to deal with emergencies. We are an operating bureau which works directly with the operations centers and corridor managers of our contracting railroads, and we continuously monitor the progress of our trains and containers as they move across our extensive stacktrain system.

My career in transportation started in 1971. After graduation from the University of California at Los Angeles, I joined Southern Pacific's Operating Department as a Train Order Operator. I was promoted to Train Dispatcher and worked high-density single track lines in southern California, some of which had centralized traffic control, and some of which were dispatched manually by train order. I next entered management as Assistant Trainmaster, and was successively promoted to Assistant to Superintendent, Assistant Terminal Superintendent, Terminal Superintendent, and Assistant Superintendent - Operations. My experience included responsibility for terminal operations, classification yards, service to industries, and management of line operations, throughout Southern Pacific's routes in southern California.

In May, 1985, I joined APL. My career at APL has included positions related to Marketing, Transportation Purchasing, and Intermodal Operations, largely working with our railroad providers on operational issues, until my appointment as Director of Stacktrain Operations, when this became a full-time responsibility.

Exhibit "B" is a schematic diagram of APL's northeastern United States service network on Conrail. Conrail is the rail carrier that APL uses to connect the following 15 primary point pairs in the Northeast:

(1) Chicago - Boston, MA

(2) Chicago - Springfield, MA

(3) Chicago - Cleveland, OH

(4) Chicago - Columbus, OH

(5) Chicago - Baltimore, MD

(6) Chicago - Allentown, PA

(7) Chicago - Pittsburgh, PA

(8) St. Louis - Cleveland, OH

(9) Chicago - Worcester, MA

(10) Chicago - Syracuse, NY

(11) Chicago - Toledo, OH

(12) Chicago - South Kearny, NJ

(13) Chicago - Morrisville (Philadelphia), PA

(14) Chicago - Harrisburg, PA

(15) St. Louis - Columbus, OH.

The APL terminal at South Kearny, NJ, known as APINY, is dedicated to APL's operations. APL performs all terminal operations itself except for switching. It has invested $17.5 million for cranes and container handling equipment to serve the facility. APINY is a key factor in the efficient operation of APL's stacktrain services in the Northeast.

All of the rail links described above are operated under Conrail's undivided responsibility. The basic service plan which APL and Conrail have developed over the years provides dedicated train schedules for APL keyed to the western gateway connection at Chicago with Union Pacific. Currently Chicago is our principal gateway, with St. Louis largely used for repositioning movements.

Exhibit "C" is a schematic diagram of the interchanges at Chicago. UP intermodal trains from the west make a right turn at Rockwell Junction, and if terminating, go to Global 1, where APL's Chicago operations are located. All dedicated APL through trains for South Kearny, the TV 200-series trains on Conrail, do not terminate at Global 1 (although they may set out blocks there), but continue 2.5 miles further to Ashland Avenue, Conrail's yard, where they are positioned for a straight exit from the Chicago terminal area eastward on Conrail's main line.

A very important aspect of APL's service through Chicago is the avoidance of intermediate, bridge, or terminal operators, with the exception of 2.5 miles of joint track used between Global 1 and Ashland Avenue. Our line-haul carriers have direct access via direct routes, both to each other, and to Global 1, which is indispensable to dependable, tightly-scheduled performance.

From Chicago east, Conrail operates three primary run-through dedicated APL trains, and APL feeds traffic to three back-up Conrail trains. The premier train is TV-200, a dedicated APL double-stack train which usually operates on Conrail's former New York Central water-level route via Toledo, Buffalo, Syracuse, and Selkirk (Albany), and then follows the former New York Central Hudson River Line (west side) to the New York terminal area, and to APL's own intermodal rail terminal, APINY, at South Kearny, New Jersey. It performs no intermediate work en route, other than that required for operational purposes.

Operating on the same route, but providing intermediate service, are trains TV-202 and TV-204, doublestack trains which set out blocks at Syracuse for what is referred to as the Conrail "filet and toupee" operation, a terminal service in which doublestack cars are single-stacked for clearance reasons and continue via trains TV-14 and TV-6/8W to provide service to Springfield, Worcester, and Boston. APL Chicago traffic destined for New York which misses any of the preceding connections can be forwarded on a back-up train, TV-78, which provides back-up service to Conrail's Kearny facility. Back-up service to Boston and Syracuse is provided by train TV-24.

The second primary group of trains covers eastern points from Philadelphia and Allentown south to the Baltimore-Washington area. The primary Conrail train is TV-2M, which operates from Chicago via Cleveland, Pittsburgh, and Harrisburg to Morrisville (Philadelphia). This train also sets out cars for a Baltimore connection at Harrisburg, a block of doublestack cars for a "filet and toupee" service by Conrail terminal forces to reduce the block to single-stack for train TV-26 and the restricted clearances to Baltimore. Chicago also originates a train in Chicago destined for Marysville, Ohio, (auto parts), and Columbus, identified as TV-220. In addition, APL gives

Conrail a number of containers each day from mixed rail cars arriving at Global 1, containers which are drayed, or "rubber-tired", to the Conrail terminal. Some of the containers on the mixed cars will be delivered locally in the Chicago area, and others will be destined to other points in the Northeast. The latter are placed on chassis and drayed to Conrail's 47th St. terminal, where Conrail will load them on stackcars for Eastern intermodal terminals.

A similar network operates in the reverse direction, from Northeast origins back to Chicago. The operating pattern I have described makes use of Conrail's multi-track, high speed, main line from Chicago to Cleveland, after which Conrail has optional routings available to east coast terminals. The primary route to South Kearny follows the former New York Central water-level route via Selkirk (Albany) and down the west side of the Hudson River, with an alternate route via the former Pennsylvania Railroad going through Harrisburg, Morrisville, and the southern portion of New Jersey. The latter route is the primary route for Morrisville (Philadelphia) and Baltimore traffic. There is also a third option used by Conrail to the New York area, called the "Southern Tier", which extends from Buffalo and the former Erie-Lackawanna line through Elmira to the greater New York area.

The present APL network on Conrail is the product of years of joint effort and hard work by both Conrail and APL personnel. It is tightly coordinated, and Conrail has made the timely, scheduled movement of APL traffic in accordance with design standards a management priority. Two examples: the terminal handling time for the "toupee and filet" trains is as tight as you will find in the railroad industry, considering the work that is done at each terminal. At Syracuse, train TV-202 is scheduled to arrive at 15:00 hrs. Boston cars are switched out, taken to the container handling track, the top layer of containers lifted off and reloaded onto waiting cars, the now single-deck Boston cars are then switched into train TV-14, mechanical inspections and air tests are performed, and train TV-14 departs at 17:45 hrs., less than three hours after the arrival of TV-202. Because of this tight schedule, the containers will be available for next morning delivery in Boston.

At Harrisburg we have a greater time allowance because the scheduled running time allows a later departure from Harrisburg, but the station time requirements, switching out, lifting off, reloading, making up the outbound train, completing mechanical inspections and air tests, are consistently less than five hours.

To those who have not had firsthand experience with rail yard operations these times may not seem striking, but experienced yard operators who know the time-consuming steps that are involved in performing what I have described, and the many opportunities for losing minutes at each stage of the process, these times are impressive. And under normal conditions Conrail meets these commitments with a high degree of reliability.

The relationship of the Conrail and APL personnel who are both working to meet the agreed performance standards is close and cooperative. As we have built the system, and have learned its strengths and its stress points, we have together developed early recognition of potential complications and the best preventive responses. Each morning at 11:00 hrs. eastern time we have a phone conference with the operations managers in Conrail's "Blue Room" in Philadelphia, in which we go over the expected lineup of the day's stacktrains from the west, and discuss tentative plans for the next 24 hours of operation. At 14:00 hrs. eastern time we confer again on the final plan, and about 19:00 hrs. eastern time we confer with the evening managers on progress and any problems. In event of serious problems, we proactively work together on the phone at any hour of the day or night.

A good example involves congestion on Conrail's River Line on the west side of the Hudson River. Now largely single-track, this line from Selkirk (Albany) south to the New York City-New Jersey terminal area is heavily congested, and is currently the source of about 75% of our train service delays on Conrail. Whether the line is going to be fluid at times when our trains are scheduled to operate is always a concern. With increasing frequency, the Conrail managers will propose to reroute a given day's train or trains over the former Pennsylvania line, via Harrisburg, and will give us a commitment to keep to schedule if they do so. This has recently been a regularly-used "escape valve" and with the Conrail managers' commitments to follow the rerouted train and give it good handling, schedule reliability has been maintained on the alternative route.

Recently the Conrail managers have also proposed using the former Erie-Lackawanna line for some of our Chicago - New York movements, and we have agreed that whenever it makes sense for them operationally and we can maintain our schedule commitments to our customers Conrail is free to do so.

There are two lessons in this. First, Conrail's present system has inherent flexibility through the availability of alternate internal routes, and use of those routes has been critical, in times of congestion, to maintain service performance. Second, and equally important, Conrail's managers are committed to maintain high service standards for APL traffic, and will not hesitate to take innovative steps to do so.

Given the nature of the working relationship between the two companies and its importance in maintaining the present pace-setting performance that APL provides, I view with grave concern the disruptions and dislocations which will follow this transaction. I would be concerned at even a minor disruption such as a change of management and its effect on currently agreed-upon working priorities, but what is proposed here is the complete dismantling of a smoothly-functioning, well-tended transportation machine, and its replacement with two separately-operated, competing-- we're not sure what, as NS and CSX Transportation, Inc. ("CSXT"), jointly referred to as "Applicants" haven't completed their plans for the future handling of APL's traffic, and are apparently negotiating the details of the blueprint. See Exhibit E, excerpts from the depositions of Mr. Orrison, Mr. Mohan, and Mr. Hart, and Confidential Exhibit F, Applicants' responses to discovery.

This is more [illegible] simply disturbing, it is alarming. The more I learn of the details, or lack of them, of Applicants' future plans for APL's Northeast service, the more convinced I become that implementation of the operating features of the transaction should not be undertaken before a replacement service program has been negotiated between CSXT and APL and NS and APL. Let me give several examples to illustrate my concerns.

Under Applicants' plan the lines on which the APL volume stackcars now operate would be divided; the potential routing of APL traffic is varied:

(1) Chicago - Boston:	**NS or CSXT tr/rts[1] on NS to Cleveland, then CSXT**
(2) Chicago - Springfield:	**NS or CSXT tr/rts on NS to Cleveland, then CSXT**
(3) Chicago - Cleveland:	**NS or CSXT tr/rts on NS**
(4) Chicago - Columbus:	**CSXT**
(5) Chicago - Baltimore:	**NS or CSXT tr/rts on NS to Cleveland, then NS**
(6) Chicago - Allentown:	**NS or CSXT tr/rts on NS to Cleveland, then NS**
(7) Chicago - Pittsburgh:	**NS or CSXT tr/rts on NS to Cleveland, then NS**
(8) St. Louis - Cleveland:	**CSXT**
(9) Chicago - Worcester:	**NS or CSXT tr/rts on NS to Cleveland, then CSXT**
(10) Chicago - Syracuse:	**NS or CSXT tr/rts on NS to Cleveland, then CSXT**
(11) Chicago - Toledo:	**NS or CSXT tr/rts on NS**
(12) Chicago - South Kearny: (NYC area)	**NS or CSXT tr/rts on NS Cleveland, then CSXT, then Shared Assests operator** **Alternate #1: same to Cleveland, then NS via Harrisburg to Trenton Line, then CSXT or NS tr/rts on CSXT to Shared Assets operator** **Alternate #2: same to Cleveland, then NS to Buffalo, then Erie Line via Elmira to SharedAssets operator**
(13) Chicago - Morrisville (Philadelphia):	**NS or CSXT tr/rts on NS to Cleveland, then NS**
(14) Chicago - Harrisburg:	**NS or CSXT tr/rts on NS to Cleveland, then NS**
(15) St. Louis - Columbus:	**CSXT**

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[1] trackage rights

The actual options may be less than indicated, as Applicants propose to unilaterally divide APL's contract business. Under the plan of allocation, Boston will be served exclusively by CSXT, and NS will exclusively serve Harrisburg, Allentown, and Pittsburgh. It seems likely that the carrier with the exclusive right to serve the destination would claim the entire haul.

Note the number of services employing the multi-track Conrail main line between Chicago and Cleveland, which is to be an NS line, subject to limited trackage rights by CSXT. As I understand it, CSXT will not enjoy unlimited use, but is restricted to a certain number of trains per day in each direction on these trackage rights, and there is no reason to believe that CSXT would want to give any particular number of those slots to APL. We might, indeed, be fortunate to secure just one. Even that does not assure equivalent service, for we have found that trackage rights tenants' trains often are not given the degree of attention and priority that the track owner's trains will receive.

The trains that CSXT did not run on the multi-track line to Cleveland would be shunted to CSXT's largely single-track line to the south, a line that needs double-tracking, and many improvements, before it can come close to matching the performance capability of the Conrail line which we now use. I am advised that CSXT has started an extensive program of upgrading, which I am pleased to hear, but I also understand that it will not be completed until long after Applicants propose to consummate their transaction.

We are also very concerned at the future traffic congestion on the former New York Central River Line between Selkirk (Albany) and New York and North Jersey. Actual performance today suggests insufficient capacity to regularly handle, day in and day out, time-sensitive intermodal traffic. Some days it can, and other days it can't, at least not without introducing serious delay. As

I earlier explained, Conrail has been working around the problem for us with alternative routings as necessary on the former Pennsylvania line via Harrisburg. CSXT will not have that capability since the Pennsylvania line will be controlled by NS. Worse, I am advised that Applicants contemplate an increase in traffic on the River Line after the acquisition, and have not submitted plans to upgrade this line in any significant way.

I am very concerned at the as-yet unclear details for the New York - New Jersey shared assets operation. This terminal area has a reputation for vulnerability to congestion and delay even under Conrail's single management, and yet it is now to be operated as a joint facility, accommodating an increased number of trains, and serving two "masters". I say "an increased number of trains" even without reference to the detail in the Applicants' operating plan, because as a former railroad manager I know that both companies, CSXT and NS, will each try to replicate the range of intermodal train services provided by Conrail, and this means inevitable duplication. And, even if there is no increase in total traffic volume, I know, as a former railroad operating officer, that taking the same volume of traffic through a given terminal area and handling it in twice the number of trains, is going to mean more congestion and delay.

Today all terminal services for APL in the New York City area and South Kearny are provided by Conrail under single responsibility. We already know, from our experience at other terminals such as the Los Angeles Harbor area, that introduction of a third party operational entity between APL and the line-haul carrier could be, from APL's standpoint, operationally undesirable. The intermediary, which may be working under severe budget constraints imposed by its owners, lacks the same sense of priorities and is never as flexible as the line-haul carrier when it comes to doing more than the minimum that it is required to do under the operating plan prescribed by its owners. This situation will be exacerbated in the Shared Assets Area because the operator of the Shared Assets Area will be responding to the sometimes conflicting needs of two railroads. The focus of the operator will necessarily be divided between its two customer-owners. The result will be that APL will lose the benefit of the single control which Conrail now provides.

Today, at South Kearny, if we need an extra switch because of a mechanical problem on a car, or need more cars brought in from support tracks outside the yard to accommodate outbound loads, Conrail responds promptly. What Applicants are proposing for APL after the acquisition is not yet clear, and prior experience with joint agencies in similar situations leads me to expect trouble ahead. Nothing has been worked out. There is no agreement in place. There is no definition of responsibilities or commitment as to what the operator will be expected to do. Applicants apparently expect us to take on faith the assurance that they will somehow work things out. We can't take this assurance on faith. Our business depends on timely and consistent terminal support and switching services, and we must know what is going to be done, and how we can require performance if the operator does not live up to its promises.

The future Chicago interchange situation is also troublesome. I earlier noted that both UP and Conrail have track access to APL's operations at Global 1. They also have a direct access to each other at Ashland Avenue, 2.5 miles from our Chicago terminal, and operate run-through trains of APL traffic, back and forth between Union Pacific and Conrail, directly. Currently, trains can set out Chicago destined cars at Global 1 while en route to the direct interchange with Conrail. For

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the overall flexibility and efficiency of operations, to interchange, to pick up, and to set out, the APL service is probably unmatched in the Chicago terminal area.

Parenthetically I want to note that this was not a matter of luck but the deliberate result of careful planning by APL. This same intensive planning effort is responsible for the location of the APL facilities at other locations on Conrail. Boston and Morrisville are particularly good examples of facilities centrally located for the needs of our customers. However, each APL facility has been located with *Conrail* service in mind, and the partition of Conrail, with the consequent introduction of impediments to reaching our terminal operations, is a matter of concern. This means not only the Shared Assets terminal area of New York- New Jersey, but also new joint use of trackage serving Morrisville, Columbus, Cleveland, and Baltimore.

Under the Applicant's plan the Ashland Avenue yard is assigned to NS, and so in the future only UP and NS would be able to interchange directly in the most efficient manner described above while serving APL at Global 1 en route. CSXT, on the other hand, will not gain direct westbound access to UP or Global 1 via the current efficient Conrail route. The CSXT terminal is at Bedford Park (Exhibit C), adding about 8 miles to the interchange or service to Global 1, but more importantly, requiring use of *two* terminal railroad lines: The Baltimore and Ohio Chicago Terminal Railroad Company ("B&OCT") and The Belt Railway Company of Chicago ("BRC"), to complete the interchange with UP or reach APL at Global 1. This interjects two more railroads into the equation, each controlling train movements, track times, and track occupancy, in a heavily-used terminal environment. We currently have a clean and relatively quick interchange between UP and Conrail, each with service to Global 1, but will not have it with CSXT after the Ashland Avenue yard is taken over by NS. Given the additional terminal running required over the B&OCT and BRC, I estimate that service time requirements for a CSXT to Global 1 or CSXT to UP run will increase by an average of two hours, as compared to the current Conrail routing.

There is another troubling aspect of the transaction, and that is CSXT's insistence that operational aspects of service for stacktrain operators such as APL be handled through CSX, Intermodal, Inc. ("CSXI"). I earlier explained how my department works directly with the senior transportation officers at Conrail. We do the same with the other principal railroads with which we work. When dealing with CSXT, however, we encounter an intermediate layer of bureaucracy. CSXI is the intermodal subsidiary of CSX Corporation ("CSX"), and an affiliate of CSXT; it is accountable for all commercial and operating aspects of intermodal transportation on CSXT. Thus, all rates, contracting, train scheduling, intermodal terminal operations and day to day operating issues are handled by CSXI, not CSXT. As mentioned in the statements of Mr. Rhein and Mr. Courtney, CSXI is a competitor of APL's domestic stacktrain service. With CSXT, therefore, we are placed in the untenable position of asking a competitor (CSXI) to ask our service provider (CSXT) for whatever it is we need-- a favor perhaps, or something that is a matter of contract right, or some preparation for future business (which CSXI may also want). If we are able to negotiate with CSXT over service in substitution for Conrail this is one issue which I shall request be addressed. We cannot have a competitor standing between us and our service provider.

