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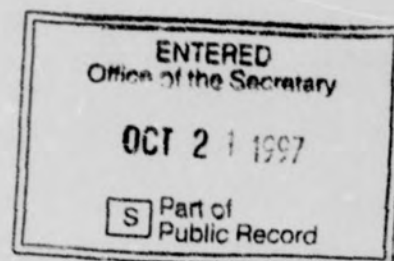
OFFICE: (202) 371-9500

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October 21, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and twenty-five (25) copies of the Redacted (to be filed in the public record) Comments and Request for Conditions of Institute of Scrap Recycling Industries, Inc., which has been designated as ISRI-7.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John K. Maser III".

John K. Maser III
Jeffrey O. Moreno
Attorney for Institute of Scrap
Recycling Industries, Inc.

ENCLOSURES
3310-070

cc: All Parties of Record



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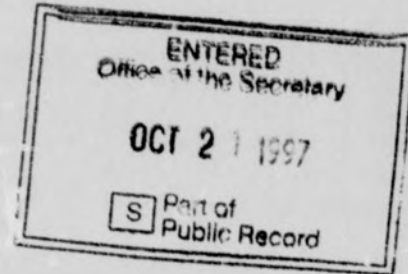
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October 20, 1997

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

Re: STB Ex Parte No. 573



Dear Secretary Williams:

On October 9, 1997, the Dow Chemical Company requested time to speak at the hearing before the Surface Transportation Board, in STB Ex Parte No. 573, scheduled to be held on October 27, 1997. That request was granted. At the time, Dow had not identified who would speak on its behalf, but stated that it would inform the Board of the speaker's identity once it had been determined. By this letter, Dow informs the Board that William L. Gebo will speak on behalf of Dow.

Please contact us if you require any further information.

Sincerely,

Nicholas J. DiMichael
Jeffrey O. Moreno



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

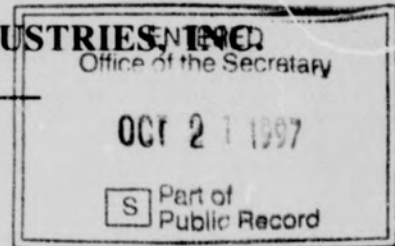
— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**COMMENTS AND
REQUEST FOR CONDITIONS**

submitted on behalf of

INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.



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*Attorneys for Institute of Scrap Recycling
Industries, Inc.*

October 21, 1997



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

— CONTROL AND OPERATING LEASES/AGREEMENTS —
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*Attorneys for Institute of Scrap Recycling
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October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**COMMENTS AND
REQUEST FOR CONDITIONS**

submitted on behalf of

INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

The Institute of Scrap Recycling Industries, Inc. ("ISRI") hereby submits these Comments and Requests for Conditions, on behalf of itself and several of its individual members. In this proceeding, the Surface Transportation Board ("Board") is considering the application of CSX Corporation and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern"), and Conrail, Inc. and Consolidated Rail Corporation ("Conrail") (collectively referred to as "Applicants") to allow CSX and Norfolk Southern to acquire control of Conrail and to divide the ownership, use and operation of Conrail's assets between them.

I. IDENTIFICATION AND INTEREST OF ISRI

ISRI is the trade association representing approximately 1,500 companies that process, broker and consume recyclable materials, including ferrous and nonferrous metals, paper, plastics, glass, rubber, and textiles. ISRI's membership also includes suppliers of equipment and services to the industry. Railroad rates, practices, and service for the transportation of recyclable commodities are of vital concern to ISRI. For over 25 years, ISRI and its predecessor organizations have been deeply involved in congressional, regulatory and judicial activities involving the transportation of recyclables by rail. ISRI always has sought to advance and protect the interest of recyclable shippers, to promote and encourage increased uses of recycled materials, and to ensure that railroad rates, practices, and service involving the transportation of recyclable materials are reasonable and competitive.

The proposed acquisition and division of Conrail by CSX and Norfolk Southern has the potential to adversely impact rail competition and ISRI's members unless appropriate conditions are imposed by the Board. Accordingly, ISRI respectfully requests the Board, pursuant to its authority under 49 U.S.C. § 11324(c), to impose conditions governing the transaction and to require the Applicants, upon consummation of their proposed transaction, to protect competition. The requested conditions and the reasons why such conditions must be imposed are detailed in this submission.

II. INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

ISRI's Comments and Request for Conditions consists of a single volume comprised of the Presentation of Comments and Request for Conditions which is followed by the Verified Statements of five ISRI members who represent concerns common to many ISRI members and who express concern over

particular competitive harms that each will suffer individually unless the transaction is appropriately conditioned. The Verified Statements are submitted by Shelley E. Padnos, Executive Vice President & Chief Administrative Officer of Louis Padnos Iron & Metal Company; Peter L. Kramer, Director of Marketing and Commercial Development for William Reisner Corporation; Jonathan Simon, President of Royal Green Corporation; William Lowery, Executive Vice President of Annaco, Inc.; and Linda Bornancin, Vice President-Transportation of Reserve Iron & Metal, L.P.

ISRI and many of its individual members also are members of the National Industrial Transportation League ("NIT League"). ISRI has previewed the comments to be filed by the NIT League in this proceeding and supports those comments and request for conditions to the extent stated herein. Certain of the NIT League's requested conditions are of particular interest to ISRI. In addition, ISRI has concerns that are not addressed in the NIT League's comments. Therefore, ISRI's comments address those issues ISRI shares with the NIT League and those issues that are particular to ISRI and its members.

To ameliorate the anticompetitive effects of the proposed merger upon ISRI and its members, ISRI requests the following relief:

I. Implementation conditions

A. The Board should permit implementation of the transaction only upon fulfillment of the following conditions:

- 1) Shared Asset Area Operations -- The submission by the Applicants jointly of a plan for operations within the Shared Asset Areas ("SAA"), including equipment allocations and assignment of dispatching functions, with a period for comment by shippers, followed by approval of the SAA operations plans by the Board.
- 2) Labor agreement conditions

- a) The Board should, by specific order issued as soon as possible after the voting conference, authorize the Applicants to initiate formal negotiations with all labor unions regarding implementing labor agreements immediately.
 - b) Certification by the NS and CSX that all implementing labor agreements necessary to operate both the Shared Asset Areas and the acquired Conrail lines are in place.
- 3) Specification of Contract Movement Responsibilities -- Submission by NS and CSX jointly of a plan as to how revenues, costs and responsibilities for rail transportation contracts for movements to, from or within the current Conrail system are to be handled. For this purpose, NS and CSX should be able, by specific order of the Board, to obtain information as to CR contracts, and the costs, revenues and operations associated with them, as soon as possible and no later than immediately after the Board's voting conference. Shippers should be given an opportunity for comment, followed by approval of the plan by the Board.

II. Continuing oversight conditions

- A. The Board should require continuing oversight of the implementation and effect of the transaction for a five year period.
- B. As part of this continuing oversight, the Board should require quarterly reports from the NS and CSX, and should provide an opportunity for comment by shippers.
- C. The Board should require specific quarterly and yearly information from NS and CSX, as set forth in more detail in this submission.
- D. The Board should develop objective, measurable standards to determine if the transaction is resulting in benefits to the shipping public.

III. Post-Implementation Rate Conditions

- A. The Board should approve the transaction only with a condition that would simplify the determination of market dominance for shippers served by the parties to the transaction, by stating that, for a period of five years after the transactions, if an NS or CSX shipper is served by only one railroad, market dominance will be presumed for

that shipper if the rates to that shipper are increased by an amount greater than that set forth in paragraph (B) below.

- B. The Board should approve the transaction only with a condition that would place on the carriers, for a period of five years after approval of the transaction, the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U.
- C. The Board should provide that the acquisition premium should not affect the determination of revenue adequacy for these carriers, or the determination of the jurisdictional threshold for rate reasonableness cases.

IV. Broad-Based Conditions

- A. Transload, new facility and build-out conditions should be ordered as in the UP / SP merger.
- B. All reciprocal switching points that would provide transportation options for shippers after the transaction is approved should continue to be kept open for reciprocal switching.
- C. Reduction of reciprocal switching charges should be ordered to a maximum level of \$130 per car, as the carriers adopted in the UP/SP merger.
- D. The Board should require the carriers to propose, by no later than 30 days after the decision, a plan for each "single line to joint line" shipper for the protection of that shipper's current single line rates and service (including establishment of efficient means of interchange), for a period of at least five years after implementation of the transaction. Shippers dissatisfied with the proposal should be permitted to request the Board to adjudicate any dispute on an expedited basis.

V. ISRI Member Conditions

- A. Grant a second rail carrier access to the Grand Rapids, Michigan and Lansing, Michigan facilities of Louis Padnos Iron & Metal Company.
 - 1. At Grand Rapids, grant access to the Norfolk Southern over CSX track from the line that Norfolk Southern will acquire from Conrail.

2. At Lansing, grant access to CSX from its own track over the Norfolk Southern line, which will be acquired from Conrail.
 - B. Grant the Boston & Maine access to William Reisner Corporation's Clinton, Massachusetts via trackage rights over the CSX line, which will be acquired from Conrail.
 - C. Grant a second rail carrier trackage rights over Conrail's line between Royal Green's Temple (Reading), Pennsylvania facility and Philadelphia with the right to interchange traffic at Philadelphia.
 1. If the carrier with trackage rights is any carrier other than CSX, require the carrier to absorb all switch charges on two line movements, or such other condition as will provide rate levels comparable to a single line movement.
 2. The trackage rights must include access to Conrail's Reading Yard so that Royal Green may store its private fleet of railcars.
 - D. Impose conditions that will protect other ISRI members who are competitively injured by the shared asset areas.
 - E. Impose conditions, as requested by the Wheeling & Lake Erie Railroad, to protect the competitive position of Annaco, Inc., Reserve Iron & Metal, L.P., and other ISRI members who may be similarly affected.
- III. THE ACT REQUIRES THE BOARD TO IDENTIFY POTENTIALLY HARMFUL EFFECTS OF A TRANSACTION AND GIVES THE AGENCY BROAD POWER TO MITIGATE THOSE EFFECTS

A. The Statutory Standard

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

- (A) the effect of the proposed transaction on the adequacy of transportation to the public.
- (B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.
- (C) the total fixed charges that result from the proposed transaction.
- (D) the interest of carrier employees affected by the proposed transaction.
- (E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

See also, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, served August 12, 1996 [*UP/SP Control*]. It should be noted that the ICC Termination Act included the last phrase to paragraph (E) above -- adverse effects on competition "in the national rail system" -- to clarify that the Board must consider the effects of a transaction upon the rail system in the nation generally.

The statute directs the Board to "approve and authorize a transaction . . . when it finds the transaction consistent with the public interest." 49 U.S.C. §11344(c). The same section also provides that the Board "may impose conditions governing the transaction." *Id.*

In addition to these explicit statutory considerations, the Board is also required by *McLean Trucking Co. v. United States*, 321 U.S. 67 (1944) and the *Northern Lines Merger Cases*, 396 U.S. 491, 510-513 (1970), to weigh the policy of the antitrust laws disfavoring diminution in competition resulting from a proposed merger against the national transportation policy favoring improvements in efficiency from an integrated national transportation system. The agency has noted that, while it does not sit as an antitrust court, the antitrust laws give "understandable content to the broad statutory concept of the public interest." *Union Pacific Corp., et al. -- Control -- Missouri Pacific Corp.*, 366

I.C.C. 462, 485 (1982) [*UP/MP Control*], quoting *FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 338, 244 (1968). Even if a particular transaction would not violate the antitrust laws, the Board has the discretion to disapprove it. *Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Railway Company*, served August 23, 1995, slip op. at 53 [*BN/SF Control*].

B. The Agency's Policy Statement

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

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

result in the *impairment* of essential rail services, the agency has a duty and an obligation to condition the transaction to mitigate or eliminate the likelihood of such a result.

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

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

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

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

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

are of greater benefit to the public than they are detrimental to the transaction. *UP/MP Control*, 366 I.C.C. at 564.

IV. THE BOARD SHOULD IMPOSE PRE-IMPLEMENTATION CONDITIONS THAT WILL PREVENT THE RECURRENCE OF THE UP/SP SERVICE PROBLEMS.

Unlike in past mergers, the Board should require the Applicants to address all unresolved implementation issues prior to permitting consummation of the transaction. We have now reached a watershed point where rail mergers have grown to such a complex magnitude that it is no longer sufficient or acceptable to approve a consolidation without a clearly defined plan of implementation for all operational matters. The acquisition and division of Conrail by CSX and Norfolk Southern promises to be the most complex consolidation to date because it involves the acquisition of control of a single rail carrier by two other carriers over a tremendous geographic area that includes many of our nation's largest commercial centers; the division of most assets between the two acquiring carriers; and the sharing of other assets in three major commercial centers.

The hazard of not requiring the resolution of all implementation issues prior to consummation of the transaction is amply illustrated by the recent acquisitions by the Union Pacific Railroad of the Chicago and Northwestern Railway Company ("CNW") and, most recently, the Southern Pacific Transportation Company ("SP"). Even as the Board was considering UP's acquisition of the SP, UP was under tremendous criticism as it struggled to integrate the CNW's operations into its own. The merger with the SP has resulted in even greater problems. The UP's promises of greater operating efficiencies as a result of the SP acquisition have disintegrated in the year since the Board authorized consummation. Not only have those efficiencies not occurred, but service has deteriorated to a point where shippers are

contemplating damage actions against the UP and the Board has initiated a proceeding to investigate the state of rail service in the Western United States. Ex Parte No. 573, *Rail Service in the Western United States* (served Oct. 2, 1997). If those efficiencies are ever realized at all, it certainly will not be within the three year period promised to the Board.

Because the proposed acquisition and division of Conrail is an even more complex transaction than the UP's acquisition of the SP, the Board must take extra precautions so as not to permit the same service problems to arise again. Therefore, ISRI urges the Board to address all implementation issues "up front" rather than leaving the implementation of the transaction to the complete discretion of the Applicants.

Operations in the shared asset areas are critical to the pro-competitive aspects of this transaction. The shared asset areas are a novel feature in rail mergers and, thus, there is little guidance for their implementation. Furthermore, the Applicants have not proposed operating plans for these areas and it is uncertain that any have been developed to date. Neither is it apparent that the Applicants intend to submit their operating plan, when developed, for public comment and Board review. Certainly, any submission would not be in time for review within the current procedural schedule. Therefore, ISRI supports the condition requested by the NIT League that the Board require the Applicants to submit detailed operational plans for each of the shared asset areas to the Board for review and public comment.

Experience with the UP/SP merger also suggests that all implementing labor agreements should be in place prior to consummation of the transaction. The failure to do so has been cited by the UP as a prominent reason for its current operational problems. See Finance Docket No. 32760 (Sub No. 21), Applicants' Third Quarter 1997 Progress Report, p. 10. Logic dictates that the

implementation of labor agreements is essential to a smooth transition of control between carriers. Therefore, ISRI supports the condition requested by the NIT League that the Applicants be required to certify that all labor agreements are in place before the transaction can be consummated.

Shippers with current Conrail contracts, particularly those with movements to or from shared asset areas, do not know which carrier or carriers will handle their traffic or what choice they may have to select that carrier. Unless this matter is resolved prior to consummation of the transaction, there is tremendous potential for confusion and chaos. To some extent, this uncertainty is caused by the inability of CSX and Norfolk Southern to view the Conrail contracts, to date. ISRI supports the NIT League's request that the Board permit CSX and Norfolk Southern to obtain information about the Conrail contracts and the costs, revenues and operations associated with them as soon as possible before the Voting Conference in this proceeding. Both carriers then should be required to submit a plan for allocation of costs, revenues and operations, and shippers should be given the opportunity to comment before the plans are approved by the Board.

V. THE BOARD SHOULD ESTABLISH CONDITIONS FOR THE CONTINUING OVERSIGHT OF THE PROPOSED TRANSACTION.

In *UP/SP Control*, the Board established a precedent for the continued oversight of a merger transaction. Slip op. at 146. The oversight process in that proceeding has generated information on the true competitive conditions after the merger and has provided a forum for gathering information and analyzing UP's serious service problems.

The complex and novel aspects of the CSX / Norfolk Southern / Conrail transaction suggest that a similar oversight proceeding would be beneficial here. In addition to providing the same benefits that have been realized in the UP/SP

proceeding, continuing oversight of this transaction is desirable as a means to monitor operations in the shared assets areas, which are a novel element of this transaction.

ISRI supports the NIT League's request that the Board require the Applicants to submit quarterly and annual reports with an opportunity for the public to comment. ISRI also shares the same concerns expressed by the NIT League regarding the data initially provided by UP/SP and asks the Board to require the Applicants to provide specified information regarding operations and benefits, including the following: (1) progress reports on key aspects of the transaction, such as division and integration of Conrail locomotive and freight car fleets, customer billing, and capital investment; (2) statistics on operations such as number of employees in key categories and numbers of locomotives available; (3) key service statistics against a baseline (*e.g.*, number of turns per month for key equipment groups, train starts, or any other statistic normally kept in the ordinary business management of the carriers); (4) status and progress reports on implementation of operations in the shared asset areas; (5) reports on truck market penetration; (6) rate trends, by key commodity groups, against a baseline; and (7) financial performance indicators. In addition, the Board should develop objective standards to determine if the transaction is resulting in benefits to the shipping public.

VI. THE BOARD SHOULD SIMPLIFY THE MARKET DOMINANCE DETERMINATION FOR SHIPPERS SERVED BY APPLICANTS AFTER THE TRANSACTION.

The record price paid by CSX and Norfolk Southern for Conrail raises a distinct risk that the financial burden will force both carriers to explore new ways to maximize revenues from their present and soon-to-be-acquired properties wherever possible. Despite the new competition that will be generated

in some areas, the Board must not lose sight of the fact that market power will be increased in other areas with the loss of a "neutral" Conrail. This reduction in major eastern carriers from three to two could permit CSX and Norfolk Southern to reduce existing competitive routings; reduce the potential threats of product and geographic competition; and reduce the competitive leverage some shippers may have to play one facility off against another or to bundle competitive and non-competitive services. Since the financial burden was assumed by CSX and Norfolk Southern, the risks associated with that burden should be borne by them, not the shippers.

Accordingly, ISRI supports the NIT League's proposed condition that would place the burden of proving the lawfulness of any rate increase for market dominant shippers that exceeds the RCAF-U upon CSX and Norfolk Southern for a period of five years after the merger is consummated. The five year period is intended to coincide with the requested oversight period and to cover the time frame over which the Applicants have indicated that their debt will be paid down to acceptable levels.

VII. THE BOARD SHOULD IMPOSE A SERIES OF BROAD-BASED CONDITIONS TO PROTECT AND PRESERVE COMPETITION.

ISRI urges the Board to impose many of the same broad-based conditions that were imposed upon the UP/SP merger. This consolidation is comparable in scope to the UP/SP merger and shares many of the same competitive problems. In addition, there are additional elements of this transaction that warrant the imposition of new broad-based conditions beyond those in the UP/SP merger. These conditions also are requested by the NIT League and ISRI supports those requests fully.

First, ISRI asks the Board to impose the same transload, new facility, and build-out conditions that were imposed in the UP/SP merger. Norfolk Southern

and CSX should be allowed to serve transload facilities and new facilities that are located along the lines of the other over which they have trackage rights. Furthermore, they also should be allowed to construct build-ins to all shippers along trackage rights lines.

Second, ISRI asks the Board to require that all reciprocal switching points that would provide transportation options for shippers after the transaction is approved continue to be kept open for reciprocal switching. This will preserve existing competitive options and prevent the Applicants from exercising market power that they may gain as a result of the transaction.

Third, ISRI asks the Board to order the Applicants to reduce reciprocal switching charges to a maximum level of \$130 per car, as the carriers did in the UP/SP merger.

Finally, ISRI asks the Board to require the Applicants to propose a plan for each "single line to joint line" shipper that would protect that shipper's current single line rates and service, including establishment of efficient means of interchange, for a period of at least five years after consummation of the transaction. This plan should be required to be submitted within thirty days after the Board's decision in this proceeding. Shippers who will go from single line to joint line service will not reap the touted benefits of this transaction and may in fact suffer some reduction in service quality. This condition should alleviate these negative impacts of the merger upon these shippers and ease the transition from Conrail single line service to CSX/Norfolk Southern joint line service.

VIII. THE BOARD SHOULD IMPOSE CONDITIONS TO PROTECT AGAINST THE COMPETITIVE HARM THAT THE SHARED ASSET AREAS WILL CAUSE TO SOME ISRI MEMBERS.

In general, ISRI applauds the pro-competitive aspects of the three shared asset areas. This is a step in the right direction towards enhanced competition for

rail services. Unfortunately, the limited scope of these shared asset areas also causes very serious competitive harm to some shippers who are situated near a shared access area but outside of it. This is true for three ISRI members who are representatives of a larger group of members who may suffer similar competitive harm.

The first affected ISRI member is Louis Padnos Iron & Metal Company ("LPIM"). LPIM operates two scrap processing facilities near the Detroit Shared Access Area. The Lansing and Grand Rapids, Michigan facilities are located approximately 80 miles and 150 miles, respectively, west of Detroit. (Verified Statement of Shelley E. Padnos ("Padnos V.S.") at 4) The Lansing facility is rail served exclusively by Conrail and the Grand Rapids facility by CSX. (*Id.* at 2) After the division of Conrail, the Lansing facility will be served exclusively by Norfolk Southern. Both facilities compete vigorously with at least nine other scrap processors who are located in the Detroit Shared Access Area. (*Id.* at 5-6) The scrap transportation situation in Michigan is somewhat unique because the State is a peninsula, which forces all scrap processors to ship their product in essentially the same direction (South) out of state. (*Id.* at 3) Moreover, because there are only three steel mills within Michigan to purchase scrap, all Michigan scrap processors must ship greater distances to other customers outside of the State. (*Id.* at 5) This is illustrated by the fact that LPIM must ship 90% of its outbound product by rail. (*Id.* at 2) Currently all Michigan scrap processors compete on an equal basis currently because all of their facilities are served by only a single rail carrier. But, after this transaction, LPIM's competitors in the Detroit Shared Access Area will have direct access to both CSX and Norfolk Southern.

The second affected ISRI member is William Reisner Corporation ("WRC"), which operates a single scrap processing facility in Clinton,

Massachusetts. (Verified Statement of Peter L. Kramer ("Kramer V.S.") at 2) WRC competes with other scrap processors in the North Jersey and the South Jersey/Philadelphia Shared Asset Areas who sell to the same customers in Delaware, New Jersey, Ohio, and Pennsylvania. (*Id.* at 2, 3) Both WRC and its competitors in the shared asset areas are rail-served exclusively by Conrail today. (*Id.*) Because WRC is located in Massachusetts and all of its traffic must therefore move greater distances south toward its principal markets, WRC already is at a slight disadvantage in freight rates. However, WRC and its shared access area competitors all have access to single-line Conrail service today, which keeps them on roughly comparable competitive footing in terms of rates and car supply. However, after the transaction, WRC will be single-served by CSX while its competitors will gain dual service from CSX and Norfolk Southern. (*Id.* at 3) Therefore, the slight advantage that WRC's shared access area competitors enjoy today will be transformed into a major advantage that will render WRC non-competitive.

The third affected ISRI member is Royal Green Corporation, which operates a single scrap processing facility in Temple (Reading), Pennsylvania. (Verified Statement of Jonathan Simon ("Simon V.S.") at 2) Royal Green is located only 40 miles from the South Jersey/Philadelphia Shared Access Area and approximately 120 miles from the North Jersey Shared Access Area, where its principal competitors are located. (*Id.* at 2-3) Royal Green is rail-served exclusively by Conrail, as are its principal competitors. (*Id.* at 3) After the transaction, Royal Green will be served solely by Norfolk Southern while its shared access area competitors will have access to both CSX and Norfolk Southern. (*Id.*) Two of Royal Green's largest customer destinations are the NorthStar steel mills located in Youngstown and Canton, Ohio. (*Id.*) Both these mills will be accessible to CSX and Norfolk Southern after the merger. (*Id.*) As

a result, Royal Green's shared access area competitors will have a choice of two single-line carriers and two sources of car supply compared to one for Royal Green. (*Id.*)

These three ISRI members will suffer competitive harm when their shared access competitors gain access to two rail carriers while they retain just one. Scrap processing is a highly competitive industry in which transportation costs account for a disproportionate amount of the total product value. (Padnos V.S. at 5; Kramer V.S. at 3; and Simon V.S. at 3) As a result, a competitive advantage in freight rates often is the difference between winning or losing business. Because rail transportation accounts for upwards of 65% of these individual scrap processors' outbound shipments, it is critical to the success as scrap iron processors. (Padnos V.S. at 2 [90%]; Kramer at 2 [65-70%]; and Simon at 2 [65%])

Rail alternatives are limited to particular circumstances. Truck rates are competitive with rail for up to 150 miles but, at greater distances, their limited capacity drives rates to exorbitant levels. (Padnos at 3; Kramer at 2) Trucks also have numerous disadvantages. Their smaller capacity often requires multiple trucks; different states have different highway weight limits, which complicates interstate hauls; and trucks must be loaded and unloaded immediately, whereas railcars can be unloaded when convenient. (Kramer V.S. at 2; Padnos V.S. at 4) Barge also can be an option but only when the origin and destination are located near navigable waterways. (Simon V.S. at 2)

Because transportation costs have such an influence upon the final product value and because rail is such an indispensable form of transportation, LPIM, WRC, and Royal Green will be unable to compete with their current competitors in the shared access areas. Those competitors will be able to leverage their new-found competitive rail options to get lower transportation rates and, thus, lower

the final cost of their product, while the three ISRI members will continue to pay the same or higher rates. The ISRI member rates actually may increase because of the premium that CSX and Norfolk Southern are paying for Conrail. (Simon V.S. at 3-4) This is demonstrated quite graphically in the NIT League Comments, Section VI. Because two carrier competition will prevent CSX and Norfolk Southern from recouping this premium from shared asset area shippers, this will force single-served shippers, such as LPIM, WRC, and Royal Green, to pay for the competitive windfall that will be realized by their shared access area competitors.

Higher rates, however, are not the only means by which LPIM, WRC, and Royal Green will be competitively disadvantaged. Car supply also is essential to remaining competitive as a scrap processor. However, the shared asset area processors will have access to the car supply of two carriers while single-served competitors will have to rely upon just one carrier.

But for the merger and its creation of the three shared access areas, these three ISRI members would not suffer any competitive harm. Only the addition of direct service from a second competitive carrier at each of these facilities will rectify these harms. Appropriate conditions, as requested in the verified statements of the three representative ISRI members, are as follows:

1. With respect to LPIM's Lansing, Michigan facility, CSX already provides service in the area and could be granted trackage rights a short distance over the Conrail line serving the facility, which will be acquired by Norfolk Southern.
2. At LPIM's Grand Rapids, Michigan facility, which is served by CSX, trackage rights could be granted a short distance over the CSX line to Norfolk Southern, which will serve the area over the Conrail line that it will acquire in the transaction.