I can appreciate Applicants' desire to lock up their transaction as quickly as possible, but from an operating manager's standpoint I urge that it cannot and should not be operationally implemented until necessary service details are complete and in place for new operations on Day 1.

This means that implementing contracts with APL must be in place, so that we know whom we shall be working with, and what the exact service commitments are going to be. We should not be expected to accept a service program in any way inferior to that now provided by Conrail.

As part of that contract negotiation APL will need agreement from the operators, whether NS or CSXT, or both, not only on the *process*, but also on *monitoring the implementation* of the process. The *process* is the blueprint, or operating plan, as to how the new services are to work. But as our recent experiences with Union Pacific have demonstrated, the *process* alone is not enough. Union Pacific put, I understand, a vast amount of management effort into the development of detailed plans for the integration of Southern Pacific into its system.

Unfortunately the operating side of railroading is replete, every day, with unanticipated events that require immediate handling to conclusion by managers if the overall process is to work. It appears to me that the process developed by Union Pacific was overwhelmed at certain locations by unanticipated problems at Southern Pacific, and the inability to get on top of them immediately meant that the breakdowns spread, until the process itself was in difficulty across the entire system.

In considering the Union Pacific experience, bear in mind that the Applicants here -- unlike Union Pacific-- have not yet agreed on a *process*, let alone how it is to be implemented and monitored.

I do not want to see APL's service in the Northeast commercially destroyed as an unintended consequence of Applicants' hasty partition of Conrail. From APL's standpoint, operationally, Conrail is not ready to be divided. The Applicants need to sit down separately with us, negotiate their respective future roles in the handling of APL's traffic, and we shall together build not only the process, but the implementation and monitoring procedures needed to assure delivery of a quality transportation product.

I understand that Applicants have been critical of similar suggestions as premature "micromanaging". The critics need to be reminded that railroading is a unique business with an extraordinary number of uncontrolled variables. A good working plan, or process, will not succeed unless the details are monitored and exceptions anticipated, prevented, or handled immediately if they arise. This is how consistent service is maintained: continuous monitoring, and attention to detail. If Applicants wish to affix the label "micromanaging" to the process, that is their privilege, but that is precisely how quality service is achieved, and I offer no apologies for the practice.

We are very concerned that a failure to "prematurely micromanage" the details – if that's what Applicants want to call it -- will result in a major "meltdown" in the Northeast similar to the one the western railroads are experiencing now. At a minimum, we are concerned that this failure will have a significant negative impact on APL's service and competitive position in the market. The Applicants appear more than willing to trumpet the big ticket items of their proposal, such as the creation of new competition, but fall woefully short when it comes to creating an operating plan which will give their customers, including APL, comfort that the new operations would provide equivalent service. Simply pushing such criticism aside with an intended pejorative label -- "micromanaging"-- is not an answer.

I have earlier pointed out a number of congestion and delay areas which will affect service if Conrail is partitioned and APL traffic is required to use the routes controlled by CSXT. Railroad congestion and delay, in the light to moderately severe stages, does not affect all traffic equally. So long as railroad management retains the capability to give priorities, traffic that is consciously preferred can often be worked through the congestion with relatively little delay. Only when the congestion becomes so serious that management loses control, and is forced to abandon priorities in order to avoid gridlock, will the congestion affect all trains equally. This has serious implications for APL stacktrains competing for track space and priority with CSXI stacktrains, for it means that, under CSXT control, CSXI stacktrains may get through the worsening congestion on CSXT unscathed, while APL stacktrains sit in sidings and wait, and miss their commitments.

I am repeatedly importuned by the commercial departments at APL to maintain higher performance standards, and to deliver a better transportation service than last month, or last year. I am constantly reminded of the importance of high standards of service, consistently maintained, to keep APL in the forefront of the competition. I dread the consequences if, on Transaction Day 1, the existing Conrail service dissolves in disarray and we slowly, painfully, start building what we can from the rubble. The operational implementation of the transaction should be postponed until APL (and others similarly situated) have had a fair opportunity to negotiate with Applicants for a new, jointly-determined, substitute for what Conrail does for us today.

State of California)
)
County of Alameda)

I, Peter K. Baumhefner, being first duly sworn, solemnly swear (or affirm) that I have read the foregoing statement, know the contents thereof, and that the facts therein are true as stated.

PKBaumhefner

Subscribed and sworn to before me at Oakland, CA, this 16th day of October, 1997.

Beatrice L. Bitner
Notary Public

BEATRICE L. BITNER
Commission # 1083758
Notary Public — California
Alameda County
My Comm. Expires Jan 20, 2000

VERIFIED STATEMENT OF ROBERT F. SAPPIO

My name is Robert F. Sappio, and I am Managing Director - Eastern Region North America, for APL Limited ("APL"). My business address is 100 Central Avenue S. Kearny, NJ, 07032.

I have direct responsibility for domestic and international operations, marketing, and sales, for APL in the eastern region of North America, extending from Toronto and Montreal south to Virginia. I am assisted by a staff of ten Regional Managers or Directors who report to me, and who in turn are supported by approximately 160 sales, operations, logistics, and clerical personnel.

The purpose of my statement is to describe the present competitive relationship between APL, on the one hand, and Sea-Land Service, Inc. ("Sea-Land") and its affiliates, on the other hand, for traffic moving between Asia and the Pacific Rim and the northeastern United States. I shall also describe the specific segment of that market in which APL and Sea-Land are the dominant competitors.

My personal background in transportation includes 15 years of experience with APL in positions of increasing responsibility in sales, sales management, logistics, operations, and corporate strategic planning. I have served as a regional sales director in the far East and was appointed to my present position in June, 1995.

Sea-Land

Sea-Land is substantially larger than APL. It currently advertises that it operates a fleet of 105 container ships, whereas APL operates 14 ships and charters 26 feeder vessels in the far East operated by others. Calling at 120 ports in 80 countries, Sea-Land is one of the world's leading shipping lines, with approximately $4 billion in gross revenues annually. Its recent alliance with Maersk Lines, the liner shipping unit of the A. P. Moller group, a worldwide Scandinavian conglomerate engaged in bulk and liner shipping, oil and gas exploration, and air transport, adds to Sea-Land's strength as a competitor.

Sea-Land and APL

While Sea-Land has more extensive operations, globally, than APL, it is intensively involved in the Asia and Pacific Rim - North America trade, which is APL's bread-and-butter business. Shippers comparing the service offerings of APL and Sea-Land between Asia and the Pacific Rim and eastern North America will find the two companies to be fairly close in number of sailings per month and overall transit times. From major shipping hubs (Hong Kong, Shanghai, and Singapore, for example) each company will list about 30 sailings per month, and half that number from the secondary, but still very important, ports. Sea-Land's vessels call at United States west coast ports, as do APL's; Sea-Land's stacktrains offer coordinated connections to the primary eastern markets, as does APL. Comparing overall schedules, from departure cutoff until availability of the container at the intermodal terminal on the eastern seaboard, elapsed times are fairly comparable. Port-to-port times are quite comparable, but APL's closely coordinated terminal operations and tight train schedules help give APL a slight edge, overall, in the time-sensitive eastbound market. From major ports overall transit times will run in the 16 - 18 day range, and from transhipment ports a week longer. As examples, to New York, transit times of APL and Sea-Land are equal from Yokohama and Bangkok, but APL is 1 day faster from Hong Kong, 2 days faster from Busan and Taiwan, and 7 days faster from Singapore.

The Time-Sensitive Market

An uninformed observer, simply counting the number of containers from Asia and the Pacific Rim landed in the United States and carried to the northeastern states, might conclude that APL and

Sea-Land are not major players, for their combined share is only about 18% of the total market (Sea-Land 8%, and APL 10%). It might also be concluded-- quite mistakenly-- that Sea-Land and APL must be only two of many participants providing similar services.

In reality, it is the competition between APL and Sea-Land, the two combined stacktrain and shipping companies, that dominates the time-sensitive market segment.

If the primary objective is simply cheap transportation, an Asian or Pacific Rim shipper has many choices, with shipping lines large and small, and sailings frequent or infrequent, either direct all-water to the east coast, or to a west coast port. If shipping to the west coast, the shipper has the option of negotiating directly with the railroads for overland transportation, or canvassing intermodal marketing companies for their best price. And there may even be opportunities on the east coast to negotiate a price break from one of the draymen. Many containers, where time is not as important as price, do move this way. If the shipper can afford a longer transit time and no particular schedule, that is the cheapest way to go, and the botttom-dollar, price-driven market accounts for a large proportion of the total containers brought to the northeastern United States.

On the other hand, if the shipment has significant value, then the shippers may look to APL or Sea-Land, the two companies offering premium ocean transportation and stacktrain under single responsibility, both offering committed schedules, tight shipment control, and effective shipment tracing, or in other words, predictable and consistent service. Sea-Land and APL enjoy high reputations in the marketplace, and both provide a premium service, which commands a premium price. If one analyzes the most recent statistics currently available for a 12-month period[1], for Asia and

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[1]Aug. 1996 - July 1997, Journal of Commerce Data

the Pacific Rim to the northeastern United States, it will be noted that for the time-critical and very high-value goods, Sea-Land and APL are the two dominant competitors:

Commodity	Sea-Land Market Share	APL Market Share
Wearing Apparel	9.2%	25.1%
Fashion Accessories/Handbags	9.5%	25.5%
Piece Goods	11.2%	23.4%
Refrigerated Shellfish	16.8%	24.7%
Luggage	5.9%	23.6%
Footwear	12.6%	12.1%
Electrical Goods	11.6%	10.3%
Refrigerated Fresh Vegetables	18.3%	12.1%

This list, which comprised 38,846 FEU's (40-foot container freight-equivalent units) in a 12-month period, is not a complete listing of the commodities in the time-sensitive market, and was selected as illustrative of the larger-volume commodities. Those 38,846 FEU's would fill a stacktrain over 165 miles long, and so while some may consider the time-sensitive high value market a "niche" market, it is a very large niche and is very important to APL.

In focusing on the time-sensitive market, I do not want to minimize the importance to APL of the less time-sensitive traffic, for which both Sea-Land and APL also compete vigorously. That is also important business to APL, and any disruption of our ability to compete effectively with Sea-Land for that market segment would be very harmful to APL.

Impact of Sea-Land/CSXT Control over APL's Rates and Services

Sea-Land is a subsidiary of CSX Corporation ("CSX") and an affiliate of CSX Transportation, Inc. ("CSXT"). Sea-Land is our primary competitor. I have been advised that the proposal before the Surface Transportation Board is that CSXT and Norfolk Southern Railway Company ("NS") will divide the existing APL-Consolidated Rail Corporation ("Conrail") transportation contract between themselves, and that CSXT will probably want to assume much of Conrail's responsibilities to APL.

Mr. Baumhefner's statement explains the operational disruptions that are likely to impact APL's service if that were to happen, disruptions which Sea-Land's containers would probably escape because corporate affiliate CSXT will be controlling the movements of the trains. That would be an appalling consequence for APL, unless APL can negotiate protections in the contract with CSXT.

Should APL lose its global reputation for excellence in this market, APL will be seriously and irreparably damaged. International shippers are a pragmatic group, and while they may admire APL's integrity and spirit, if APL can't make its schedule commitments, while Sea-Land does, they will shrug their shoulders and issue instructions to divert the APL traffic to Sea-Land. If this happens APL will effectively be knocked out of the premium market, restricted to seeking its business entirely in the low-contribution, "price-is-everything" sector, and leave the high-end of the market to be the exclusive province of CSXT and Sea-Land.

I have not addressed the consequences to APL's pricing if CSXT becomes APL's rail service provider to and from the northeast United States. It is obvious that, for any situation in which pricing is not dictated in the present Conrail contract, APL would simply be at the mercy of its competitor when asking for new rates, and APL would not be able to effectively compete for such new business.

Considering the current competitive stance of APL and Sea-Land, and the likely consequences of the operation of Conrail by CSXT and NS, it is imperative that APL have the ability to negotiate new contracts with CSXT and with NS which ensure that APL will not be disadvantaged or placed in a position where it must rely totally on the services of its competitor's affiliate for its rail transportation needs.

State of New Jersey)
) ss.
County of Hudson)

I, Robert Sappio, being first duly sworn, solemnly swears (or affirms) that I have read the foregoing statement, know the contents thereof, and that the facts therein are true ~~as~~ stated.

Subscribed and sworn to before me at South Keaeny, this 14th day of October, 1997.

Catherine J. Cukar
Notary Public

CATHERINE J. CUKAR
Notary Public of New Jersey
My Commission Expires: 2-14-02

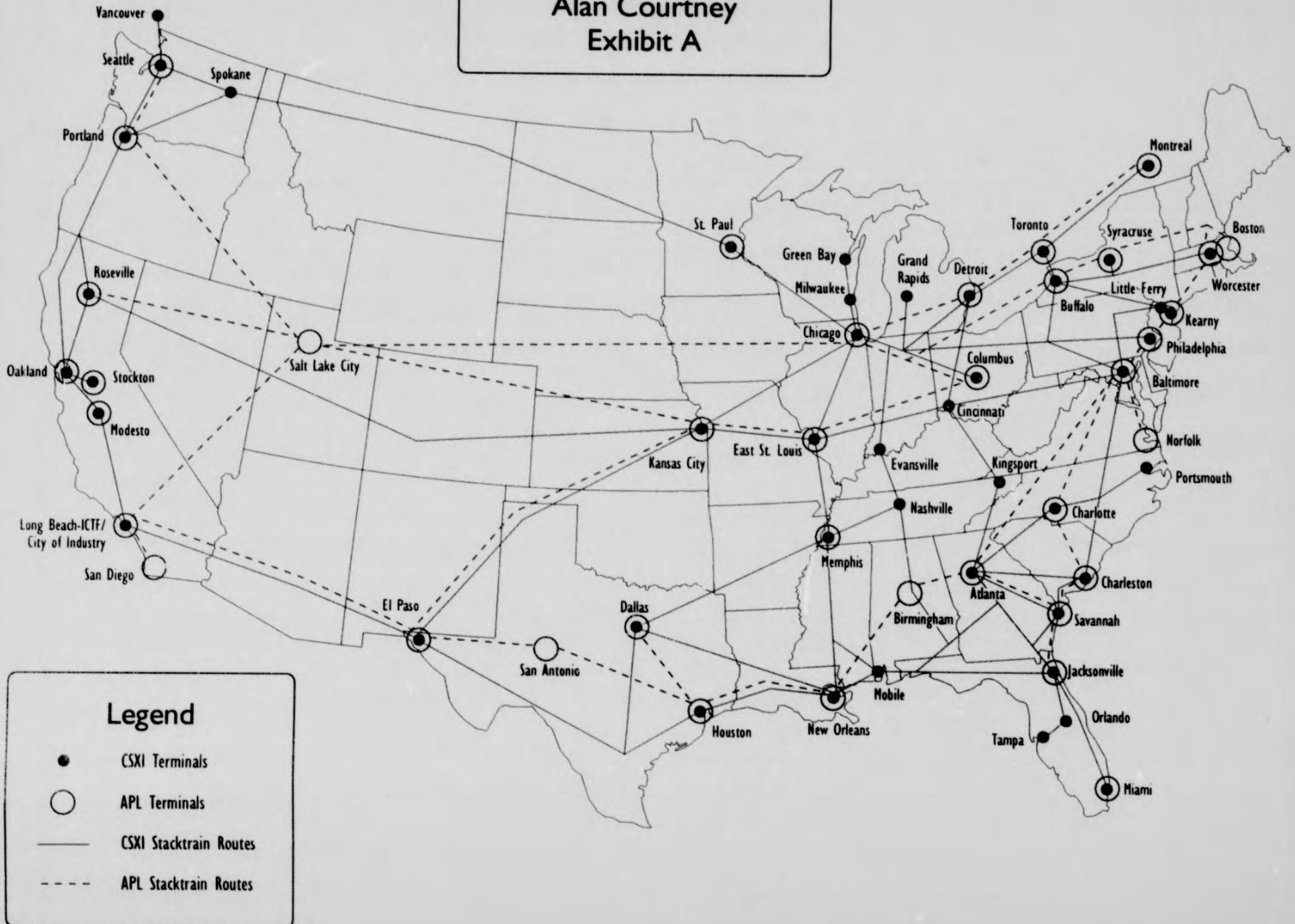
AH971013LTSaa-1040ai-csx

CERTIFICATE OF SERVICE

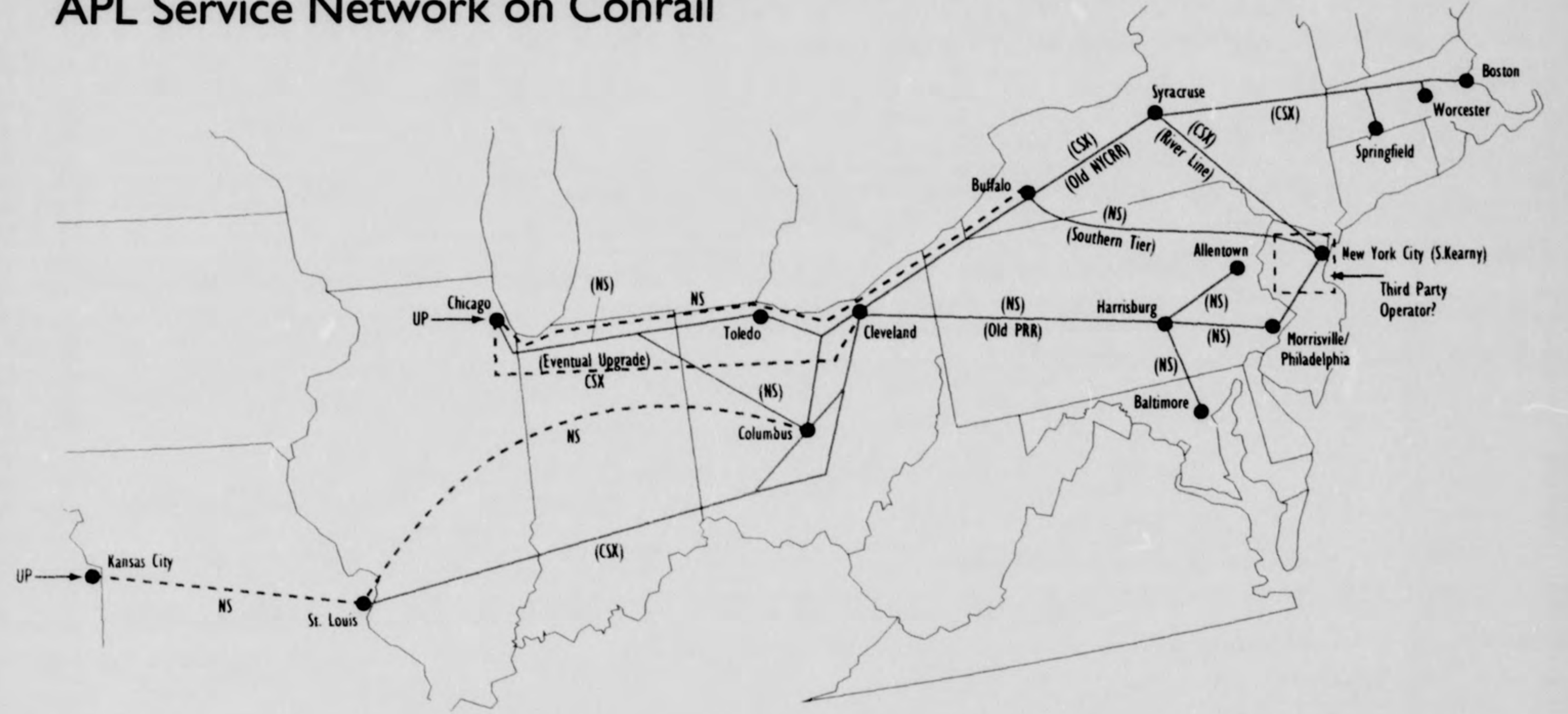
I hereby certify that I have caused APL Limited's Response and Request for Conditions to be served by hand on applicants' representatives in this proceeding and by first class mail, postage pre-paid on all other parties of record in STB Finance Docket No. 33388.