3. At WRC's Clinton, Massachusetts facility, the Boston & Maine Railroad could be granted trackage rights a short distance over the Conrail line that will be acquired by CSX. The Boston & Maine then could haul the traffic over its own line to Mechanicville, New York where it could be interchanged with either Norfolk Southern or the Canadian Pacific Railroad ("CP").
4. At Royal Green's Temple (Reading), Pennsylvania facility, a second carrier, such as CSX or the CP, could be granted trackage rights over the Conrail line to be acquired by Norfolk Southern from Philadelphia to the facility in order to provide service. The CP currently has trackage rights over the Conrail line between Reading and Philadelphia. If the carrier with trackage rights is any carrier other than CSX, Royal Green asks that the carrier be required to absorb all switch charges on two line movements, or such other condition as will provide rate levels comparable to a single line movement. The trackage rights carrier also will need access to Norfolk Southern's Reading Yard where Royal Green stores its private fleet of rail cars.

All three ISRI members satisfy the criteria for imposing conditions, as discussed in *UP/SP Control*, slip op. at 144-45. The merger imposes effects harmful to the public interest that a condition will ameliorate; the requested conditions are operationally feasible, produce net public benefits, and are narrowly tailored to remedy the harmful effects; and the conditions will not broadly restructure the competitive balance among railroads with unpredictable effects.

The three ISRI members highlighted above are representative of a larger group of members who may also be harmed by the shared access areas. In

addition to granting the conditions requested by these three members, ISRI asks the Board to condition this transaction in a way that would allow other similarly affected ISRI members to obtain comparable relief.

IX. ON BEHALF OF ITS AFFECTED MEMBERS, ISRI SUPPORTS THE CONDITIONS REQUESTED BY THE WHEELING AND LAKE ERIE RAILROAD.

ISRI supports the conditions requested by the Wheeling and Lake Erie Railroad ("W&LE") to the extent those conditions will alleviate harm to ISRI members. Two Verified Statements of affected ISRI members are attached hereto in support of the W&LE. These members also have submitted their statements as part of the W&LE's comments and request for conditions.

Reserve Iron & Metal, L.P. ("Reserve") is concerned about the loss of current two carrier access to its Cleveland, Ohio facility. (Verified Statement of Linda Bornancin at 1) The facility currently is served by both Conrail and CSX. (*Id.*) Although the Applicants have stated their intent to preserve competition at all two-to-one carrier points, Reserve has not been able to obtain a firm statement from Norfolk Southern that it will replace Conrail service to Reserve's Cleveland facility. Therefore, Reserve is supporting the W&LE's request to gain access to the Cleveland facility.

Annaco, Inc. operates scrap facilities in Ohio that are served by the W&LE. Annaco is concerned that the succession of Norfolk Southern to Conrail lines in W&LE's territory will result in Norfolk Southern forcing most traffic off of the W&LE and onto Norfolk Southern single-line routes, potentially bankrupting the W&LE. (Verified Statement of William W. Lowery at 1) In addition to effectively eliminating two line competition, Annaco has been displeased with both Norfolk Southern and CSX service which is less dependable than W&LE service. (*Id.* at 1-2) This will adversely affect Annaco's

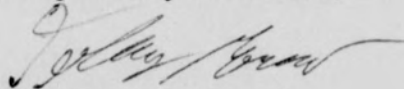
competitiveness. Thus, Annaco supports W&LE's attempts to preserve its essential services and its position as a competitive ratemaker.

On behalf of its other members who are similarly affected, ISRI supports conditions that will protect ISRI's members from the anticompetitive effects of this transaction in areas served by the Wheeling & Lake Erie Railroad.

X. CONCLUSION

ISRI respectfully requests that the Board consider these Comments and impose as conditions to this transaction the matters stated herein.

Respectfully submitted,



John K. Maser III
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorneys for Institute of Scrap Recycling
Industries, Inc.*

October 21, 1997

**VERIFIED STATEMENT
OF SHELLEY E. PADNOS**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**VERIFIED STATEMENT OF
SHELLEY E. PADNOS**

My name is Shelley E. Padnos. I am Executive Vice President & Chief Administrative Officer of Louis Padnos Iron & Metal Company ("LPIM"). My mailing address is P.O. Box 1979, Holland, Michigan, 49422.

I received my BA degree from Michigan State University in 1975. In 1979, I earned a Juris Doctor Cum Laude from Thomas Cooley Law School. After practicing law with Scholten Fant & Marquis (a private law firm in West Michigan) for five years, I joined LPIM in July of 1984.

In my current position, my responsibilities include oversight of the administrative areas of the company including coordination and review of all railroad contracts. The purpose of this verified statement is to highlight the adverse effect which the proposed acquisition and division of Conrail by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("Norfolk

Southern") will have on the competitive environment of the scrap processing industry in the State of Michigan and, in particular, upon LPIM.

LPIM is a closely held corporation, organized under the laws of the State of Michigan, with its headquarters located in Holland, Michigan. Started in 1905 by Louis Padnos, the Company is currently run by third generation family members from nine locations throughout Michigan. LPIM has become a recognized leader in the scrap processing industry. Four of LPIM's nine locations are major processing facilities, with millions of dollars of highly specialized and sophisticated equipment used to process scrap into specification-grade feedstock intended for consumption by foundries and mills throughout the United States. Each of these four major processing facilities is accessible by rail and two of those facilities have the potential to be adversely impacted by the announced acquisition and division of Conrail. Also, each of these four facilities produces different end-products and, therefore, production cannot be shifted among facilities.

The two locations that will be adversely impacted are LPIM's Turner Avenue Yard, located at 2001 Turner Avenue, N.W., Grand Rapids, Michigan 49504 ("Grand Rapids Facility"), and our Lansing Division Yard, located at 1900 West Willow Street, Lansing, MI 48912 ("Lansing Facility"). Both of these facilities purchase scrap materials in the market place and then process that scrap into specification-grade material for consumption by foundries and steel mills throughout the United States. The Grand Rapids Facility currently has access only to CSX rail service while the Lansing Facility currently has access only to Conrail rail service. After the Conrail acquisition, the Lansing Facility will be served exclusively by Norfolk Southern.

Approximately 90% of the ferrous scrap from these two facilities moves outbound by rail and 10% by truck. In 1994, 1995, and 1996, the following

number of railcars of ferrous scrap were shipped outbound from each of the yards in question:

	'94	'95	'96	97 Thru Sept
Grand Rapids Facility	896	1103	592	936
Lansing Facility	566	273	256	426

The destinations for these railcars varied month to month, depending upon market conditions and consumer demands. In the past four years LPIM has shipped outbound railcars loaded with our ferrous scrap finished product from the Grand Rapids Facility and our Lansing Facility to steel mills and foundries located in Alabama, Arkansas, Colorado, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin. All rail service at these facilities was provided under contract with either CSX or Conrail and at least 85% of the routes involved single-line service.

There are only a few limited non-rail transportation alternatives at either the Grand Rapids or Lansing Facilities. These alternatives are either truck service or, hypothetically, intermodal service. The vast majority of LPIM's volume of ferrous steel sales is made to consumers who are located outside of the State of Michigan. Because the State of Michigan is a peninsula with the only "connecting" states located on its southern border, the entire State is somewhat "freight disadvantaged" on movements beyond its borders.

Truck shipments of ferrous scrap are cost-effective within approximately a 150-mile radius. Beyond that area, truckload shipments are no longer cost effective because: (1) the price per ton on a 20-gross ton truckload (based upon

the limited amount of weight which can be loaded on a truck and the fact that most truck freight rates are quoted on a "per mile" basis) becomes exorbitant in comparison to the efficiencies of shipping 85 gross tons per car by rail; and (2) the variations among states of allowable weights for truckload quantities makes the shipment of ferrous scrap by truck through multiple states a serious logistical challenge.

Furthermore, ferrous scrap cannot be efficiently or realistically loaded into intermodal containers because of (1) the extremely high expense of shipping via intermodal; (2) the very small capacity of intermodal containers, (3) the practical difficulty and safety hazards of attempting to load ferrous scrap in intermodal containers; and (4) the fact that the loading of ferrous scrap into intermodal containers would almost certainly result in substantial damage to the containers.

The terms of the proposed acquisition and division of Conrail by CSX and Norfolk Southern provide for a "Detroit Shared Asset Area" which will give both CSX and Norfolk Southern complete and equal access rights to the rail lines and shippers located East of the CP-Townline (Michigan Line MP 7.4) and South to, and including, Trenton (Detroit Line MP 20). This shared access area is only approximately 80 miles east of Lansing and 150 miles east of Grand Rapids. The decision to grant "Shared Access" in this area gives all shippers in that area who currently have access to only one rail carrier instant access to two rail carriers. This will be a substantial competitive windfall for them. LPIM has several direct competitors located within the Detroit Shared Asset Area and, as a result, LPIM will be dramatically and directly competitively disadvantaged if its nearby competitors are granted dual rail carrier access, while it is limited to a single carrier. The nature of the scrap market further compounds this disadvantage.

Ferrous scrap is a commodity and like any other commodity, pricing fluctuates based upon markets. However, regardless of how good or bad ferrous

markets may be, freight constitutes a substantial percentage of the value of our product. Depending upon markets, the outbound freight alone ranges from 13% to over 21% of the value of our product. Because transportation costs constitute such a large proportion of total product value, the difference in freight rates charged to nearby scrap competitors will result in grossly disproportionate final product costs. This will preclude LPIM from effectively competing with its current competitors in the nearby Detroit Shared Asset Area.

Scrap processors typically purchase the majority of their raw material from sources located within a radius of 150 miles from their processing facility. For this reason, the majority of the scrap which is generated within Michigan, is purchased by scrap processors located within Michigan. On the other hand, the number of consumers of finished product scrap is limited and most scrap processors compete with each other monthly for positions at the available steel mills and foundries across the United States. Michigan has only three (3) steel mills located within its borders, and for that reason most sales of finished product scrap to steel mills (as well as a large portion of the steel foundry sales) are shipped out of state by rail.

LPIM (at both its Grand Rapids and Lansing Facilities) and its Detroit competitors often compete to purchase inbound scrap material from the same sources and to sell finished product scrap to the same consumers. To the extent that LPIM's freight rates for delivery of its finished product are higher than its competition, it is placed at a substantial economic disadvantage and may not be competitive in the marketplace in its ability either to buy its raw material or to sell its finished product.

To the best of my knowledge, the following LPIM competitors are expected to reap the windfall of dual rail service as a result of the designation of the Detroit Shared Asset Area.

Eastern Iron & Metal
8000 Mt. Elliott Avenue
Detroit, MI 48211

Ferrous Processing & Trading Co.
9100 John Kronk Avenue
P.O. Box 10166
Detroit, MI 48210

Keywell LLC
3075 Lonyo Avenue
Detroit, MI 48209

Kimmel Scrap Iron & Metal
10571 W. Grand River Avenue
Detroit, MI 48204-2007

Mars Industries, Inc
3100 Lonyo Avenue
Detroit, MI 48209

Schwartz Iron & Metal Co., Inc.
20300 Mt. Elliott Avenue
Detroit, MI 48234-2743

Winston Bros. Iron & Metal Co., Inc.
17384 Conant
Detroit, MI 48212

Winston-Morrow Corp.
Sub. of Winston Bros. Iron & Metal
13200 Mt. Elliott Avenue
Detroit, MI 48212

Fritz Enterprise, Inc.
23550 Pennsylvania Rd.
Taylor, Michigan 48180

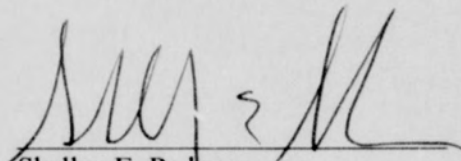
These scrap processors are among the largest in Michigan.

In order to rectify the gross competitive inequities that will fall upon LPIM as a result of creation of the Detroit Shared Asset Area, I request that the Surface Transportation Board impose a condition upon the Conrail transaction that would grant a second rail carrier access to LPIM's Grand Rapids and Lansing Facilities. At Grand Rapids, the Norfolk Southern, over track acquired from Conrail, easily would be able to access LPIM's facility over a very short distance of trackage rights on the CSX line. Similarly, CSX also has track in Lansing and could access LPIM's facility there via trackage rights over the Norfolk Southern line, which will be acquired from Conrail. These conditions will prevent the merger from adversely affecting LPIM's competitive position.

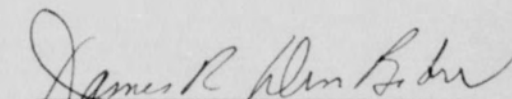
VERIFICATION

COUNTY OF OTTAWA :
: SS:
STATE OF MICHIGAN :

Shelley E. Padnos, being duly sworn, deposes and says that she has read the foregoing statement and knows the contents thereof, and that the same are true as stated.


Shelley E. Padnos

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


Notary Public

My Commission expires: 9/10/98

**VERIFIED STATEMENT
OF PETER L. KRAMER**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**VERIFIED STATEMENT OF
PETER L. KRAMER**

My name is Peter L. Kramer and I am Director of Marketing and Commercial Development for William Reisner Corporation ("WRC"), a Massachusetts corporation. My address is 33 Elm Street, Clinton, Massachusetts 01510. WRC is a scrap metal processor, dealer, and broker.

I graduated from Lehigh University with a Bachelor of Arts degree in 1974. I also have earned post graduate credits from the J.L. Kellogg School of Business at Northwestern University and from the University of Massachusetts Graduate School of Business.

I have been employed by WRC for 1 year during which time I have held my current position. Prior to joining WRC, I worked for Naporano Iron and Metal Company in Newark, New Jersey for one year as General Manager and for Schnitzer Steel Industries, Inc. in Portland, Oregon for two years as Vice

that capacity, I am submitting this Verified Statement to express my concern over the anti-competitive effects that the North Jersey and South Jersey/Philadelphia shared asset areas, which will be created by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("Norfolk Southern"), will have upon Royal Green.

Royal Green buys and sells ferrous scrap throughout the mid-Atlantic region. Essentially all of the processing of the scrap is done at our Temple (Reading), Pennsylvania facility. There we operate two shears and two shredders on a daily basis.

Scrap is a manufactured commodity. Industry-wide, freight is probably the single largest expense after the cost of raw material. I can say with certainty that this is true for Royal Green. Our Reading facility currently is rail-served only by Conrail. Norfolk Southern will replace Conrail as our only rail carrier after the acquisition and division of Conrail.

Royal Green currently ships approximately 65% of its finished products by rail. At least half of that amount has no effective competitive alternative. Because our facilities are not located on a navigable body of water, barge or ship transport also cannot provide a competitive alternative.

As part of their acquisition of Conrail; CSX and Norfolk Southern have created three shared asset areas in which both carriers will be able to serve all shippers in those areas. Two of those areas, the North Jersey and South Jersey/Philadelphia shared asset areas, will cause direct competitive harm to Royal Green. Royal Green's Reading, Pennsylvania facility is approximately 40 miles from the South Jersey/Philadelphia Shared Asset Area and 120 miles from the North Jersey Shared Asset Area. Royal Green's principal scrap competitors, such as Naparano Iron (Newark, NJ), Camden Iron (Camden, NJ), and Hugo Neu (Jersey City, NJ), are located in these two shared asset areas. Currently, those

competitors have the same single-carrier access to Conrail that Royal Green has to Conrail. However, as a direct result of the Conrail acquisition, those competitors will gain dual access to both CSX and Norfolk Southern while Royal Green will still have only single-carrier access, to Norfolk Southern.

Compounding this injury is the fact that Royal Green's competitors in these shared asset areas will have single-line hauls to Royal Green's two largest rail customers: NorthStar's Youngstown and Canton, Ohio mills. After the merger, the two NorthStar facilities will have access to both CSX and Norfolk Southern. Because traffic from these facilities will travel over essentially the same route and distance on the Norfolk Southern line, there should be little difference in the rail rates to these facilities for Royal Green and its shared asset area competitors. However, those scrap competitors in the shared asset areas will have the leverage of a second single-line carrier, in CSX, to force down Norfolk Southern's rates. Royal Green will have no such leverage and thus is at great risk of losing its NorthStar business due to higher transportation rates, which is Royal Green's second greatest cost factor after raw material. In addition, Royal Green's shared asset competitors will have dual rail service at the origin to all destinations. Because transportation constitutes such a large portion of the cost of the final product, Royal Green will be at a distinct competitive disadvantage vis-a-vis its shared asset area competitors, directly caused by the Conrail acquisition.

A further concern is that Royal Green's rail transportation costs actually will increase as a result of the Conrail acquisition. CSX and Norfolk Southern are paying the highest premium ever paid to acquire a rail carrier. This premium will have to be recovered from shippers in the form of higher rates. However, CSX and Norfolk Southern will be unable to recover this premium from shippers that have dual rail service due to the direct competitive threat to that business. This leaves only single-served shippers, like Royal Green, from

whom this premium can be collected. Thus, Royal Green will pay higher rates post-merger in order to finance the acquisition of Conrail and to supplement the lower rates that Royal Green's competitors in the shared access areas will pay due to newly acquired dual rail access.

Royal Green also is concerned about stranded investment in its rail car fleet after the merger. We own our own fleet of 72 rail cars which we use, in conjunction with Conrail cars, to transport scrap. Norfolk Southern has told me that it does not like to encourage the use of private car fleets. This is cause for great concern because Royal Green may no longer be able to realize the financial benefits of owning its own cars and, in fact, such ownership could become a financial burden. I already have placed orders for thirty new rail cars on hold because I am uncertain that car ownership will be more burdensome than beneficial on the Norfolk Southern rail system. I do not have the luxury of making this decision for rail cars that Royal Green already owns.

Royal Green also will be disadvantaged because of its limited access to railroad supplied cars. Our shared asset competitors will be able to draw from the car supply of either CSX or Norfolk Southern while we must rely solely on Norfolk Southern. Currently, we all must rely on the same single carrier Conrail. Thus, our competitors will reap a windfall from the shared asset areas that will put Royal Green at a competitive disadvantage.

I would like to believe that Royal Green can grow its business in the future to accomodate the next generation of my family. While markets continually adjust to new conditions, they also tend to favor those with the lowest fixed-cost structure. In this instance, Royal Green's competitors in the shared asset areas are the arbitrary beneficiaries of an unfair trading advantage. Their greatly improved cost structure, the result of more favorable freight rates, will allow them to disrupt markets where we all sell scrap.

Because this competitive threat is very real, I am requesting the Surface Transportation Board to grant certain conditions that will alleviate the competitive threat of the Conrail acquisition on Royal Green. My request has several parts:

1. Grant a second rail carrier trackage rights over Conrail's line between Royal Green's Temple (Reading), Pennsylvania facility and Philadelphia in order to provide Royal Green with the same two carrier service that its shared asset area competitors will receive.
2. If the carrier with trackage rights is any carrier other than CSX, I ask for the imposition of a further condition requiring the carrier to absorb all switch charges on two line movements, or such other condition as will provide rate levels comparable to a single line movement.
3. The trackage rights must include access to Conrail's Reading Yard so that Royal Green may store its private fleet of railcars.

VERIFICATIONCITY OF Reading
STATE OF Pa.SS: 186-42-6538

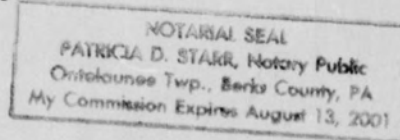
[NAME], being duly sworn, deposes and says that he has read the foregoing statement and knows the contents thereof, and that the same are true as stated.

[Signature] Pres.
[NAME]

Subscribed and sworn to before me, a Notary Public, this 20 day of October, 1997.

[Signature]
Notary Public

My Commission expires: 8/13/2001



**VERIFIED STATEMENT
OF JONATHAN SIMON**

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**VERIFIED STATEMENT OF
JONATHAN SIMON**

My name is Jonathan Simon. I am the President of Royal Green Corporation ("Royal Green"), a Pennsylvania company. My address is Royal Green Corporation, West Huller Lane, Temple, Pennsylvania. Royal Green is a processor of scrap iron.

I have served as President of Royal Green for the past eight years. I have been with the company and its predecessor for almost twenty years. Prior to that time, I was employed by Luria Brothers, another scrap processor, in its Cleveland, Ohio trading office. I entered the scrap business after receiving my undergraduate degree from the University of Pittsburgh. However, you could say that I grew up in the scrap business since my family has been in the business for over sixty years.

My responsibilities as President of Royal Green include the strategic planning and positioning of Royal Green and its affiliates for future growth. In

President and General Manager. Prior to that, I worked over twenty years for Kramer Industries/Scrap, Inc. in Greenfield, Massachusetts.

In my current position as Director of Marketing and Commercial Development for WRC, I am responsible for marketing WRC's services and expanding its customer base. I also am in charge of scrap metal sales and new product development. I am submitting this Verified Statement to express my concern that the shared asset areas, which will be created by CSX Transportation, Inc. ("CSX") and Norfolk Southern Railway Company ("Norfolk Southern"), will have significant anti-competitive effects upon WRC.

WRC's headquarters and principal place of business is at 33 Elm Street, Clinton, Massachusetts. The company collects and purchases iron, steel, nonferrous metals and stainless steel scrap for processing and packaging in order to render it suitable for sale to mills, foundries, refineries, and smelters, which remelt the product.

Currently, WRC's Clinton facility is rail-served solely by Conrail. After the Conrail acquisition, Clinton will be served solely by CSX. Approximately 65-70% of all outbound shipments are transported by rail. This averages 12-15 cars per month. All of this traffic moves currently by Conrail in single-line service to destinations in Delaware, New Jersey, Ohio and Pennsylvania.

The only potential alternative to rail transportation for WRC's outbound movements is motor carriage. However, this alternative has significant limitations. First, trucks cannot satisfy the tonnage requirements of WRC. This shortage of available trucks does not allow shipments to keep pace with WRC's production and sales. Second, motor carriage is more expensive than rail, particularly on longer hauls. Third, motor carriage is less efficient operationally. Motor carriage is used most often for short distance hauls and for time-sensitive movements because trucks have a shorter transit time.

With access to only one rail carrier, WRC does not have a competitive alternative for rail service. This leaves us with artificially high freight rates and no relief other than to pursue a costly and time consuming rate complaint before the Surface Transportation Board. Because transportation costs are 12-40% of WRC's final product cost, the level of freight rates is of paramount importance to WRC. Also, access to only one rail carrier means only a single source of car supply and one provider of switch service.

Although the high freight rates and limited car supply are generally undesirable, until now, they have not placed WRC at a significant competitive disadvantage because our principal competitors also labored under the same disadvantages of single carrier service. This no longer will be true after the acquisition of Conrail by CSX and Norfolk Southern. Shared asset areas in North Jersey and South Jersey/ Philadelphia will allow WRC's principal competitors in those regions better access and lower costs to the same steel mills that WRC sells to because those competitors will gain two carrier service at their facilities from CSX and Norfolk Southern. The competition generated by this new two carrier service will result in lower transportation charges and greater car supply for WRC's competitors, thereby reducing their costs of production while WRC's costs remain constant. This windfall to the shared asset areas is particularly detrimental to WRC because transportation costs are such a large percentage of total production costs.

In order to rectify this competitive harm, WRC requests that the Surface Transportation Board condition this merger upon granting a second carrier access to WRC's Clinton, Massachusetts facility. The Boston & Maine Railroad operates nearby over tracks that run parallel to the Conrail line that CSX will acquire and which serves WRC's Clinton facility. The Boston & Maine could operate a short distance via trackage rights over CSX to access the Clinton

facility; haul the traffic over its own line to Albany, New York; and interchange the traffic with the Norfolk Southern at Albany. This condition would substantially restore the competitive balance that will be destroyed by the shared asset areas created by the Conrail acquisition.

VERIFICATION

CITY OF Greenfield :
STATE OF Massachusetts : SS:
:

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

[Signature]
[NAME]

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

[Signature]
Notary Public

My Commission expires: 10/18/2002

**VERIFIED STATEMENT
OF LINDA BORNANCIN**



Reserve Iron & Metal, L.P.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388

**VERIFIED STATEMENT
OF**

LINDA BORNANCIN

My name is Linda Bornancin. I am Vice President - Transportation of Reserve Iron & Metal, L.P. I have ten (10) years of experience in transportation matters and am qualified to make this statement on behalf of Reserve Iron & Metal, L.P.

Reserve Iron & Metal has authorized me to submit this statement to stress the essential nature of Wheeling & Lake Erie Railway Company's (W&LE) service. Last year we shipped 3,167 cars over the W&LE, all of which moved in joint line service with CSXT. In every case, Conrail offered direct competition.

Reserve Iron & Metal is a scrap processor with facilities in Cleveland, OH; Chicago, IL; and Attalla, AL. Our Cleveland facility is currently served by both Conrail and CSXT. Since the announcement of the NS/CSXT acquisition of Conrail, I have assumed that Norfolk Southern would replace Conrail's position in our yard. However, I have been unable to confirm this with anyone at Norfolk Southern, and the possibility of losing our second rail carrier causes me great concern.

Reserve is the largest processor of blast furnace iron in the United States and ships to several mills which are dually served by Conrail and the Wheeling & Lake Erie Railway, including Republic Engineered Steel in Canton, Ohio; LTV Steel in Cleveland, Ohio; and Wheeling Pittsburgh Steel in Steubenville, Ohio. In light of the possibility of losing our competitive advantage to these locations, Reserve supports Wheeling & Lake Erie's

petition to gain access to our Cleveland facility. Their presence in our yard would reduce the impact of the loss of Conrail to Reserve and would prevent us from becoming captive to CSXT options only. At the same time, this would contribute to the continued viability of the Wheeling & Lake Erie as a competitive rail carrier in the East. After meeting with top management at the Wheeling & Lake Erie Railway, it is clear that direct access to their railroad is the only way that Reserve will remain competitive after the acquisition.

It is my understanding that neither the Norfolk Southern nor CSXT intend for the Conrail acquisition to create an anti-competitive environment. However, by eliminating the direct routes that Reserve now has with Conrail and by threatening the existence of the Wheeling & Lake Erie Railway, I do not feel that this acquisition will be beneficial to Reserve Iron & Metal unless direct commercial access to Reserve is granted to the Wheeling & Lake Erie and unless the viability of W&LE can be assured by imposed conditions so that it can continue to provide essential rail service and rate competition. The continued success of Reserve Iron & Metal depends heavily on competitive rail options, and we made a large investment in order to gain this advantage. We do not want to lose it.

Accordingly we urge the Board to direct that W&LE be given direct commercial access and that the Surface Transportation Board grant conditions sufficient to ensure its continuing viability.

Verification

I have read the foregoing statement and declare that it is true and correct to the best of my knowledge.

Linda Bornancin
Linda Bornancin

Bernadine Levine
Notary

**Bernadine Levine
Notary Public, State of Ohio
My Commission Expires
September 27, 2000**

**VERIFIED STATEMENT
OF WILLIAM W. LOWERY**



VERIFIED STATEMENT OF SUPPORT FOR
WILLIAM W. LOWERY

STB Finance Docket No. 33388

October 16, 1997

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-001

Attention: STB Finance Docket No. 33388

Dear Secretary Williams:

ANNACO

Creating
new standards
in quality
scrap metal
processing

943 Hazel Street
P.O. Box 1148
Akron, Ohio 44309
(330) 376-1400
Fax (330) 376-9696

My name is William Lowery and I am the Executive Vice President of Annaco, Inc. in Akron Ohio. I have 19 years experience in the scrap recycling business and have had the responsibility for dealing with Annaco's transportation matters for the last 11 years.

Annaco is one the larger scrap processors in the State of Ohio. We average over 80 rail shipments per month as well as 30 or so inbound loads. All of these load are handled by the Wheeling and Lake Erie Railway. Of this traffic, about 50 % of our shipments are joint line connections for delivery throughout the United States and all of our inbounds are joint movements.

We are very concerned about the Conrail control proceeding and its effect on the Wheeling and Lake Erie Railway Company. As I understand it, The NS will take over Conrail's franchise in W&LE's territory and will divert to a single line routing. W&LE will lose a substantial amount of the traffic it now handles with NS. Without some solution, this would bankrupt the W&LE and most probably force our service to be handled by NS or CSXT.

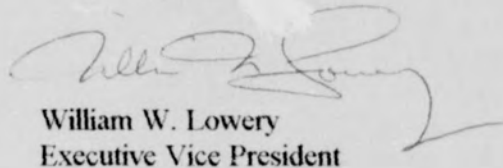
We have dealt with both of these railroads and we have learned that customers of our size are not very important to them. Both the NS and CSXT have raised rates on our movements considerably over the last three years. Some by as much as 60 %! In the scrap business we compete for limited quantities of unprepared material against other markets. If we cannot offer a competitive price for our material f.o.b. shipping point, we do not get the material. Recent large increases in rail rates by the NS and CSXT have caused us to lose substantial amounts of business because it lowered the price we were able to offer for the material. On the other side, we have had to absorb healthy reductions in gross margins on shipments to accounts we have west of Akron that are on the NS.



Besides freight rates, we have major concerns with service. I constantly hear of problems with car availability and timely switches from those in our industry that are served by the major carriers. We have requirements to ship certain customers every day. If we don't perform, we will lose that business. The W&LE though not perfect has worked closely with us to give us dependable service. The glitches that we have are minor when compared to the experience of many of our acquaintances that are serviced directly by the major carriers.

In short, we are scared of the effects this merger will have on our ability to compete. We do business in over 20 states and we would not survive without competitive and reliable rail services. We need the W&LE as both a provider of essential services and as a competitive ratemaker. We fully support W&LE's efforts to find a solution to its crippling loss of traffic as a result of a NS takeover of Conrail properties.

Very truly yours,

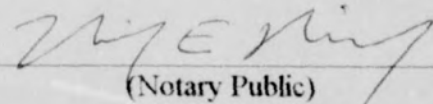

William W. Lowery
Executive Vice President

State of)

County of)

Verification

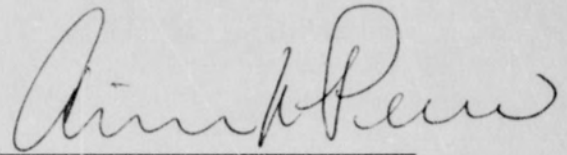
NICK E. REWES being duly sworn on 16 October,
deposes and says that he has read the foregoing, and that it is true and
accurate to the best of his knowledge and belief.


(Notary Public)

My Commission expires Spt 5, 2001.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMMENTS AND REQUESTS FOR CONDITIONS OF INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC. has been caused to be served by first class mail, postage prepaid, on all parties of record in this proceeding this 21st day of October, 1997.

A handwritten signature in cursive script, appearing to read "Aimee L. DePew", written over a horizontal line.

Aimee L. DePew

STB

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LAW OFFICES

FRITZ R. KAHN, P.C.

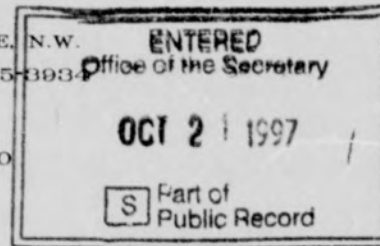
SUITE 750 WEST

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

(202) 371-8037

FAX (202) 371-0900



October 21, 1997

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 33388, CSX Corp., et al.--Control and Operating Leases/Agreements--Conrail, Inc., et al., are the original and twenty-five copies of the Comments and Request for Conditions of Martin Marietta Materials, Inc.

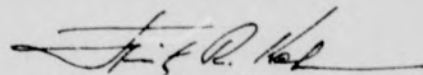
A diskette with the text of the pleading in WordPerfect 5.0 format also is enclosed.

Extra copies of the Comments and of this letter are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed self-addressed, stamped envelope.

Service is being effected in accordance with the Certificate of Service.

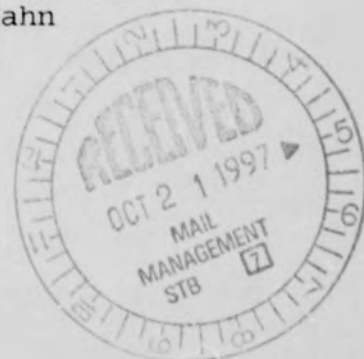
If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Mr. Grant Godwin
Mr. Melvin L. Schrieffer, Jr.

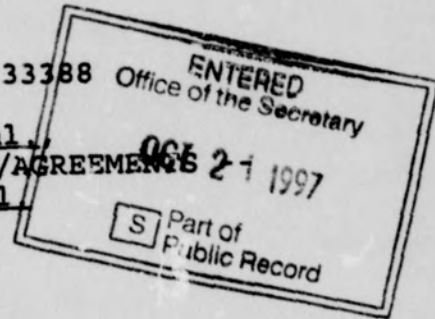


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MMM-2

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.
-- CONTROL AND OPERATING LEASES/AGREEMENTS
CONRAIL, INC., et al.



COMMENTS AND REQUEST FOR CONDITIONS
OF
MARTIN MARIETTA MATERIALS, INC.

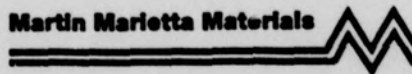


Bruce A. Deerson
Vice President & General Counsel
Martin Marietta Materials, Inc.
P. O. Box 30013
Raleigh, NC 27622
Tel.: (919) 783-4506

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1100 New York Avenue, NW
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Tel.: (202) 371-8037

Attorneys for

Martin Marietta Materials



Dated: October 21, 1997

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Attachments

Verified Statement of Stephen P. Zelnak, Jr.

Supporting Statements

John W. Snow's Deposition Testimony

Darius W. Gaskins' Deposition Testimony

John W. Orrison's Deposition Testimony

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

COMMENTS AND REQUEST FOR CONDITIONS
OF
MARTIN MARIETTA MATERIALS, INC.

Protestant, Martin Marietta Materials, Inc., of Raleigh, North Carolina, pursuant to 49 C.F.R. 1104.13(a) and the Board's decision, Decision No. 12, served July 23, 1997, submits the following as its Comments and Request for Conditions:

I.

INTRODUCTION

Martin Marietta Materials, Inc. ("MMM"), is the Nation's second largest producer of aggregates, used for the construction of highways and other infrastructure projects and for commercial and residential construction. Formerly a subsidiary of Lockheed Martin Corporation, MMM is an independent company, the stock of which is publicly traded.

Involved in this proceeding is the shipment by rail of certain of its products from the Woodville, Ohio, facility, the largest

dolomitic lime plant in the United States. The plant ships to its customers in excess of half a million tons of aggregates annually by rail. The principal customers for the rail shipped aggregates are located at Hugo and Twinsburg, Ohio, which together receive approximately 465,000 tons annually.

Aggregates are about the lowest rated of the commodities handled by the railroads, traditionally carried in carload lots at seventeen and a half percent of the railroads' first class rates. At the same time, however, railroad rates on aggregates are extraordinarily high, given the intrinsic low value of the commodity. In the case of the Woodville-to-Hugo and the Woodville-to-Twinsburg aggregates shipments the railroad rates actually have exceeded the price of the product itself. In other words, at the time of their delivery to the customers, more than half of their costs represent the transportation charges applicable on the aggregates shipments. Accordingly, aggregates sales are extremely sensitive to even slight changes in the railroads' freight rates.

The Woodville-to-Hugo and the Woodville-to-Twinsburg aggregates shipments currently are handled in single-line movements by Consolidated Rail Corporation ("Conrail"). That all is about to change, if the Board were to approve the proposed transaction. Woodville is situated on a line slated to go to CSX Transportation ("CSXT"), and Hugo and Twinsburg, to Norfolk Southern Railway Company ("NS"), as are Mingo Junction, Ohio, and Weirton, West Virginia, to which MMM ships about 70,000 tons of lime annually. The proposed break-up of Conrail would result in what had been a

single-line becoming two-line railroad movements.

The difficulty, however, is that aggregates shipments cannot be interlined as other freight can. The increased costs of handling carloads of aggregates through junctions and, hence, the higher rates the participating railroads would need to assess foreclose the commodity's movement. The Chairman, President and Chief Executive Officer of CSX Corporation, Mr. John W. Snow, and the former Chairman of the Interstate Commerce Commission and former President and Chief Executive Officer of the Burlington Northern Railroad Company, testified on deposition that they knew of no instance when aggregates were handled over the lines of two Class I railroads.

To overcome the effective loss of railroad service, MMM asks for the imposition of modest conditions, if the Board otherwise were to find that the proposed transaction is consistent with the public interest, namely, the operation of run-through trains on movements of sixty 100-ton hopper cars, the pre-blocking of cars when fewer of them are tendered, thereby by-passing classification at the junctions, and five-year joint-rate agreements, to be effective from the effective date of Board's decision, at the existing level of rates, whether tariff, exempt circular or contract rates, subject to adjustments reflecting the railroads' costs. Such conditions, Mr. Snow acknowledged, would be within the power of the Board to prescribe and in no way would offend the terms of applicants' agreement for the division of the Conrail properties.

This submission is supported by the attached Verified Statement of Mr. Stephen P. Zelnak, Jr., Chairman and Chief Executive Officer of Martin Marietta Materials, and by the attached statements of Mr. S. R. Terhune, Vice President of The Honker Company, Cleveland, Ohio, Mr. James G. Ruiz of the Traffic & Transportation Department of Wheeling Pittsburgh Steel Corporation, Wheeling, West Virginia, and The Honorable Richard A. Harman, Mayor of the Village of Woodville, Ohio.

II.

EVIDENTIARY SUBMISSION

A.

The advantages of single-line service are among the foremost public benefits to be attained by the proposed transaction.

"One of the major benefits of this transaction," said Mr. John W. Snow, Chairman, President and Chief Executive Officer of CSX Corporation, at page 9 of his Verified Statement, page 311 of vol. 1 of the Application, CSX/NS-18, filed June 23, 1997, "will be the dramatic increase in the single-line routes available to shippers throughout the East." Mr. Snow continued:

The inherent superiority of single-line service over interline service has long been recognized in the railroad industry. It translates into enhanced operating efficiencies, reduced costs, reduced transit time and less handling of freight.

Mr. Snow, over the succeeding several pages of his Verified Statement, enumerated the several benefits flowing from single-line railroad service: Less handling of freight, reduced transit time,

increased reliability of service, reduction in equipment cycle time, more efficient utilization of equipment, improved safety, decreased risk of loss and damage, resulting in the expansion of the shippers' market reach, with "more sales opportunities for sellers and more options for receivers." V.S., p. 10, vol. 1, p. 312.

Mr. Snow's approbation of single-line railroad service was echoed by Mr. Darius W. Gaskins, former Chairman of the Interstate Commerce Commission and former President and Chief Executive Officer of the Burlington Northern Railroad Company, testifying on behalf of CSX. At page 15 of his Verified Statement, page 103 of vol. 2A of the Application, Mr. Gaskins declared, "In my opinion, a central advantage of the proposed transaction is the expansion of single-line services." Mr. Gaskins stated, "Single-line service is generally superior to interline service." V.S., p. 13, vol. 2A, p. 101. Dr. Gaskins continued, "The advantages of single-line rail service to customers have long been recognized." At page 14 of his Verified Statement, page 102 of vol. 2A of the Application, Mr. Gaskins explained:

During my tenure at Burlington Northern, we began a series of initiatives designed to remedy the pronounced service problems we persistently encountered on interline lanes. Despite our efforts to create an interline service that appeared to be seamless to the customer, we had significant difficulties. Cars were frequently delayed, lost mis-switched, and inefficiently prioritized -- while each carrier pointed to the other as the guilty party. As any inventory management professional will state, an increase in either will lead to a costly increase in product inventory levels, further reducing the attractiveness of rail.

Other CSX witnesses testified to the same effect as to the

advantages of railroad single-line service. See, pages 21-29 of the Verified Statement of Mr. Christopher P. Jenkins, pages 424-433 of vol. 2A of the Application, page 10 of the Verified Statement of Mr. John W. Orrison, page 14 of vol. 3A of the Application, and pages 30-32 of the Verified Statement of Dr. Joseph P. Kalt, pages 31-33 of vol. 2A of the Application.

B.

Terminating single-line service and
changing to interline rail service
correspondingly disadvantages affected shippers.

At their depositions, the CSX witnesses acknowledged that going from single-line service to interline service would reduce the efficiencies and increase the costs of the railroad operations at the junctions, to the detriment of the affected shippers and their customers.

Mr. Snow, at pages 169-170 of the deposition transcript, a copy of which is attached, testified, as follows:

Q. [By Mr. Kahn] Would not going from single line service to two-railroad or joint line service be correspondingly disadvantageous. Would there not be greater handling of freight?

* * *

A. I think it would.

Q. And would it not result in extended transit time?

A. Normally it would.

Q. And would it not result in diminished operating efficiencies?

A. Certainly that is potential consequence, yes.

Q. And would it not result in increased operating costs?

A. Insofar as there is additional handling which would be contemplated as a result, yes, there would be additional costs.

Q. And greater risk of loss and damage?

A. Yes, it's inherently more complicated when you have two people in the joint route or in the route.

Q. And diminished market reach?

A. Could well have that effect, yes.

Q. And fewer sales opportunities for sellers?

A. Yes, for the very reason that the single line service expands the opportunities, correct.

Mr. Gaskins was no less emphatic in detailing the disadvantages of going from single-line to interline or joint-line railroad service. Mr. Gaskin's testimony was, as follows:

Q. [By Mr. Kahn] Now, Mr. Gaskins, would not going from single-line service to two-railroad service be correspondingly disadvantageous.

A. Most likely it would be.

Q. Would there not be greater handling of freight?

A. Yes.

Q. Would there not be extended transit times?

A. There probably would be.

Q. Would there not be increased operating costs?

A. Yes, there would be.

Q. Would there not be less efficient utilization of equipment?

A. Probably.

Q. Would there not be greater risk of loss and damage?

A. Yes.

Q. Would there not be fewer sales opportunities for

sellers?

A. Yes.

* * *

Q. Mr. Gaskins, would there be fewer options for buyers, again using the term buyers as the customers of the shippers?

A. Probably, probably [Tr. 15-16].

While understandably Mr. Snow and Mr. Gaskins were unfamiliar with MMM's Woodville, Ohio, plant and with the details of the transportation of its output, including the movement by rail of aggregates shipments to customers at Hugo and Twinsburg, Ohio, it, nevertheless, is significant that, despite their many years of experience in the railroad industry, neither one knew of any interlined or joint-line movements of aggregates involving two Class I railroads.

At pages 171-72 of his deposition transcript, Mr. Snow testified:

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

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

Q. And gravel?

A. The same.

Q. Aggregates?

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

Mr. Gaskins corroborated Mr. Snow's statement. At page 19 of his deposition transcript, Mr. Gaskins testified:

Q. With reference to aggregates, Mr. Gaskins, do you know any instance when there are interlined movements, two-line movements, not including short line by Class I railroads?

* * *

A. Class 1's. I'm not aware. There may well be, but I'm not aware of them.

Mr. Stephen P. Zelnack, Jr., MMM's Chairman and Chief Executive Officer, in his Verified Statement, which is attached, underscored the point that had been made by the CSXT witnesses, saying, "Martin Marietta knows of no two-line haul situations that involve rates or service equal or comparable to single line-hauls." The less efficient service and, hence, higher rates effectively foreclose two-line movements of aggregates.

C.

The interchange between CSXT
and NS at Toledo is certain
to be cumbersome and time consuming.

MMM's Woodville plant is situated on the stub-end of a railroad line, extending in a southeasterly direction from Toledo, Ohio, to Woodville, Ohio. The plant is on a line currently owned and operated by Conrail slated to be assigned to CSXT; in other words, CSXT is expected to originate all of the rail shipments from MMM's Woodville plant.

CSXT's witness in charge of preparing the operating plan for the railroad was Mr. John W. Orrison, General Manager, Field Operations Development, whose Verified Statement appears beginning at page 5 of vol. 3A of the Application, filed June 23, 1997. At page 92 of his Verified Statement, page 192 of vol. 3A, Mr. Orrison explained how operations would be conducted by CSXT at Toledo

following the proposed break-up of Conrail:

Toledo will continue to play a prominent role in the expanded CSX. The projected operation will use Conrail's Stanley Yard to perform all northbound blocking for easter Michigan points, to block for the shared territory in the Detroit area, to provide interchange service in Toledo, and to support local industrial activity.

Outbound blocks will also be made for all east, west and southbound traffic. Projected activity at Stanley Yard will be about 1,300 cars per day, with 40 classifications.

Switching activity at Walbridge Yard will be absorbed at Stanley Yard. Walbridge will be used for block swapping, staging unit trains, and loading/unloading finished automobile traffic.

As is evident, Mr. Orrison's testimony pertaining to CSXT's proposed operations in Toledo and its handling of cars being interchanged to and from NS -- the complete text of which was excerpted -- was long on generalizations and short on specifics; it hardly affords any degree of comfort to a shipper, such as MMM, whose cars are denied alternative railroad routing and necessarily must pass through the Toledo gateway. Mr. Orrison's deposition testimony was no more reassuring.

Although Mr. Orrison contended that "CSX intends to serve the [Woodville] plant with the same type of local operations that Conrail provides today [Tr. 25-26]," Mr. Orrison acknowledged that he had no personal knowledge of how the plant currently is served by Conrail.

Q. [By Mr. Kahn] [C]an you tell me from your personal knowledge how Conrail currently serves the Woodville lime plant?

A. I can tell you from my personal knowledge how [sic] Conrail currently serves the plant.

Q. Can you tell me from your personal knowledge whether the service is rendered by Conrail on a daily basis, weekly basis, or what?

A. It is my understanding, although I don't know that this is correct, that it is a daily basis, that there is a local that operates on the line.

Q. Is that based on your personal knowledge or information gained through the course of this proceeding?

A. It is based off [sic] information gained in the development of this operating plan [Tr. 20].

Mr. Orrison conceded having even less knowledge when it came to how Conrail currently handles MMM's cars from the Woodville plant to certain of MMM's customers in the Cleveland and Pittsburgh areas:

Q. Do you have any knowledge of how the lime cars consigned to customers in Pittsburgh area are handled?

A. I do not have any knowledge of that.

Q. Do you have any knowledge how the cars containing aggregates and consigned to customers in the Cleveland area are handled by Conrail?

A. I do not have knowledge of their current operations, no.

Q. You don't know whether those cars are handled as single cars or in blocks of cars; is that correct?

A. That is correct [Tr. 21-22].

In fact, MMM's customers at Hugo and Twinsburg, Ohio, and those at Mingo Junction, Ohio, and Weirton, West Virginia, are situated on Conrail lines designated to be assigned to NS; in other words, on shipments to those customers, the cars are expected to be picked up at the Woodville plant by CSXT and to be delivered to certain of MMM's customers in the Cleveland and Pittsburgh areas by NS. What had been a single-line rail movement would become an

interline or joint-line railroad movement, with the interchange occurring at Toledo.

Mr. Orrison was asked how CSXT proposed to effect the Toledo interchange of MMM's cars, originated by CSXT, for delivery by NS to MMM's customers on its line.

Q. And how is the interchange between CSXT and Norfolk Southern in the Toledo terminal area currently effected?

A. Are you asking of the interchange between CSXT and Conrail?

Q. Norfolk Southern, I beg your pardon.

A. Those interchanges are not affected.

Q. Today how would you interchange equipment from the Walbridge Yard [of CSXT] to Norfolk Southern?

A. There is a movement of a train called a puller operation that operates between Walbridge Yard and Norfolk Southern's Homestead Yard at Ironville.

* * *

Q. And does CSXT propose to continue that method of interchange following the board's approval of the proposed transaction?

A. It is our intention to continue that, yes.

* * *

Q. Do you know for a fact that the interchange between CSXT and Norfolk Southern will continue as currently effected between the Walbridge Yard and the Homestead Yard?

A. I stated earlier that the current interchange is between Walbridge and Homestead Yard. And that is your question, is that not correct?

Q. And will that continue?

A. The interchange will happen because of us acquiring Stanley Yard. We will be interchanging from Stanley Yard to Homestead through this puller operation [Tr. 29-30].

What is shocking about Mr. Orrison's deposition testimony is

that, notwithstanding that he was the sponsoring witness for CSXT's operating plan, Mr. Orrison was woefully uninformed, not only about how Conrail currently handles MMM's shipments, but, even more astonishingly, how CSXT anticipates handling MMM's cars to be interchanged to NS at Toledo following the proposed break-up of Conrail. Mr. Orrison could not have been more emphatic in stating that the interchange between CSXT and NS would continue as it heretofore has been conducted, except for the shift from by CSXT from the Walbridge Yard to the Stanley Yard, with the cars being handled to and from NS's Homestead Yard. Obviously, Mr. Orrison was unaware that NS does not contemplate interchanging cars with CSXT at its Homestead Yard, as it formerly did, but, rather, anticipates that the interchange will occur at Yard E. At page 178 of his Verified Statement, page 246 of vol. 3B, Mr. D. Michael Mohan, the sponsoring witness for NS's operating plan, was explicit in stating that "CSX interchange traffic will be accomplished just north of Stanley Yard (which will be allocated to CSX) at Yard "E" which will be assigned to NS." In other words, MMM is expected to entrust its outbound railroad shipments from its Woodville plant to a railroad whose principal witness on this subject doesn't even know how the interchange of equipment to NS at Toledo is to be effected following the proposed break-up of Conrail.

What is certain, however, is that it likely would take several days' time for MMM's cars to pass through the Toledo gateway. The cars first would need to be picked up at the Woodville plant for movement to CSXT's Stanley Yard. Mr. Orrison was asked:

Q. Do you have any idea how much time will elapse between the time the cars are picked up at the Woodville lime plant and the time they are delivered at the Stanley Yard?

A. It would be within the day of operation of the local train [Tr. 29].

Mr. Orrison was asked how long it would take for the cars to be moved from the Stanley Yard to the NS yard.

Q. And how frequently does CSXT today interchange cars with Norfolk Southern?

A. That is a daily operation.

Q. And do you know that time of day that occurs?

A. No, I do not [Tr.30].

Finally, Mr. Orrison was asked how long a car may sit in NS' yard before it is classified for departure on a road train for its destination.

Q. Do you have any idea how long the cars normally remain at Norfolk Southern's Homestead Yard before they leave the yard?

A. No [Tr. 31].

It may be that shippers of other freight can adapt to the multiple handling and time delays that the interchange of cars from CSXT to NS at Toledo will occasion; MMM cannot. Its commodities are ubiquitous, and the loss of single-line service and the greater operating costs and, hence, increased freight rates that inevitably will result cannot be borne by it if it is to remain competitive in the markets which it heretofore has been able to serve. As a practical matter, MMM will be denied the opportunity to market its products; it will have no railroad service.

D.

The inefficiencies of two railroad
or joint-line service can be
ameliorated by appropriate conditions.

CSXT's witnesses acknowledged that the disadvantages of going from single-line to interline railroad service can be minimized by suitable conditions to be imposed by the Board. Mr. Snow was asked:

Q. Would the operation or the handling of block cars as a unit, which would certainly be a means of facilitating an interchange, would that offend the agreement [between CSX and NS]?

A. No, not to my knowledge.

Q. Would the operation of run-through trains be another way addressing the problems of interchange?

A. I think blocking, run-through arrangements -- there are various arrangements that could mitigate the problems.

Q. Would you consider your Tropicana train to be a run-through train, the arrangement between CSXT and Conrail?

A. Surely, that's a run-through.

Q. And would such a run-through train arrangement be offensive to the agreement, Mr. Snow, the agreement between Norfolk Southern and CSXT?

A. No. If NS and CSXT can come to agreement on a run-through train, I don't see anything inherently offensive about that.

Q. Would haulage rights be another means of overcoming the inherent problems of effecting an interchange.

A. I think haulage rights could in certain cases be an appropriate response to the problem.

Q. And would an agreement among CSXT and Norfolk Southern for haulage rights be offensive to the agreement, do you believe?

A. Not inherently offensive, no.

Q. How about trackage rights, Mr. Snow?

A. Conceivably trackage rights could be a way to address the problem.

Q. Would line sales be yet a further means of overcoming an interchange problem?

A. Conceivably, under a given set of circumstances.

* * *

Q. Granted that you would much rather work these things out amicably with the participation of Norfolk Southern and the shipper, failing that, would you have any views as to whether the Surface Transportation Board, as a condition of its approval of the transaction might impose one or another of these requirements?

A. Well, it's my hope that we will have addressed the shipper concerns jointly with NS and that prescriptions won't -- conditions, prescriptions won't be required. And I'm confident that we will be able to do that in most cases. And you are asking if we aren't would we be opposed to prescription and the answer would be, I would have to know that the nature of the prescription would be [Tr. 173-176].

Mr. Gaskins' testimony agreed with that of Mr. Snow as to the ameliorating conditions that the Board would be able to impose to minimize the affect upon a shipper in having its shipments go from single-line to joint-line railroad service. He testified:

Q. Mr. Gaskins, are there steps that cooperating railroads might take to minimize the difficulties of two-railroad interchange service?

A. Yes, there are steps obviously that can be taken.

Q. Could you identify what they might be?

A. Well, historically railroads have agreed to long-term contractual arrangements that tend to bridge the gap where the contracts spell out specific operating responsibilities. I know at the Burlington Norther we had an arrangement with a terminal in Memphis area in which we alternated operation of the property from year to year in order to maintain appropriate coordination of traffic.

Q. Would trackage rights be something that might be included in an agreement?

A. Trackage rights have been included historically. And one of the purposes is to help solve these problems. Run-through trains, where you power run through, is another institutional arrangement that has occurred in the case of coal movements in particular to help coordinate interline movements. So there are lost of things that railroads have turned to.

Q. Haulage rights, for example?

A. Yes, haulage rights have been used.

Q. Blocking of cars?

A. Yes. There's a myriad of small things that are done at an operating level that attempt to solve these problems.

Q. Large [sic] reciprocal switching districts?

A. That been used, yes.

Q. How about line sales?

A. Well, there's always the possibility that railroads can rationalize their systems by selling lines to one another. I don't know of an example, though, where that's been -- I'm just not familiar with a situation where that been used to solve these kinds of problems.