Louis E. Gitomer
October 21, 1997

Alan Courtney
Exhibit A



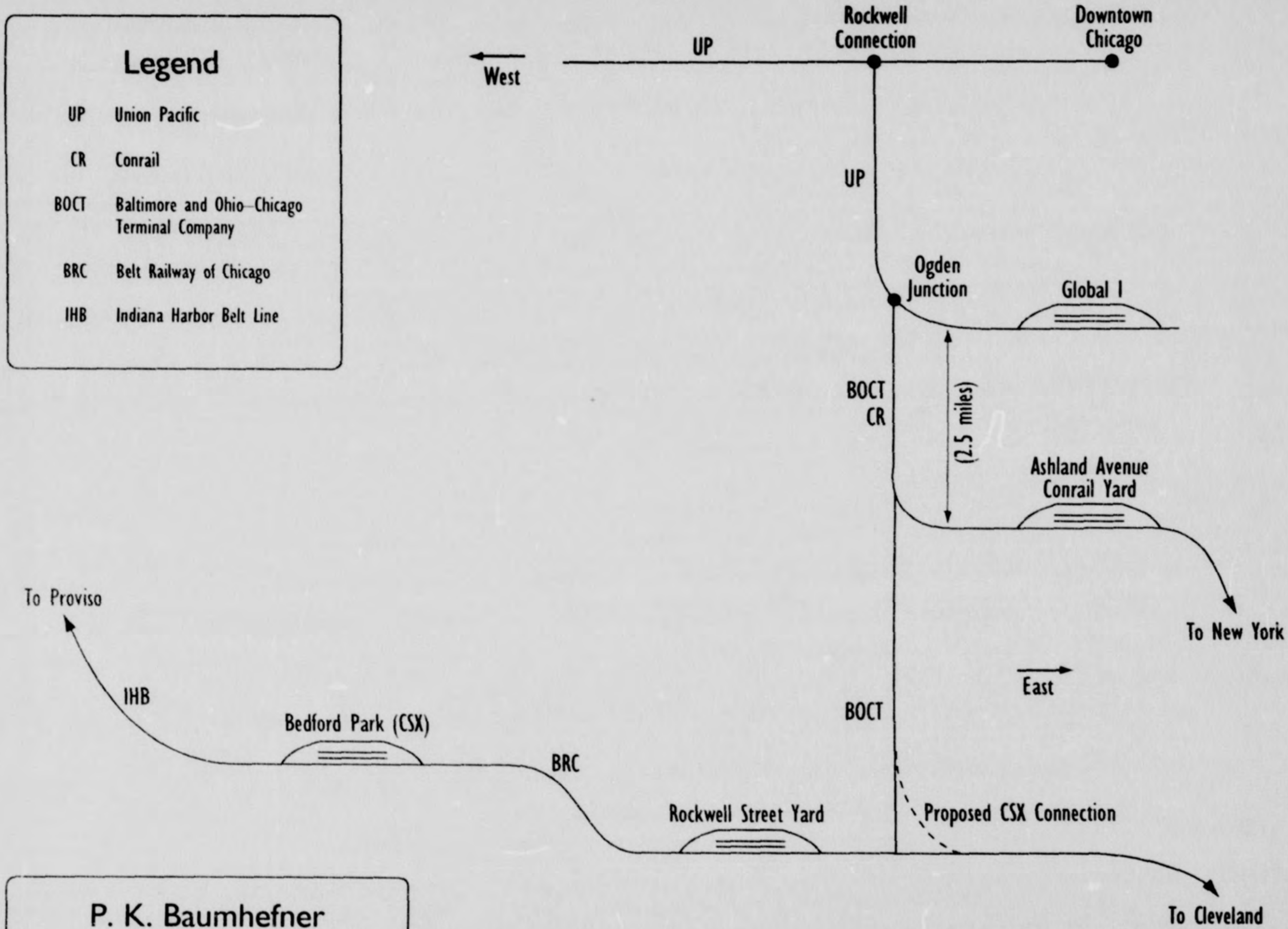
Primary Northeastern United States APL Service Network on Conrail



Legend

———	CSXI Stacktrain Routes
- - - -	Existing NS or CSX Routes
(NS) or (CSX)	Future Owner

P. K. Baumhefner
Exhibit B



P. K. Baumhefner
Exhibit C

EXHIBIT D

ANZDL

Australia-New Zealand Direct Line

October 8, 1997

Surface Transportation Board
Washington, DC

SUBJECT: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Australia-New Zealand Direct Line presently operates a fleet of seven containerships on a weekly service between Oakland, Los Angeles, Auckland, Melbourne, and Sydney, and full intermodal connections to and from points throughout North America.

A substantial number of our customers are located in the Eastern United States at locations served by Conrail. Our company has the following rail options to move containers to and from the Eastern United States: we can contract directly with the rail carriers themselves; we can utilize the inland services of other ocean carriers or we can use the services of stacktrain operators. The two largest stacktrain operators available to us for service between the West Coast and the Eastern United States are APL Stacktrain Services and CSX's affiliate, CSX Intermodal.

We choose to use APL because of the scope of its system, the rates and train shedules that it offers, the pool of equipment that it provides, and the other ancillary services that it offers. If APL were to lose its competitive position in the market, it would be a serious setback to our efforts to improve our market share in the Eastern United States. Furthermore, it would have the effect of lessening competition in the intermodal transportation market.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (c) of the Transaction Agreement <u>deprives</u> customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CSX, not later when their contract expires. That certainly includes APL which should not be forced to forego competition between NS and CSX for the duration of its contract term.

Article II, Section 2.2 (c) also allows NS and CSX—who are competitors—to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the

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ANZDL

Australia-New Zealand Direct Line

applicants' much vaunted claim that this acquisition will result in more competition. In the case of APL, there are potentially serious competitive consequences of this allocation of responsibility since one of the future providers of former Conrail rail service to APL is also one of its principal competitors in both the ocean transportation and domestic stacktrain markets—CSX.

In summary, given that APL has a multi-year contract with Conrail, the application of Section 2.2 (c) to APL's contract puts APL at a severe disadvantage for two reasons: first, as opposed to its competitors who may have much shorter contracts with Conrail, or none at all, and thus are free to negotiate much sooner than APL with NS and CSX for the handling of their traffic, APL is deprived of that competition until 2005. Second, putting control of a large portion of APL's business without APL's consent into the hands of one of its principal competitors raises concerns regarding the quality of service that APL will receive. If APL's competitive advantages are lessened because of the application of Section 2.2 to it, this in turn will directly impact our long-term market growth.

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: **First,** APL is asking the Board to disapprove Article II, Section 2.2 (c) in its entirety. **Second,** if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third,** if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. **Fourth,** APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fifth,** APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at Australia-New Zealand Direct Line include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings, I will state that Australia-New Zealand Direct Line desires to go on record as sharing the concerns expressed by APL, and Australia-New Zealand Direct Line strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely yours,

Stuart N. Rattray
Vice President, North America

3601 South Harbor Boulevard • Santa Ana • California • 92704
Tel 714 424 0400 • Fax 714 424 3481 • Internet www.anzdl.com

State of California
County of USA

I, Stuart N. Rattray, being first duly sworn, solemnly swears (or affirms) that he has read the foregoing statement, knows the contents thereof, and that the facts therein are true as stated.

____

Subscribed and sworn to before me at Santa Ana California, this 10th day of October 1997.

GST Corporation
TOTAL QUALITY IS OUR #1 PRIORITY.

2620 Thousand Oaks Blvd.
Suite 3420
Memphis, TN 38118
901-794-2225

Surface Transportation Board,
Washington, D. C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

GST Corporation is an Intermodal Marketing Company which arranges rail and truck transportation for beneficial owners of cargo throughout the United States and into Mexico and Canada. We presently have a contract with APL Stacktrain Services by which we have access to APL Stacktrain's intermodal doublestack rail transportation network. We tender domestic cont4ainers to APL Stacktrain Service under this contract on behalf of our customers.

A substantial number of our customers are located in the eastern United States at locations served by Conrail. Our company has the following rail options to move domestic containers to and from the eastern United States: We can contract directly with the rail carriers themselves or we can utilize the services of stacktrain operators. The two largest stacktrain operators available to us for services between the west coast and the eastern United States are APL Stacktrain services and CSX's affiliate CSX Intermodal.

We use all of these options for portions of our volumes. We specifically use APL because of the scope of its system, the rates and the train schedules which it offers, the pool of equipment which it provides, and the other ancillary services which it offers. If APL were to lose its competitive position in the market, it would be a serious setback to our efforts to improve our market share in the eastern United States. Further, it would have the effect of lessening competition in the intermodal transportation market.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 c of the Transaction

Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CSX, not later when their contract expires. That certainly includes APL which should not be forced to forego competition between NS and CSX for the duration of its contract term.

Article II, Section 2.2 c also allows NS and CSX – who are competitors to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants much vaunted claim that this acquisition will result in more competition. In the case of APL, there are potentially serious competitive consequences of this allocation of responsibility since one of the future providers of former Conrail rail service to APL is also one of its principal competitors in both the ocean transportation and domestic stacktrain markets - CSX.

In summary, given that APL has a multi-year contract with Conrail, the application of Section 2.2 c to APL's contract puts APL as a severe disadvantage for two reasons: first, as opposed to its competitors who may have much shorter contracts with Conrail, or none at all, and thus are free to negotiate much sooner than APL with NS and CSX for the handling of their traffic, APL is deprived of that competition until 2005. Second, putting control of a large portion of APL's business without APL's consent into the hands of one of its principal competitors raises concerns regarding the quality of service which APL will receive. If APL's competitive advantages are lessened because of the application of Section 2.2 to it, this in turn will directly impact our long-term market growth.

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are First, APL is asking the Board to disapprove Article II Section 2.2 c in its entirety. Second, if the Board will not take that action APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. Third, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. Fourth, APL has asked that the Board retain continuing jurisdiction until

2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. Fifth, APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at GST Corporation include advising regulatory agencies of the interest and concerns of this company in pending agency proceedings. I will state that GST Corporation desires to go on record as sharing the concerns expressed by APL, and strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely Yours,

Lanny S. Vaughn

Lanny S. Vaughn,
President and CEO

State of Tennessee

County of Shelby County

I Lanny S. Vaughn, being first duly sworn, solemnly swears that he has read the foregoing statement, knows the contents thereof, and that the facts therein are true as stated.

Lanny S. Vaughn

Subscribed and sworn to before me at Shelby County, this 7th day of October 1997.

Allison L. Geary

My Commission Expires
June 12, 2000

INTERSTATE CONSOLIDATION
AN INTERMODAL COMMON CARRIER

Gary I. Goldfein
President

October 10, 1997

Surface Transportation Board
Washington, D.C.

SUBJECT: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Interstate Consolidation is an intermodal marketing company which arranges rail and truck transportation for beneficial owners of cargo throughout the United States (and into Mexico and Canada). We presently have a contract with APL Stacktrain Services by which we have access to APL Stacktrain's intermodal doublestack rail transportation network. We tender domestic containers to APL Stacktrain Services under this contract on behalf of our customers.

A substantial number of our customers are located in the eastern United States at locations served by Conrail. Our company has the following rail options to move domestic containers to and from the eastern United States: we can contract directly with the rail carriers themselves or we can utilize the services of stacktrain operators. The two largest stacktrain operators available to us for services between the west coast and eastern United States are APL Stacktrain Services and CSX's affiliate CSX Intermodal.

We use all of these options for portions of our volumes. We specifically use APL because of the scope of its system, the rates and the train schedules which it offers, the pool of equipment which it provides, and the other ancillary services which it offers. If APL were to lose its competitive position in the market, it would be a serious setback to our efforts to improve our market share in the eastern United States. Further, it would have the effect of lessening competition in the intermodal transportation market.

The applicants, as we understand, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, it is our understanding that, at the same time, Article II, Section 2.2 (c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and

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WEB PAGE: http://www.icsla.com
E-mail: laics@aol.com

completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CS, not later when their contract expires. That certainly includes APL which should not be forced to forego competition between NS and CSX for the duration of its contract term.

Article II, Section 2.2 (c) also allows NS and CSX – who are competitors – to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition. In the case of APL, there are potentially serious competitive consequences of this allocation of responsibility since of the future providers of former Conrail service to APL is also one of its principal competitors in both the ocean transportation and domestic stacktrain markets – CSX.

In summary, given that APL has a multi-year contract with Conrail, the application of Section 2.2(c) to APL's contract puts APL at a severe disadvantage for two reasons: first, as opposed to its competitors who may have much shorter contracts with Conrail or none al all, and thus are free to negotiate much sooner than APL with NS and CSX for the handling of their traffic, APL is deprived of that competition until 2005. Second, putting control of a large portion of APL's business without APL's consent into the hands of one of its principal competitors raises concerns regarding the quality of service which APL will receive. If APL's competitive advantages are lessened because of the application of Section 2.2. to it, this in turn will directly impact our long-term market growth.

It is our understanding APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: First, APL is asking the Board to disapprove Article II, Section 2.2.(c) in its entirety. Second, if the Board will not take that action, A{PL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. Third, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. Fourth, APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. Fifth, APL has requested that the Board forbid either NS or CSX from

INTERSTATE CONSOLIDATION
AN INTERMODAL COMMON CARRIER

discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at Interstate Consolidation include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings. I will state that Interstate Consolidation desires to go on record as sharing the concerns expressed by APL, and Interstate Consolidation strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely yours,

Gary Goldfein

Gary I. Goldfein
President

GIG:ed

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Los Angeles

On Oct 10, 1997 before me, Lauren Teodoski,
DATE — NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Gary Goldfein,
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

HPR1
LAUREN TEODORSKI
COMM. #1062697
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires July 31 1999
HPR1

WITNESS my hand and official seal.

Lauren Teodoski
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: ______________________

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

____

DESCRIPTION OF ATTACHED DOCUMENT

____
TITLE OR TYPE OF DOCUMENT

____
NUMBER OF PAGES

____
DATE OF DOCUMENT

____
SIGNER(S) OTHER THAN NAMED ABOVE

State of California

County of Los Angeles

I, Gary I. Goldfein, being first duly sworn, solemnly swears that he has read the foregoing statement, knows the contents thereof, and that the facts therein are true as stated.

Subscribed and sworn to before me at Los Angeles, Ca
this 10th day of October 1997.

KEYSTONE

TERMINALS, INC.

CORPORATE HEADQUARTERS
SUITE 507
MEADOWS OFFICE COMPLEX
301 ROUTE 17 NORTH
RUTHERFORD, NEW JERSEY 07070
N.J. TEL: (201) 935-0011
FAX: (201) 935-1765

N

W E

S

SHIPPER'S AGENT

Surface Transportation Board
Washington, D.C.

Re: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Keystone Terminals is an intermodal marketing company which arranges rail and truck transportation for beneficial owners of cargo throughout the United States, Mexico, and Canada. We presently have a contract with APL Stacktrain Services by which we have access to APL Stacktrain's intermodal doublestack rail transportation network. We tender domestic containers to APL Stacktrain Services under this contract on behalf of our customers.

A substantial number of our customers are located in the eastern United States at locations served by Conrail. Our company has the following rail options to move domestic containers to and from the eastern United States: we can contract directly with the rail carriers themselves or we can utilize the serves of stacktrain operators. The two largest stacktrain operators available to us for services between the west coast and the eastern United States are APL Stacktrain Services and CSX's affiliate CSX Intermodal.

We use all of these options for portions of our volumes. We specifically use APL because of the scope of its system, the rates and the train schedules which it offers, the pools of equipment which it provides, and the other ancillary services which it offers. If APL were to lose its competitive position in the market, it would be a serious setback to our efforts to improve our market share in the eastern United States. Further, it would have the effect of lessening competition in the intermodal transportation market.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (c) of the Transportation Agreement <u>deprives</u> customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS CSX, not later when their contract expires. That certainly includes APL which should not be forced to forego competition between NS and CSX for the duration of the contract term.

Article II, Section 2.2 (c) also allows NS and CSX - who are competitors - to allocate the traffic covered by contract between themselves with out the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition. In the case of APL, there are potentially serious competitive consequences of this allocation of responsibility since one of the future providers of former Conrail services to APL is also one of its principal competitors in both the ocean transportation and domestic stacktrain markets - CSX.

In summary, given that APL has a multi-year contract with Conrail, the application of Section 2.2 (c) to APL's contract puts APL at a severe disadvantage for two reasons: first, as opposed to its competitors who may have much shorter contracts with Conrail, or none at all, and thus are free to negotiate much sooner than APL with NS and CSX for the handling of their traffic, APL is deprived of that competition until 2005. Second, putting control of a large portion of APL's business without APL's consent into the hands of one of its principal competitors raises concerns regarding the quality of service which APL will receive. If APL's competitive advantages are lessened because of the application of Section 2.2 to it, this in turn will directly impact our long-term market growth.

We understand that APL has requested several conditions from the Board prior to approving this trans action. Those conditions are: First, APL is asking the Board to disapprove Article II, Section 2.2 (c) in its entirety. Second, if the Board will nor take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. Third, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. Fourth, APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. Fifth, APL has requested that the board forbid either NS or CSX from Discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier of stacktrain operator.

My responsibilities at Keystone Terminals include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings, I will state that Keystone desires to go on record as sharing the concerns expressed by APL, and Keystone strongly supports APL's requests for conditions. For the reasons stated above, we urge the Board to adopt conditions proposed by APL.