Q. The foregoing which are arrangements that cooperating railroads have worked out among themselves, do you think that those might be imposed by the Surface Transportation Board if it deemed the imposition to such conditions were required to assure the adequacy of transportation services?

* * *

A. I know historically that the predecessor to the Surface Transportation Board has imposed certain conditions on mergers. And over time the imposition of those conditions has changed with their perception of what the competitive realities are.

When I first joined the commission, the policy was that DT&I, the famous DT&I conditions were imposed on all mergers under the guise at that point that that was protecting competition. With the benefit of additional thought, the commission has stepped back from the

imposition of those conditions beginning in the early 1980s. So yes, the commission and its successor can impose conditions and has in the past.

Q. Such as trackage rights, for example.

A. Yes.

Q. Such as independent pricing authority, for example?

A. Yes [Tr. 19-22].

It is against this background of CSXT's witnesses' acknowledgement of the authority of the STB to impose conditions ameliorating the adverse effects of going from single-line to joint-line railroad movements and of their detailing of the sorts of arrangements that can minimize the greater costs and, hence, the increased rates that shippers would suffer that MMM asks for the imposition of conditions tailored to its unique requirements as a shipper of aggregates and, to a lesser extent, lime from its Woodville plant.

III.

REQUEST FOR CONDITIONS

The applicants can be counted on to contend that no conditions are required, that the Board can approve their proposal for dividing Conrail's lines without the need for imposing any conditions. Trust us, they'll say; we'll work with the shippers, our valued customer, to provide them with the level of rates and the measure of service that will assure that they will be better off because the proposed transaction. That refrain has been heard before; indeed, it has been sounded by the railroads whenever the

have advanced an acquisition or merger proposal. The affected shippers, however, are unpersuaded that the railroads' promises have been kept.

The exuberance of the applicants is no substitute for the carefully conditioned implementation of their acquisition and merger proposal. The lesson to be learned from the experience of the Union Pacific Railroad Company, first, following its acquisition of the North Western and, more recently, of the Southern Pacific, is that the optimism of the applicants must be met with a good bit of healthy skepticism, by the Board, as well as their customers.

The conditions that the proposed division of Conrail requires are unprecedented, but never before has the Board, or, indeed, the ICC, been confronted by the proposed break-up of a major, Class I railroad and the need for conditioning its approval of the transaction to assure the rendition of adequate railroad service. The conditioning power of the Board, however, is virtually limitless, and the current circumstances call for its innovative and resourceful use.

The acquisition by MMM of the Toledo-to-Woodville line and making it available to both CSXT and NS certainly would overcome the company's concerns about the consequences of two-line railroad service. Similarly, requiring CSXT to grant trackage rights to NS on its line between Toledo and Woodville would have the effect of preserving single-line service for the aggregates movements to Hugo and Twinsburg and the lime movements to Mingo Junction and Weirton.

As much as we would welcome such relief, we do not at this time seek it. We appreciate the problems that attended the partitioning Conrail and have no doubt of the difficulties that CSXT and NS may have had in arriving at their agreement for the railroad's division. We do not propose to redraw the applicants' railroad map; the conditions we seek are wholly compatible with their proposal.

MMM asks that, if the Board otherwise were to find the transaction to be consistent with the public interest, it be conditioned so as to require CSXT to cooperate with NS in the operation of run-through trains from Woodville to stations on NS, provided, however, that there be a tender at any one time of no fewer than sixty 100-ton hopper cars.

CSXT is well familiar with the operation of run-through trains. Mr. Snow, at page 174 of his deposition testimony, cited the Tropicana train, which originates on CSXT and terminates on Conrail, as an example of a run-through train. Indeed, CSXT participates in the operation of a run-through train of MMM's lime shipments, from Woodville to Manatee, Michigan. Mr. Orrison, at page 21 of his deposition testimony, referred to it. The train, Mr. Orrison said, moves as a unit train, first, on Conrail's line from Woodville to Toledo and, then, on CSXT's line from Toledo to Manatee, a point he identified as being north of Grand Rapids.

We ask that proposed transaction be conditioned so as to require a similar arrangement for run-through trains between Woodville and stations on NS. As Mr. Snow acknowledged, at page

174, of his deposition transcript, such cooperative dealings between CSXT and NS would not be offensive to the terms of their agreement to divide Conrail.

MMM, further, asks that, if fewer than sixty, but not less than ten, 100-ton hopper cars be tendered at any one time for transportation to stations on NS, that they be pre-blocked and handed off as a block of cars by CSXT to NS so as to pass through the Toledo gateway without the need for their classification.

Mr. Gaskins, at page 21 of his deposition transcript, agreed that the blocking of cars would be a means of solving the problems that inhere in the interchanging of cars between connecting railroads. And Mr. Snow, at page 173 of his deposition transcript, declared that the handling of blocked cars as a unit would not offend the terms of the CSXT-NS agreement providing for Conrail's break-up.

MMM, finally, asks that its approval of the proposed transaction be conditioned by a requiring that the applicants enter into five-year joint-rate agreements with MMM, effective the date the Board's decision becomes effective, at the existing level of aggregates and lime rates, whether tariff, exempt circular or contract rates, provided, however, that such rates shall be subject to eighty-five percent of the unadjusted RCAF increases.

We understand that the Board heretofore has not imposed a rate condition such as we seek, but we say, again, neither has the Board, or the ICC, for that matter, previously been asked to approve the break-up of a major, Class I railroad and to address

the problems it occasions. Mr. Snow, at page 170 of his deposition transcript, acknowledged that going from single-line service to two-railroad service, as MMM faces, would increase the railroads' operating costs, with the result that the shipper would have "diminished market reach" and "fewer sales opportunities." Mr. Gaskins, at pages 15-16 of his deposition transcript, agreed. Indeed, in the absence of the rate condition we seek, there is not likely to be any joint-line movement of aggregates shipments; the traffic would dry up. Certainly, neither Mr. Snow, at pages 171-72 of his deposition transcript, and Mr. Gaskins, at page 19 of his deposition transcript, could not recall any movement of aggregates that required an interchange between two connecting Class I railroads.

Mr. Zelnak declared that, in the absence of the requested rate condition, the aggregates shipments from MMM's Woodville plant would cease:

Martin Marietta is deeply concerned that shipments from its Woodville facility are at high risk with the proposed acquisition of Conrail. The loss of this tonnage would negatively impact the entire Woodville operation and the earnings of MMMS.

The five years which we seek for the rate condition is no more time than is necessary for MMM to adjust to the proposed break-up of Conrail and to assess just how responsive to its needs the applicants' service will be. It conforms to the period of time that the Board has felt was required for the affected shippers to determine the effectiveness of the conditions it imposed in by its decision in Finance Docket No. 32760, Union Pacific Corp., et al.--

Control and Merger--Southern Pacific Rail Corp., et al., Decision No. 44, served August 12, 1997. See, also, Great Northern Pac.--Merger--Great Northern, 331 I.C.C. 228, 359 (1967), aff'd sub nom, United States v. I.C.C. 396 U.S. 494 (1970).

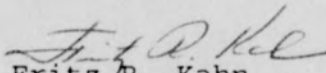
WHEREFORE, Protestant, Martin Marietta Materials, Inc., asks that, if the applicants' proposed transaction otherwise were found by the Board to be consistent with the public interest, its approval be conditioned upon the railroads' operation of run-through trains, handling of blocked cars and maintenance of rates, as requested.

Respectfully submitted,

MARTIN MARIETTA MATERIALS, INC.

By their attorneys,

Bruce A. Deerson
Vice President and General Counsel
Martin Marietta Materials, Inc.
P. O. Box 30013
Raleigh, NC 27622
Tel.: (919) 783-4506


Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: October 21, 1997

Martin Marietta Magnesia Specialties



2323 Eastern Boulevard
P.O. Box 15470
Baltimore, MD 21220-0470 USA
Telephone: (800) 648-7400
(410) 780-5500
Fax: (410) 780-5555

VARIFICATION

I, Melvin L. Schriefer, Jr. Traffic and Distribution Manager of Martin Marietta Magnesia Specialties Inc., have read the foregoing Comments and Request for Conditions of Martin Marietta Materials Inc., and I declare under penalty of perjury that the factual assertions are true and correct to the best of my knowledge.

Dated in Baltimore, Maryland this 21st day of October, 1997.


Melvin L. Schriefer, Jr.

VERIFIED STATEMENT
OF
STEPHEN P. ZELNAK, JR.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C. 20423

STB Finance Docket No. 33388

CSX CORPORATION, et al.,
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL, INC., et al.

VERIFIED STATEMENT
OF
STEPHEN P. ZELNAK, JR.

My name is Stephen P. Zelnak, Jr., and I am the Chairman and Chief Executive Officer of Martin Marietta Materials, Inc.

This statement is submitted in support of the conditions sought by Martin Marietta Materials, Inc. (Martin Marietta) if the STB were to approve the acquisition of Conrail, Inc. by CSX Transportation and Norfolk Southern Railway. The basis for the requested conditions is concern with the impact to shipments of aggregates and lime from Martin Marietta's Woodville, Ohio, lime plant/limestone quarry. Most of these shipments presently move single-line via Conrail and would need to move, subsequent to acquisition, by CSX origin and NS destination.

Martin Marietta is a New York Stock Exchange company with 1996 revenues of \$721,947,000. Martin Marietta is the second largest aggregates supplier in the U. S. and one of the nation's leading suppliers of magnesia products through our direct subsidiary, Martin Marietta Magnesia Specialties (MMMS). Martin Marietta ships approximately 7.5 million tons of material by rail with CSX and NS being the two largest providers of rail transportation services. Martin Marietta is also a major supplier of ballast to CSX, NS and a number of other Class 1 and shortline railroads.

The Woodville quarry and lime plants were established (1) to support our Manistee, Michigan, magnesia operation through the supply of approximately 270,000 tons of lime annually, and (2) to supply lime to the steel industry. Several years ago MMMS began shipping lime fines and limestone aggregate by rail to a number of construction-related customers in what proved to be a successful effort to market by-products. Shipments in 1996 were 580,000 tons (aggregate 520,000, lime 60,000). Tonnages have ranged from 565,000 tons to 860,000 tons.

This tonnage is absolutely critical to sustaining the Woodville operation and is being shipped at extremely marginal rates in order to reduce costs in the face of significant competition, and without acceptable transport economics, could not otherwise be marketed for the benefit of MMMS, its customers, and the local community. All of this tonnage has moved single-line by Conrail, but with the acquisition would become two-line hauls with CSX origin and NS destination. Additionally, Woodville competes with producers who currently ship with single-line Conrail Service who will continue to enjoy single-line service post-merger under NS.

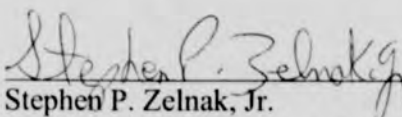
If Woodville rates and service were to remain comparable to present levels, we believe the tonnage could remain at current volumes in spite of competition from lime and aggregate delivered by single-line service and/or by water. However, Martin Marietta knows of no two-line haul situations that involve rates or service equal or comparable to single-line hauls. From our experience, two-line hauls always involve higher rates, with the revenues divided between the railroads, less efficient service because of transit times between rail yards, and consequently a negative impact on shipping cost.

In addition to the MMMS shipments noted above, significant efforts have been made to develop new, rail-based business into historical points that will become single-line CSX hauls post acquisition (Greater Detroit and points west and to western Indiana). MMMS has had no success in developing this business because of slag and water tonnage in Detroit and local stone quarries in the other areas. From MMMS review of the lines that will become CSX owned post acquisition, we do not believe we can develop competitive traffic to any degree of significance to offset the probable loss of business entailing a two-line move.

The inherent advantages of single-line service have been repeatedly touted by CSX and NS management as primary reasons for the acquisition of Conrail, Inc. In the case of Martin Marietta's shipments from Woodville, Ohio, we are *losing single-line service* for a level of tonnage critical to our economic viability. We have endeavored, to no avail, over recent months to reach an agreement with the railroads that would assure us of comparable rates and service. We believe the inability to reach an agreement to continue present rate/service levels affirms the negative economic impact of two-line hauls of aggregates and lime.

Martin Marietta is deeply concerned that shipments from its Woodville facility are at high risk with the proposed acquisition of Conrail. The loss of this tonnage would negatively impact the entire Woodville operation and the earnings of MMMS. It is on this basis that Martin Marietta files its request for conditions to the acquisition of Conrail, Inc. by CSX Transportation and Norfolk Southern. We respectfully request consideration and redress by the Surface Transportation Board of our concerns expressed herein.

Submitted this, the 17th day of October 1997.



Stephen P. Zelnak, Jr.
Chairman and Chief Executive Officer

STATE OF North Carolina

Wake County

I, Thomas Lee, a Notary Public for said County and State, do hereby certify that, Stephen P. Zelnak, Jr., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

My Commission expires 10/2/2001

SUPPORTING STATEMENTS

THE HONKER COMPANY

12400 BROADWAY AVENUE
CLEVELAND, OHIO 44125

Telephone (216) 587-2700
Fax 216 587-2711

October 2, 1997

TO: Surface Transportation Board
RE: Proposed Conrail/NS Service Plan Woodville, Ohio Origin

Dear Board Members:

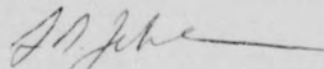
We are writing this letter in support of the Inconsistent Application filed by Martin Marietta Magnesia Specialties Inc. in regard to the proposed change in carriers at their Woodville, Ohio Plant.

The potential loss of single line service for products moving from the above point to our plant, The Honker Company at Hugo Sand Company-Twin Lakes Plant, Kent, Ohio could have a negative impact on both service efficiency and the current rate structure.

Martin Marietta is very concerned about this impact and the potential for lost business due to the proposed change. We share these concerns as the recipients of the tonnage supplied by Martin Marietta to our facility, as our plant uses 245,000 tons of crushed stone annually.

Again, we support Martin Marietta in their efforts to insure cost efficient service and rates.

THE HONKER COMPANY



S.R. Terhune
Vice President

SRT:ish



JAMES G. RUIZ
TRAFFIC & TRANSPORTATION DEPARTMENT

PHONE: (304) 234-2833
FAX: (304) 234-2823

October 15, 1997

TO: Surface Transportation Board

RE: Proposed Conrail/NS Service Plan Woodville Ohio Origin

Dear Board Members:

We are writing this letter in support of the Inconsistent Application filed by Martin Marietta Magnesia Specialties Inc. in regard to the proposed change in carriers at their Woodville, Ohio Plant.

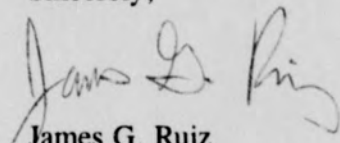
The potential loss of single line service for products moving from the above point to our plant Wheeling-Pittsburgh Steel Corporation in Mingo Junction, Ohio could have a negative impact on both service efficiency and the current rate structure.

Martin Marietta is very concerned about this impact and the potential for lost business due to the proposed change. We share those concerns as the recipients of the tonnage supplied by Martin Marietta to our facility.

Our facility uses 50,000 tons of Dolomitic Lime annually.

Again, we support Martin Marietta in their efforts to insure cost efficient service and rates.

Sincerely,


James G. Ruiz
Traffic & Transportation



Village of Woodville

"LIME CENTER OF THE WORLD"

SANDUSKY COUNTY

WOODVILLE, OHIO 43469

October 16, 1997

TO: Surface Transportation Board

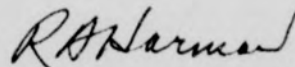
RE: Proposed Conrail/NS Service Plan Woodville Ohio Origin

Dear Board Members:

The recent split up of Conrail and proposed change in carriers may have significant adverse effects on the Martin Marietta Magnesia Specialties - Woodville plant. This plant is the largest employer in the village of Woodville and a significant employer in Sandusky County. In the highly competitive lime and aggregate industry an increase in costs to the customer, whether they be manufacturing or transportation, can be immediately translated into job losses and financial hardship. Martin Marietta Magnesia Specialties has been a good neighbor and an important contributor to the Woodville community financially as well as community action and volunteer work.

In considering the overall economic impact of this profound restructuring with three of America's greatest railroads, I urge you to take action which preserves the viability of this important employer and member of the Woodville community.

Sincerely,



The Honorable Richard A. Harman
Mayor, Village of Woodville

RAH/bje

EXCERPT FROM THE DEPOSITION TESTIMONY OF
JOHN W. SNOW

September 18, 1997

1 time together.

2 A. Thank you.

3 Q. I have no further questions at this
4 time.

5 MR. LYONS: We've been in session for
6 about an hour and 40 minutes. Would a
7 five-minute break be in order prior to the next
8 party?

9 (Recess.)

10 EXAMINATION BY COUNSEL FOR
11 MARTIN MARIETTA MATERIALS, INC.

12 BY MR. KAHN:

13 Q. Mr. Snow, my name is Fritz R. Kahn and
14 I represent Martin Marietta Materials, Inc. of
15 Raleigh, North Carolina. I have very few
16 questions and the initial one, it will be a
17 follow-up to a question or two that you were
18 asked by Mr. McBride.

19 As I recall, you practiced law with the
20 law firm of Wheeler & Wheeler?

21 A. Yes, I did.

22 Q. And do you recall what years that may
23 have been?

24 A. That was late '60s, maybe '67, '66
25 through 1972, I think.

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1 Q. And Wheeler & Wheeler was known as a
2 transportation law firm, was it not?

3 A. Yes, it was.

4 Q. And Wheeler & Wheeler represented one
5 or more railroads?

6 A. Yes, it did.

7 Q. And in practicing with Wheeler &
8 Wheeler, you were admitted to practice before the
9 Interstate Commerce Commission?

10 A. I must have been, Mr. Kahn, because I
11 did appear over there a few times.

12 Q. So I think it's safe to say, would it
13 not be, Mr. Snow, that you have more than simply
14 a layman's knowledge of the regulatory scheme to
15 which the railroads of this nation are subject?

16 A. Yes, I think that's fair, recognizing
17 laymen don't know very much.

18 Q. And then let me turn to the subject
19 that was introduced by Mr. Stone. I thought
20 Mr. McBride would follow up on it but he did not
21 to the extent that I would like to. And I would
22 like to ask you a couple of questions with
23 respect to your statement, particularly on page 9
24 of your statement, which is page 311 in volume
25 1. In the middle of the top paragraph, you say:

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1 These public benefits can be broadly
2 characterized as the benefits resulting from more
3 efficient single line service than the other
4 ones.

5 Do you continue to be of the view that
6 the availability of single line service will be
7 one of the benefits flowing from the proposed
8 transaction?

9 A. Yes, I do.

10 Q. Further down on the page, you state,
11 quote: The inherent superiority of single line
12 service over interline service has long been
13 recognized in the railroad industry. I assume
14 you continue to be of that view, Mr. Snow?

15 A. Yes, I stand by that statement.

16 Q. And then over the next few pages, you
17 indicate just what, in your view, those
18 advantages of single line service are: Less
19 handling of freight, reduced transit time,
20 enhanced operating efficiencies, reduced
21 operating costs and more efficient utilization of
22 equipment, reduced risk of loss and damage,
23 expanded market reach, more sales opportunities
24 for sellers, more options for buyers.

25 Do you continue to be of that view?

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1 A. Yes, I do.

2 Q. Would not going from single line
3 service to two-railroad or joint line service be
4 correspondingly disadvantageous? Would there not
5 be greater handling of freight?

6 A. Conceivably, yes.

7 Q. Can you conceive of a situation where
8 that would not be the case?

9 A. Depending on what sort of arrangement
10 was worked out between the joint line carriers,
11 they might be able to minimize some of the
12 negatives that come from the substitution of the
13 joint line service for the single line service.
14 But I'm prepared to say that in situations where
15 we have, as a result of the merger, present a
16 shipper with joint line haul in lieu of a former
17 single line haul, we're prepared to work with the
18 shipper to try and tailor a solution that
19 addresses those concerns.

20 Q. If I may, Mr. Snow, I would like to
21 defer for a while the discussion of solutions but
22 I just wondered whether, in the absence of an
23 agreement in between the connecting railroads, if
24 the performance in two-railroad or joint line
25 service would not result in the greater handling

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1 of freight?

2 A. I think it would.

3 Q. And would it not result in extended
4 transit time?

5 A. Normally it would.

6 Q. And would it not result in diminished
7 operating efficiencies?

8 A. Certainly that is a potential
9 consequence, yes.

10 Q. And would it not result in increased
11 operating costs?

12 A. Insofar as there is additional handling
13 which would be contemplated as a result, yes,
14 there would be additional costs.

15 Q. And greater risk of loss and damage?

16 A. Yes, it's inherently more complicated
17 when you have two people in the joint route or in
18 the route.

19 Q. And diminished market reach?

20 A. Could well have that effect, yes.

21 Q. And fewer sales opportunities for
22 sellers?

23 A. Yes, for the very reason the single
24 line service expands the opportunities, correct.

25 Q. And Mr. Snow, will not the breakup of

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1 Conrail as proposed in the application that's
2 pending before the Surface Transportation Board
3 result in certain shippers which heretofore have
4 had single line service on Conrail being subject
5 to joint line or interline service involving
6 movements over NS and CSXT?

7 A. Yes, there are some instances like
8 that.

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

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

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

18 A. Not that I'm aware of.

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

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

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1 Q. And gravel?

2 A. The same.

3 Q. Aggregate?

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

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

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

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

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1 answer is going to be very much an outgrowth of a
2 detailed understanding on the part of the
3 carriers of the precise service requirements and
4 lading characteristics, flow characteristics, so
5 that a well-thought-through and specific,
6 tailored sort of response can be made to the
7 individual shipping characteristics.

8 Q. The three subjects that you mentioned,
9 and I'm paraphrasing, devoting special attention
10 to the shippers' needs to get through the
11 interchange, some sort of arrangement for
12 expeditious handling of the cars, some sort of
13 contractual arrangement between the carriers
14 relating to tracing and liability, these would
15 not in any way offend the agreement between CSXT
16 and Norfolk Southern, as you understand it, would
17 they?

18 A. I don't think they would.

19 Q. Would the operation or the handling of
20 block cars as a unit, which would certainly be a
21 means of facilitating an interchange, would that
22 offend the agreement?

23 A. No, not to my knowledge.

24 Q. Would the operation of run-through
25 trains be another way of addressing the problems

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1 of interchange?

2 A. I think blocking, run-through
3 arrangements -- there are various arrangements
4 that could mitigate the problems.

5 Q. Would you consider your Tropicana train
6 to be a run-through train, the arrangement
7 between CSXT and Conrail?

8 A. Surely, that's a run-through.

9 Q. And would such a run-through train
10 arrangement be offensive to the agreement,
11 Mr. Snow, the agreement between Norfolk Southern
12 and CSXT?

13 A. No. If NS and CSXT can come to
14 agreement on a run-through train, I don't see
15 anything inherently offensive about that.

16 Q. Would haulage rights be another means
17 of overcoming the inherent problems of effecting
18 an interchange?

19 A. I think haulage rights could in certain
20 cases be an appropriate response to the problem.

21 Q. And would an agreement among CSXT and
22 Norfolk Southern for haulage rights be offensive
23 to the agreement, do you believe?

24 A. Not inherently offensive, no.

25 Q. How about trackage rights, Mr. Snow?

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1 A. Conceivably trackage rights could be a
2 way to address the problem.

3 Q. Would line sales be yet a further means
4 of overcoming an interchange problem?

5 A. Conceivably, under a given set of
6 circumstances.

7 Q. Finally, how about enlarged switching
8 districts?

9 A. I don't want to rule out any
10 conceivable solutions here that might be workable
11 in a given circumstance. If the question is
12 expanding SAAs or shared areas, I think those
13 were so hard bargained and fought out that they
14 would be very difficult to get NS and CSX to come
15 to closure on, having been a party at the
16 40,000-foot level to producing those agreements.

17 But certainly I think we're prepared to
18 look at what will work to address these problems
19 and we've taken note of those problems. And
20 we're interested in trying to find answers to those
21 problems.

22 Q. Granted that you would much rather work
23 these things out amicably with the participation
24 of Norfolk Southern and the shipper, failing
25 that, would you have any views as to whether the

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1 Surface Transportation Board, as a condition of
2 its approval of the transaction, might impose one
3 or another of these requirements?

4 A. Well, it's my hope that we will have
5 addressed the shipper concerns jointly with NS
6 and that prescriptions won't -- conditions,
7 prescriptions won't be required. And I'm
8 confident that we will be able to do that in most
9 cases. And you're asking me if we aren't, would
10 we be opposed to prescription and the answer
11 would be, I would have to know what the nature of
12 the prescription would be.

13 Q. Certainly. Let me just wind up by
14 asking you, Mr. Snow, whether you personally are
15 familiar with Martin Marietta Materials'
16 Woodville lime plant in Woodville, Ohio.

17 A. No, I'm not but I'm very familiar with
18 the company generally.

19 Q. Are you aware to which one of the
20 railroads, CSXT or Norfolk Southern, the railroad
21 line extending from Toledo to the Woodville lime
22 plant will be assigned?

23 A. I'm not.

24 Q. And I assume as well, Mr. Snow, that
25 you would not know whether the railroad lines

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1 reaching Martin Marietta's customers at Hugo,
2 Ohio or Twinsburg, Ohio are going to Norfolk
3 Southern or CSXT?

4 A. No, I don't.

5 Q. And the same with West Virginia and
6 Mingo Junction, Ohio?

7 A. I don't.

8 MR. KAHN: That's all I have,
9 Mr. Snow. Thank you very much.

10 THE WITNESS: Mr. Kahn, thank you very
11 much.

12 EXAMINATION BY COUNSEL FOR THE PORT AUTHORITY
13 OF NEW YORK AND NEW JERSEY
14 BY MR. DONOVAN:

15 Q. Mr. Snow, Paul Donovan representing the
16 Port Authority of New York and New Jersey.
17 Preliminarily, let me start out by saying, sir,
18 that the Port Authority of New York and New
19 Jersey wants this transaction to succeed. We
20 desperately want this transaction to succeed. We
21 want your operations in the shared asset area of
22 Northern New Jersey to be completely successful
23 and we want you to earn your cost of capital. We
24 want you to make lots of money moving lots of
25 freight through the Port of New York and New

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EXCERPT FROM THE DEPOSITION TESTIMONY OF
DARIUS W. GASKINS, JR.

August 20, 1997

1 MR. SIPE: And, subject to Mr. Reeves'
2 representation that he's going to sign those
3 today, and I believe we're going to get some
4 copies here for you --

5 MR. REEVES: Great.

6 MR. SIPE: -- we'll proceed on that
7 basis.

8 MS. TANENHAUS: I'm Marta Tanenhaus and
9 I'm representing Canadian Pacific Railway, and I
10 have signed both of the protective orders.