Sincerely yours,

James R. Marino
President

Matson
Intermodal System

Michael R. Checchi
Vice President - General Manager

October 13, 1997

Surface Transportation Board
Washington, D.C.

RE: F.D. 33388, CSX Corporation et al., Control-Conrail

Dear Board Members:

Matson Intermodal System is an intermodal marketing company that arranges rail freight distribution services throughout the United States, Canada and Mexico. Matson Intermodal is headquartered in San Francisco, CA., with sales offices located throughout the United States.

A number of our customers are located in the eastern United States at locations served by Conrail. Our company has the following rail options to move containers to and from the eastern United States; we contract directly with the rail carriers themselves; or, we can use the services of stacktrain operators. The two largest stacktrain operators available to us for service between the West Coast and the eastern United States are APL Stacktrain Services and CSX's affiliate CSX Intermodal.

Our primary service provider is APL. We are concerned if APL were to lose its competitive position in the market, it would be a serious setback to our efforts to improve our market share in the eastern United States. Further, it would have the effect of lessening competition in the intermodal transportation market.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company supports. However, we understand that, at the same time, Article II, Section 2.2. (c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the terms of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have the opportunity to avail themselves now of the competition between NS and CSX, not later when their contract expires. That certainly includes APL, which should not be forced to forego competition between NS and CSX for the duration of its contract terms.

Article II, Section 2.2. (c) also allows NS and CSX -- who are competitors -- to allocate traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without consent of the shipper causes our company to question the applicants claim that this acquisition will result in more competition. In the case of APL, there are potentially serious competitive consequences of this allocation of responsibility since one of the future providers of former Conrail rail service to APL is also one of its principal competitors in both the ocean transportation and domestic stacktrain markets -- CSX.

Ten Years

In summary, given that APL has a multi-year contract with Conrail, the application of Section 2.2 (c) to APL's contract puts APL at a severe disadvantage for two reasons: **First**, as opposed to its competitors who may have much shorter contracts with Conrail, or none at all, and thus are free to negotiate much sooner than APL with NS and CSX for the handling of their traffic, APL is deprived from negotiating competitive alternatives until 2005. **Second**, putting control of a large portion of APL's business without APL's consent into the hands of one of its principal competitors raises concerns regarding the quality of service which APL will receive. If APL's competitive advantages are lessened because of the application of Section 2.2 to it, this in turn will directly impact our long-term market growth.

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: **First**, APL is asking the Board to disapprove Article II Section 2.2 (c) in its entirety. **Second**, if the Board will not take the action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third**, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. **Fourth**, APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fifth**, APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

Matson Intermodal System shares the concerns expressed by APL and supports APL's request for conditions.

Sincerely yours,

Michael R. Ch

M.R. Checchi
Vice President/General Manager
Matson Intermodal System

Mitsui O.S.K. Lines (America) Inc.

One Concord Centre
2300 Clayton Road · Suite 1500
Concord, CA 94520
Tel: 510-688-2600

October 9, 1997

Surface Transportation Board
Washington D.C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Mitsui O.S.K. Lines (MOL) presently operates a fleet of 70 liner vessels engaged on worldwide trade routes. In the USA trade our vessels are employed in The Global Alliance offering 6 weekly sailings between the US West Coast and Asia and a further service from the US East Coast through the Panama Canal to Asia. In addition we operate a bi-weekly service to the East Coast of South America from the US Gulf.

A substantial number of our customers are located in the Eastern United States at locations served by Conrail. MOL currently relies on Conrail's intermodal service to provide inland transportation between East Coast ports and inland points and connecting service with West Coast carriers at Chicago. MOL has a contract with Conrail for this intermodal service.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that at the same time, Article II, Section 2.2 (c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail, including APL, should have an opportunity to avail themselves now of the competition between NS and CSX, not later when their contract expires. No company should be forced to forego competition from NS and CSX for the duration of their contract terms.

Article II, Section 2.2 (c) also allows NS and CSX - who are competitors -- to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

We understand that APL has requested several conditions from the Board prior to approving this transaciton. Those conditions: are: **First,** APL is asking the Board to disapprove Article II, Section 2.2 (c) in its entirety. **Second**, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third**, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. **Fourth,** APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fifth,** APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of an non-affiliated ocean carrier or stacktrain operator.

My responsibilities at MOL include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings, Although MOL does not use APL Stacktrain Services, I will state that MOL desires to go on record as sharing the concerns expressed by APL, and MOL strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely yours,

Raymond L. Keene
Executive Vice President, C.O.O.
Mitsui O.S.K. Lines (America) Inc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa

On October 9, 1997 before me, Karin Dunley, Notary Public,
Date / Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Raymond L. Keene,
Name(s) of Signer(s)

☐ personally known to me – **OR** – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

KARIN DUNLEY
COMM. #1030164
Notary Public — California
CONTRA COSTA COUNTY
My Comm. Expires MAY 28, 1999

WITNESS my hand and official seal.

Karin Dunley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Letter of Support

Document Date: October 9, 1997 Number of Pages: 2

Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name: Raymond L. Keene

☐ Individual
☐ Corporate Officer
Title(s): ____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Vice President

Signer Is Representing:

self

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: ____

☐ Individual
☐ Corporate Officer
Title(s): ____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: ____

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

NOL (USA) INC.

Surface Transportation Board
Washington, D.C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

NOL presently operates a fleet of 36 of containerships. 6 of these ships provide service between Asia and West Coast Ports in the U.S. and 4 of these ships provide service between Asia and U.S. East Coast Ports.

A subtantial number of our customers are located in the eastern United States at locations served by Conrail. NOL currently relies on Conrail's intermodal service to provide inland transportation between East Coast ports and inland points and connecting service with West Coast carriers at Chicago. NOL has a contract with Contrail for this intermodal service.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (c) of the Transportation Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CS, not later when their contract expires. That certaintly includes NOL, and it includes APL as well. Neither company should be forced to forego competition from NS and CSX for the duration of our contract terms.

Article II, Section 2.2 (c) also allows NS and CSX-- who are competitors--to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

80 Grand Avenue, Suite 700, Oakland, California 94612
Tel: (510) 839-6800 Fax: (510) 465-6044 Telex: 6502001656

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: **First,** APL is asking the Board to disapprove Article II, Section 2.2 (c) in its entirety. **Second,** if the Board will not take that action APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third,** if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. **Fourth,** APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fifth,** APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operation at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at NOL include advising regulatory agencies of the interests and concerns as of this company in pending agency proceedings, I will state that NOL desires to go on record as sharing the concerns expressed by APL, and NOL strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely yours,

Johnny Low
Vice President Operations

State of California

County of Alameda

I, Johnny Low, declare under penalty of perjury that the facts herein stated are true and corrected.

Exceuted at Oakland, California, this 7th day of October, 1997.

OOCL

We take it personally

Surface Transportation Board
Washington, DC

October 10, 1997

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Orient Overseas Container Line, Inc., presently operates a fleet of 38 containerships. 10 of these ships provide service between Asia and US West Coast Ports, and between Asia and U.S. East Coast Ports via the Panama Canal.

A substantial number of our customers are located in the eastern United States at locations served by Conrail. Orient Overseas Container Line, Inc. currently relies on Conrail's intermodal service to provide inland transportation between East Coast ports and inland points, connecting with West Coast carriers at Chicago. OOCL has a contract with Conrail for this intermodal service

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (e) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition, All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CSX, not later when their contract expires. That certainly includes OOCL, and it includes APL as well. Neither company should be forced to forego competition from NS and CSX for the duration of our contract terms.

OOCL (USA) Inc.
4141 Hacienda Drive, Pleasanton, California 94588 Tel: (510)460-4800 FAX: (510) 463-2870

Article U, Section 2.2 (c) also allows NS and CSX -- who are competitors -- to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: **First,** APL is asking that the Board continue oversight until December 31, 2004. **Second,** APL is asking the Board to disapprove Article II, Section 2.2 (c) in its entirely. **Third,** if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service.. **Sixth,** APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at OOCL include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings, Although OOCL does not currently use APL Stacktrain Services, I will state that OOCL desires to go on record as sharing the concerns expressed by APL, and OOCL strongly supports APL's request for conditions 1, 2, 3 and 6. For the reasons stated above,, we urge the Board to adopt those specific conditions proposed by APL.

Sincerely yours,

Thomas Tjom

Thomas Tjom
Director, Regulatory Affairs

State of California

County of Alameda

1, I, Thomas [illegible], being first duly sworn, solemnly swears (or affirms) that he has read the foregoing statement knows the contents thereof, and that the facts therein fact true as stated.

Subscribed and sworn to before me at this 10th day of October 1997.

Nancy Huppler

Notary Signature

NNA1

NANCY HUPPLER
COMM. # 1051193
Notary Public — California
ALAMEDA COUNTY
My Comm. Expires FEB 5, 1999

NNA1

Quality
INTERMODAL CORPORATION

October 14, 1997

Surface Transporation Board
Washington, D.C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

Quality Intermodal Corporation is an intermodal marketing company which arranges rail and truck transportation for beneficial owners of cargo throughout the United States and into Mexico and Canada. We presently have contracts with APL Stacktrain Services and several other ocean carriers who provide intermodal doublestack rail transportation service. We tender domestic containers to these carriers under our contracts on behalf of our customers.

A substantial number of our customers are located in the eastern United States at locations served by Conrail. Our company has the option to move domestic containers to and from the eastern United States either directly with the rail carriers themselves or we can utilize the services of stacktrain operators. The two largest stacktrain operators available to us for services between the west coast and the eastern United States are APL Stacktrain Services and CSX's affiliate CSX Intermodal.

We use all of these options for portions of our volumes. If APL, as well as other stacktrain operators, were to lose their competitive position in the market, it would have a serious impact on our efforts to improve our market share in the eastern United States. This could effectively lessen competition in the intermodal transportation market.

Article II, Section 2.2 (c) provides that all transportation contracts in effect with Conrail on the date of transfer of the operations to NS and CSX shall run through their stated term. Further, NS and CSX will carry out the obligations under those contracts and will allocate the traffic covered by the contracts between themselves without the consent of the affected shippers. In the case of APL and other stacktrain operators, there are potentially serious competitive consequences of this allocation of responsibility since CSX Intermodal is a principal competitor in both the ocean transportation and domestic stacktrain markets.

19747 Highway 59, Suite 200 • Humble, TX 77338 • Phone (281) 540-3131 • Fax (281) 540-1992

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: First, APL is asking the Board to disapprove Article II, Section 2.2(c) in its entirely. Second, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. Third, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. Fourth, APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. Fifth, APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at Quality Intermodal Corporation include advising regulatory agencies of the interest and concerns of this company in pending agency proceedings. I will state that Quality Intermodal Corporation desires to go on record as sharing some of the concerns expressed by APL, and Quality Intermodal Corporation strongly supports APL on the following conditions. **First**, the Board shall exercise continuing oversight of the transaction and, until December 31, 2004, shall entertain petitions for reopening for the purpose of prescribing further conditions shown to be needed in the public interest. **Second**, that the application of Article II, Section 2.2 (c) be disapproved as to all companies holding Transportation Contracts for intermodal service and **third**, that neither applicant shall discriminate, in schedules, terminal services, in space or equipment allocation, or otherwise, in favor of an affiliated stacktrain operator or container transportation provider, to the detriment of any non-railroad affiliated stacktrain operator or container transportation provider. We have no position as to the other request by APL and for the reasons stated above, we urge the Board to adopt the conditions we have supported and outlined in this paragraph.

Yours very truly,

Quality Intermodal Corporation

Fred A. Beasley
President

State of Texas

County of Harris

I, Fred A. Beasley, being first duly swarn, solemnly swears that he has read the foregoing statement, knows the contents thereof, and that the facts therein are true as stated.

Fred A Beasley

Subscribed and sworn to before me at Humble, Texas, this 14th day of October 1997.

Rebecca Ethridge 10/14/97

NOTARY PUBLIC STATE OF TEXAS
REBECCA ETHRIDGE
Notary Public, State of Texas
My Commission Expires
2-26-2001

RISS INTERMODAL

Thomas R. Brown
President

4 Orinda Way, Suite 100-A
Orinda, California 94563

510.253.3801
510.253.3880 Fax

October 17, 1997

Surface Transportation Board
Washington, D.C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Board Members:

My name is Thomas R. Brown. I am a co-founder of, and President and Chief Operating Officer of The RISS Companies, one of the nation's largest and fastest-growing Intermodal Marketing Companies. Earlier this year, the RISS group acquired Richmond Transportation International, the largest US provider of international intermodal services, and in 1996 we founded RISS Logistics in order to provide contract logistics services to key accounts. Our combined revenues will now annualize to approximately $175 million.

RISS Intermodal (now The RISS Companies) has been an active supporter of past railroad mergers for a number of reasons. Principal among them has been the pro competitive aspects of strengthening the national rail network through concentration of traffic density, rationalization of plant and staff, and the resultant lower carrier cost structure.

A concurrent motif in this context has been our emphasis on the importance to customers and IMCs of multiple sources of competition in the intermodal environment. In both the BNSF and UPSP cases, we discussed the critical role that capacity providers, such as American President Lines (APL) and the CSXI/SEALAND combination play in the West, in providing competition for the intermodal traffic of full truckload shippers. We argued then, and we argue now, that APL and CSXI provide an important counterpoise to the reduction of competition that would otherwise be associated with what is now a two railroad West. In theory and practice, the role of capacity providers as a source of intra and intermodal competition has become even more critical to Intermodal Marketing Companies (IMCs) as a result of the growing presence of the truckload carriers JB Hunt (JBH) and Schneider National (SNL) in the national intermodal network (generally referred to below as bi-modal carriers).

In 1996, IMCs accounted for approximately 38% or 3,200,000 shipments tendered to US and Canadian railroads. As such, IMCs represent the single largest volume segment of the intermodal business. (Taking into consideration the fact that an estimated 500,000 additional units are moved by IMCs in ISO containers under steamship billing and are therefore not counted above, the IMC segment is an even more important part of the commercial framework of US intermodal transportation.)

Intrinsic to the added value which IMCs supply to customers is the ability to offer Beneficial Owners access to the intermodal network through various, and competing, systems. IMCs typically place in front of their customers door-to-door service and rate packages which offer a variety of routing, equipment type and supply, and other options.

Furthermore, access to equipment pools is critical for the continued success of the IMC community. Who will own and provide equipment to the IMCs and their customers is a critical and evolving issue at this juncture. Historically, IMCs accessed intermodal equipment through the free running per diem trailer pool. Today, as our industry converts from domestic trailers to containers, that pool is declining in volume and increasing in age. It is being supplanted by managed networks of containers. It is critical to note that as this conversion from trailers to containers takes place, the role of equipment supplier is passing, to a large extent, from the equipment leasing companies, to managed pool operators such as EMP (a UP-NS-CR joint venture), and to capacity providers such as APL and CSXI. One railroad, BNSF, continues to be a major container supplier in its own right and also plays an important role for and with IMCs in this context. However, BNSF's close alignment with, and often-preferential treatment of, JBH makes IMC reliance on that equipment source somewhat problematic.

In the end, APL, with its 17,000 domestic containers is the primary source of such capacity to IMCs. And, in the critical 53-foot market where the bi-modal carriers offer this equipment type as a standard vehicle, generally without a price premium, APL's 2,885 53-foot containers are the sole source of such capacity to IMCs. At the same time CSXI, CSX's intermodal operating and marketing company, has combined the intermodal resources of its parent railroad in the Southeast, with its SEALAND intermodal volume through the West and Southeast to create a competing domestic intermodal network. However, CSXI does not supply the critical 53-foot containers which APL has. Interestingly, with UP's acquisition of SP, CSXI's western network largely overlays that of APL. And, like APL, albeit with a somewhat different commercial strategy, CSXI also seeks to sell its intermodal products through IMCs. In fact, over 80% of CSXI's domestic revenues are derived from the IMC channel.

Having described the respective roles of APL and CSXI in the IMC-based product formation and delivery chains, we at RISS can readily understand, and actively embrace APL's argument that apportioning its existing CR contract between CSXI and NS has serious anti-competitive impacts. The Board can readily derive from our position here that these anti-competitive effects will directly and significantly impact the IMC community at large.

Given that APL and CSXI vigorously compete today in the West and Southeast for IMC business, and given that both have made significant investments in intermodal equipment to support the IMC channel, it is highly unlikely that an APL captive to CSXI's parent company on former Conrail trackage will be afforded many competitive advantages in the Northeast, unless APL can freely and openly negotiate its volume commitments and rates in the context of what will be an entirely new playing field.

We at RISS recognize that the Board, as was the Commission before it, is hesitant to abrogate contracts in the name of creating competition where none existed prior to a merger. Yet, we also believe that APL's position in this unprecedented case (a division of a railroad rather than an acquisition) is so unique that it requires a recognition of its special circumstances. No captive carload shipper to our knowledge has been put into a contractual commitment with its major competitor in any previous case before the Board. Furthermore, one of NS and CSXI's principal arguments for their acquisition of Conrail is that it will create competition where none has heretofore existed. This is the most compelling public interest benefit of this transaction. It would be a cruel irony to deprive APL, who has made an independent investment of more than hundreds of millions of dollars in providing domestic container capacity, of full and meaningful access to this new and competitive environment. Bear in mind that many of APL's competitors will not be bound by the same constraining and will negotiate aggressively post acquisition with each carrier bringing to the table the full weight of their total volume unrestrained by the provisions of Section

2.2(c) of the Transaction Agreement. The potential consequences of this for the IMC community are negative and far-reaching.

Post acquisition, we look forward to working with a vibrant, competitive CSXI and NS as we move to exploit the new intermodal markets this acquisition will create. At the same time, we need the continued healthy, aggressive presence of APL in both the new and the traditional intermodal markets. Therefore, we urge the Board to exempt APL from the provisions of Section 2.2(c) of the Transaction Agreement in recognition of the special circumstances which we have discussed above, and in light of APL's particular importance to the commercial viability of the IMC channel.

Thomas R. Brown
President and Chief Operating Officer

State of California

County of Contra Costa

I, Thomas R. Brown, being first duly sworn, solemnly swear (or affirm) that I have read the foregoing statement, know the contents thereof, and that the facts therein are true as stated.

Thomas R. Brown

Subscribed and sworn to before me at Riss-Orinda, this 15th day of October, 1997.

Lynn Shafer

LYNN SHAFER
COMM. # 1057477
Notary Public — California
CONTRA COSTA COUNTY
My Comm. Expires APR 30, 1999

陽明海運股份有限公司
Yangming Marine Transport Corporation

CABLE ADDRESS: "YANGMING TAIPEI" TELEX: 11572

4TH FL., 53 HWAI NING STREET
TAIPEI, TAIWAN
REPUBLIC OF CHINA

TELEPHONE: 3812911

October 9, 1997

Ms. Vernon A. Williams
Secretary,

Surface Transportation Board
STB Finance Docket No. 33388
1925 K Street, N. W.
Washington, D.C.

Subject: F.D. 33388, CSX Corporation et al., Control - Conrail

Dear Ms. Williams:

On May 30, 1997, Mr. Wen-jin Lee, Assistant Vice President of Solar International Shipping Agency, on behalf of Yangming Marine Transport Corp. (Referred as Yang Ming) sent a letter to support Norfolk Southern and CSX to acquire Conrail. However, to keep as true railroad competition in the northeast region, we would also like to express our concern to transaction agreement between these two railroads.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exists now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2 (c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contract. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CS, not later when their contract expires. That certainly includes Yang Ming, and it includes APL as well. Neither company should be forced to forego competition from NS and CSX for the duration of our contract terms.

Article II, Section 2.2 (c) also allows NS and CSX -- who are competitors -- to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again files directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

We understand that APL has requested several conditions from the Board prior to approving this transaction. Those conditions are: First, APL is asking the Board to disapprove Article II, section 2.2 (c) in its entirely. Second, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. Third, if the Board will not take that action, APL is asking the Board to disapprove that section of the Application as to APL. Fourth, APL has asked that the Board retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. Fifth, APL has requested that the Board forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at Yang Ming include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings. Although Yang Ming does not currently use APL Stacktrain Service, I will state that Yang Ming desires to go on record as sharing the concerns expressed by APL, and Yang Ming strongly supports APL's request for conditions. For the reasons stated above, we urge the Board to adopt the conditions proposed by APL.

Sincerely Yours,

Ming-sheu Tsay,
Senior Vice President,
Yangming Marine Transport Corp.

cc: Ms. Ann F. Hasse, APL.
Capt. T. R. Lee, Solar International Shipping Agency, Inc.

I, Ming-sheu Tsay, declare under penalty of perjury that the facts herein stated are true and corrected.

Executed at Taipei, Taiwan, Republic of China, this 7th day of October, 1997.

M. S. [illegible]
____

EXHIBIT E

EXAMINATION BY COUNSEL
FOR APL LIMITED
BY MR. GITOMER:
Q. Mr. Orrison, I'm Lou Gitomer, I'm representing APL Limited. I thank you for your past two difficult days with us and I know another difficult day in preparation, so I'm sure you're tired and ready to go. I will try and make this as brief as I possibly can.
If you can't hear my questions, please let me know. If you don't understand what I'm asking you, please ask me to rephrase the question and I will glad to do it for you. Also, if you can answer questions yes or no, that's fine too. If you feel you want to add some explanation, please feel free.
With the exception of local trains, is the only train service projected to be provided by CSX over the New York Central Lines, LLC, and in the shared assets operating areas reflected in CSX-21 which is the schedules which were filed

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with the STB on August 29?
A. Yes.
Q. Were the operating lines intended to replace Conrail's current operations which CSXT will acquire and, two, to accommodate the new traffic that will be generated by CSXT?
A. Yes.
Q. And is the same true for your train schedules?
A. To accommodate the traffic –
Q. To both replace Conrail's operations and to accommodate any new traffic that may be diverted from motor carrier or from other railroads?
A. Yeah, the schedules were developed from traffic studies that were developed to provide us with the level of traffic that would be attained at year three. And then the train schedules were designed to accommodate the movement of those traffics.
Q. Okay. Now, do the operating plan and train schedules provide equal or better service than Conrail provided to the intermodal and stack train customers that will be served by CSXT?
A. We have some instances of that, yes.

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Q. And how do you know that that will be the case?
A. Through a statement in our operating plan.
Q. You provide a statement in your operating plan that you will provide better service, and that's based on schedules that you have compared to current schedules?
A. Yes.
Q. Okay. And whose current schedules have you compared?
A. We compared –
Q. Just one or two examples.
A. We compared them against Conrail's current intermodal schedules.
Q. Okay. Fine. In preparing the operating plan and train schedules, did you or anyone on your team consult with Conrail?
A. Yes.
Q. Norfolk Southern?
A. Yes.
Q. Okay. Sea-Land?
A. Not to my knowledge.
Q. Okay.
MS. CLAYTON: I'm sorry. In doing what

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did you consult with these people?
BY MR. GITOMER:
Q. In preparing the operating plan.
A. It's a big umbrella, so the answer is yes because shared areas is underneath that.
Q. You did not consult with Sea-Land. CSX Intermodal?
A. Well, I'm saying to my knowledge I did not.
Q. To your knowledge, yes, you did not. And to your knowledge no one on your team did?
A. Well, there are members on my team which are the intermodal representatives. They may have consulted with APL.
Q. Well, I was asking Sea-Land first.
A. Oh, I'm sorry. With Sea-Land. Not to my knowledge, no.
Q. CSX Intermodal?
A. Yes.
Q. Okay. And APL?
A. Again the CSXI intermodal representatives may have talked with APL.
Q. CSXI Intermodal?
A. Well, excuse me. CSX Intermodal, the acronym for it is CSXI.

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Q. Right. CSXI is not an applicant in
this case as I understand it?
A. It is not.
Q. CSXI is not a subsidiary of CSXT?
A. That's correct. It's part of CSX
Corporation.
Q. Now, in preparing the operating plan,
did you receive any schedule requests, this is
different than consulting with, or suggestions
from APL?
A. Not to my knowledge.
Q. Or did anyone on your team?
A. Possibly the representatives from
Intermodal.
Q. Okay. CSXI?
A. Yes.
Q. Okay. Sea-Land?
A. No.
Q. Any other intermodal or stack train
operator?
A. Not to my knowledge.
Q. What efforts did you or anyone on your
team make to understand APL's needs and concerns
for train service?
A. We had meetings with Conrail

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representatives who currently schedule and manage
Conrail's operations. They provide us with
briefings with respect to all the intermodal
requirements which would include the requirements
for intermodal customers such as APL and others.
So they gave us a general description of the
overall network, why the network runs this way,
what the schedule requirements are.
Q. They told you what Conrail's operations
were for their customers?
A. Yes.
Q. And do you know if NS made such an
effort?
A. I don't know.
Q. Okay. That's fine. Now, have you
confirmed with any of CSX's customers that the
operating plan meets their specific service
needs?
A. Not I personally, no.
Q. Has anyone in your team?
A. Yes.
Q. Okay. Have you done this with APL?
A. Yes.
Q. And what was APL's response, do you
know?

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A. I don't know the subject of their
response.
Q. Okay. And that would have been a June
25 meeting?
A. That and subsequent meetings, yes.
Q. And you were not at any of these
meetings?
A. No.
Q. Do you know if any of the trains that
have been scheduled by CSX in the operating plan
are dedicated APL trains?
A. I don't know.
Q. Now, APL operates between Chicago and
Baltimore and Chicago and Boston and has special
services provided, the fillet and toupee
services. Do you know what those services are?
A. Yes, I do.
Q. And does CSX intend to make provisions
to continue providing those same services?
A. That is my understanding.
Q. Now, are you aware of the extent to
which Conrail provides special services for APL
at Boston, Baltimore, Harrisburg, Syracuse,
Toledo, Columbus, Wooster, Springfield,
Morrisville, Allentown, and Pittsburgh?

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A. Would you read the very first part of
the sentence again.
Q. Okay. Are you aware of the extent to
which Conrail currently provides terminal
services for APL?
A. I don't have personal knowledge, no.
Q. Okay. Do you know if the terminal
services were included as part of the operating
plan?
A. I know in the operating plan that we
state that we're going to provide certain
services in different intermodal facilities.
But, you know, specific services that are
required for APL I don't know of.
Q. Okay. Thank you. Does CSX propose to
provide any specific service to APL at the
Kearney terminal?
A. Yes.
Q. Could you describe that. Not the
service to the Kearney terminal but to APL's
portion of it. And I know on pages 220 and 228
and 229 you discuss the rest of the Kearney
terminal, but I'm talking about APL
specifically.
A. The operating plan states that three

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shared asset area crews will switch the APL
terminal and local customers. So these would be
crews that would be directed by the shared asset
area in terms of the switching operations. I
don't know of the inside terminal services
operations.
Q. All right. You've said that the
operating plan is the plan which will be fully
implemented three years after the transaction is
consummated; is that correct?
A. Yes.
Q. Okay. Will intermodal service for APL
be implemented on day one or will it have to wait
three years for the proposals in the plan?
A. My understanding is that it's a
priority to have day one operations in place for
critical services including all of the intermodal
services.
Q. But, as Mr. Donovan pointed out
earlier, there is no evidence before the Surface
Transportation Board as to what day one
operations will be?
A. Well, within the statement that I just
described, that the intermodal plan that's
outlined in here would be reflected in our day

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one operations.
Q. So the intermodal plan in the operating
plan is also intended to apply on day one?
A. There may be some slight adjustments to
it, but for the most part I think it's a
framework that would be guiding the operations
for day one.
Q. Okay. Now, if the number of trains
that are projected to serve APL increase, does
that mean that the number of surplus locomotives
that CSX will have will decrease?
A. That would have to be studied to find
out the answer to that.
Q. Okay. Now, if CSXT was to obtain
100 percent of the APL's traffic, would you have
to add additional trains to your operating plan?
A. Again you would have to study it to
understand that.
Q. In your operating plan, are you
proposing to handle 100 percent of APL's traffic?
A. I don't know what portion of APL's
traffic that we're planning on handling in our
operating plan. I know in our operating plan
we're going to provide services for APL, but I
don't know whether or not it's 100 percent. The

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information was provided to me by the intermodal representatives that were doing this work on my behalf.

Q. And they received the information from the marketing group?

A. Yes.

Q. And your part of the project in preparation of the operating plan did not require you to understand the contract between CSX and Norfolk Southern which divided contract traffic?

A. No, I don't have any knowledge of that. You know, a further point to your statement, you said 100 percent of APL. Those schedules and documents that we've looked at over the last two days requested for schedules to points such as Harrisburg which CSX won't provide service to. So, to accommodate 100 percent of Conrail's APL operation, I think it –

Q. You won't be able to accommodate –

A. Yeah, we can't accommodate it all unless you got us trackage rights there.

Q. One last question.

A. You see how tired I am. I want that to be in the record.

Q. I understand that you cannot provide

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APL with a cutoff time for delivery of containers or the availability time once containers are delivered to destination at this point in time; is that correct?

A. Yes. And the schedules that you provided to us did not have current cutoff times. My telephone conversations with my representatives have said that it's a case-by-case review of what the requirements of the customers need to be so that we can accommodate their requirements and that those are ongoing discussions between APL and CSX.

Q. Which leads to my next question, that those negotiations, would they be conducted with CSXT or CSXI?

A. With CSXI.

Q. Who is not a party to this case and who is not subject to the oversight of the Surface Transportation Board in this case and may not be subject to any conditions which the Surface Transportation Board would impose and which –

MS. CLAYTON: I'm going to object to those legal conclusions on your part.

MR. GITOMER: That's fine.

MS. CLAYTON: Obviously, if the STB is

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making any conditions on CSXT for the way it operates its intermodal service, I would assume that, you know, we're talking about the operating plan which is in here.

MR. GITOMER: Those are all the questions I have. Thank you very much,. Mr. Orrison, thank you for your time. Counsel, thank you.

THE WITNESS: Thank you.

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And, therefore, we are going to adjourn at this time and schedule another time for those people who have already noticed him and did not have a chance to depose him today. And we will get back to those people with the date and time.

(Whereupon, at 5:45 p.m., the deposition adjourned, to be resumed on a date and time to be determined by counsel.)

Signature of the Witness

SUBSCRIBED AND SWORN to before me this day of , 19 .

NOTARY PUBLIC

My Commission expires:

EXAMINATION BY COUNSEL FOR

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APL LIMITED

BY MR. GITOMER:

Q. Mr. Mohan, I'm Lou Gitomer, I'm here representing APL Limited, and I have some very basic questions for you about the proposed operations of the Norfolk Southern over the portions of the Conrail system that it will be operating.

First, except for local trains, is the only train service projected to be provided by NS over the Penn Lines LLC and in the shared assets operating areas reflected in NS-19 which are the Norfolk Southern schedules?

A. Could you refresh my memory with respect to what NS-19 might be.

Q. NS-19 was four volumes that was the supplement to volume 3B, the projected train schedules. That's just volume 2 which has the intermodal schedules.

A. Can I confer with counsel for just a moment?

Q. Absolutely.

(Witness confers with counsel.)

THE WITNESS: To the best of my understanding of the document that you handed me,

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that captures the schedules from the document depository which were basically schedules that would experience substantial change or which were new. Whether that document includes current Conrail schedules that NS would intend to maintain I couldn't say without review of the document.

In the document depository, there was also a set of existing Conrail train schedules. And, unless the schedule were to change materially, there is no mention of it in the operating plan 3B volume which means that certain schedules that Conrail now maintains would also be maintained by NS.

BY MR. GITOMER:

Q. So NS will continue certain Conrail schedules?

A. Yes, that's right.

Q. Okay. And NS will continue those schedules beginning on day one of operations of the revised Conrail?

A. That's my understanding.

Q. So that the operating plan and these schedules in NS-19 are not intended to replace all of Conrail's current operations?

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A. You're correct.
Q. But they are intended to accommodate the diverted traffic and the new business?
A. And, to the extent that a schedule was changed for reasons other than new business or diversions, we also tried to make mention of it.
Q. Thank you. The new schedules and the revised operating plan, where they replace current Conrail service, do they provide better service than Conrail had been providing as a general matter?
A. Many of them do, yes.
Q. When you were with Southern Pacific, was APL Limited one of your customers?
A. Absolutely.
Q. And you are familiar with the service requirements that APL has?
A. Yes, in a general sense.
Q. And you know that APL is also a customer of Conrail's?
A. I do.
Q. And that APL provides a great deal of traffic to Conrail?
A. And to NS I believe.
Q. But at least here we're talking about

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changing the service being provided by Conrail or looking at potential changes in the service. In preparing the operating plan, did you consult with any potential shippers who might be affected?
A. I myself did not. With respect to what the traffic witnesses may or may not have done, I don't know.
Q. Okay. But neither you nor anybody on the operating plan team did?
A. I did not. I can't speak specifically for everyone on the operating team.
Q. Okay. Did either you or the operating team receive requests from any potential shippers, as an example APL or Sea-Land, for specific schedules?
A. Not to my knowledge.
Q. In preparing the operating plan and the schedules, did you make any efforts to understand APL's needs and concerns?
A. Myself personally, no.
Q. Did anybody on your team?
A. Yes, the shared asset area group undertook to assess APL's needs particularly in Northern New Jersey with respect to direct

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service to and from its termina. at South Kearney. And, with respect to any other contacts that may have been made with APL, I'm not aware of what they might have been.
Q. So you wouldn't know whether anyone on your team or anyone at NS met with APL to see if any schedule changes would meet APL's needs?
A. I'm not aware that anyone did, but they may have.
Q. Do you know if anyone at NS met with any other shippers to determine if these new schedules met their needs?
A. I don't know other than to the effect that the traffic witnesses may have.
Q. But not the operating witnesses?
A. Not the operating witness.
Q. Okay. You said that certain Conrail trains would be operated by NS as they are today. How did you make the determination not to change those Conrail trains?
A. If there appeared to be traffic from the model for the trains and the operation appeared to be as efficient and expeditious as could be, we didn't change it.
Q. Do you know if any of the trains in the

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operating plan or in the schedules are dedicated to service for APL?
A. I believe certain of the existing Conrail schedules are. Certain of the NS schedules may be.
Q. But you couldn't identify them?
A. Not without documents in front of me.
Q. Are you familiar with Conrail's operations for APL between Chicago and Baltimore? Conrail provides doublestack operations out of Chicago, but before they get to Baltimore, because of tunnel clearances, they have to what they call fillet the doublestack trains.
A. I'm familiar that there's a filleting operation. I didn't immediately associate that with APL.
Q. Does the operating plan make provisions for NS to continue to provide that service?
A. Until such time as the clearances on the Port Road branch to Baltimore and the Northeast corridor are improved which is a specific part of the plan in order to get doublestacks in and out of Baltimore without filleting.

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Q. Do you have a time for when that rehabilitation work will be completed?
A. It's a high priority, but I don't know the specific timeline, no.
Q. So it could be anywhere from year one to year three?
A. That's basically correct, to the best of my personal knowledge.
Q. Conrail provides terminal services for APL in Baltimore, Harrisburg, Toledo, Columbus, and a number of other locations that will become part of the property to be operated by Norfolk Southern. Will NS be providing the terminal services at those locations?
A. There is nothing in the operating plan that would indicate that it would not.
Q. Does NS have a contractor in mind for providing those services?
A. Not to my knowledge.
Q. On the other portion of the division of Conrail, CSX has indicated that its affiliate, CSX Intermodal, will be providing terminal services. But, as far as you know, Norfolk Southern itself will be providing the terminal services?

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A. To the best of my knowledge, although NS intermodal will make that ultimate determination in conjunction with the customer.
Q. So it will be something negotiated by APL and NS intermodal?
A. That's my understanding.
Q. What services does NS propose to provide for APL at APL's Kearney terminal?
A. To the best of my understanding, the intent that NS has is to operate such unit trains or more properly intact trains as may be required by APL to and from the South Kearney terminal. And, to the best of my recollection, those include services now operated via what is referred to as the Pennsylvania main line between Chicago and South Kearney. My recollection is that those are existing Conrail schedules that we made no attempt to change.
Q. How about services within APL's Kearney terminal itself?
A. I'm not aware that that is a settled issue as to who the terminal operator would be, if APL wishes it to be other than APL.
Q. Well, today Conrail provides certain services within the terminal, they provide some

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switching, train makeup. And APL is very interested in continuing to have one of the two carriers or maybe even both carriers provide that.

A. My understanding and recollection is that the operation at South Kearney was designed with flexibility and direct access to APL in mind; that, if APL's requirements were for train service direct from South Kearney to some point in the APL network, that NS would be able to operate it; if there were a need for switching service, that the shared asset operator could provide it.

Q. The operating plan you mentioned earlier was prepared to be filed with the Surface Transportation Board. Is it also a blueprint for Norfolk Southern's actual operations?

A. Oh, yes, yeah. From what I have heard so far, from my informal contacts with the implementation team, it's very much a blueprint.

Q. Now, the operating plan will be fully implemented in year three of the transaction, after the transaction is consummated. What about on day one of the transaction?

A. There is a great deal of transition

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team planning at NS now to address that issue. With respect to specific day one implementing issues, they reside with the teams. Because of the lack of information available from Conrail and an unwillingness to be presumptuous about STB approval, there isn't a total transition plan that was available at the time of the filing.

Q. Do you expect such a transition plan to be in effect, assuming the STB approves the transaction by the time it becomes effective?

A. I know that that is NS's planning intent and that is what they are concentrating on now.

Q. Along those lines, Exhibit 16 is a newspaper article indicating that there may be some thought about going slow in implementing the transaction. How can you reconcile that with providing service to Conrail's current shippers on the first day after consummation of the transaction?