11 MR. KAHN: Fritz R. Kahn, representing
12 Martin Marietta Materials, Inc., and I have
13 signed both the confidential and highly
14 confidential undertakings.
15 Whereupon,

16 DARIUS W. GASKINS, JR.,
17 was called as a witness by counsel for the
18 Parties, and having been duly sworn by the Notary
19 Public, was examined and testified as follows:

20 EXAMINATION BY COUNSEL FOR
21 MARTIN MARIETTA MATERIALS, INC.

22 BY MR. KAHN:

23 Q. Mr. Gaskins, I'm Fritz R. Kahn, I
24 represent Martin Marietta Materials, Inc., of
25 Raleigh, North Carolina, and I just have a few

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1 questions of you based on your verified statement
2 beginning at page 88 of volume 2A of the railroad
3 control application.

4 Mr. Gaskins, you're the former chairman
5 of the Interstate Commerce Commission. Do you
6 recall when you were at the ICC?

7 A. Yes, I was confirmed in July of 1979 as
8 a commissioner and appointed chairman on January
9 1 of 1980. And I resigned from the commission on
10 the 1st of February, 1981.

11 Q. And, while you were at the ICC, were
12 there any major mergers, railroad mergers
13 pending, do you recall?

14 A. Yes, there were.

15 Q. And which ones were they?

16 A. There was a merger between the Frisco
17 Railroad and Burlington Northern at that time,
18 there was a merger between the Chessie system and
19 Seaboard Coastline, there was an acquisition of
20 the -- that's a small merger. Those two I
21 remember very clearly.

22 Q. Had Norfolk Southern/N&W been filed
23 before you left?

24 A. It had been filed.

25 Q. And my recollection, Mr. Gaskins, is

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1 that upon leaving the ICC you joined BN,
2 Burlington Northern?

3 A. No, that's not strictly correct. I
4 went to work for a company in Texas called
5 Natomas North American which was an oil and gas
6 company. And I worked for them from February of
7 1981 until August of 1982, a period of a year and
8 a half.

9 Q. And you were at BN from August of '82
10 until when?

11 A. Until April of 1989.

12 Q. And, during that period of time, was BN
13 involved in any major railroad mergers, either as
14 an applicant or protestant?

15 A. We were a party I believe in the
16 SP/Santa Fe case, but I'm not sure that we -- I
17 don't remember what stance we took because that
18 involved -- I think in the end we stood aside,
19 even though we signed the papers and were part of
20 the process.

21 Q. And do you recall whether BN at that
22 time may have been involved in the UP and MP/WP,
23 Union Pacific's acquisition of the Missouri
24 Pacific and Western Pacific?

25 A. I think that that was being concluded

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1 when I joined the railroad. I was involved in
2 marketing and sales and didn't have anything to
3 do with that matter. I don't remember when it
4 was concluded, whether it was just after I joined
5 BN or shortly after. But I had no involvement, I
6 don't remember the company being involved in it,
7 I don't know what their posture was.

8 Q. In advance of preparing this verified
9 statement, Mr. Gaskins, did you meet with CSXT or
10 NS?

11 A. Yes.

12 Q. And did either CSXT or NS provide you
13 with some data, some information relating to the
14 proposed transaction?

15 A. Yes, as part of this analysis, we
16 relied directly on estimates made by some people
17 from Reebie and also some representatives of the
18 railroad as to what they thought the short-term
19 diversions from truck to the newly acquired
20 property would be, combined property.

21 Q. Mr. Gaskins, at page 15 of your
22 statement which is page 103 of volume 2A, you
23 make the statement, in my opinion a central
24 advantage of the proposed transaction is the
25 expansion of single-line services. Do you remain

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1 of that view?

2 A. Yes.

3 Q. At page 14 you state, the advantages of
4 single-line service to customers have long been
5 recognized. Do you remain of that view?

6 A. Yes.

7 Q. Would you please enumerate what some of
8 those advantages of single-line service might be?

9 A. Well, I think they're enumerated in my
10 statement. But sort of the bottom line
11 concluding advantage is that, when single-line
12 service is offered to the customer, because it's
13 under the control, total control of a single
14 entity supplying the service, the quality of the
15 service as perceived by the customer is superior
16 to a situation where there are multiple parties
17 involved in a transportation option.

18 Q. Is there less handling of freight,
19 Mr. Gaskins?

20 A. Well, there may be substantially less
21 switching of the cars involved, there are clearly
22 less negotiation about rates, there's less
23 discussion about who is responsible for what
24 happens when there's only one party that holds
25 themselves out as the responsible freight

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1 carrier.

2 Q. Is there reduced transit time?

3 A. Almost always, there would be reduced
4 transit time because the transportation is
5 planned by a single entity and there is not the
6 potential delay when traffic is handed off from
7 one to another.

8 Q. Are there reduced operating costs?

9 A. There's certainly the possibility of
10 reduced operating costs and I would suggest in
11 most instances there is an actual reduction,
12 though in some instances the parties before the
13 transaction could operate effectively and
14 efficiently.

15 Q. Is there more efficient utilization of
16 equipment?

17 A. Yes.

18 MR. SIPE: Fritz, just so we're clear,
19 these questions are all sort of asking for
20 generalizations at this point as I understand it.

21 MR. KAHN: Yes.

22 THE WITNESS: Yes, I would agree with
23 that.

24 BY MR. KAHN:

25 Q. And reduced risk of loss and damage?

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1 A. Yes.

2 Q. More sales opportunities for sellers?

3 MR. SIPE: I object to that question as
4 unclear.

5 THE WITNESS: That was not -- I mean I
6 don't follow that question exactly. I can answer
7 it, but -- let me see.

8 BY MR. KAHN:

9 Q. It happens to be a direct quote from
10 the testimony of the chairman, Mr. John Snow.
11 And I was just trying to explore whether you
12 agreed with Mr. Snow's statement?

13 A. Well, let me respond in the following
14 sense, if you look at the actual transaction that
15 we have in place, because those shippers in the
16 former Conrail territory will have single-line
17 service to points they didn't have it before,
18 then -- but it isn't single-line service that
19 provides different regions, it's the fact that
20 you've created single-line service to a point
21 that's outside the range of the Conrail
22 franchise.

23 Q. More options for buyers?

24 A. Which buyers are we talking about?

25 Q. I assume that would refer to customers

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1 of shippers?

2 A. Yes.

3 Q. Now, Mr. Gaskins, would not going from
4 single-line service to two-railroad service be
5 correspondingly disadvantageous?

6 A. Most likely it would be.

7 Q. Would there not be greater handling of
8 freight?

9 A. Yes.

10 Q. Would there not be extended transit
11 times?

12 A. There probably would be.

13 Q. Would there not be increased operating
14 costs?

15 A. Yes, there would be.

16 Q. Would there not be less efficient
17 utilization of equipment?

18 A. Probably.

19 Q. Would there not be greater risk of loss
20 and damage?

21 A. Yes.

22 Q. Would there not be fewer sales
23 opportunities for sellers?

24 A. Yes.

25 MR. SIPE: I'm going to object -- well,

1 let me just make a comment on that question.

2 You're asking generally in the abstract
3 and not with reference to this transaction I take
4 it? If you want to ask him with reference to
5 this proposed transaction, that's fine. But I'm
6 just going to state for the record my
7 understanding of the scope of these questions.

8 MR. KAHN: Thank you, Mr. Sipe.

9 BY MR. KAHN:

10 Q. Mr. Gaskins, would there be fewer
11 options for buyers, again using the term buyers
12 as the customers of the shippers?

13 A. Probably, probably.

14 Q. Mr. Gaskins, will not the breakup of
15 Conrail with regard to certain shippers which
16 today have Conrail single-line service result in
17 their being subject to two-railroad service on
18 CSXT and NS?

19 A. In a very small percentage of the
20 time. We have analyzed that question and
21 discovered that there are, in fact, nine lanes
22 between one BEA and another where single-line
23 service would be removed. And those nine lanes
24 represent a de minimis portion of the rail
25 freight that's involved in this transaction.

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1 Q. Where in your statement will I find
2 evidence of your consideration of that?

3 A. It's not in my statement.

4 Q. On page 13 and 14 of your statement,
5 you do make the statement, at the bottom of page
6 13, carrying over to the top of 14, the increased
7 cost associated with the need for each carrier
8 to, in effect, originate a move can price the
9 rail mode out of that market. Do you remain of
10 that view?

11 A. Yes.

12 Q. And what did you mean by that
13 statement, would you amplify on it, please?

14 A. Well, to the extent that you have two
15 parties that have to negotiate, negotiate rates,
16 that have to coordinate service, they both will
17 bear some costs associated with it. And it seems
18 likely that the total cost of the move and the
19 costs to the two parties will be somewhat higher
20 than it would in the case of single line.

21 And, if, in fact, the truck competition
22 is so severe that there's very little margin even
23 for a single-line carrier, there's a possibility
24 that the interline carriers will not be able to
25 compete in the market. So they will lose traffic

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1 because of that.

2 Q. On page 13 you have the statement,
3 furthermore, interline service can be difficult
4 for the railroads to market in relatively short
5 and medium haul lanes, particularly for
6 low-margin commodities. Do you remain of that
7 view?

8 A. Yes.

9 Q. Do you consider aggregates to be
10 low-margin commodities, sand?

11 A. No. In fact, if the rail service is
12 properly designed, aggregates can be quite
13 profitable for railroads. In fact, railroads are
14 observed to haul aggregates relatively short
15 distances.

16 Q. Short distances?

17 A. Yes, like 200 miles.

18 Q. If you do not consider aggregates,
19 sand, gravel, crushed rock, to be low-margin
20 commodities, would you give me an example of what
21 you deem to be low-margin commodities as you use
22 that term in your statement?

23 A. Well, in the case of a short distance,
24 like 200 miles, anytime a railroad attempts to
25 compete directly with trucks for intermodal type

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1 shipments, those are low-margin commodities for
2 the railroad. And, in fact, you observe that,
3 using existing technology, railroads are
4 generally unable to attract intermodal traffic
5 for a distance of 200 miles. But, in contrast to
6 that, aggregates they can handle in the 200-mile
7 range.

8 Q. With reference to aggregates,
9 Mr. Gaskins, do you know any instance when there
10 are interlined movements, two-line movements, not
11 including short line but Class I railroads?

12 MR. SIPE: And this question time frame
13 applies to any time in his experience, past or
14 present?

15 BY MR. KAHN:

16 Q. That would be great, if he can recall
17 any instance. Thank you, Mr. Sipe.

18 A. I'm sure there were some -- there's
19 examples of gravel that moved on short lines.

20 Q. Excluding short lines, Mr. Gaskins. I
21 asked whether you were aware of any two Class I
22 interlined movements.

23 A. Class 1's. I'm not aware. There may
24 well be, but I'm not aware of them.

25 Q. Mr. Gaskins, are there steps that

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1 cooperating railroads might take to minimize the
2 difficulties of two-railroad interchange service?

3 A. Yes, there are steps obviously that can
4 be taken.

5 Q. Could you identify what they might be?

6 A. Well, historically railroads have
7 agreed to long-term contractual arrangements that
8 tend to bridge the gap where the contracts spell
9 out specific operating responsibilities. I know
10 at the Burlington Northern we had an arrangement
11 with a terminal in the Memphis area in which we
12 alternated operation of the property from year to
13 year in order to maintain appropriate
14 coordination of traffic.

15 Q. Would trackage rights be something that
16 might be included in an agreement?

17 A. Trackage rights have been included
18 historically. And one of the purposes is to help
19 solve these problems. Run-through trains, where
20 you power run through, is another institutional
21 arrangement that has occurred in the case of coal
22 movements in particular to help coordinate
23 interline movements. So there are lots of things
24 that railroads have turned to.

25 Q. Haulage rights, for example?

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1 A. Yes, haulage rights have been used.

2 Q. Blocking of cars?

3 A. Yes. There's a myriad of small things
4 that are done at an operating level that attempt
5 to solve these problems.

6 Q. Enlarged reciprocal switching districts?

7 A. That's been used, yes.

8 Q. How about line sales?

9 A. Well, there's always the possibility
10 that railroads can rationalize their systems by
11 selling lines to one another. I don't know of an
12 example, though, where that's been -- I'm just
13 not familiar with a situation where that's been
14 used to solve these kinds of problems.

15 Q. The foregoing which are arrangements
16 that cooperating railroads have worked out among
17 themselves, do you think that those might be
18 imposed as conditions by the Surface
19 Transportation Board if it deemed the imposition
20 of such conditions were required to assure the
21 adequacy of transportation services?

22 MR. SIPE: I object to that question.
23 First of all it calls for the witness to
24 speculate. Second, it asks him to speculate
25 about legal matters.

1 BY MR. KAHN:

2 Q. You may answer the question.

3 MR. SIPE: But don't speculate.

4 THE WITNESS: I know historically that
5 the predecessor to the Surface Transportation
6 Board has imposed certain conditions on mergers.
7 And over time the imposition of those conditions
8 has changed with their perception of what the
9 competitive realities are.

10 When I first joined the commission, the
11 policy was that DT&I, the famous DT&I conditions
12 were imposed on all mergers under the guise at
13 that point that that was protecting competition.
14 With the benefit of additional thought, the
15 commission has stepped back from the imposition
16 of those conditions beginning in the early
17 1980s. So yes, the commission and its successor
18 can impose conditions and has in the past.

19 Q. Such as trackage rights, for example?

20 A. Yes.

21 Q. Such as independent pricing authority,
22 for example?

23 A. Yes.

24 Q. Mr. Gaskins, are you personally
25 familiar with the Woodville lime plant of Martin

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1 Marietta Materials, Inc.?

2 A. No, I'm not.

3 MR. SIPE: Just for the record,
4 Mr. Kahn, when you say Woodville, I assume that's
5 a city or a town. Could you associate that with
6 a particular state so the record is clear.

7 MR. KAHN: Mr. Sipe, I'm surprised, you
8 haven't done your homework in preparation for
9 this. Woodville is about 15 miles south of
10 Toledo, Ohio. It is a Conrail station which will
11 be served by your client, CSXT. And the reason
12 I'm here is that several of its customers will be
13 on Norfolk Southern's lines.

14 BY MR. KAHN:

15 Q. Mr. Gaskins, can you state from your
16 personal knowledge whether the Woodville lime
17 plant of Martin Marietta Materials, Inc., will be
18 able to move its aggregates to customers?

19 A. I have no idea.

20 Q. Can you state from your personal
21 knowledge whether, in the situation of the
22 Woodville lime plant, it requires the imposition
23 of protective conditions?

24 A. I have no idea.

25 MR. KAHN: That concludes the questions

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1 I have. Thank you very much, Mr. Gaskins.

2 MR. SIPE: Do we want to identify the
3 gentleman who walked in during the course of
4 Mr. Kahn's examination.

5 MR. DONOVAN: I apologize for being
6 late, Mr. Sipe.

7 Paul Donovan with LaRoe, Winn, Moerman
8 & Donovan representing The Port Authority of New
9 York and New Jersey, and I have signed both
10 protective orders.

11 EXAMINATION BY COUNSEL FOR
12 CANADIAN PACIFIC RAILWAY COMPANY

13 BY MS. TANENHAUS:

14 Q. Dr. Gaskins, my name again is Marta
15 Tanenhaus, I'm from the law firm of Hogan &
16 Hartson, and I represent Canadian Pacific
17 Railway.

18 In your verified statement, at the
19 bottom of page 90, and let me say for the record
20 that I will be referring to the lower page
21 numbers?

22 A. I have to do a little cross-reference
23 because I have the upper ones. But that's fine.

24 Q. You say that the CSX/NS/Conrail
25 transaction, quote, is the most procompetitive

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EXCERPT FROM THE DEPOSITION TESTIMONY OF
JOHN W. ORRISON

September 11, 1997

1 Central, and the Wisconsin Central Limited, and I
2 have signed the undertakings.

3 MR. PLUMMER: My name is Pat Plummer,
4 I'm here from the law firm of Guerrieri, Edmond &
5 Clayman, we're representing the International
6 Association of Machinists, the Railway
7 Supervisors Association, and the United
8 Transportation Union, and I have signed both
9 undertakings.

10 MS. CLAYTON: Carrie Clayton from
11 Steptoe & Johnson, I'm representing CSX and the
12 deponent.

13 Whereupon,

14 JOHN W. ORRISON,
15 was called as a witness by counsel for the
16 Parties, and having been duly sworn by the Notary
17 Public, was examined and testified as follows:

18 EXAMINATION BY COUNSEL FOR
19 MARTIN MARIETTA MATERIALS, INC.

20 BY MR. KAHN:

21 Q. Good morning, Mr. Orrison. My name is
22 Fritz Kahn and I represent Martin Marietta
23 Materials, and the focus of my questions will be
24 its plant at Woodville, Ohio. Just one or two
25 questions about your qualifications.

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1 I note from having read pages 1 and 2
2 of your verified statement, pages 5 and 6 in
3 volume 3A, that your entire professional career
4 has been in railroad; is that correct?

5 A. That is correct.

6 Q. And your experience and expertise lies
7 in the area of operations planning; is that
8 correct?

9 A. That is correct. All my career but for
10 just one item, I did have one year that I was
11 working in The White House as a White House
12 Fellow.

13 Q. When were you division superintendent
14 in Detroit?

15 A. I was appointed division superintendent
16 in Detroit in November of 1993.

17 Q. And how long did you remain there?

18 A. I remained on that job until
19 mid-January 1995.

20 Q. And, with the exception of that
21 approximately two-year stint as division
22 superintendent in Detroit, most of your
23 experience with CSXT has been at the company's
24 headquarters first in Baltimore and then in
25 Jacksonville; is that correct?

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1 A. With a couple exceptions. My first
2 year with CSX was as an assistant trainmaster at
3 the Hamlet, North Carolina, hump yard. And I was
4 in Jacksonville between the fall of 1990 through
5 I guess the fall of 1991 at our operations
6 center; it's located at Jacksonville, but it's
7 the centralized dispatching operations center
8 which runs the tactical operations of our
9 railroad.

10 Q. But you've never been a yard
11 superintendent, for example?

12 A. I have been an assistant trainmaster at
13 the hump yard in Hamlet. And my tour of duty
14 required me to perform the duties that would be
15 similar to being a yard superintendent.

16 Q. Let me turn, if I may, to your map of
17 the Toledo terminal area which I think is figure
18 13.4-5 at page 329 of volume 3A. Mr. Orrison,
19 can one tell from this map which of the lines
20 will be assigned to CSXT and which ones will be
21 assigned to Norfolk Southern, assuming that the
22 Surface Transportation Board approves the pending
23 application?

24 A. There are -- this map could be colored
25 to depict those lines.

1 Q. But it has not been?

2 A. It has not been.

3 Q. What is the purpose of the map?

4 A. The purpose of the map is to show
5 Conrail/CSX trackage in the vicinity of Ohio,
6 Toledo, Ohio.

7 Q. That's existing trackage?

8 A. That is correct.

9 Q. Not after the breakup of Conrail?

10 A. That is true.

11 Q. And just so we get our orientation,
12 which way is north?

13 A. North would be toward the bottom of the
14 page. That is actually a north marker, if you
15 look --

16 Q. I was looking for it, yes.

17 A. Do you see it? I can point it out to
18 you.

19 Q. There we go. Okay. All right.

20 A. I immediately turn it to the north.

21 Q. Can you identify the line that extends
22 to Martin Marietta's Woodville lime plant at
23 Woodville, Ohio?

24 A. Yes, I can.

25 Q. Which one would that be?

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1 A. It's the line that says to Woodville
2 near the word Walbridge and it's dotted. Do you
3 see it?

4 Q. Yes. And can you tell me from your
5 personal knowledge how Conrail currently serves
6 the Woodville lime plant?

7 A. I can tell you from my personal
8 knowledge how Conrail currently serves the plant.

9 Q. Can you tell me from your personal
10 knowledge whether the service is rendered by
11 Conrail on a daily basis, weekly basis, or what?

12 A. It is my understanding, although I
13 don't know that this is correct, that it is a
14 daily basis, that there's a local that operates
15 on the line.

16 Q. Is that based on your personal
17 knowledge or information that you have gained
18 through the course of this proceeding?

19 A. It's based off of information gained in
20 the development of this operating plan.

21 Q. And, when you say that Conrail provides
22 daily service to the Woodville lime plant --

23 A. Well, no. I don't want to leave you
24 with the impression it's to the actual lime plant
25 but to this railroad line called the Woodville --

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1 this branch. You know, I don't know what actual
2 operations occur at the plant.

3 Q. Yes, thank you. When you say daily
4 service, do you mean five working days a week or
5 seven days a week that Conrail provides service
6 on the Woodville branch?

7 A. My knowledge is it's five days a week
8 local service.

9 Q. And can you tell me from your personal
10 knowledge how the cars originated at the
11 Woodville lime plant pass through the Toledo
12 terminal area; in other words, from your personal
13 knowledge, do you know to which yard, if any, the
14 cars are brought?

15 A. Are you speaking about all the cars on
16 this branch or your lime plant cars?

17 Q. Let's take the lime plant cars first.

18 A. I have some knowledge of the operations
19 because there is a train that operates to CSX
20 that is moved as a unit train. And it's received
21 at the point where the word Walbridge is, in that
22 vicinity, and CSX then moves the train on its
23 lines to a point north of Grand Rapids.

24 Q. Do you have any knowledge of how the
25 lime cars consigned to customers in the

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1 Pittsburgh area are handled?

2 A. I do not have any knowledge of that.

3 Q. Do you have any knowledge how the cars
4 containing aggregates and consigned to customers
5 in the Cleveland area are handled by Conrail?

6 A. I do not have knowledge of their
7 current operations, no.

8 Q. You don't know whether those cars are
9 handled as single cars or in blocks of cars; is
10 that correct?

11 A. That is correct.

12 Q. And you don't know whether, in addition
13 to the cars that are handed off to CSX, that
14 there are other cars currently being handled by
15 Conrail as if they were unit trains?

16 MS. CLAYTON: Are you talking about
17 some specific area right now or all cars handed
18 off?

19 BY MR. KAHN:

20 Q. I'm referring to the movements to the
21 lime customers in the Pittsburgh area and the
22 aggregates customers in the Cleveland area.

23 A. Yeah, I don't have knowledge of that
24 operation because I believe it is currently a
25 movement that's handled by Conrail.

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1 Q. That brings us to the very point that I
2 want to pursue. Do you know to whom, between CSX
3 and Norfolk Southern, the lines serving Weirton,
4 West Virginia, and Mingo Junction, Ohio, have
5 been assigned, the Conrail lines currently
6 serving Weirton, West Virginia, and Mingo
7 Junction, Ohio, to whom have they been assigned?

8 MS. CLAYTON: From where, what lines
9 are you referring to?

10 MR. KAHN: Conrail, Conrail's lines.

11 MS. CLAYTON: Do you understand the
12 question?

13 THE WITNESS: I understand the
14 question. Those points are small points. If you
15 could point them out on line segments to me.

16 BY MR. KAHN:

17 Q. If you have a Conrail system map, I
18 would be happy to point them out.

19 MS. CLAYTON: I have the maps that were
20 put in volume 1 or 2.

21 BY MR. KAHN:

22 Q. Weirton, West Virginia, and Mingo
23 Junction, Ohio, Mr. Orrison, can be found in the
24 vicinity of Pittsburgh, Pennsylvania.

25 A. If those are currently Conrail points,

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1 those lines have been assigned to Norfolk
2 Southern.

3 Q. And, as long as you have the map before
4 you, to whom have the Conrail lines extending to
5 Hugo, Ohio, and Twinsburg, Ohio, in the Cleveland
6 area been assigned?

7 A. Can you describe what locations they
8 are related to in the Cleveland area? Is it back
9 toward Center Street or Youngstown on the line
10 between Cleveland?

11 Q. I could not tell you that.

12 MS. CLAYTON: We have a blowup of that
13 which makes it easier to read. I'll be right
14 back.

15 (Discussion off the record.)

16 BY MR. KAHN:

17 Q. Can we stipulate that they're slated to
18 be assigned to Norfolk Southern?

19 A. Okay.

20 MS. CLAYTON: We'll take your
21 representation. I mean Mr. Orrison can't be
22 expected to know every town in the United
23 States.

24 BY MR. KAHN:

25 Q. So that, assuming that Hugo, Ohio, and

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1 Twinsburg, Ohio, will be on the line or lines
2 assigned to Norfolk Southern and that Weirton,
3 West Virginia, and Mingo Junction, Ohio, are on a
4 line or lines assigned to Norfolk Southern, is it
5 not true that what had been a single-line
6 movement on Conrail in the handling of Martin
7 Marietta's lime and aggregate shipments will
8 become a two-railroad or interline movement with
9 CSXT originating the traffic and the traffic
10 being terminated by Norfolk Southern?

11 A. If those destinations are located on
12 Norfolk Southern lines and the origin is on CSX
13 lines, then it would be a two-carrier move.

14 Q. Well, can you take a look at the Toledo
15 terminal area and verify that the Woodville lime
16 plant will be served by CSXT?

17 A. The Woodville lime plant will be served
18 by CSXT.

19 Q. So we are talking about two-carrier or
20 interline movements?

21 A. Yes, sir, that is correct.

22 Q. Now, tell me how CSXT plans to serve
23 the Woodville lime plant?

24 A. CSX intends to serve the plant with the
25 same type of local operations that Conrail

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1 provides today.

2 Q. Of which I believe you testified you
3 have no personal knowledge?

4 A. I have no personal knowledge of being
5 on that local, riding it, understanding how it
6 does its work. My knowledge is that there is a
7 local that provides service to the line. In our
8 operating plan, we said that we were planning on
9 keeping the local operations to the customer the
10 same.

11 Q. And that would be daily, five days a
12 week service; is that correct?

13 A. If that is the current operation of the
14 local, that's what it would be.

15 Q. And --

16 A. I would want to only add to that that,
17 you know, once operations begins and we see
18 volumes of traffic and the movements and the
19 requirements of the customers, we have a
20 procedure in place at CSX that allows us to look
21 at adding days or numbers of locals to serve
22 customers based off of the traffic and the
23 requirements that are necessary to move the
24 freight equipment.

25 Q. And how do you propose effecting the

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1 interchange with Norfolk Southern?

2 A. The operating plan does not determine
3 the interchange point.

4 Q. And do you have any concept of how
5 Martin Marietta cars will be handled in the
6 Toledo terminal area?

7 A. I can't speak to the operation of the
8 lime plant train that's going into Michigan. In
9 my knowledge of it, it will be a CSX train that
10 will operate from the lime plant directly to
11 North Michigan. That eliminates the current
12 interchange that occurs at Toledo from Conrail to
13 CSX.

14 The movement of these other trains that
15 you've spoken about earlier would be determined
16 by how the shipper would want to have the cars
17 moved and the interchange arrangements that would
18 be set up by the marketing people talking with
19 the customer. The operating plan would then be
20 set up to describe movement of the train to those
21 points.

22 Q. Let's take one step at a time, if we
23 can, Mr. Orrison. Does CSXT plan to run a local
24 train on the Woodville branch?

25 A. Yes, we plan to provide local service

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1 on the Woodville branch.

2 Q. And to what yard will those cars be
3 brought then?

4 A. They will be brought back to Stanley
5 Yard.

6 Q. Stanley Yard is currently operated by
7 CSXT?

8 A. It is currently operated by Conrail.

9 Q. So that will be a change in operations?

10 A. After the acquisition of Conrail lines,
11 CSX will operate Stanley Yard.

12 Q. And what will happen to the Walbridge
13 Yard?

14 A. The Walbridge local operations will be
15 moved to Stanley Yard.

16 Q. I believe, in describing the Stanley
17 Yard, on page 91 of your statement, page 191 of
18 the volume 3A, in the middle of the page, you
19 state all trains must enter and leave Stanley
20 from the north.

21 A. That is a reflection of current Conrail
22 operations.

23 Q. How do you anticipate CSXT will handle
24 the Woodville lime plant cars to the Stanley
25 Yard?

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1 A. I think it may best be described by
2 looking at the map. I was trying to find the map
3 again.

4 Q. The map is on page 329.

5 A. Okay. The railroad cars would come up
6 the line that says to Woodville to the point
7 called Walbridge and would move on a line that's
8 a solid line from Walbridge to Stanley Tower.
9 And there's a connection, it's a movement that
10 the train moves forward into Stanley Yard.

11 Q. Do you have any idea how much time will
12 elapse between the time the cars are picked up at
13 the Woodville lime plant and the time they are
14 delivered at the Stanley Yard?

15 A. It would be within the day of operation
16 of the local train.

17 Q. And how is the interchange between CSXT
18 and Norfolk Southern in the Toledo terminal area
19 currently effected?

20 A. Are you asking of the interchange
21 between CSXT and Conrail?

22 Q. Norfolk Southern, I beg your pardon.

23 A. Those interchanges are not affected.

24 Q. Today how would you interchange
25 equipment from the Walbridge Yard to Norfolk

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1 Southern?

2 A. There is a movement of a train called a
3 puller operation that operates between Walbridge
4 Yard and Norfolk Southern's Homestead Yard at
5 Ironville.

6 Q. Can you indicate the Homestead Yard on
7 the map?

8 A. If you go on the line that says
9 Walbridge, it's a solid line, moving northward
10 past a point called Vickers on northward to a
11 point called Ironville. Homestead Yard is to the
12 right of that. Do you see that?

13 Q. Yes, thank you. And how frequently
14 does CSXT today interchange cars with Norfolk
15 Southern?

16 A. That is a daily operation.

17 Q. And do you know at what time of day
18 that occurs?

19 A. No, I do not.

20 Q. And does CSXT propose to continue that
21 method of interchange following the board's
22 approval of the proposed transaction?

23 A. It is our intention to continue that,
24 yes.

25 Q. I would like to refer to NS-21 which is

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1 Norfolk Southern's interrogatory response to
2 questions posed by Martin Marietta.

3 MS. CLAYTON: I'm going to object, he
4 doesn't have anything to do with NS's responses
5 to your requests.

6 BY MR. KAHN:

7 Q. That's fine. Do you know for a fact
8 that the interchange between CSXT and Norfolk
9 Southern will continue as currently effected
10 between the Walbridge Yard and the Homestead
11 Yard?

12 A. I stated earlier that the current
13 interchange is between Walbridge and Homestead
14 Yard. And that is your question, is that not
15 correct?

16 Q. And will that continue?

17 A. The interchange will happen because of
18 us acquiring Stanley Yard. We will be
19 interchanging from Stanley Yard to Homestead
20 through this puller operation.

21 Q. Do you have any idea how long the cars
22 normally remain at Norfolk Southern's Homestead
23 Yard before they leave the yard?

24 A. No.

25 MR. KAHN: I think I have no further

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1 questions, Mr. Orrison. Thank you very much.

2 THE WITNESS: Thank you.

3 (Discussion off the record.)

4 EXAMINATION BY COUNSEL FOR STATE OF NEW YORK and

5 THE FOUR CITIES: CITIES OF EAST CHICAGO,

6 HAMMOND, GARY, AND WHITING, INDIANA

7 BY MR. DOWD:

8 Q. Mr. Orrison, good morning again. By
9 way of reintroduction, my name is Kelvin Dowd and
10 I'm going to be asking you some questions on
11 behalf of the State of New York and the Four
12 Cities in Indiana.

13 What did you do to get ready for your
14 deposition today?

15 A. I had several meetings with my counsel
16 to review my verified statement and to review the
17 operating plan.

18 Q. Did you review any documents or
19 materials other than your verified statement and
20 the operating plan that's in the application?

21 A. I had my counsel talk to me about
22 several different interrogatories, some of the
23 questions that have been posed.

24 Q. Do you recall which interrogatories,
25 not the specific questions, but the parties that

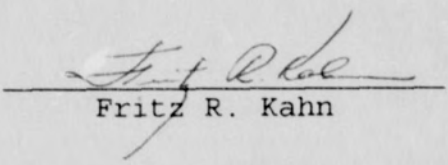
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CERTIFICATE OF SERVICE

I this day have served the foregoing Comments and Request for Conditions of Martin Marietta Materials, Inc., by causing copies thereof to be hand delivered to Judge Jacob Leventhal and local counsel for the applicants and to be mailed, by first-class mail, with postage prepaid, to each party of record appearing on the Board prepared service list.

Dated at Washington, DC, this 21st day of October 1997.


Fritz R. Kahn

STB

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10-21-97

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182942

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202 347-7170

October 21, 1997

BY HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find a separately packaged original and twenty-five (25) copies of the "Comments of the State of New York" (NYS-10). In accordance with the Board's prior order, we have enclosed Wordperfect 5.1 diskettes containing this filing.

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

Sincerely,

Kelvin J. Dowd
An Attorney for
The State of New York

KJD:cef
Enclosures

182942

NYS-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388

COMMENTS
OF
THE STATE OF NEW YORK



THE STATE OF NEW YORK BY AND
THROUGH ITS DEPARTMENT OF
TRANSPORTATION

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Dated: October 21, 1997

Attorneys and Practitioners

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

COMMENTS
OF
THE STATE OF NEW YORK

The State of New York, acting by and through its Department of Transportation ("New York"), in accordance with the procedural orders entered herein by the Board, hereby submits these Comments¹ in response to the Application filed with the Board on June 23, 1997 by CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Corporation and Norfolk Southern

¹Contemporaneous herewith, in accordance with Decision No. 29 in this proceeding, New York, together with the New York City Economic Development Corporation ("NYCEDC"), is submitting its Joint Responsive Application (NYS-11) seeking conditions and declaratory relief that would provide competitive rail service over the Hudson Line from Albany/Selkirk/Schenectady, NY through Poughkeepsie, NY and Mott Haven Junction to Fresh Pond, NY, in the event that the Primary Application is approved. Finance Docket No. 33388 (Sub-No. 69), The State of New York, By and Through Its Department of Transportation -- Trackage Rights Over Lines of Consolidated Rail Corporation and Declaration Concerning Trackage Rights Restrictions on Lines of Metro-North Commuter Railroad Company ("Joint Responsive Application"). The evidence and argument set forth in these Comments likewise are submitted in support of the Joint Responsive Application.

Railway Company (NS), and Conrail Inc. and Consolidated Rail Corporation (Conrail) (collectively, the "Primary Applicants"). Through the Application, NS, CSX and Conrail jointly seek authority under 49 U.S.C. §§11323-25 for NS and CSX to acquire control of Conrail, and for the subsequent division of most of Conrail's assets and the joint or shared operation of others.²

IDENTITY AND INTEREST

New York is a sovereign state, having entered the Union through ratification of the Constitution of the United States on July 26, 1788. The New York State Department of Transportation is the executive department charged with responsibility for the supervision and administration of state policies and interests with respect to transportation within or affecting New York, including rail transportation.

Perhaps more than any other state, New York has borne the effects of the progression of rail system changes that first led to the creation of Conrail, and now apparently have prompted the Primary Applicants' proposal for its division. Over 90% of the freight rail miles located within the State are owned or controlled by Conrail, and as described further, infra, New York has invested or guaranteed over one billion dollars in rail

²The Application also encompasses various, ancillary petitions for exemption and authorization covering certain abandonments, line transfers and incidental trackage rights, under 49 U.S.C. §§10502 and 10901-03.

facilities and related infrastructure, much of which directly or indirectly has benefitted Conrail and its operations. Given this investment, and the fact that virtually every aspect of rail freight and passenger transportation throughout New York stands to be profoundly and permanently affected by the Primary Applicants' proposal, the State has an obvious interest in this proceeding, and an essential public interest role in its conduct and resolution.

SUMMARY OF POSITION

In their Application, CSX and NS claim that their proposed division of Conrail means nothing less than a complete revitalization of effective rail competition throughout New York and the Northeast; competition which the region has not seen for over twenty (20) years. See, e.g., Application, Vol. 1, V.S. Hoppe at 4-5, 18-19. The result, they and their supporting witnesses say, will be expanded and enhanced rail freight service at reduced cost; expanded market opportunities for regional shippers; a massive diversion of freight traffic from overburdened highways onto rail; and short and long-term synergies and efficiency gains that purportedly will benefit not only the Primary Applicants themselves, but their customers, connections and the public at large.

Other than over-the-road motor carriers and certain, specified railroads forecast to experience traffic diversions

(see Application, Vol. 1 at 82-83), the Primary Applicants admit to no "losers" under their plan. At worst, the impact of the proposed transaction on shippers, commuters and other rail passengers, rail employees, and parties to existing contracts with Conrail is said to be neutral, as the Primary Applicants pledge their intent to assume and honor all current obligations of Conrail to shippers, smaller carriers, commuter agencies and other constituencies. See, e.g., Application, Vol. 1 at 40, 93-95.

As succinctly summarized by Governor George E. Pataki in his accompanying Statement, many aspects of the Primary Applicants' proposal as it relates to New York do offer an improvement over the current Conrail status quo. On balance, however, the Application fails in too many key respects to meet its own stated goals, and New York's legitimate public interest concerns, to permit New York to support the CSX-NS plan without condition. Indeed, elements of the Primary Applicants' proposal -- particularly as regards rail service east of the Hudson River and in the Buffalo area -- threaten new, adverse impacts on affected shippers and local economies.

As shown by the testimony, evidence and argument set forth in these Comments, a division of Conrail solely on the terms proposed by CSX and NS would be contrary to the public interest, and should not be approved. 49 U.S.C. §11323(c). Rather, New York submits that for the Application to be granted

in compliance with the governing statute, the following conditions must be imposed.

1. To ameliorate the anti-competitive impacts of the Primary Applicants' proposal to establish CSX as the sole operator of Conrail lines and trackage rights south of Albany and east of the Hudson River in New York, the Board should grant the Joint Responsive Application of New York and NYCEDC filed contemporaneous herewith in Finance Docket No. 33388 (Sub-No. 69), et al.

2. To restore the competitive balance between Buffalo and Detroit as through points for U.S.-Canada trade that would be destroyed by the Primary Applicants' proposal to establish competitive rail service solely in Detroit, the Board should grant the conditions proposed in the Comments of the Erie-Niagara Rail Steering Committee ("ENRSC"), and establish a Shared Assets Area³ and reasonable, associated switching terms in and around Buffalo.

3. To ensure that the Primary Applicants' proposed division of Conrail assets in New York, and their planned, subsequent increases in rail freight traffic frequency and scope, do not adversely affect critical commuter and inter-city passenger service, the Board should prescribe a 10-year oversight condition as described further infra, and retain jurisdiction

³As used herein, the term "Shared Assets Area" has the same meaning as that ascribed in the Application and related transaction agreements.

over the subject matter to impose such further or additional conditions as may be necessary.

4. Both to protect the public investments made by New York and its taxpayers and to ensure that unfulfilled contractual undertakings made by Conrail are fully honored by its successors, as the Primary Applicants appear to have pledged, the Board should condition approval on the Primary Applicants' written assumption of Conrail's obligations under the contracts listed in Exhibit ____ (JAU-5) to the Verified Statement of James Utermark, and further described infra, and confirm pursuant to 49 U.S.C. §11321(a) that full compliance with all of these contracts will in no way interfere with the Primary Applicants' carrying out of the subject transaction, and their subsequent operation of the Conrail properties at issue.

As further explained in these Comments, New York also fully supports, and respectfully urges the Board to grant the separate approval conditions sought by Metro-North Commuter Railroad Company ("Metro-North"), and the Southern Tier West Regional Planning & Development Board ("Southern Tier West"). Finally, New York requests that the Board impose appropriate conditions to ensure that New York shippers do not experience unreasonable future rail rate increases as a consequence of the high price paid by the Primary Applicants for control of Conrail.

In support of these Comments and the relief herein requested, New York presents the testimony of the following witnesses, followed by argument of counsel:

The Honorable George E. Pataki

Governor, State of New York

Mr. James A. Utermark

Director, Freight & Economic
Development Division
New York State
Department of Transportation

Mr. Robert L. Banks

President, R.L. Banks &
Associates

Mr. Stephen D'Arrigio

Hunts Point Market Board

Mr. Alan Firestone

President, Firestone Plywood
Corporation

Mr. Jim Christie

Regional Vice President,
USA Waste, Inc.

VERIFIED STATEMENT
OF
THE HONORABLE GEORGE E. PATAKI

My name is George E. Pataki. I am Governor of the State of New York. This Statement is submitted in support of the relief which New York has requested in its Comments in this proceeding, and in its contemporaneous, Joint Responsive Application with the New York City Economic Development Corporation.

If the CSX-Norfolk Southern plan for Conrail is approved, the 21st century will see two mighty railroads dominate the eastern half of our continent. This rail system will have to be counted upon to link our ports, our cities, our farms and our manufacturers to each other and the world. We must assure the new system best serves the nation, its citizens and their enterprise.

New York is keenly interested as this new rail transportation era takes shape. How effectively and efficiently we move people and goods will determine the level of the State's economic success. A revitalized and competitive rail system also will assist the State in meeting its environmental goals by reducing congestion on our highways and bridges.

As the world grows smaller, we increasingly rely on our connections to it. The State depends on the quality and economics of its transportation network and its links to New York's domestic and foreign trading partners.

In this regard, the proposed absorption of Conrail into this new system is of vital interest to the State and its economy. Conrail currently operates over 2,000 miles of trackage in New York, serving all our major cities and the Port of New York and New Jersey. In most cases, Conrail offers the only interstate rail service available to shippers and receivers in those markets. In addition to the Port, the economies and businesses of communities throughout the State -- upstate as well as the southern counties and Long Island -- depend upon Conrail freight access for the shipment of marketed products from and the delivery of goods to New York's residents. New York's stake in Conrail and the future of its lines is such that since 1974, New York has invested over \$400 million in taxpayer funds and guarantees in the interest of preserving and enhancing rail freight service, and commuter and intercity passenger service over lines owned or controlled by Conrail.

The proposal by CSX and Norfolk Southern to jointly acquire and divide Conrail has the potential to help the New York economy, through improved rail service quality and, in some areas, increased competitive opportunities. In four (4), critical respects, however, the CSX-Norfolk Southern plan falls short of meeting the public interest objectives that would allow New York to support the proposal:

1. The proposal fails to provide for effective, line-haul rail competition for shippers and receivers east of the Hudson River in New York City, Long Island, and the eastern

Hudson River Valley. Those regions would be served solely by CSX. In contrast, however, many of the New York businesses in those regions have competitors in Northern New Jersey and elsewhere west of the Hudson that will enjoy the benefits of new rail competition under the CSX-Norfolk Southern plan.

2. CSX and Norfolk Southern have proposed to divide the Conrail lines serving Buffalo, but fail to offer new switching or other arrangements that would allow shippers in the area to obtain competitive access to multiple long-haul and regional railroads. At the same time, however, shippers in Detroit -- which competes with Buffalo in the U.S.-Canada trade markets -- would be given new, joint access to all the rail carriers serving that area.

3. While CSX and Norfolk Southern apparently promise to honor all current commuter and inter-city passenger agreements until they expire, the carriers offer no assurances as to the accommodation of passenger service after that time, or for the support of passenger service growth initiatives promoted by the State and the Metropolitan Transportation Authority. Protection and enhancement of commuter and inter-city passenger rail is vital to the downstate region, as well as the Empire State Corridor between Albany and Buffalo.

4. Much of the investment made by New York taxpayers in rail infrastructure has been under agreements with Conrail that remain in effect. As with passenger service arrangements, however, CSX and Norfolk Southern have not yet adequately

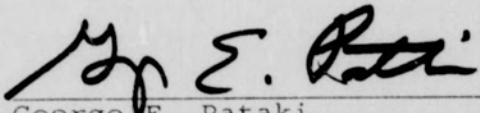
guaranteed that all obligations under these agreements will be assumed and fully honored.

On behalf of the State and its residents and businesses, I urge the Board to exercise its authority in this proceeding to correct the flaws in the CSX-Norfolk Southern plan that I have outlined. In its Comments and Joint Responsive Application, New York has proposed specific remedies to address them. The adoption of each of these remedies by the Board is necessary to bring the proposed division of Conrail in line with the demands of the public interest.

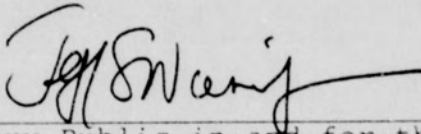
Verification

State of New York)
)
) ss:
County of New York)

The Honorable George E. Pataki, Governor of New York,
being duly sworn, deposes and says that he has read the foregoing
Statement, knows the contents thereof, and that the same are true
as stated to the best of his knowledge, information and belief.


George E. Pataki

Subscribed and sworn to before
me this 16 day of October,
1997:



Notary Public in and for the State
of New York

JEFF S. WISENFELD
NOTARY PUBLIC - State of New York
No. 414777595
Qualified in Queens County
*Cert. Filed in _____ County
Commission Expires Aug 30, 1998

VERIFIED STATEMENT
OF
JAMES A. UTERMARK

My name is James A. Utermark and I serve as Director of the Freight and Economic Development Division of the New York State Department of Transportation. I was appointed to my position by Governor George Pataki. My address is 1220 Washington Avenue, Albany, New York 12232-0871. I appear in this proceeding at the direction of the Governor of the State of New York ("New York").

INTRODUCTION

The New York State Department of Transportation has broad jurisdiction and authority over the State's various transportation activities, including its considerable involvement in railroad transportation. I believe it can be fairly said that New York is the Nation's first state when it comes to railroad investment. The Department also coordinates the activities of other agencies within the State which deal with rail transportation, including the Metropolitan Transportation Authority (MTA) and Metro-North Commuter Railroad, which are state agencies that engage in the rendition of railroad commuter operations.

In my testimony today, on behalf of the State of New York, I first want to acquaint the Board with New York's large and unique financial commitment to the rail system within its borders, including Conrail's facilities and operations and, in

particular, its future services. In this connection, I will provide some of the particulars on the State's massive funding for the benefit of Conrail, and I will urge the Board to impose a condition which protects the State's investments in Conrail and insures that the Applicants satisfy Conrail's obligations to the State. Finally, I will insist that Applicants be held to a high standard of compliance in serving the needs of New York's huge passenger population. The safety and welfare of our passengers are of an importance which mandates Board oversight to guarantee that Applicants provide New York passengers with the safe, efficient, reliable and high speed passenger service to which they are entitled.

NEW YORK AND RAILROADS

The economic history of New York and the railroad industry are closely intertwined. The railroad industry began in New York in the 1830s, and New York's long tradition of national industrial leadership has in large part been made possible by its strong rail network, which links together not only the major metropolitan areas of New York City, Rochester, Buffalo, Albany, Binghamton and Syracuse, but also links New York to other commercial centers such as Chicago, Montreal, Cleveland.

Since the inception of railroading in New York, the State has consistently encouraged the growth and use of its railroads. For example, New York was among the first states to

initiate, primarily at State expense, a widespread program to provide for safe and efficient grade crossings.

Prior to the Northeast railroad crisis of the 1970s, New York cities and communities enjoyed the rail transportation services of numerous independent Class I railroads, including the New York Central, the Erie Lackawanna, the Delaware and Hudson, the New Haven and the Pennsylvania Railroad among many others. In addition to their vital role as transporters of freight for New York's commercial and industrial endeavors, the State's railroads also played an important role in the movement of passengers. Several regions within our State, such as Long Island and Westchester County, depend upon the railroads for essential commuter services, while many of our cities such as Albany, Buffalo, Syracuse, Rochester and New York City, rely heavily on the railroad for dependable intercity transportation services. A map showing the freight and passenger railroads serving New York today is appended as my Exhibit __ (JAU -1).

NEW YORK AND THE NORTHEAST RAILROAD CRISIS

Because of the important role played by railroads in the economy of New York, the financial collapse in the early 1970s of most of the State's major railroads was a matter of grave concern to the State. The continued transportation services of the Penn Central, the Erie, the D&H, etc. were critical to the economic health and welfare of the people and businesses of

New York. Unfortunately, the railroad industry itself was unable or unwilling to participate and/or assist in the rescue of the Northeastern railroad system after the Penn Central entered bankruptcy in June of 1970. The financial problems of the railroads in New York in the early 1970s are well-chronicled in numerous books and publications, including the Wreck of the Penn Central and the Fallen Colossus. These contemporary treatments depict not only the grave problems within the rail industry itself, but the indifference of the elected officials in Washington in devising either a government or a government-assisted solution. While the railroads, the courts, the banks, and the federal government were at an impasse between 1970 and 1974 on how to solve the deepening Northeast railroad crisis, the businesses and citizens of the State of New York became no less dependent on efficient, economic rail services. The problem was especially severe at the passenger level, where railroad passengers, especially commuters, have few options. In order to sustain essential rail operations in the crisis atmosphere I have described, New York had no choice but to assume a leadership role.

With continued rail operations in and to New York in jeopardy, the State of New York acted expeditiously between 1970 and 1974 so as to preserve and maintain essential rail services. Immediate and major investments were made by the State to keep the trains running. In order to sustain essential passenger

service, the State acquired Penn Central's line from New York City to the Connecticut Border. For the same reasons we also acquired Penn Central's line from New York City to Poughkeepsie. Numerous, similar investments were made by New York during this critical era when the very survival of the State's railroads hung in the balance. To keep its railroads running as their financial woes escalated after 1970, New York passed statewide referendums expressly providing funds for its beleaguered railroads, and the legislature adopted a Special Rail Transportation funding program. New York's steadfast support for its railroads between 1970 and 1975 is especially astonishing as a consequence of the fact that it came at a time when New York City was experiencing a financial crisis in which the federal government took no interest. In the face of an unprecedented need for State funds, New York, nonetheless, poured millions of dollars into the D&H, the Long Island, the Penn Central, and other carriers.

NEW YORK'S CONTINUING RAIL COMMITMENT

While the creation of Amtrak in 1970 by Congress and the enactment of the Regional Rail Reorganization Act ("3-R Act") in 1974 averted a meltdown of the Northeastern rail network, the federal programs were merely the beginning of a long rehabilitation process which may only now be culminating with the Application of CSX and NS. Given the deplorable conditions in the rail industry in New York in the early 1970s, there could be no

instant fix. Moreover, while the federal government had reluctantly stepped up to avert a close down of the rail system in the Northeast, its initial commitment was lukewarm at best. For example, Amtrak's initial authorization amounted to only \$40 million plus \$100 million in loan guarantees, while the United States Railway Association which the 3-R Act created was initially backed by only \$1.5 billion. To protect its railroad investments and to sustain and maintain essential rail operations in the State whose continuation were in jeopardy despite the new federal programs, New York was compelled to continue in its role as a major partner and ally in the State's railroad industry. Thus, from the creation of the USRA in 1974 until present, the State has invested an additional and direct \$600,000,000 in railroad related projects. In addition to its direct cash investments in the rail industry, the State has amassed a truly enormous indirect investment in its railroads. This "indirect" investment has taken many forms including tax exemptions for railroads, compensation for unemployed railroad workers; and subsidies for light-density branch line services; the provision of alternative transportation arrangements to shippers where rail service was abandoned or threatened. A listing of some of the legislative initiatives which enabled New York to deliver massive financial aid to its beleaguered railroads is listed in my Exhibit __ (JAU-2). When New York's indirect investment in its railroads is combined with the \$600+ million of direct cash

investments, the State's total stake in its railroads approaches one billion dollars.

My Exhibit ____ (JAU-3) sets forth a listing of the specific projects in which New York has directly invested money to initiate or improve railroad transportation and facilities within the State. The information in my Exhibit ____ (JAU-3) discloses the existence of over 350 contracts between the State and various entities supplying rail or rail-related services. The recipients of the State's funds include Amtrak, Conrail and various regional railroads and rail authorities. My Exhibit ____ (JAU-4) contains a brief summary of some of the State's investments by category. This summary will give the Board a better appreciation of the breadth and the totality of New York's commitment to railroading in the State. While the Federal Government is the unquestioned savior of the region's rail system, New York carried the day in a very large and important State. Moreover, unlike the federal participation, which the United States sold in the public offering of Conrail, the New York investment is not similarly marketable. The return on New York's massive investment in its railroads, and especially in Conrail, depends on the good faith of Conrail and/or its successors. New York thus remains a major railroad stakeholder, especially in the Conrail System.

NEW YORK'S CONRAIL INVESTMENTS

Since 1974, New York has entered into more than 85 specific agreements with Conrail, representing over \$162 million invested in railroad operations and rail track, bridge and station construction and improvement projects. Under these agreements, Conrail and New York have cooperated to maintain and upgrade rail facilities throughout New York to ensure reliable freight and passenger service for New York rail users. Among the State's investments in Conrail are the following:

- Over \$47 million invested in high-speed track and signal construction and maintenance along the Poughkeepsie to Schenectady rail corridor;
- Over \$28.25 million invested in high-speed track and signal construction and maintenance along the Poughkeepsie to Croton Harmon rail corridor;
- Over \$28 million invested in three contracts for maintenance of and through and local train service over the Southern Tier Main Line and Southern Tier Extension;
- \$17 million invested in track rehabilitation between Suffern and Port Jervis;
- Over \$11 million invested in three contracts for track and signal improvements and maintenance in the Buffalo-Niagara terminal area, in part to preserve passenger service;
- Over \$5 million invested in track maintenance and upgrades along the Buffalo to Albany rail route, in part to facilitate faster passenger service;
- \$7.5 million invested in maintenance, repair, and operation of the Massena branch line through Onondaga, Oswego, Jefferson and St. Lawrence counties, New York;

- Close to \$3 million invested in track rehabilitation and maintenance along the Phoenix branch line from Syracuse to Oswego, New York;
- \$1.3 million invested in improvements and maintenance of the Empire Corridor passenger line from New York City to Albany.

In addition to its direct investments in Conrail, the State has provided Conrail with huge sums in connection with its grade crossing improvement program, which provided money for the carrier, reduced liability and increased efficiency. More than \$100 million has been expended to improve Conrail crossings in New York.