A. Exhibit 16 is a newspaper article compiled I am sure with the best information and intent. What I have heard from NS is slow, detailed, focused, careful. I'm not so sure that the emphasis has ever been in my discussions on

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slow so much as it has been on detailed and careful.

With respect to day one operations, while the transition teams are responsible for the plan, I would imagine that, on day one, if there is a service demand that APL has and it's addressed by the existing Conrail operation, then NS would continue to maintain it.

Q. Would NS be able to maintain that operation considering the Conrail property will be divided, the Conrail equipment will be divided, the service obligations over Conrail will be divided?

A. The transition teams I know are very aware of those issues and many others. With respect to how they intend to deal with those very important specifics, I am not part of the transition planning effort and couldn't address it.

Q. Going back to your mention of the Conrail schedules that are in effect today that will remain in effect after the transaction is consummated, those schedules contain cutoff times for delivery of containers and availability times to pick up containers once they have been

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delivered. You said that NS would maintain those schedules. Does that include the cutoff times and the availability times?

A. I think perhaps, with all respect, that that question would be better addressed to someone in authority at NS.

Q. Was that considered in developing your operating plan?

A. Not specifically, no.

Q. As APL reads the application and the statements by CSX and Norfolk Southern, it appears that the APL traffic is going to be divided between the two railroads. If NS were to obtain 100 percent of the APL traffic that it can handle; that is to say, not traffic going to Boston because at least as the plan is configured now NS does not reach Boston, but 100 percent of the APL traffic that NS can handle, would that require additional trains to be added to the new Norfolk Southern system?

A. If it were to all be added to NS in what we might refer to as a result of a real-world negotiation as opposed to a traffic split determined by traffic witnesses in the filing, I would certainly think that would

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require additional train services, yes.

Q. You're not in a position to state whether NS is willing to enter into a real-world negotiation, are you?

A. I'm not. But I know that they value APL's business very highly.

Q. Okay. You indicated that the APL traffic would continue to be routed over the Conrail routes that it has today. So the indication in the operating plan that the Southern Tier route would be used for doublestack and intermodal traffic would not include APL traffic?

A. If APL had an expressed preference for the Southern Tier, I'm sure NS would be willing to discuss that issue.

Q. I don't think at this time the Southern Tier is in the physical condition to meet APL's service requirements.

A. APL's high volume east-west business in the plan was not changed. It would, therefore, continue to move via the Pennsylvania route.

Q. Along those lines of APL's traffic not being changed, is there any planning or any thought being given to relocating the

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APL-Conrail-UP interchange to Kansas City?

A. No, not to the best of my knowledge.

MR. GITOMER: That takes care of all my questions. Thank you very much, Mr. Mohan.

THE WITNESS: You're very welcome.

EXAMINATION BY COUNSEL FOR APL LIMITED
BY MR. GITOMER:
Q. Good afternoon, Mr. Hart. Again, I'm Lou Gitomer of Ball Janik here on behalf of APL Limited. I assume you're familiar with APL.

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A. Yes.
Q. I've got three basic areas of questions for you. One area is general background, one involves the South Kearney yard and the other involves the Conrail transportation contracts, which are discussed in section 2.2(c) of the transaction agreement.
In your verified statement at page 137, you've said that you were involved in network service design. Would you give me a brief explanation of what network service design involved?
A. Yes, sir. It involves the development of the train plan, blocking and scheduling plan for how traffic is brought together, accumulated into blocks and then accumulated into trains and then the train schedules that are attendant to that, including frequency, priority. Essentially the definition of how one attempts to run a railroad.
Q. So the location of the railroad lines, terminals is important to how a railroad would operate?
A. It's our factory.
Q. Could you expand that to say how any

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transportation company would or should operate?
MR. SIPE: I don't understand that question.
BY MR. GITOMER:
Q. Would you say that planning a network, whether it be schedules for a train or for a truck or for a broker would be important?
A. Very important.
Q. Now, you've also indicated in your verified statement at page 138 that you worked in market segmentation to identify how to satisfy customers. Could you give me a brief explanation of that?
A. Well, in a job I had doing long-range planning, we did a classic market segmentation study which attempted to look at our business from a commodity, customer, carload and corridor perspective – the four Cs helped me remember that – and we really made an attempt to understand what were the ingredients that determined what a business was and what the business required. So that's a fairly common technique for doing strategic planning.
Q. And to find out what a business was and what it required, was it easiest just to talk to

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the business, to sit down and negotiate with them?
A. No, it really is more of an analytically-based approach to understand the logistic structure of a very complex subject, of a mix of commodity and car type and corridor, that is employed to make the partnership between the railroad and the customer work.
Q. One of the reasons you've given for CSX entering this transaction was that it would improve its competitive position vis-a-vis railroads, and that's on page 150 of your verified statement. Is CSX also improving its competitive position vis-a-vis other modes?
A. Yes.
Q. And what would those modes be?
A. Most particularly, truck.
Q. How about barge?
A. Not very much.
Q. Ocean-going vessels?
A. To the extent we have access to new ports, yes.
Q. Freight forwarders or brokers?
A. Yes.
Q. And would this be just CSXT or all of

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the CSX Transportation entities?
A. I think all of the CSXT transportation entities.
Q. All of the CSXT. What about CSX Intermodal?
A. CSX Intermodal, as well.
Q. And Sea-Land?
A. I don't think this transaction directly benefits Sea-Land.
Q. Does Sea-Land have train service into New York today?
A. Yes.
Q. Is that over Conrail?
A. Partially.
Q. Do you think that service may be over CSX after this transaction?
A. Maybe is the operative phrase.
Q. Let's move on to South Kearney yard where APL has its large eastern intermodal terminal. Am I correct that CSXT, I guess through the New York Central Lines LLC will own the South Kearney intermodal terminal after the transaction?
A. It will be assigned. I think owned is a very legal phrase.

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Q. I agree with you. It will be assigned to NYC?
A. Yes, and therefore, to CSX.
Q. And does this include the portion of that terminal that is leased to APL?
A. Yes.
Q. Now, there is currently a lease between APL and Conrail for the portion of the South Kearney terminal that APL operates in. Are you aware of that lease?
A. Yes, I am.
Q. Who will be responsible for the Conrail portion of that lease after the transaction?
A. I believe CSX will.
Q. Will that be CSXT?
A. Yes.
Q. So that the duties that Conrail now performs will be delegated – try and help me with this because I'm getting a little confused because of the structure – from Conrail to New York Central lines LLC and then to CSXT? Is that how it will flow?
A. That's a lot more complicated understanding than I have of it.
Q. But somehow it will go from Conrail to

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CSXT?
A. Yes.
Q. But CSXT does not envision delegating its duties under the lease any further or to any corporate affiliate?
A. I didn't mean to say that.
Q. I didn't say that you said that. I was just asking you if CSXT intended to delegate to, for example, CSX Intermodal.
A. It could very well be.
Q. But that hasn't been determined yet?
A. I would imagine CSXI would operate the terminal.
Q. Now, Conrail currently provides switching other services for APL at South Kearney. Are we at the point where you would say that CSXI will be perform those services?
A. I'm certain that CSX will be performing those services, certain.
Q. CSXI, CSXT?
A. That matters – I'm a bit confused by that. My company will perform that service for your client. I'm not trying to be cute.
Q. No, I understand that, but CSXT i the railroad, which is a subsidiary of CSX

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Corporation?
A. Yes, sir.
Q. CSX Intermodal is not a subsidiary of CSXT, it is also a subsidiary of CSX Corporation?
A. That's my understanding.
Q. CSXT is a railroad, that's correct, isn't it?
A. Yes.
Q. CSXI arranges intermodal shipments throughout the country?
A. Yes.
Q. APL also arranges intermodal shipments throughout the country?
A. If you say so.
Q. That's fine. If APL has questions concerning service at the South Kearney terminal, who should it contact?
MR. SIPE: At what time frame?
MR. GITOMER: After the transaction.
MR. SIPE: Post-transaction?
MR. GITOMER: Post-transaction.
THE WITNESS: It should contact – it depends on what the service problem is. If it's an over the road problem or a terminal problem –
BY MR. GITOMER:

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Q. A terminal problem.
A. I would contact the operator of the Kearney yard terminal.
Q. And that would be a CSX company, it may be CSXT or CSXI?
A. Yes. I'm not certain how that's coming out.
Q. This is probably more of an operating question but let me try. Can you explain how you intend to integrate the APL services at South Kearney with the rest of the services currently provided by Conrail at the adjacent Kearney yard?
A. I think we're just beginning to learn and we're beginning to study the business in the Northern New Jersey terminal area in order to develop a plan that sorts that out in a way that satisfies the needs of our customers.
Q. Do you expect that to include discussions with those customers?
A. Yes.
Q. Let's turn to section 2.2(c) of the transaction agreement, which is in Volume 8B.
A. Do you have a page from that?
Q. It is from pages 25 to 29.
A. Okay.

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Q. It begins right at the top of page 25. Now, is section 2.2(c) an agreement between CSX and NS, who are two rail carriers, to divide traffic, divide services and divide the earnings of Conrail's contract traffic?
A. Yes.
Q. Now, turning back to page 23, there is a definition of the term transportation contracts. And I just want to be clear that this encompasses all contracts because at least prior to 1996, my understanding was there were two types of contracts. There were transportation contracts that re filed with the Interstate Commerce Commission and there were contracts that were entered between the railroad and its shipper for exempt commodities that were not filed with the Interstate Commerce Commission. Today neither of those are filed. Now, I just want to make sure that this definition of contracts encompasses both or if it just encompasses one.
MR. SIPE: Do you know?
THE WITNESS: I don't know.
BY MR. GITOMER:
Q. You don't know, okay. So it could be

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one or the other? It could be all contracts between Conrail and its shippers?
A. I'll stick with I don't know.
Q. Now, section 2.2(c)iii(a), which is on page 25, and especially subpart (b) of that, which is down towards the bottom of the page, defines dual. And I'm just looking for a definition of dual with regard to intermodal service. And I just want to ask you about a couple of points, whether they would be considered dual under this definition. And the first one could be Chicago.
A. Dual.
Q. South Kearney?
A. Dual.
Q. Baltimore?
A. Not dual.
Q. Baltimore would be CSX, would be NS?
A. Could be either.
Q. Why would you say it's not dual?
A. To the best of my knowledge, there is no commingled facilities in Baltimore.
Q. Well, let's go back to (b). That talks about, for intermodal service, all intermodal facilities in any city.

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MR. SIPE: Where are you exactly?
BY MR. GITOMER:
Q. I'm on page 25, 3A small b down towards the bottom of the page. I'm just trying to find out. I don't want to argue.
A. I understand. I'm trying to be responsive. Not Baltimore.
Q. How about Columbus, Ohio?
A. Not.
Q. New York?
A. New York is a big place.
MR. SIPE: New York, could you put some definition around that?
BY MR. GITOMER:
Q. I wish I could put some definition around it. That's why I'm struggling with section (b) where it says all intermodal facilities in any city in which each of CSXT and NSR has line haul service to any intermodal facility.
A. I think I know what it means and I've given you my definition.
Q. So New York?
A. You're going to have to define New York.

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Q. New York City.
MR. SIPE: The five boroughs?
MR. GITOMER: The five boroughs, yes.
THE WITNESS: Not New York.
BY MR. GITOMER:
Q. How about St. Louis?
A. To the best of my knowledge, no.
Q. Could dual include locations that CSX and NS serve today but are not being acquired from Conrail, such as Atlanta?
A. No.
Q. This is just a statement for background. I don't expect you to answer this. One of APL's concerns is who is going to be providing its service after the transaction. Now, is it correct that responsibility for performance of a contract for transportation between a dual station, such as Chicago, and a specified station, which is defined in section iii(C)(cc) at the top of page 27, will be determined under section 2.2 (C)(iv), which is at the bottom of page 28?
A. Holy cow, you're going to have to ask that again.
Q. Okay. Let's see if I can put some meat

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on that. There is an APL train today between Chicago and South Kearney.
A. Yes.
Q. Chicago is a dual station.
A. Yes.
Q. South Kearney you've said is dual and it's also in the shared access area?
A. Yes.
Q. Who will provide APL's service between Chicago and South Kearney?
A. Not settled.
Q. It's not settled. Do you know when it will be settled?
A. We don't have a specific timetable for that.
Q. And that would probably be the same answer between any dual facilities –
A. Yes, sir.
Q. – and shared access areas?
A. Yes.
Q. How about between New York and Atlanta? There is currently Conrail service between New York and Atlanta. It is interchanged between Norfolk Southern between New York and Atlanta.

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MR. SIPE: This is not a Triple Crown?
MR. GITOMER: No, this is not a Triple Crown. This is an APL service.
THE WITNESS: Really Northern New Jersey?
BY MR. GITOMER:
Q. Northern New Jersey, yes.
A. To Atlanta.
Q. Yes.
A. We would very much like to compete for that business with Norfolk.
Q. But again, it hasn't been settled –
A. No.
Q. – who is going to have that. Let me try maybe an easier one. How about Chicago to Boston? Let me ask a preliminary question. Is Boston a New York Central allocated asset?
A. Yes, it is.
Q. Then I think, under the rules at the top of page 27 (cc)(Y) –
A. Looks like Y to me.
Q. So that would be CSX service?
A. Yes.
Q. And I won't ask you about NS service.
A. Thank you.

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Q. Section 2.2 (C)(v), which is the first section on the top of page 29, talks about NS and CSX cooperating to assure shippers receive the benefits to which they are entitled. And it spells out two benefits, volume pricing and refunds. And then it has the term et cetera. Can you put any meat on that term?
A. Let me take a moment and read it.
Q. Sure, absolutely.
A. Some et ceteras would be equipment supply, any elapsed time commitments that were part of the transaction or deals. Absent any contracts for elapsed time commitments, there would be the intention to provide the same level of service after as before in the context of frequency and in the context of service reliability.
Q. What if the service provided by Conrail to APL involved network service where you have a network set up by APL to provide intermodal service to a large number of points in Conrail territory, and that is a contractual provision?
A. The intention of this section is to assert that we will take every action we can to deliver and live up to the terms of the

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contracts.
Q. You've said that it hasn't been determined who will be providing specific service between dual points, dual points and specified stations yet.
A. I said dual points and shared and dual points and dual points.
Q. That's what I meant. Will that be determined before the transaction is consummated?
A. Can you give me a definition of consummated.
Q. The Surface Transportation Board approves the transaction, 30 days later it says you may go ahead and close the transaction, which I believe would mean assigning Conrail assets to the New York Central, to the Pennsylvania, CSX beginning operations over the New York Central, Norfolk Southern beginning operations over the Pennsylvania and the remainder of Conrail operating over the Conrail shared assets.
MR. SIPE: Just me make a statement for purposes of clarification. I don't know whether it will clarify or not. In the application, the applicants have sought authority to jointly operate Conrail for some period of time upon

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approval of the transaction. I don't know if that clarifies or not. I'm not sure that your definition of consummation is consistent with that notion, that there might be some period of basically joint control by Conrail before the assets are split.

MR. GITOMER: That's the point I'm getting to.

BY MR. GITOMER:

Q. Will Conrail continue to operate as it does today –

A. Let me give you our best thinking today on that topic because it is a topic of concern for us and the shippers. For the definition, we'll say STB approval is the beginning date. I have personally not focused on the 30-day issue. What we've been focused on is the orderly implementation that we believe will be required to separate this property and to operate it as you outlined. And we think that that process may logically take and will logically take longer than 30 days.

In order to effect a split and effectively operate it will require us to have implementing agreements with the labor unions,

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and rather specifically to make sure that – the first example that comes to mind is Cleveland west, where those crews today operate in exclusively Conrail territory. Some of the Cleveland west crews will be required to run on the B&O and some of the Cleveland west crews will be required to run on the Conrail Elkhart line.

So in order to effect a logical and orderly transition from Conrail today to the proposal that Norfolk and ourselves have made before the STB, will require us to get labor implementing agreements with our unions and then to train the unions, to the extent that it will require them to become familiar with a line that they don't operate on today. So the best guess on that today is perhaps a period of six to nine months to effect that.

During that interim period, if you will, a continuing Conrail operation honoring the contracts that are in place today, as Sam said, which is one of the things sought in this application, to allow that to continue during the interim period, in order that the right level of service is provided while the rate set and implementation activities are being put in place,

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is now what is contemplated.

Q. That's very helpful. Would you please take a moment to read section 2.2 (C)(vi), again at the top of page 29.

A. I've read it.

Q. Could you tell me if that means that CSX could enter a contract with APL to provide service to APL even though APL currently has a contract with Conrail?

A. I don't think it means that but I don't know.

Q. Do you know what this section means?

A. I do not know what this section means.

MR. GITOMER: Mr. Hart, thank you very much. That concludes my questions.

THE WITNESS: Thank you.

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FOR APL LIMITED
BY MR. GITOMER:
Q. Good afternoon, Mr. McClellan. My name is Lou Gitomer. I'm here on behalf of APL Limited. I assume you're familiar with APL?
A. Absolutely.
Q. They're a customer of Norfolk Southern?
A. One of our largest.
Q. And they're also a customer of Conrail's?
A. One of their largest.
Q. And I'm assuming you're hoping that their portion of Conrail's business will someday soon be a part of Norfolk Southern's business?
A. Yes.
Q. Okay. You said you're familiar with APL's operations. Are you familiar with the terminal which they use in Northern New Jersey?
A. I'm familiar with the fact that APL is a big customer of Conrail and Norfolk Southern. I've been to the APL facility. I've seen it.
Q. The South Kearney?
A. South Kearney, yes.
Q. Who is going to acquire the South Kearney terminal as a part of the transaction?

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A. South Kearney terminal goes to CSX with joint access by NS and CSX to the APL facility.
Q. Okay. Now, is that otherwise in the Northern New Jersey shared asset area?
A. It's inside the shared asset areas.
Q. But the APL terminal in South Kearney will be operated and acquired by CSX and I guess the New York Central lines LLC? That's the CSX subsidiary in the transaction.
A. I don't know how the underlying real estate will go on that. That wasn't in the -- it wasn't in the April 8 letter. So I didn't deal with it.
Q. Do you know why CSX got the South Kearney terminal?
A. It was negotiated.
Q. It was just a negotiation. All right. You've said that you're familiar with APL. And in your statement you said that your customers desire bundle contracts covering prices and services to multiple markets. I assume that's the situation that APL has on Norfolk Southern today?
A. I understand that to be true from Tom Finkbiner, yes.