CONRAIL'S CONTINUING OBLIGATIONS TO NEW YORK

As a government, New York's interest in the railroad industry is understandably long range. Many of the State's investments were made with an eye toward improving the State's railroad services well into the next century. Under most of the contracts I have identified in Exhibit ____ (JAU-5), Conrail's obligations continue for many years to come, primarily in the form of long-term maintenance duties together with local and through freight train operating commitments. Under the Massena Branch Contract, for example, Conrail has pledged to "maintain all track rehabilitated under the terms of this Agreement at a level commensurate with facility usage for a period not to exceed thirty (30) years" from August 4, 1980. In the same contract, Conrail has committed to operate local freight service "to the

extent necessitated by rail traffic" between points on the rehabilitated Massena line, again for thirty years after August 4, 1980. Under the Poughkeepsie-Schenectady High-Speed Rail Contract, Conrail agreed to "maintain the main tracks and signals" covered by the agreement at specified levels through "at least" 2007. The Radisson Yard agreement, again, requires maintenance through, at least, 2008, and obligates Conrail to reimburse the State for sums previously paid to Conrail. Despite the contract's requirement of full reimbursement by 1990 or so, Conrail has yet to pay over one (1) million dollars back to the State.

While New York has discharged its obligation to compensate Conrail for these and other services required by the agreements I have listed, Conrail has not yet completed its performance in return. The Conrail agreements mentioned are typical of the many between Conrail and the State whereunder the State has met its obligations and Conrail has not yet fully completed its end of the bargain. I append relevant portions of the Massena and Poughkeepsie Agreements as my Exhibit ____ (JAU-6). They are representative of numerous agreements between Conrail and New York in which continued performance is required by Conrail well into the future.

New York is gravely concerned over the future status of its investments in Conrail under the new regime proposed in the pending Application. To be sure, New York enjoys various commer-

cial contract rights in connection with its Conrail investments. While these rights are commercially enforceable, in many cases such enforcement would be impractical from a public interest standpoint. For example, in the Massena Contract (Exhibit ____ (JAU-6, sheet 5)), New York retains title to the materials employed in the improvement of the Massena Branch such as ties, ballast, etc. Obviously, it would not be prudent for the State to repossess these materials in the event of a default by Conrail. As such, New York needs the Board to order an express assurance from Applicants that they will unconditionally honor all New York contracts with Conrail, which order can be enforced in an expert forum guided by the requirements of the same public interest which prompted New York to make its investments in the first place.

Our concerns regarding the Applicants' proposal and the State's contracts with Conrail are heightened by the complexity of the transaction which the Applicants propose. While the Conrail which has operated in New York in the past will disappear, it is not clear exactly which of the Applicants will resume responsibility for Conrail's obligations to New York in the event that Applicants' proposal is granted. The Application in its present form makes only limited provision for CSX or NS assumption or delegation of Conrail's still outstanding contract duties. Neither the Application nor anything else Applicants have said or done assures New York of their intent to honor and

continue in full Conrail's contracts with the State. To the contrary, both the Application and Applicants' Discovery Responses indicate that they have not even considered, let alone resolved, which specific outstanding Conrail contracts each will assume. See, Norfolk Southern's Responses to Interrogatories (NS-24) at sheet 13. In light of this failure and in order to assure the preservation of Conrail's outstanding commitments to the State, New York believes that the Board must intervene and impose upon Applicants the conditions described in Part V of the State's Comments.

With the sale of Conrail by the United States of America to the public, the State of New York has succeeded it as Conrail's largest single stakeholder. Our stake in Conrail and our commitment to rail transportation in New York merit careful protection by the Board. For this reason, the Board must condition any approval of the Application with an explicit order directing Applicants to adhere to both the letter and the spirit of all of the contractual agreements which are listed in my Exhibit ____ (JAU-5). New York also adds its voice to those who are concerned about the Conrail purchase price and the manner in which Applicants set their future freight rates. Our concern is heightened by the fact that we made significant contributions to Conrail which were material in creating the successful enterprise which Applicants seek to acquire. It would be perverse if the Board permitted Applicants to fund their purchase from increased

charges to New Yorkers, whose funds in part made Conrail profitable in the first place.

NEW YORK'S PASSENGER COMMITMENTS AND RIGHTS

As my testimony demonstrates, a substantial portion of the State's tremendous railroad investment has been devoted to facilities, improvements, acquisitions and systems to benefit the movement of passengers. At a point not too distant in history, several railroads operating in the State of New York provided essential transportation services for railroad passengers. These services included both commuter transportation, primarily into New York City, and intercity transportation between points in New York. Some of the common carrier railroads who provided these passenger services included the New York Central System, the New Haven Railroad, the Long Island Railroad, Erie Lackawanna Railroad and the Central Railroad of New Jersey.

These carriers provided an extensive network of both short haul or commuter services and long haul intercity passenger services, which were used extensively by the people of New York. The traditional passenger network which I describe was and is essential to the welfare and economy of the State of New York. Exhibit ____ (JAU-7). Its very existence was put in doubt in 1970 when the Penn Central and the various other Northeast railroads declared bankruptcy.

In October of 1970, the Federal Government created the National Railroad Passenger Corporation (Amtrak) to try to preserve and maintain essential intercity rail transportation services. All agreed at the time that Amtrak was grossly underfunded for the purposes for which it was created. Moreover, Amtrak was not created to solve the railroads' problems with the transportation of commuters millions of whom resided in the New York metropolitan area. The solution to the preservation of essential rail passenger services in the face of a crisis which the Federal Government would not solve and the bankrupt railroads could not solve, fell to the State of New York and its allied agencies, including the New York Metropolitan Transportation Authority. In order to sustain essential passenger services New York acquired by purchase or lease essential facilities from the various bankrupts. In my earlier remarks, I outlined New York's massive railroad aid, much of which benefitted passenger service. New York, like every government, while pressed for funds, had no choice but to invest large amounts of taxpayer funds in the acquisition of railroad assets and/or the subsidizing of various railroad operations.

SUMMARY OF NEW YORK'S VITAL PASSENGER OPERATIONS

As a consequence of the State's determination to preserve and promote passenger transportation by rail and with the cooperation of Amtrak and Conrail, New York today enjoys a

reasonably extensive system of railroad passenger services. While the options and availability of intercity service do not approach the pre-1970s' levels, Exhibit __ (JAU-7), they are nonetheless significant when measured by today's standards. They represent the results of the State's hard work and significant investment. A brief summary of the passenger services widely used within and to and from New York will assist the Board in understanding the movement of passengers in New York, and why it is of such concern to the State in the context of the pending Applications.

A. Commuter Services

Commuter operations in New York are conducted by Metro North and New Jersey Transit (state agencies) on various Conrail lines which CSX and NS will acquire or operate over under track-age rights. They include services in the Northeast Corridor (NEC) between points in New Jersey and New York City, and between New York City and points on Long Island and in Connecticut. Metro-North also conducts commuter operations over various lines owned or leased by MTA. Metro-North operates (and dispatches) the portion of Conrail's Hudson Line between Penn Station and Poughkeepsie, over which Conrail has trackage rights.

Another commuter line of importance to New York is the portion of Conrail's "Southern Tier" line between Hoboken/Croton and Port Jervis, New York via Suffern. The portion of this line east/south of Suffern is owned by New Jersey Transit;

Conrail has trackage rights over this segment. The portion of the line between Suffern and Port Jervis is owned by Conrail and dispatched by New Jersey Transit. New Jersey Transit conducts the entire commuter operation between Port Jervis and Hoboken pursuant to an agreement with Metro North, which owns the commuter stations and parking lots west of Suffern as well as the Port Jervis yard. Conrail uses the line for through freight trains (primarily doublestacks) operating between points west of Buffalo and the North Jersey intermodal terminals. Conrail's operating rights will be acquired by NS, which will use the line as one of its two principal routes between Chicago/Cleveland and the East Coast (the other is the Conrail/former Pennsylvania Railroad main line via Pittsburgh and Harrisburg).

As my summary reveals, New York is responsible for a vast and complicated commuter network. It is operated by different government agencies over facilities used by Conrail, which facilities are owned in part by New York. Hundreds of thousands of passengers rely upon the system for their daily transportation needs. The health, growth, and safety of these valuable assets are of paramount concern to New York. Safety, of course, is a special concern.

B. InterCity

Amtrak conducts operations on several major routes in New York. One is the NEC between Washington and Boston via New York City. The NEC between Trenton and Newark is to be part of

the North Jersey Shared Assets Area; from Newark north through New York City the NEC will be acquired by CSX. After the merger, both CSX and NS will conduct through freight operations over the portion of the NEC between the northern New Jersey area and Washington.

A second New York line used by Amtrak is the Hudson Line between New York City (Penn Station) and Albany on the east side of the Hudson River. The New York Metropolitan Transportation Authority ("MTA"), Metro-North's parent, acquired the portion of this line between Penn Station and Poughkeepsie by long-term lease from Penn Central Corporation in 1972. Metro-North dispatches this segment, and operates commuter service between New York City and Poughkeepsie. The Conrail portion of this line (and Conrail's operating rights over the Metro-North portion) will be acquired by CSX. Amtrak operates intercity passenger trains over the Hudson line between New York City and Albany, as well as a through train between New York and Chicago via Albany, Buffalo and Cleveland. The Hudson Line is maintained for high-speed passenger operations, as high as 110 MPH in certain areas. Conrail presently operates local freight service and one daily through freight train in each direction on this line.

A third line used by Amtrak is the Empire Corridor (part of Conrail's Chicago Line) between Albany and Buffalo.

Most of this line is owned, and all of it is dispatched, by Conrail. Amtrak operates an average of 7.4 daily intercity trains over this line between Albany and Buffalo (including the through New York-Chicago trains mentioned earlier, which operate via Buffalo and Conrail's main line extending eastward to Erie and Cleveland). CSX will acquire this line. This will be one of CSX's two principal Chicago-East Coast routes for freight traffic (the other being the former B&O main line via Pittsburgh and Cumberland, MD to Baltimore and Philadelphia), and it will be used for virtually all CSX traffic moving between the Midwest and New York City/New England. Other Amtrak routes of importance to New Yorkers are its runs to Montreal and Boston. All of these routes and the train services over them are extensively used by New York.

As my testimony demonstrates, passenger service is of utmost importance to New York. The complexity of the commuter operations in New York is self-evident. The efficient movement of commuters requires the close cooperation of the railroad and the State agencies. I again emphasize that safety is a paramount concern. New York is equally apprehensive over the long-run commitment of Applicants to maintain and improve long-haul passenger transportation in New York. As I have explained, much of New York's investment in Conrail was made to facilitate passenger service. For example, substantial sums have been spent by New York on the Conrail lines north and south of Albany with

the objective of eventually achieving train speeds of 125 miles per hour. Much work remains to be done, however. If Applicants, for any reason, fail to follow through on the State's long range efforts to increase passenger train speeds, the State's investment will be lost. Yet without some Board oversight, New York's worst fears may be realized. Applicants' operating plans have only a three (3) year horizon. The State's investments have been made in the context of a far-longer time frame. For New York to realize fair returns on its investments, an oversight period of, at least, ten (10) years is required during which the Board maintains jurisdiction to address the inevitable problems which New York will face in assuring that Applicants adhere to both the letter and the spirit of their commitments and Conrail's to the State and to their joint passenger programs.

Any approval by the Board of the pending Application must be conditioned upon the following:

1. An express commitment by Applicants to continue the New York program to achieve high speed passenger service between New York City and Albany (125 MPH) and between Albany and Buffalo (100 MPH).
2. An express commitment by Applicants to enhance and expand their passenger facilities in conjunction with Amtrak as circumstances require as contemplated by the State when the State invested in Conrail facilities.
3. The imposition of an oversight condition directly connected with passenger operations in New York State. The provision must remain in force for at least ten (10) years in order for New York to

insure that its citizens receive a fair return on their Conrail investments.

The relationship between New York and Conrail is a unique one in which New York has invested huge sums in Conrail facilities with few strings attached in order to promote adequate passenger service well into the 21st century. If the Board authorizes Applicants' proposal it must do so under conditions which protect the investment of the State on behalf of its rail passenger population.

CONCLUSION

In my testimony I have endeavored to acquaint the members of the Board with the unique relationships which New York has with railroads operating in the State and with Conrail in particular. Because of its massive investments in Conrail, New York has earned and paid for the right to have a strong say in the fashion in which Conrail is to be partitioned. Our support helped Conrail through the precarious early years and strengthened its bottom line in later years. In fact, it is arguable whether Conrail would be so strong, and thus so valuable, without the public assistance it accepted from all levels of government. New York's contribution is in the top rank of state support of rail transportation both in generosity and in scope.

In effect, New York and Conrail were partners in a venture in which each mutually and keenly needed to succeed. The State's substantial investment gives New York a true stake in

Conrail. Each partner did what was necessary, including the commitment of political and financial resources, to assure that success. In this sense, New York's stake is real. Even if it has no stocks, bonds, or other formal property in the corporation, New York surely has moral equity in Conrail.

The requirements of the public interest together with New York's past and continuing

Verification

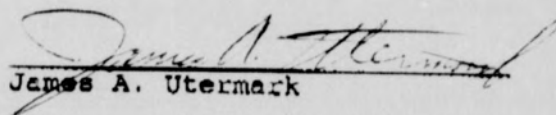
State of New York)

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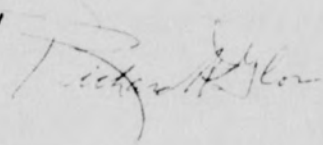
County of ALBANY)

James A. Utermark, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.


James A. Utermark

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

RICHARD P. GLOR
Notary Public, State of New York
Qualified in Erie County
No. 4731427
Commission Expires May 31, 1998



Notary Public in and for the State
of New York

FREIGHT AND INTERCITY PASSENGER RAILROADS IN NEW YORK STATE

Prepared by New York State Department of Transportation, September, 1964

Legend

— Through Freight Service
— Limited Freight Service
— Local Freight Service
— Through Passenger Service
— Limited Passenger Service
— Local Passenger Service
— Intercity Passenger Service
— Commuter Service
— Ferry Service
— Air Service
— Cable Service
— Pipeline Service
— Electric Power Service
— Telephone Service
— Gas Service
— Water Service
— Sewer Service
— Sanitation Service
— Fire Service
— Police Service
— Health Service
— Education Service
— Social Service
— Recreation Service
— Cultural Service
— Religious Service
— Civic Service
— Business Service
— Industrial Service
— Agricultural Service
— Forestry Service
— Mining Service
— Manufacturing Service
— Transportation Service
— Communication Service
— Public Service
— Private Service
— Other Service



For further information, contact the New York State Department of Transportation, Office of Railroads, Albany, New York 12242.

Legend

— Through Freight Service
— Limited Freight Service
— Local Freight Service
— Through Passenger Service
— Limited Passenger Service
— Local Passenger Service
— Intercity Passenger Service
— Commuter Service
— Ferry Service
— Air Service
— Cable Service
— Pipeline Service
— Electric Power Service
— Telephone Service
— Gas Service
— Water Service
— Sewer Service
— Sanitation Service
— Fire Service
— Police Service
— Health Service
— Education Service
— Social Service
— Recreation Service
— Cultural Service
— Religious Service
— Civic Service
— Business Service
— Industrial Service
— Agricultural Service
— Forestry Service
— Mining Service
— Manufacturing Service
— Transportation Service
— Communication Service
— Public Service
— Private Service
— Other Service

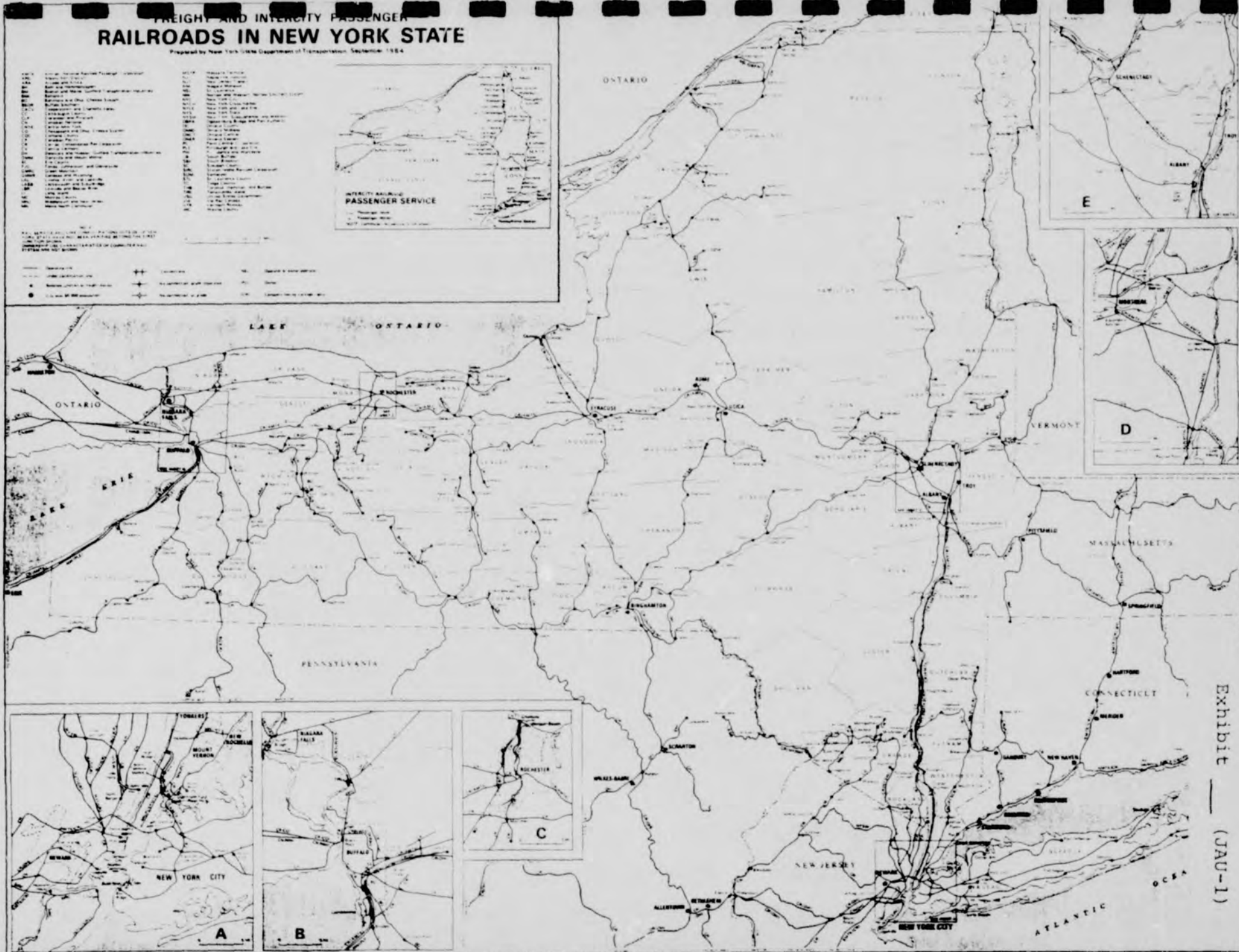


Exhibit (JAU-1)

RAIL PROGRAM ELEMENTS

New York State's Rail Program consists of a number of separate but coordinated elements. The following is a concise explanation of each element including its purpose, funding source, and current status.

- The Rail Preservation Bond Act of 1974 established a rail program to preserve essential rail service and established eligibility for federal financial assistance. Approved BY the statewide electorate in November, 1974, it authorized a State debt of \$250 million for preservation, restoration, and improvement of rail transportation capital facilities and equipment.
- The Essential Rail Services Appropriation was part of the Rail Preservation Bond Act of 1974 in the form of a legislative appropriation which advanced \$30 million for the immediate needs of the most urgent aspects of the Rail Preservation Program. Included was the reinstitution of passenger services and the rehabilitation of track and equipment on high priority lines.
- The Energy Conservation Through Improved Transportation Bond Act of 1979 was approved by the electorate in November, 1979, and authorized a State debt of \$500 million, \$400 million of which was appropriated for improving rapid transit, commuter, intercity rail passenger and rail freight capital facilities and equipment.
- The Early Implementation Appropriation was part of the

Energy Conservation Through Improved Transportation Bond Act of 1979 in the form of a legislative appropriation which advanced \$10 million for rail and rapid transit projects prior to the enactment of the parent Bond Act.

- The Local Rail Service Assistance Program was initially developed through the Regional Rail Reorganization Act of 1973 (3R Act), which led to the establishment of Conrail, and provided assistance to 17 states in the Northeast and Midwest on an eligible mileage ratio basis. Funds could be used to subsidize, rehabilitate, purchase or rail bank branchlines not included in the Conrail system or branchlines in which substantial public funds had been invested. The Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) amended the earlier program in several ways, including the extension of the program to include all states. The Local Rail Service Assistance Act of 1978 (LRSAA) reoriented the program toward lines still owned and operated by private carriers by permitting interested parties to revitalize branchlines prior to abandonment or service discontinuance. Finally, the Northeast Rail Service Act of 1981 (NERSA) further modified the program in several ways, including the limiting of planning support funds for every state, regardless of size and/or entitlement and the elimination of operating assistance as a use for the funds.
- The State Rail Preservation and Local Rail Freight Assistance Program were funded by the State Legislature to

provide capital and operating assistance for branchlines and shortlines by supplementing declining federal program funds and by supporting lines not eligible for federal subsidies. Projects in this program are generally small in nature, \$750,000 or less, and shorter in duration.

- Local Rail Service Preservation - Capital Project Fund - In State fiscal years 1985-86 and 1986-87, \$3.0 million was appropriated each year for the improvement of rail service in association with the rationalization of Class I railroads, branchline improvements, urban restructuring and/or other rail service preservation projects. This program varies from past appropriations in that it requires a 50% local project match for each project and the promulgation of rules and regulations.

The purpose of this program is to encourage industrial retention and growth, to make New York's shipping community more competitive, and to integrate changes to the railroad network into public works projects, thus providing lower costs and more cost effective solutions.

- The Rebuild New York Bond Program contains funds for freight railroad improvements, grade crossing eliminations, grade crossing protection, railroad related bridges, and port railroads.

In addition to the specific capital programs listed above, legislative budget items were made available in 1979 for specific rail improvements. These included:

- High Speed Rail Passenger Improvements: \$17,500,000
(Croton-Hoffmans)
- Southern Tier Mainline Improvements: \$14,600,000

Other funds which have been approved for specific rail service improvements include:

- Long Island Railroad Subsidies: \$245,110,000
- Amtrak 403(b) Subsidies: \$ 5,082,000

Except for the Rebuild New York Bond Program, most of the funding made available through these sources has been obligated and a major portion has been expended. Over \$7 million has been expended on Rebuild New York rail-related projects.

The State's Rail Program also provided for rail safety. The rail safety aspects include the following four categories:

- The Grade Crossing Elimination Program provides for the elimination of specific highway-railroad at-grade crossings. This program is funded from annual legislative appropriations and is subject to regulatory action by NYSDOT, upon petition by jurisdictional municipalities.
- Railroad Law Bridge Reconstruction funding is available for existing highway-railroad grade separation structures located on non-state highways.
- The Rail-Highway Crossing Improvement Program, which is 90% funded by the Federal Highway Administration, provides funding to eliminate hazards at existing grade crossings either on or off the federal-aid highway system. Projects

advanced under this program include improvements to both the crossing surface and warning devices.

- The Safety Inspection Program provides for the monitoring of the rail carriers in New York State in all aspects of railroad safety. The specific safety disciplines are: track, signal and trail control, motive power and equipment, operating practices, and hazardous materials. The New York State Department of Transportation also participates in the Federal Railroad Safety Program in which staff railroad safety inspectors are currently certified by the Federal Railroad Administration in the track and motive power and equipment safety disciplines.