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Q. Now, with Conrail being split between CSX and Norfolk Southern, how do you intend to meet that similar need for APL after the transaction?
A. I don't follow the -- presuming we win your contract, we'll take it to --
Q. Will you take it to Boston?
A. We would have to work out a joint arrangement, but we can take it to Boston.
Q. Do you think you would be able to win the APL contract?
A. You would have to ask Tom Finkbiner that.
Q. Well, under the terms of the transaction agreement, is there even a chance to win the APL contract? I don't want to play any games. APL is very concerned about what's going to happen to its traffic, who is going to move its trains between specific points. And we're concerned with the specific terms of the contract dealing with transportation contracts. And what we would really like is some help figuring out who is going to handle our trains and when. And there are provisions in this contract which talk about handling trains

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from dual stations, and dual is defined in the contract, it talks about handling trains into and out of shared areas. Now, you've told Mr. Wood and Mr. Stone that you really didn't have much to do with the development of this language in the contract.
A. Yes.
Q. But I was wondering if you might be able to help us out in trying to figure out what's going to happen to traffic moving between, say, Chicago and the South Kearney Yard?
A. I saw early drafts of that contract language and I don't pretend to understand why it was done. And that was handled by somebody else. I'd like to help APL, but I think you've got the wrong witness.
Q. Could you tell me who was responsible for this specifically?
A. Both the lawyers and the commercial people were involved in this, for both CSX and Norfolk Southern. I do know some of the contentions, I just don't know how the language evolved.
Q. Okay. Well, let's go back to the South Kearney Yard. You said that NS and CSX would

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both have access to the yard?
A. Yes.
Q. Who will be responsible for administering the lease between APL and what is today Conrail? APL leases a portion of the yard from Conrail.
A. I don't know. That was a matter of an unanswered question at the time the April 8 agreement was put together. And I remember some arguments as between CSX and NS, but I didn't follow those arguments through to the definitive agreement. So I don't know how that was resolved.
Q. Mr. Hart yesterday indicated that CSX would be administering the lease.
A. I can't disagree or agree with Mr. Hart on that matter. I don't know.
Q. Okay. Now, if APL has problems with its service in the South Kearney Yard, in the yard itself, do you know who they would be contacting after the transaction, after the division date?
A. Let me -- can I make an assumption?
Q. Sure.
A. We're handling the traffic. I presume

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you could contact us and we would go and contact CSX or whoever.
Q. Well, who could whoever be?
A. My understanding now is that Conrail services your yard.
Q. Yes, they do.
A. My understanding would further be that CSX will do the actual handling. That means we would have to go to CSX.
Q. Okay. And, if there were problems -- but we would come to you first?
A. Under the assumption I made.
Q. Under your assumption?
A. Sure.
Q. APL would go to NS and NS would intervene with CSX on APL's behalf?
A. Correct.
Q. And, for traffic that would be over the line, we would just work that out with Norfolk Southern, if there were any problems?
MR. ALLEN: Is that a question?
BY MR. GITOMER:
Q. If there were any problems with the traffic that Norfolk Southern was handling with APL over the line, wouldn't APL discuss those

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directly with Norfolk Southern?
A. Yes, they would, yes.
Q. Are you familiar with any plans to integrate APL service at South Kearney with the service currently provided by Conrail at the adjacent Kearney Yard?
A. No, I'm not aware of that, no.
Q. And, as we previously discussed, you're not familiar with the terms of the transaction agreement as far as the division of the transportation contracts between the parties?
A. As I said I read early drafts.
Q. Okay. If you were a shipper and a railroad came to you and said I am providing you service because an arbitrator said that I am providing service, how would you feel as the shipper?
A. I suspect I wouldn't like it.
Q. Okay. I ask that question because, in the transaction agreement, if CSX and NS cannot agree to divide the contracts, that matter then goes to arbitration. I'm not asking for an answer to that, I'm just stating that and pointing out to you that that is one of APL's concerns. And it's one of the reasons we're not

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very pleased with that provision of the contract.
A. I understand.
MR. GITOMER: That's all the questions I have. Thank you.
MR. ALLEN: I'll ask a follow-up question.
FURTHER EXAMINATION BY COUNSEL FOR NORFOLK SOUTHERN CORPORATION and NORFOLK SOUTHERN RAILWAY COMPANY
BY MR. ALLEN:
Q. Mr. McClellan, would you expect that the shippers' views on these matters would have weight with Norfolk Southern and CSX in working out those issues?
A. I would. Certainly I can speak for Norfolk Southern, they have weight at Norfolk Southern.
Q. And do you anticipate CSX, Norfolk Southern, and APL working those problems out, working those matters out?
A. I hope not.
MR. ALLEN: Okay.
MR. GITOMER: I have one question with regard to that

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FURTHER EXAMINATION BY COUNSEL FOR APL LIMITED
BY MR. GITOMER:
Q. The matters that we've been discussing that Mr. Allen raised and that I raised with regard to the contract are contract terms that would then have to be renegotiated by CSX and Norfolk Southern. Is it correct that the transportation provisions of the contract are part of the overall bargain between CSX and Norfolk Southern? Let me rephrase that. Is the decision as to how transportation contracts are divided between CSX and Norfolk Southern part of the overall bargain between CSX and Norfolk Southern?
A. It's included in the definitive agreement. My understanding of the rationale when I was involved early on was that there was a desire to avoid significant disruption to traffic flows in the early phases of operation.
MR. GITOMER: Okay. That's all I have. Thank you.

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182859

NYK LINE

NYK LINE (NORTH AMERICA) INC.
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Surface Transportation Board
Washington, D.C.

Subject: F.D. 33399, CSX Corporation et al., Control - Conrail

Dear Board Members:

NYK Line participates globally with its partners, Neptune Orient Line, Hapag Lloyd and P & O Nedlloyd, in the Grand Alliance. Of a combined Grand Alliance fleet of 38, NYK Line presently operates 16 containerships in loops serving North America ports. As part of the fleet of 38 containerships providing weekly service, the Grand Alliance deploys 17 vessels in transpacific service, 8 vessels in service between Asia and East Coast ports and 13 vessels in Asia to Europe pendulum service (via Panama).

A substantial number of our customers are located in the eastern United States at locations served by Conrail. NYK Line currently relies on Conrail's intermodal service to provide inland transportation between East Coast ports and inland points and connecting service with West Coast carriers at Chicago. NYK Line, through our wholly owned subsidiary, Centennial Express Corp., has a contract with Conrail for this intermodal service.

The applicants, as we understand it, have pledged to create competition in the current Conrail territory, putting in place two rail carriers where only one exist now. That is something our company certainly supports. However, we understand that, at the same time, Article II, Section 2.2(c) of the Transaction Agreement deprives customers who are under contract to Conrail of that competition during the term of their contracts. That seems highly inequitable and completely inconsistent with the stated purpose of providing competition. All current customers of Conrail should have an opportunity to avail themselves now of the competition between NS and CS, not later when their contract expires. That certainly includes NYK line, and it includes APL as well. Neither company should be forced to forego competition from NS and CSX for the duration of our contract terms.

Article II, Section 2.2 (c) also allows NS and CSX, who are competitors, to allocate the traffic covered by contract between themselves without the consent of the affected shippers. This arbitrary division of traffic without the consent of the shipper again flies directly in the face of the applicants' much vaunted claim that this acquisition will result in more competition.

We understand that APL has requested five conditions from the Board prior to approving this transaction. Of these conditions, NYK supports the following four: **First**, the Board should disapprove Article II, Section 2.2 (c) in its entirety. **Second**, if the Board will not take that action, the Board should disapprove that section of the Application as to all companies holding Transportation Contracts for intermodal service. **Third**, the Board should retain continuing jurisdiction until 2004 to hear petitions for reopening for the purpose of imposing any further conditions found to be in the public interest. **Fourth**, the Board should forbid either NS or CSX from discriminating in favor of an affiliated stacktrain or ocean carrier operating at the expense of a non-affiliated ocean carrier or stacktrain operator.

My responsibilities at NYK Line include advising regulatory agencies of the interests and concerns of this company in pending agency proceedings.

For the reasons stated above, we urge the Board to adopt the above referenced conditions proposed by APL.

Sincerely yours,

Michael E. Strickland,
Senior Vice President

State of New Jersey

County of Bergen and Passaic

I, LAURA VAN OSTENBRIDGE, being first duly sworn, solemnly swears that I have read the foregoing statement, knows the contents thereof, and that the facts are true as stated.

Laura Van Ostenbridge

LAURA VAN OSTENBRIDGE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 13, 1999

Subscribed and sworn to before me at NYK Line, this 20th day of October 1997.
Secaucus, New Jersey

STB FD 33388 10-21-97 D 182850

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SOC-3

Commonwealth
Consulting
Associates

October 21, 1997

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MAIL
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STB

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

D

Re: Finance Docket No. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS—
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of the Joint Comments of Shell Oil Company and Shell Chemical Company. Also enclosed is a 3.5 inch diskette, containing the Joint Comments in a format which may be converted to Word Perfect 7.0.

Copies of these Joint Comments are also concurrently served on the U.S. Secretary of Transportation, the U.S. Attorney General, Administrative Law Judge Jacob Levanthal, applicants' representatives and all other parties of record.

Respectfully submitted,

David L. Hall

720 North Post Oak Road · Suite 400 · Houston, Texas 77024 · Tel (713) 896-1300 · Fax (713) 686-6667

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SOC-3

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

JOINT COMMENTS OF

SHELL OIL COMPANY

AND

SHELL CHEMICAL COMPANY

Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

Due Date: 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

JOINT COMMENTS OF

SHELL OIL COMPANY

AND

SHELL CHEMICAL COMPANY

Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell") hereby file joint comments in compliance with the procedural schedule issued by the Surface Transportation Board (Board or STB) in its Decision No. 6, served May 30, 1997 in Finance Docket No. 33388. Both Shell companies are corporations, the address of which is One Shell Plaza, Post Office Box 2463, Houston, Texas 77252.

Shell's interest in the transaction at issue in this proceeding[1] is derived from the fact that the Shell companies own and operate petrochemical plants served by the Conrail, CSXT and NS railroads. Shell products are shipped via all three railroads to customers and terminals throughout the United States and to ports for export to customers throughout the world.

Shell opposes the application of CSXT and NS (applicants) as filed for the purchase and division of Conrail. Shell's opposition to the Conrail breakup as considered in this proceeding is based on three dangers to Shell in particular and shippers in general. Those dangers are service deterioration, acceleration of rate increases, and a continued decrease in railroad competition. While there are certainly some potentially positive aspects to the proposed transaction, they are far outweighed by the contribution it will make to a long term reduction in competition in the railroad industry, as well as the more immediate detrimental economic and service consequences. Each of these will be addressed in turn.

SERVICE

The service problems resulting from the ill-fated Union Pacific purchase of the Southern Pacific are well documented. The inability of the Union Pacific to move Shell traffic to and from our plants and customers has cost Shell hundreds of thousands of dollars to this point, with no end in sight to the UP system bottleneck. We fear that the breakup of Conrail, as proposed by

[1] CSX Corporation and CSX Transportation, Inc. (CSX, hereinafter) and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS, hereinafter) acquisition of joint control and division of assets of Conrail, Inc. (Conrail, hereinafter).

the applicants, could result in a similar situation in the east, with even fewer alternative sources of railroad transportation to alleviate the problems which do occur.

The UP-SP merger involved the integration of two complete, previously working, systems. The breakup of Conrail is potentially much more complicated because it involves the dismemberment of an existing system, two pieces of which will be integrated into the systems of the two applicants, with other portions operated as individual, "neutral" entities.

The first, and dominant, concern from a service standpoint is the ability of CSX to integrate and efficiently and safely operate the forty-two percent of Conrail which it is purchasing. CSX has historically provided less than exemplary service to Shell. Based on an internal Shell comprehensive rating system conducted twice per year, CSX consistently finished near the bottom in 1995 and 1996, out of the eight major U.S. rail carriers still in existence then. CSX standing improved slightly in comparison to the other carriers in the first half of 1997, partially due to the UP-SP debacle.

The second concern is the operation of facilities in the shared asset areas. These facilities will be operated by an new entity, or entities, with two masters. Where they were once part of a single system, they will now be part of a juggling act which must mesh three systems to move traffic in and out of their areas. We have yet to see a detailed operating plan for these shared asset areas and reserve the right to comment on same when it is provided later this month as required in STB Decision No. 44 in this proceeding.

The third concern is the ability of NS to compete with CSX interchanges to the Illinois Central and Union Pacific at Effingham and St. Elmo, Illinois. It is essential that Shell shipments to the northeast from the Texas and Louisiana gulf coast have viable functioning interchanges which will allow us to reach all of the Conrail served points. For this to happen, CSX must maintain Effingham and St. Elmo and NS must construct its proposed interchanges at Sidney and Tolono, Illinois, without delay.

ECONOMICS

Each merger proposal is accompanied by rosy predictions of economic benefits to the applicants, their customers and the public at large. The extent to which shippers benefit is dependent on two factors, the actual benefits available and the leverage of the shipper.

The premium which has been paid for Conrail makes it unlikely that much of the excess cash thrown off by the efficiencies will go much farther than debt service. We can be certain from past mergers that captive shippers will not benefit economically from this merger unless competition is enhanced. It is essential that the applicants not be allowed to fund "taking all the trucks off of I-95" by increasing the rates to captive shippers, such as Shell at Apple Grove.

COMPETITION

Increased competition between railroads is the only answer to long term health and stability in the railroad industry. If U.S. industrial companies are to continue to produce goods in the United States that will allow us to compete globally, we must have access to a railroad transportation system which is itself competitive.

Shell sees a reduction, rather than an increase in competition resulting from this merger as it is now structured. The true benefits of competition will only be available if captive shippers are provided access to intramodal rail competition.

CONCLUSION

The UP-SP merger was to provide efficiencies of scale, projected to generate annual public benefits in excess of $750 million while providing seamless railroad transportation in the western United States. The Board imposed only minimal conditions, instituting an "oversight" process which has remained frozen while the UP system paralysis has spread from Houston across the western United States.

The Board must do better this time. Shell's recommendations for the conditions under which this application should be approved are found in the Verified Statement of David L. Hall, attached hereto. Shell urges the Board to implement those recommendations and start down the road to a restoration of competition in the railroad industry.

Respectfully submitted,

SHELL CHEMICAL COMPANY
For itself and as Agent for Shell Oil Company
By its Manager of Products Traffic

Brian P. Felker

Brian P. Felker
One Shell Plaza
Houston, Texas 77252

Dated: October 20, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, copies of the Joint Comments of Shell Oil Company and Shell Chemical Company were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on the U.S. Secretary of Transportation, the U.S. Attorney General, Administrative Law Judge Jacob Levanthal, applicants' representatives and all other parties of record.

Brian P. Felker

Brian P. Felker
Manager of Products Traffic
Shell Chemical Company
One Shell Plaza
Post Office Box 2463
Houston, Texas 77252

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

VERIFIED STATEMENT

OF

DAVID L. HALL

IDENTIFICATION AND QUALIFICATIONS OF AFFIANT

My name is David L. Hall. I am President of COMMONWEALTH CONSULTING ASSOCIATES, with offices at 720 North Post Oak Road, Suite 330, Houston, Texas, 77024. COMMONWEALTH CONSULTING ASSOCIATES provides management consulting services, including practice areas in logistics and information systems. A statement of my qualifications is attached as Appendix A hereto.

INTRODUCTION

This Verified Statement is submitted in support of the positions of Shell Oil Company and/or Shell Chemical Company "for itself and as agent for Shell Oil Company" (hereinafter jointly referred to as "Shell"), as set forth by Brian P. Felker in his statement hereto. This submission is filed in compliance with the procedural schedule issued by the Surface Transportation Board (Board or STB) in its Decision No. 6, served May 30, 1997 in Finance Docket No. 33388.

Shell is unable to support the joint Railroad Control Application by which CSX Corporation, CSX Transportation (collectively CSX herein), Norfolk Southern Corporation, and Norfolk Southern Railway Company (collectively NS herein) seek to acquire, divide, and use the assets of Conrail, Inc. and its subsidiary Consolidated Rail Corporation (collectively Conrail herein). Shell has legitimate concerns that the proposed acquisition of Conrail will lead to serious service deterioration in some sectors of the eastern United States, increased abuse of market power over captive shippers and smaller railroads, and further consolidation of the railroad industry.

Of the three carriers involved in this consolidation, only NS has consistently met or exceeded Shell standards for safety, reliability, on-time performance and customer care. Just as consistently, CSX has fallen woefully short of even achieving a median standing in Shell carrier evaluations. Shell is concerned that the acquisition, integration and operation of forty-two percent of Conrail assets would lead to deterioration of service which has been marginal at best.

Continued consolidation in an industry which has insurmountable barriers to entry and negligible economic regulation is a further temptation to abuse market power by those who have not yet, and a renewal of license to those who have. Captive shippers are now required to subsidize traffic carried at a loss by those roads seeking to maximize revenue and market share through the mechanism of "differential pricing". This application contains no relief for captive shippers.

Increased concentration of market power leads to decreased levels of service at higher prices. Increased competition leads to better service at lower prices. Reducing the number of major railroad service providers east of the Mississippi from three to two concentrates market power. On the other hand, this application, if approved as filed, will provide only a token increase in competition in limited, shared asset areas; competition means a choice of rail carriers at my plant and/or my customer's facility, not just that there are two major railroads in a region.

The Surface Transportation Board has the opportunity and the obligation to protect shippers, consumers and the railroad industry itself from the detrimental effects of market concentration which would result from the approval of this application as filed. With judicious handling of this application, measures can be developed and implemented which will proactively address service, safety, pricing, and market power concerns.

Unintended consequences such as the service and safety disasters we are saddled with from the UP-SP merger can be anticipated and mitigated, or even avoided. Opportunities for the abuse of market power by raising the rates of captive shippers until "we see the traffic disappear" can be removed. True competition can be introduced in the east as a model for the national railroad duopoly which fast approaches.

To that end, Shell offers the following recommendations for revision of the application which will facilitate integration of the proposed rail networks, increase competition and protect those shippers which remain captive.

RECOMMENDATIONS

Shell recommendations fall into three categories, based on the potential problem areas delineated above. Operations recommendations encompass both service and safety. Economic recommendations pertain to rates and carrier economic performance. The final recommendations relate to competition.

Unless otherwise noted, it is contemplated that each of the recommendations remain in place for an oversight period of five years.

Operations

Baseline measurements for each of the three railroads should be established based on current safety and service levels[1] for each operating territory. Annual goals for each of the measurements should be established, with the baseline measurements serving as minimum benchmarks. Quarterly progress reports should be submitted to, and published by, the Board. Shipper and connecting carrier input should be solicited annually.

The Board should establish consequences for sub-standard safety and service levels, such as fines, reparations to shippers, and temporary transfer of operating authority, along with a mechanism by which they could be invoked.

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[1] Standard safety and service statistics currently collected and reported, supplemented by such measures as on-time train performance, number of trains rerouted, number of trains held, 12-hour tie-ups, freight-car inventory, number of main lines and sidings blocked, yard/terminal condition reports, number of trains moving in the system versus the number of trains that have no Car Location Message (CLM) generated for more than 24 hours, system train velocity, interchange delays greater than 24 hours, freight-car dwell time in terminals, number of cars on the system, gross ton-miles per horsepower hour.

The Board should require completion of all labor agreements necessary to operate the Shared Asset Areas as well as the acquired Conrail lines prior to final merger approval.

Applicants should be required to submit detailed operating plans for all Shared Asset Areas, not only the North Jersey Shared Assets Area as required in Decision No.44, for comment and Board approval.

Applicants should be required to submit a plan to handle the disposition of contracts for movements to, from or within the current Conrail system, subject to comment and subsequent Board approval.

Economics

In a rate complaint case, market dominance determination for any shipper served by any one of the three applicants should be predicated only on the presence or absence of intramodal competition.

Rates on new traffic where a party to this application enjoys market dominance should be limited to level of the regulatory threshold, currently 180% of variable cost.

Rate increases on traffic where a the party to this application enjoys market dominance should be limited to an amount equal to the Rail Cost Adjustment Factor, adjusted for productivity, unless that carrier proves that the proposed rate is at or below the regulatory threshold.

The acquisition premium paid by the applicants should not be included in the annual calculation of Revenue Adequacy or used in any way in the determination of the jurisdictional threshold.

Progress reports on the capital investment proposed in the application should be required annually of all parties.

Competition

Creation of a rail duopoly in the east, which paves the way for a national duopoly, requires that intramodal competition be enhanced. The Board should implement a reciprocal switching system such as the interswitching system in Canada. The availability of competition would lead to reasonable rates and improved service for those shippers which are now captive. Carriers would be forced to forgo traffic which they could not profitably carry. That traffic would move to the mode and carrier dictated by a competitive market.

All points which now enjoy reciprocal switching should be kept open.

Reciprocal switch charges should be set at $130 per car, as the carriers adopted in the UP-SP merger.

All gateways should be maintained with shipper choice of gateway mandated as a condition of the merger. Shell must retain its current ability to route without penalty on the basis of the best route and rate.

This extends to specifying a "short haul" for an origin carrier whose service is poor, without threat of a rate escalation. Past experience has shown that without this provision the shipper can change the route to improve service but, the originating carrier who is getting short hauled for poor performance can refuse to establish reasonable divisions over the new routing. The result is that the originating carrier transports the shipment a shorter distance but retains the same revenue. In effect the carrier is compensated for poor performance. Allowing the shipper to designate the interchange point puts the onus on the carrier to provide acceptable service for its division of the revenue.

NS gateways at Sidney, IL (UP) and Tolono, IL (IC) should be evaluated to ensure sufficient capacity to avoid traffic bottlenecks. It is imperative that NS provide interchanges for eastbound traffic coming out of the Texas and Louisiana Gulf Coast of capacity comparable to that of current Conrail interchanges, which will be acquired and operated by CSXT.

MAJOR AREAS OF CONCERN

Shell has three major areas of concern with the application for the purchase, division and use of the assets of Conrail. Operations, composed of service and safety, economics, particularly rates and carrier performance measures, and competition. Each of these will be addressed in turn.

Operations

Safety is always a priority for Shell. Shell rates, ranks, and works with all of its carriers on safety. The Union Pacific safety problems which have occurred recently are a concern and have been watched very closely.

Both CSX and NS mentioned safety in the application as a top priority. NS has always achieved top ratings from Shell and has won numerous railroad industry safety awards. Shell has confidence that NS safety standards and practices will be integrated into the acquired Conrail lines and operations.

The recent record of CSX with regard to safety is of greater concern. It has been reported that "[T]he Federal Railroad Administration identified a pattern of safety-related problems at CSX Transportation Inc. after an investigation spawned by five separate accidents this summer."[2] Perhaps more disturbing was the FRA claim that it "found an atmosphere on CSXT in which some CSXT field managers consistently failed to demonstrate full commitment to safety. Some front-line managers emphasize train

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[2] Journal of Commerce, October, 17, 1997.

operations over safety considerations. Such management actions have led some employees to doubt senior management claims that safety is first, foremost and always."[3]

This is a concern not only for the lines and operations of Conrail of which CSX will have exclusive use, but also the operation of the Shared Asset Areas. Shell rates its carriers on various performance criteria, including safety and service. As mentioned in Brian Felker's statement, CSX performance ratings, as developed by Shell, have been near the bottom of the industry. If safety has begun to slip on the priority list even before the integration of acquired lines ensues, it would behoove the Board to make certain that the necessary measures are in place to provide prior warning of a safety meltdown.

In their application CSX and NS touted the designation of Shared Asset Areas, created for the purpose of opening South Jersey/Philadelphia, North Jersey, Detroit, the Monongahela Railroad coal fields and the Ashtabula dock facility to direct competition. While we welcome the introduction of competition in this manner, and suggest that the concept be extended to Indianapolis, Cincinnati, and West Virginia, there is a lack of specifics about the manner in which the Shared Asset Areas will be operated. This will be partially rectified, we hope, when applicants comply with Board Decision No. 44. Until we have had the opportunity to examine the manner in which the Shared Asset Areas will be operated, we will reserve comment.

It is clear from the operating plans that NS and CSXT will be using the Conrail Shared Assets Operation (CSAO) to perform local switching, train breakup, classification and assembly services. It is not clear as to whether the respective roads will provide the

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[3] Ibid

Customer Service duties consistent with car tracing. Shell requires "one stop shopping", which it would prefer be managed by the railroad which handled the linehaul.

It is imperative that the carriers assume the responsibilities for the actions of their contractor namely, CSAO. If there are any problems with the operations within the confines that have been designated as CSAO, we as a shipper will look to the line haul carrier(s) to accept responsibility and resolve and/or correct any problems. We do not want to deal with the CSAO because they are just the agent for the line haul carriers.

In that same vein, Shell has concerns regarding the switching operations at East St. Louis, IL. At the present time CSXT uses the TRRA for its switching and classification services to and from western carriers as well as NS traffic originating out of Shell's Wood River facility. In the past CSX has taken the position that they have no responsibility or ownership of the traffic till the traffic is moving on their line. CSX contracts with TRRA to perform services for which CSX is responsible and yet they attempt to shirk their responsibilities.

If the application is approved, CSXT will take over Conrail's Rose Yard for interchange to and from the GWWR. Although it is not indicated in the CSX Operating Plan, Shell assumes that the TRRA and/or AS will act as contractor for CSX. If this is the case it is incumbent upon CSX take responsibility for that service which it has contracted out.

Post merger routing options from the Texas and Louisiana Gulf Coast is another major concern for Shell. Significant Shell traffic is currently routed from the Gulf Coast to the Northeast via the gateways listed below;

Current Gateways and Interchanges Impacted:

Location:	Interchange:	Post Merger
1. St. Elmo, IL	UP/SP-Conrail	UP/SP-CSXT
2. Effingham, IL	IC-Conrail	IC-CSXT
3. Salem, IL	UP/SP-Conrail	UP/SP-CSXT

As shown above, the current Conrail interchanges with UP and IC will be acquired by CSX. As shown below, the application addresses the need for NS gateways to handle the north and eastbound traffic which will be interchanged from the UP and IC;

Proposed New Construction Gateways and Interchanges:

1. Sidney, IL	NS	UP/SP-NS
2. Tolono, IL	IC	IC-NS

We agree with the need for the construction of these new connections as set forth in Railroad Control Volume 3B of 8, but lack the information to determine whether the planned capacity of either of the tracks will be sufficient.

Diagrams of the new interchanges at Sidney, IL and Tolono, IL, are shown in Appendix B of the application volume referenced above. The captions on the diagrams indicate that not all tracks are shown and that those which are may not be drawn to scale. Shell would appreciate additional information on those interchanges as the diagrams make them appear to be very short for major interchanges that will handle traffic between the Texas and Louisiana Gulf Coast refineries and east coast points.

The importance to Shell of the IC-NS interchange has grown because of the service problems with the Union Pacific. Traffic that had been routed UP/SP-Conrail over St. Elmo is now being routed BNSF-Memphis, IC-Effingham, then Conrail. While this interchange will still be open and available post-merger with CSXT, it is clear from recent experience with the UP-SP merger that we need alternatives. The interchanges that are proposed by NS are essential if we are to retain competition and routing alternatives. The proposed NS interchanges will provide the shippers with the desired alternative routing if they are constructed in a way that will facilitate the traffic through the interchange in a smooth fashion with minimal amount of switching.

Another concern which Shell has regarding Tolono and Sidney is the timetable for construction of the interchange facilities. Sidney was one of three construction projects for which a waiver was requested so that the interchange could be operational by the anticipated merger approval date around the first week of June, 1998. The Board granted NS the requested waiver on June 12,1997.[4] In that decision the Board attributed to NS a time to construct of ten months. A member of our staff, in the area on other business, examined the site at Sidney on September 26, 1997 and construction had not yet begun.

A waiver was not even requested for the proposed interchange at Tolono with the IC. If this application is granted during the first week of June, 1998, neither the Sidney nor the Tolono interchange will exist "to permit the efficient handling of traffic between" IC or UP and NS, "bypassing congestion at East St. Louis."

[4] Decision No. 9, Decided June 11, 1997 and Served June 12, 1997.

Other issues which need to be resolved regarding the gateways mentioned above include whether the applicants will participate in run-through trains with interline carriers, pre-blocking of cars, and whether the interchanges will be run seven days per week.

The CSX segment designated the Central Service Route in its operating plan is due for an increase in traffic as CSX attempts to avoid congestion at Cincinnati. Shell is concerned that the additional traffic routed through the CSX yard at Russell, Kentucky could negatively impact Shell's plant at Apple Grove, WV.

South and westbound traffic from the plant are switched through the yard at Russell which even now contributes to delays in the return of Shell empties or the receipt of Shell raw materials. Shell needs information from CSX as to the impact of this rerouting on the Shell operations at Apple Grove.

Economics

Among the public benefits claimed in the application was that CSX and NS will spread fixed costs over broader traffic base because per unit shipping costs will decline; reduced costs will allow vigorous competition.

Decreased shipping costs do not necessarily translate into decreased rates, especially on captive traffic. Neither road will have incentive to reduce rates on captive traffic, but in fact will have incentive to raise rates on such traffic.

First, the exorbitant price for Conrail must be paid for. The bidding war in which CSX and NS engaged resulted in a premium of nearly four billion dollars paid for Conrail.

CSX was left saddled with debt of approximately \$4.2 billion while NS borrowed almost \$6 billion.

Second increased competition for traffic which does not now have intramodal choice will reduce rates on that traffic creating revenue shortfall where surplus once existed. Those fortunate enough to be located in one of the Shared Asset Areas will benefit here.

Third the applicants claim they will take significant truck traffic off of I-95 by providing seamless intermodal service. Railroads have attempted to buy traffic off of trucks for 60 years only to create "new" business which moves below cost and must be paid for by captive shippers.

Shell needs rate relief for captive facilities, particularly the PET plant at Apple Grove. Apple Grove has no viable alternative to the CSX for the receipt of raw materials or the shipment of PET. Only imposition of conditions which create competition at Apple Grove will ensure that Shell benefits economically from this merger.

Competition

There will be significant reduction in rail competition on the CSX and NS systems which now exist. Where previously a shipper in the south or midwest had a choice between the two railroads at origin with a destination on Conrail, the choice will now be essentially eliminated. The carrier which controls the former Conrail destination will control the movement. The same is true going in the other direction with the carrier which controls the former Conrail origin now eliminating the choice of a destination carrier.

Gateways are another issue of concern. Where will the former Conrail gateways with the western carriers now be located? For example, will CSX attempt to force traffic which formerly went from the gulf coast to Conrail through St. Louis to be routed through New Orleans instead?

Will the plan as currently constituted preserve competition at Cincinnati, OH? NS will take over Conrail's Sharonville Yard that currently serves the P&G industries in Cincinnati. There is no indication in either operating plan that CSX will retain the right to serve P&G plants in Cincinnati. In order to main a competitive environment, both railroads need to be able to serve P&G.

In Indianapolis area tracks will be assigned to CSX, according to the operating plans. NS will be afforded trackage rights to serve 2-1 shippers in Indianapolis. Shell proposes that Indianapolis be declared "open" so that all shippers may route their traffic via the railroad of their choice.

<u>Indiana Harbor Belt Railroad (IHB) in Chicago</u>: According to the application the IHB's control and operation will be divided up between the carriers. However it is not clear whether the IHB will retain its own identity. Whatever the case may be, all shippers currently switched by the IHB must be able to retain the right to route their traffic to the line haul carrier of their choice rather than be subject to the dictates of the line haul carrier serving their facility post-merger.

Trackage/haulage rights, where applicable, must be administered in a way that the carrier owning the line must give equal time to the carrier(s) who are granted these rights. We have seen a gross violation of the intent of trackage rights in the recent UP/SP merger. The UP/SP has refused to permit the carriers who have trackage rights equal access to their line. The result is excessive transit time, escalating costs for both the shippers and the carriers holding the trackage rights, a non-competitive environment. Both the KCS-Tex Mex and the BNSF have stated in public hearings that the trackage rights granted them in the UP/SP merger are not working. The administration and control of trackage/haulage rights must be more than a threat of "mutual terror" which is universal tactic embraced by the railroads today.

Finally, the interchange of traffic with short line and/or smaller Class I railroad must be handled expeditiously. Otherwise the abuse of market power by the duopoly carriers will result in marginal service by the smaller carriers.

VERIFICATION

COUNTY OF HARRIS)
) ss:
STATE OF TEXAS)

DAVID L. HALL, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and the same are true as stated.

Signed: ______________________
David L. Hall

Subscribed and sworn to before me this 20th day of October, 1997

Lisa M. Schofield
____
Notary Public

My Commission expires:

April 28, 2001

(SEAL)

LISA M. SCHOFIELD
MY COMMISSION EXPIRES
April 28, 2001

Appendix A

BACKGROUND AND QUALIFICATIONS

OF

DAVID L. HALL

My name is David L. Hall. I am President of COMMONWEALTH CONSULTING ASSOCIATES (COMMONWEALTH), with offices at 720 North Post Oak Road, Suite 400, Houston, Texas, 77024. COMMONWEALTH provides management consulting services, including practice areas in logistics and information systems.

With COMMONWEALTH I have conducted and supervised numerous transportation cost and operational analyses for clients in various industries to aid in the determination of reasonable rate levels. We assist shippers in obtaining reasonable rail transportation rates by determining target rate levels based on movement specific cost analyses, identifying significant differences between those targets and the rates in effect, and providing negotiating tools and strategies which assist the client in achieving target rates.

I have performed benchmark analyses and process redesign studies for clients to assist them in employing best practices and streamlining operations. In these studies we work with distribution service providers to squeeze excess costs from the system to the benefit of both carrier and shipper.

I also developed the Commonwealth Rail Costing System© (CRCS©) a copyrighted rail rate and cost analysis software package which runs under Microsoft

Windows and includes three cost development models, a Data Manager, and a Report Generator. CRCS allows the user to evaluate current rates, generate target rates, project annual rail transportation savings and establish company-wide metrics.

Before establishing COMMONWEALTH CONSULTING ASSOCIATES, I was a Transportation Consultant with A. T. Kearney, Inc., Management Consultants, where I assisted in the implementation of the Kearney transportation costing system, as well as participated in transportation cost and operational analyses for various Kearney clients. Those studies included the movement of coal to public utilities, movements of phosphate rock in the Bone Valley of Florida, the movement of lime and soda ash from Missouri and Wyoming to a midwestern utility and the movement of building materials from Texas to midwestern and western plant locations. I also developed rail and inter-modal costs for Ohio River Basin export coal and nitrogenous fertilizers distributed from the Gulf of Mexico to farm belt states.

Prior to joining Kearney, I was employed by the Illinois Commerce Commission as a Transportation Financial Analyst. While employed by the Commission I served as case manager in investigations and proceedings pertaining to the regulation of railroads, motor carriers of passengers and motor carriers of freight. I analyzed cost and financial data submitted by proponents and protestants in Commission proceedings, and prepared cost studies to aid the Commission in the determination of transportation costs and proper rate levels. I also appeared as an expert cost and financial witness and participated in cross-examination of witnesses in various Commission hearings.

Prior to my association with the Illinois Commerce Commission, I was employed by M. L. Hall & Associates, Transportation Consultants, as a Cost Analyst. Some of my assignments while at M. L. Hall & Associates included; participation in an operational analysis of a subsidized railroad for the State of Michigan; development of data for use in Rail Form A, Rail Terminal Form F and Highway Form B costing applications; use of unit costs derived from the above mention cost formulae in development of movement costs for various railroads and shippers; participation in the 1978 operations study of the Port of Houston switching terminal and assistance in the development of costs using data derived from the Houston study; assistance in development of a cost system for the Association of American Railroads which was first used in a 1977 railroad general rate increase to develop revenues, costs and revenue/cost ratios for over 37,000,000 carloads of traffic; assistance in development of a cost model for the Illinois Commerce Commission to develop costs for single-car, multiple-car and trainload/unit-trains of coal.

I also held the position of Statistical Assistant with the firm of G. W. Fauth & Associates, Transportation Consultants. My duties included gathering data from various government agencies, trade associations, railroads and shippers for use in developing transportation costs for various modes.

In addition to preparation of the above studies and supporting documents which were submitted to various regulatory agencies, I also submitted testimony and exhibits in Docket No. 38336S, Niagara Mohawk Power Corporation, v. Consolidated Rail Corporation and Pittsburg & Shawmut Railroad, Ex Parte No. 347 (Sub-No. 2), Rate Guidelines—Non-Coal Proceedings, Dockets No. 41242, Central Power & Light Company

v. Southern Pacific Transportation, No. 41295, Pennsylvania Power & Light Company v. Consolidated Rail Corporation, and No. 41626, MidAmerican Energy Company v. Union Pacific Railroad Company and Chicago and North Western Railway Company, collectively termed the "Bottleneck Case" and Docket No. 41670 Shell Chemical Company et al., v. Boston & Maine Corporation et al.

I graduated magna cum laude from the University of Richmond with a Bachelor of Science Degree in Business Administration and a double major in finance and economics. I earned a Master of Business Administration Degree from the University of Houston and have completed courses toward a Doctorate in Marketing Information Systems at the same institution.

STB FD 33388 10-21-97 D 182845

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

Confidential

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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the highly confidential version, an original and twenty-five copies of the confidential version, and an original and twenty-five (25) copies of the public version of the Comments, Requests for Conditions, Opposition Evidence, And Supporting Argument of the Port Authority of New York and New Jersey (NYNJ-14, NY/NJ-15 and NY/NJ-16) for filing in the above-captioned proceeding. An additional copy of each is enclosed for file stamp and return with our messenger. Please note that copies of these filings are also enclosed on 3.5-inch diskette in WordPerfect 5.1 format.

Very truly yours,

Paul M. Donovan

STB FD 33388 10-21-97 D 182842

18242

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Vernon A. Williams, Secretary
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