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AIDA	293513301	AMSTERDAM RAIL SPUR	B		0		D210351	001	083181	120182	010389	257000
AIDA	293517301	KELLOGG BRANCH REHABILITATION	B		0		D001348	001		101584	011989	200000
Amsterdam Industrial Development Agency												457,000
AM	593593001	AMTRAK 403(B) SUBSIDY PROG (10/1 - 9/30/96)	9		0		D139715	001				820000
AM	593593001	AMTRAK 403(B) SUBSIDY PROG (10/1 - 9/30/97)	1		0		D139715	002				820000
AM	593599301	RTL TURBOLINER UPGRADE	8		0		D007639	001	102695		073197	3000000
AM	593599301	RTL TURBOLINER UPGRADE (INSURANCE COVERAGE)	8		0		D007639	002	102695		073197	100000
AM	X93551301	PENN STATION-WEST SIDE LINE CONNECTION	4		0		D002264	001	043089		071196	14000000
AM	X93551301	PENN STATION-WEST SIDE LINE CONNECTION	4		0		D002264	002	043089		071196	4000000
AM	X93551301	PENN STATION-WEST SIDE LINE CONNECTION	4		0		D002264	003	070191		071196	10000000
AM	X93551301	PENN STATION-WEST SIDE LINE CONNECTION	4		0		D002264	004	123191		071196	1000000
AM	193507301	ALBANY-RENSS STATION AND PARKING LOT	B		0		D140684	001		090182	063087	600000
AM	193510301	SCHENECTADY PASSENGER STATION CONSTRUCTION	B		0		D139582	001		110181	080587	240236
AM	193524301	ALB-RENSSELAER STA PARKING LOT EXTENSION	B		0		D002069	001	012386	121785	052289	225000
AM	193532301	WHITEHALL NEW PASSENGER STAT. AND FACILITY	9		0		D002668	001		092190		100586.25
AM	193532301	WHITEHALL NEW PASSENGER STAT. AND FACILITY	9		0		D002668	002		092190		27000
AM	193533301	TICONDEROGA NEW PASSENGER STAT AND FACILITY	9		0		D002668	001		092190		62913.75
AM	193534301	AMTRAK WESTPORT STATION IMPROVEMENTS	B		0		D002662	001		110189		42000
AM	193540301	125 MPH DEMONSTRATION TRACK IMPROVEMENT	8		0		D008168	001				2030500
AM	193545301	ALB-RENSSELAER RAIL STATION REDEVELOPMENT	B		0							1000000
AM	193547301	HAMILTON PRINTING PRIVATE CROSSING IMPROV.	B		0				123198			250000
AM	293520301	UTICA PASS. STATION ACCESS IMPROVEMENTS	B		0		D002614	001	020188	091390	031193	242000
AM	293520301	UTICA PASS. STATION ACCESS IMPROVEMENTS	B		0		D002614	002	020188	091390	031193	9200
AM	493500301	ROCHESTER PASSENGER STATION CONSTRUCTION	B		0		D094558	001		050179	122479	577560
AM	593501301	NIAGARA FALLS PASSENGER STATION	B		0		D139743	001		070180	063087	330000
AM	593502301	EXCHANGE ST STATION RECONSTRUCTION	B		0		D139824	001		070180	063087	184000
AM	593510301	CHEEKTOWAGA PASSENGER STATION CONSTRUCTION	B		0		D140317	001	102880	073181	063087	621000
AM	593594301	DEPEW RAIL STATION IMPROVEMENTS	B		0		D009830	001	022898			150000
AM	893538301	RHINECLIFF STATION REHAB	B		0		D002085	001		121087	033191	0
AM	893538301	RHINECLIFF STATION REHAB	B		0		D002085	002		033191	031193	162300
AM	893538301	RHINECLIFF STATION REHAB	B		0		D002085	003		033191	031193	12700
National Railroad Passenger Corporation (Amtrak)												40,608,996
APR	193541301	ALB PORT RAILROAD AIR PLANT FACILITY	B		0		D008184	001	123197			79775.61
APR	193801371	ALBANY PORT RR REHABILITATION	B		0		D140153	001	103180	070188	021494	2600000
APR	193801371	ALBANY PORT RR REHABILITATION	B		0		D140153	002	103180	070188	021494	103300
APR	193801371	ALBANY PORT RR REHABILITATION	B		0		D140153	001	103180	070188	021494	2600000
Albany Port Railroad												5,383,076
AR	500902301	REMSEN-LAKE PLACID RAIL LINE REHAB	B		0		D094946	005	123180	020181	022891	1750000
AR	500902301	REMSEN-LAKE PLACID RAIL LINE REHAB	B		0		D094946	602	123180	020181	022891	50600
AR	500902301	REMSEN-LAKE PLACID RAIL LINE REHAB	B		0		D094946	803	123180	020181	022891	200000
AR	500902301	REMSEN-LAKE PLACID RAIL LINE REHAB	B		0		D094946	804	123180	020181	022891	600000
AR	500902301	REMSEN-LAKE PLACID RAIL LINE REHAB	B		0		D094946	605	123180	020181	022891	100000
Adirondack Railway Corporation												2,700,600
ARA	493508301	ARA RR REHABILITATION OF 3 BRIDGES	B		0		D140158	001		040689	011890	246600
ARA	493508301	ARA RR TRACK REHABILITATION, 14.9 MILES	B		0		D140158	002		040689	011890	745211
ARA	493522301	ARA RR BRIDGE EMERGENCY REPAIRS	B		0		D140158	003	043087	040689	011890	90000
ARA	493523001	ARA RR LOCOMOTIVE PURCH/FACILITY REPAIR	9		0		D002636	001	033188			150000
ARA	493523001	ARA RR LOCOMOTIVE PURCH/FACILITY REPAIR	9		0		D002636	002	033188			0
ARA	493523001	ARA RR LOCOMOTIVE PURCH/FACILITY REPAIR	9		0		D002636	003	033188			0

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Arcade & Attica Railroad												1,231,811
ARPS	275288321	ADIRONDACK RAILROAD ENHANCEMENT PROJECT	1		0							400000
ARPS	293531301	ADIRONDACK RY PRESERVATION REMSEN-BIG MOOSE	1		0		D011092	001				215000
Adirondack Railroad Preservation Society												815,000
BCID	593705101	BINGHAMTON INTERMODAL STUDY	9		0		D010728	001				200000
Broome County Economic Development Alliance												200,000
BM	193516301	B&M RR MECHANICVILLE YARD REHAB	8		0		D094680	001		120178	100279	1902300
BM	193523301	B&M RR MECHANICVILLE CLASS YARD IMPROVEMENT	8		0		D000115	001	123182		042788	848070
Boston & Maine												2,548,370
BNK	193522302	BNK RR REHAB. 27.79 MILES	8	D250207	1467161	011283					011283	0
BNK	193525301	BNK RR EMERGENCY SOILS STABILIZATION	8		0		D000283	601	070183	070183	031794	10000
BNK	193526301	BNK RR REPAIRS	8		0		D000389	001				190000
BNK	193548301	BATTENKILL RAILROAD '98 SOILS STABILIZATION	8		0		D011041	001				55000
BNK	193602001	BATTEN KILL RAILROAD TRACK REHAB	8		0		C930102	001	123195		112295	50000
Battenkill Railroad												305,000
BO	593514302	BUFFALO FREIGHT TERMINAL PROJECT	8		0		D003024	001			073189	36260
Baltimore & Ohio Railroad												36,260
BP	593591301	TRACK REHAB - MACHIAS SOUTH	8		0		D008162	001				2100000
Buffalo & Pittsburgh Railroad												2,100,000
BUFF	593592301	STUDY TO RELOCATE EXCHANGE ST STATION	8		0		D009588	001				50000
City of Buffalo												50,000
C.H.	892075001	HUDSON AMTRAK STATION RENOVATION	9		0		K550140	001			090396	300000
C.H.	892075001	HUDSON AMTRAK STATION RENOVATION	9		0		K550140	002			090396	75000
City of Hudson												375,000
CACV	993503301	CACV RR TRACK REHABILITATION	8		0		D094292	601		080180	012795	578138
Cooperstown & Charlotte Valley Railroad												578,138
CB	593544301	GANSON ST RECONSTRUCTION	9		0		D000395	001		082388	082988	100000
City of Buffalo												100,000
CC	593543301	NY&LE RR EMERGENCY WORK	8		0		D140727	001		093088	020393	101000
Cattaraugus County Industrial Development Agency												101,000
CC&H	593703101	DEVELOPE AN RFP FOR RTL RETROFIT PROGRAM	8		0		C008833	001		120498		100000
Chambers, Conlon & Hertwell												100,000
CCID	593569301	NY & LE RR TRACK REHABILITATION	9		0		D002094	001	123188			200000
CCID	593569301	NY & LE RR TRACK REHABILITATION	9		0		D002094	002	123188			200000
Cattaraugus County Industrial Development Agency												400,000
CIDA	593550301	BUSH INDUSTRIES RAIL SIDING	8		0		D002093	001	123185		052494	1400000
CIDA	593550301	BUSH INDUSTRIES RAIL SIDING	8		0		D002093	002	123185		052494	90000
CIDA	593572301	N&W RY CHEMICAL PROCESS&SUPPLY SIDETRACK	8		0		D002285	001	123188	082287	112288	300000
CIDA	593590301	NY&LE TRACK REHAB	8		0		D008178	001				450000

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Chautauque County Industrial Development Agency												2,240,000
CNEG	593591101	CONEG RAIL & TRANSPORTATION ACTIVITIES	9		0		D010754	001				18750
Coalition of Northeastern Governors												18,750
CNYK	293506301	CNY RR TRACK REHABILITATION	8		0		D094291	001		080180	030598	800904
CNYK	293522172	RICHFIELD SPRINGS/RICHFIELD JCT. REHAB	0		0		D920201	001	050394		103195	1078768
Central New York Railroad												1,877,872
CORT	393159001	CORTLAND COUNTY GRADE CROSSING IMPROVEMENT	9		0		C893007	001	070993		021095	200000
CORT	393520301	CORTLAND COUNTY TEAM TRACK	9		0		C880047	001	033191			200000
CORT	393520301	CORTLAND COUNTY TEAM TRACK	9		0		C880047	002				450000
City of Cortland												850,000
CR	593512301	CONRAIL HIGH SPEED RAIL POUGHKEP-SCHENECTADY	8		0		D094668	001		123182	013089	47380000
CR	593526000	CONRAIL INTERLOCKING IMPROVEMENTS, ALB-BUF	8		0		D094282	001		040684	040684	5397500
CR	593542301	CONRAIL LYONS FALLS BRANCH REHAB	8		0		D139681	001		120181	012690	5752783
CR	593546301	CONRAIL AUBURN BRANCH REHAB	8		0		D139957	001		063082	062288	5312000
CR	593547301	CONRAIL SOUTHERN TIER LINE REHAB	8		0		D140091	001	120180	110183	070887	8536000
CR	593548301	CONRAIL SYRACUSE-MASSENA TRACK REHAB	8		0		D140722	001	040181	030183	082085	7500000
CR	593553301	DOBBS FERRY&ARDSLEY STA CLEARANCE IMPROVMT	8	D096299	307673	061580	D140481	001			031185	32805
CR	593553301	DOBBS FERRY&ARDSLEY STA CLEARANCE IMPROVMT	8	D096299		1 061580	D140481	002			031185	20084 21
CR	593553302	DEPOT PLACE & 5 OTHER BRIDGE CLEAR IMPROVEM	8	D096500	9756871	011983	D140858	001			100788	330000
CR	593553302	DEPOT PLACE & 5 OTHER BRIDGE CLEAR IMPROVEM	8	D096500		1 011983	D140858	002			010987	263174
CR	593553302	DEPOT PLACE & 5 OTHER BRIDGE CLEAR IMPROVEMTS	8	D096619	4908992 45	112383	D140952	001			031689	428555
CR	593553303	LUDLOW ST & 9 OTHER BRIDGE CLEAR IMPROVEMTS	8	D096708	784365 88	041883	D210163	001			082184	19535
CR	593553304	HIGH STREET BRIDGE RECONSTRUCTION	8	D096708		1 041883	D210163	002			082184	14730
CR	593553304	HIGH STREET BRIDGE RECONSTRUCTION	8	D096708		0	D000068	001	010583	010183	062288	410000
CR	593555301	CONRAIL WILLIAM ST TERMINAL IMPROVEMENTS	8		0						040485	0
CR	593556301	OAK POINT LINK UNDER THIRD AVE	8	D250254	1778919	040485						8200
CR	593556302	OAK POINT CONNECTOR TURNOUT INSTALLATION	5	D250696	2295400 8	091285	D003297	001				1483 38
CR	593556302	OAK POINT CONNECTOR TURNOUT INSTALLATION	5	D250696		1 091285	D003297	002				87300
CR	593556307	OAK POINT CONNECTOR-HARLEM RIVER YDRUN TRK	8	D500438	7223576 95	122388	D540131	001			080390	73000
CR	593558371	BAY RIDGE LINE CLEARANCE IMPROVEMENTS REHAB	0	D250238		1 012787	D001464	001			022488	59000
CR	593560301	CONRAIL HIGH SPEED RAIL POUGHKEP-CROTON HARMON	8		0		D140749	001	120182		041185	28347822 4
CR	593601371	CONRAIL WASSAIC-MILLERTON LDL PROGRAM MAINT	0		0		D139952	001		110179		155439
CR	593603371	WEST SHORE SEC(PC LINE 81)SOIL STABILIZATIO	0	D096213	85237 85	121279	D094910	001			053184	0
CR	593603372	WEST SHORE SECONDARY REHABILITATION	0	D096213		0 121279	D094910	001			053184	2015486
CR	593603373	WEST SHORE SEC(PC LINE 81)SLOPE STABILIZAT	0	D096213	48320	121279	D094910	003		123179	121279	0
CR	593608371	CONRAIL MALONE-CANADIAN BORDER LDL PROG MNT	0		0		D139952	001		110179		156238
CR	593609371	CLARENCE TEAM TRACK CONSTRUCTION	0		0		D094897	001		061580	020684	22500
CR	593610371	HANNIBAL-WEBSTER ACCELERATED MAINTENANCE	0		0		D094448	001		121278	090281	1544455
CR	593610372	WALLINGTON TRACK CONNECTION, USRA 102/108	0	D095576	211897 06	070178	D094949	001		120178	013184	134000
CR	593611371	ONTARIO SEC/SODUS BAY SEC REHAB, 37.5 MILES	0	D095892	1933857 4	080880					080880	0
CR	593612371	BUFFALO TRANSLOADING FACILITY	0		0		D140008	001	123179	060181	072982	220000
CR	593614371	MARION BRANCH ACCELERATED MAINTENANCE	0		0		D094448	001		122178	090281	322778
CR	593614372	NEWARK TRACK CONNECTION TO ALB-BUF ML	0		0		D139602	001	101078	123178	013184	352000
CR	593618301	KINGSTON-KINGSTON PT ACCELERATED MAINT	8		0		D140308	001		120179	090782	400000
CR	593618371	KINGSTON-KINGSTON PT ACCELERATED MAINT	0		0		D139600	001		120779	011984	302850
CR	593621371	OWEGO-MILLS TRACK REHABILITATION	0	D095857	1664938	100179					100179	0
CR	593623371	SHORTSVILLE-VICTOR ACCELERATED MAINTENANCE	0		0		D094448	001		090578	090281	91735
CR	593623372	VICTOR-SHORTSVILLE TRACK CONNECTIONS	0	D095592	594727 25	112878	D139554	001		112878	111281	36465
CR	593624371	BATAVIA TRACK CONNECTION TO CALEDONIA BR	0		0		D094909	001		073178	040684	270000
CR	593625371	FAIR OAKS TEAM TRACK CONSTRUCTION	0		0		D094899	001		120178	053184	14900

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CR	593629371	SALAMANCA TEAM TRACK IMPROVEMENTS	0		0		D139540	001		060180	020684	25000
CR	X93539301	OAK POINT TEAM TRACK CONSTRUCTION	0		0		D140968	001	082881	050182	072685	350000
CR	X93561101	OAK POINT LINK RESUMPTION: P.E.	0	D254273	1			011				0
CR	093519302	CONRAIL PROTECTIVE BARRIER CONSTRUCTION	0	D098925	113115 98	030183	D140230	001			031689	75000
CR	293503301	CONRAIL EMPIRE CORRIDOR TRACK IMPROVEMENTS	0		0		D089658	001	050175	120175	100477	1300000
CR	393505301	CONRAIL PHOENIX BRANCH REHABILITATION	0	D095261	816424 56	062878	D094303	001			052682	2798040
CR	393516301	CONRAIL RADISSON IND PARK YARD CONSTR	0		0		D139943	001	123179	050180	071883	2386047 22
CR	393517301	CONRAIL SUPPORT YARD AT FULTON	0		0		D000306	001		081589	090490	2250000
CR	493509301	ROCHESTER OUTER LOOP IND PARK TRACK CONSTR	0		0		D139901	001		093078	101882	401700
CR	493515301	GOODMAN ST YD-ROADRAILER- & HIGHBRIDGE YARD	0		0		D000053	001	052683	032189	040990	430000
CR	503807301	CLINTON ST(RT 354)ETC,BRIDGE ABUTMENT REMOV	0	D000000	361376 76	112585					072288	21150
CR	551225301	GENESSEE ST(RT 33)REMOVAL OF ABAND RR BRIDGE	0	D500252	354000	013087	D540069	001			022488	578000
CR	593505301	NIAGARA JCT. RAILWAY REHABILITATION	0		0		D004538	001		061782	052885	6058000
CR	593507301	CONRAIL BUFFALO-NIAGARA FALLS TRACK REHAB	0		0		D139744	001		052585	102285	4700000
CR	593514301	BUFFALO FREIGHT TERMINAL TRACK/SIGNAL IMPR	0		0		D000348	001	120187	102285	102285	300000
CR	593532301	CONRAIL BURROWS LOT YARD IMPROVEMENT	0		0		D000293	001	083184	072585	090886	68700
CR	593547301	BATTENFELD AMERICAN SIDING RELOCATION	0		0		D003088	001		102585	120388	0
CR	593548301	SMITH ST. ETC. BRIDGE ABUTMENT REMOVAL	0	D500069	104864	061985		999			061985	0
CR	593549301	BROADWAY, ETC. BRIDGE ABUTMENT REMOVAL	0	D500082	185196	030687		999			030687	0
CR	593553301	CLINTON ST BRIDGE ABUTMENT REMOVAL	0	D500217	96690	120685		999			120685	0
CR	593554301	50 PARK AVE. ETC. BRIDGE ABUTMENT REMOVAL	0	D500211	320000	120385		999			120385	0
CR	593555301	SENECA ST ETC BRIDGE ABUTMENT REMOVAL	0	D500227	117617 25	030586		999			030586	0
CR	593556301	10TH ST BRIDGE ABUTMENT REMOVAL	0	D500233	43245	112785	D540056	001			102286	10300
CR	593557301	AMHERST ST.ETC BRIDGE ABUTMENT REMOVAL	0	D500247	357476	091687	D540118	001			072088	55800
CR	593558301	BAILEY AVE&SCAJAQUADA ST BRIDGE REMOVAL	0	D500253	297000	073186		999			073186	0
CR	593559301	MICHIGAN AVE,ETC,BRIDGE ABUTMENT REMOVAL	0	D500363	1149757 07	102687		999			102687	0
CR	593563301	INDIAN CHURCH RD,ETC,BRIDGE ABUTMT REMOVAL	0	D500470	336780	040588	D540137	001			040990	9400
CR	593565301	NO OGDEN ST,ETC,BRIDGE & ABUTMENT REMOVAL	0	D500432	984662 2	080688		999			080688	0
CR	593568301	FILLMORE AVE,ETC,BRIDGE ABUTMENT REMOVAL	0	D500618	680715	102990		999			102990	0
CR	593575301	DINGENS ST/THRUWAY BRIDGE REMOVALS	0	D500492	253756	090889		999			090889	0
CR	593577301	BRIDGE ABUTMENT,GR XING REMOVAL,CONTRACT 16	0	D500553	347610	110188	D540175	001			040990	2700
CR	593578301	BRIDGE/ABUTMENT/GR XING REMOVAL,CONTRACT 17	0	D500687	458434 5	102489	D540248	001			050390	0
CR	593601101	BUFFALO TERMINAL STUDY LABOR-MGT TASK FORCE	0		0		D140101	001	100180	100182	112583	80000
CR	693504301	CONRAIL WELLSVILLE SIDING/TCS	0		0		D140447	001		032984	032984	2500000
CR	693510301	CONRAIL HEMLOCK JCT YARD RELOCATION	0		0		D000498	001	123186	080187	040990	350000
CR	793505301	CONRAIL NEWTON FALLS BRANCH REHAB	0		0		D000281	001	123184	121584	121788	1984000
CR	802125301	RT 62 RR BRIDGE REMOVAL OVER HIGHWAY	0		0		D004319	001			041690	292800
CR	893020321	BABCOCK ST BRIDGE CLEARANCE PROJECT	0	D250234	1248300 6	032884	D001203	001			031187	118350
CR	893509321	POUGHKEEPSIE STA PARKING LOT IMPROVEMENTS	0	D095987	759098 25	092981	D140869	001			041188	409200
CR	893515301	BALLARD RD BRIDGE REHAB	0		0		D094825	001	100177	120178	081782	71684 9
CR	893520301	CONRAIL TRACK IMPROVEMENTS, CP 89-CP 94	0		0		D094281	001		080177	012583	215000
CR	893530301	CONRAIL TRACK REHAB, SUPPERN-PORT JERVIS	0		0		D140720	001	120181	080785	022388	1700000
CR	893533321	RHINECLIFF STATION PARKING LOT EXPANSION	0	D250188	138195	032983	D001201	001			031387	11800
CR	893537301	CAPTAINS 3 & 2 OTHER PRIVATE XING PROTECT'N	0		0		D003045	001			010791	349400
CR	893537301	CAPTAINS 3 & 2 OTHER PRIVATE XING PROTECT'N	0		0		D003045	002			010791	41643
CR	893615301	HUDSON LINE CLEAR IMPR BEACON SEC BRIDGE	0		0		D004505	001				951000
CR	893512102	BINGHAMTON RAIL RESTRUCTURING: P.E.	0	D253008	1	081191	D540293	011			081993	2500
Consolidated Rail Corporation (Conrail)												162,097,011
CRTA	393524301	SYRACUSE INTERMODAL CENTER	0		0		D008148	001	100897			1500000
Central New York Regional Transportation Authority												1,500,000
DH	593524301	D&H RY TRACK IMPROVEMENTS-1975	0		0		D094102	001		083080	011791	3972400

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DH	593524302	'89 - \$3 MILLION CAPITAL PROGRAM	9		0		D005356	001	100190		011791	3000000
DH	593524303	1991 CAPITAL PROGRAM	9		0		D006347	001	033192			3000000
DH	593524304	D&H CORPORATION MASTER AGREEMENT	9		0		D006346	001	011803			0
DH	593525301	D&H RY REMANUFACTURE OF 8 LOCOMOTIVES	8		0		U094144	001		060178	112378	2200000
DH	593534301	D&H RY TRACK IMPROVEMENTS-1976	8		0		D094415	001		070181	081985	4465134
DH	593535301	D&H RY REHAB 30 DIESEL LOCOMOTIVES	8		0		D094578	001		081778	011791	1210000
DH	593538301	D&H RY SIGNAL AND COMMUNICATION IMPROVEMENT	8		0		D094801	001		060182	011791	1100000
DH	593541301	D&H RY TRACK IMPROVEMENTS-1977	8		0		D094729	001		120177	042181	2199874
DH	593545101	D&H RY FINANCIAL STUDY	8		0		D139581	001		030179	040480	150000
DH	593554301	D&H RY REHAB 80 BOX CARS	8		0		D140368	001		040180	120280	240000
DH	593564301	D&H RY SALE OF 200 BOXCARS TO NY STATE	8		0		D210090	001		070181	072981	1850000
DH	593564302	D&H RY LEASE AND REHAB OF 200 BOX CARS	8		0		D210148	001		070183	060383	2750000
DH	593583301	D&H RY EAST BINGHAMTON YARD	8		0		D000367	001	123185		011791	600000
DH	593583302	D&H RY REHAB, E. BINGHAMTON-RICHMONDVILLE	8		0		D000367	001	123186		011791	15269090
DH	593583303	D&H RY REHAB, FORT EDWARD TO PORT KENT	8		0		D000367	001	123186		011791	2030910
DH	593585401	D&H RY OPERATING SUBSIDY	8		0		D000364	001		042485	042485	3000000
DH	193500000	D&H RY PASSENGER SERVICE TO MONTREAL	8		0		D089518	001		123177	052781	5450000
DH	193518301	D&H RY ADIRONDACK BRANCH REHABILITATION	8		0		D094578	003		100184	011791	8430000
DH	193528301	D&H RY MILL ST TRACK REHABILITATION	8		0		D000485	001	080184	091285	070590	75000
DH	193536301	MOHAWK YARD CLEARANCE IMPROVEMENT	8		0		D008180	001				60000
DH	193537301	CLEARANCE IMP BETWEEN CAPT DIST & ROUSES PT	8		0		D008181	001				50000
DH	193538301	CONSTRUCT NEW TEAM TRACK IN KENWOOD YARD	8		0							400000
DH	193539301	RAIL CLEARANCE SCHENECTADY TO PORT OF ALB.	8		0		D008183	001	113097			975000
DH	193539301	RAIL CLEARANCE SCHENECTADY TO PORT OF ALB.	8		0		D008183	002	070898			3125000
DH	193539301	RAIL CLEARANCE SCHENECTADY TO PORT OF ALB.	8		0		D008183	003	113097			250000
DH	593538301	D&H RR JX YARD EMERGENCY REPAIR	8		0		D000228	001		120183		0
DH	593541301	D&H RR JX YARD REHAB, PHASE 2	8		0		D000487	001			011791	200000
DH	593571301	LEHIGH VALLEY YARD PREVENTATIVE MAINTENANCE	8		0		D002228	001	082086		011791	85000
DH	993505301	D&H RY ONEONTA YARD IMPROVEMENTS	8		0		D094578	002	090179	070183	011791	250000
DH	993508102	D&H RY BELDEN TUNNEL CLEAR IMPROVEMENT STUDY	8		0		D550008	001	100984	100385	100385	300000
DH	993507301	D&H RY LOCO. REPAIR FACILITY-E BINGHAMTON	8		0		D000367	001	123186		011791	3000000
DH	993509301	D&H RY BELDEN TUNNEL CLEARANCE IMPROVEMENT	8		0		D550150	001	123185	090187	011791	8500000
DH	993512101	BINGHAMTON RAIL RESTRUCTURING, P.E.	9	D253008	1		D004837	011			022692	5550
DH	993512301	BINGHAMTON RAIL RESTRUCTURING	9	D253008	1219547	091191	D004825	001				805700
DH	993521301	BROOME CORP. PARK RAIL SIDING-PENNFIELD CO	U		0							100000
Delaware & Hudson Railway Corporation												78,878,658
DL&W	493530301	CONSTRUCT NEW ENGINE HOUSE	8		0		D008140	001	093098			108000
Depew, Lancaster & Western Railroad												108,000
DMM	493521301	D&MM RR TRACK/BRIDGE UPGRADING, PHASE I	8	D500498	3239343.12	081588	D003533	001			081588	0
DMM	493521305	D&MM RR TRACK/BRIDGE UPGRADING, PHASE II	8	D252189	921544	122388	E003533	001			122388	0
DMM	493521308	GNWR BRIDGE REHAB, CONTRACT (02)	8	D252335	789489.89	012890	F003533	001			012690	0
Danville & Mount Morris Railroad												0
ECID	593595301	WOODLAWN BEACH RAIL RELOCATION PROJECT	8		0							1000000
ECID	593596301	GENERAL MOTORS - POWERTRAIN	8		0							1000000
EIDA	593537301	BUFFALO & SOUTHWESTERN BRANCH REHAB.	8		0		D000333	001	110184		122195	908400
EIDA	593540301	LANCASTER INDUSTRIAL TRACK REHAB	8		0		D000333	002	110184		122195	423600
EIDA	593540301	LANCASTER INDUSTRIAL TRACK REHAB	8		0		D000333	003	110184		122195	200000
EIDA	593552301	MODPAC RAIL SIDING RECONSTRUCTION	8		0		D002057	001	030586	120487	031491	375000
EIDA	593552301	MODPAC RAIL SIDING RECONSTRUCTION	8		0		D002057	002	030586	120487	031491	67827
EIDA	593560301	NIAGARA FRONTIER FOOD TERMINAL RAIL SIDING	8		0		D002204	001	091088		032288	350000

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EIDA	593562301	GIOIA SIDING GROTE/AMHERST ST XING REMOVAL	6		0		D002079	001	123085	030990	031491	160000
EIDA	593562301	GIOIA SIDING GROTE/AMHERST ST XING REMOVAL	6		0		D002079	002	123085		031491	115000
EIDA	593580301	DUNLOP TIRE INDUSTRIAL SIDING REHAB	6		0		D002671	001	063089	101269	100891	283000
EIDA	593585301	CP DRAW RAIL YARD IMPROVEMENT	9		0		D006841	001	113093		100896	920000
EIDA	593588301	ECIDA-BUFFALO SOUTHERN RAIL REHAB	8		0		D008177	001				845000
EIDA	593589301	TRACK & TRANSLOAD FACILITY IMPROVEMENTS	8		0		D008178	001				210000
EIDA	593593301	TIFFT TERMINAL BYPASS CONNECTION	8		0		D009573	001	123196			2000000
EIDA	593593301	TIFFT TERMINAL BYPASS CONNECTION	8		0		D009573	002	123196			700000
Erie County Industrial Development Agency												9,555,827
FELD	175408302	PT. EDWARD RAIL STATION REHAB	8		0		D009582	002				100000
FELD	175408321	PT. EDWARD RAIL STATION REHAB	8		0		D009582	001				350000
Fort Edward Local Development Agency												450,000
FJG	293507301	FJ&G RR TRACK REHABILITATION	8		0		D094290	001		123181	041983	1705000
Fonda, Johnstown & Gloversville Railroad												1,705,000
GJ	193515301	G&J RR TRACK REHABILITATION	8		0		D094766	001		123179	032690	800000
Greenwich & Johnsonville Railroad												800,000
GNWR	493511301	GNWR SILVER SPRINGS TRACK CONNECTIONS	6		0		D000217	003	063084		062395	493923
GNWR	493511303	FOSTER-WHEELER PHASE III; 2 BRIDGE REPAIRS	6		0		D000217	004			062395	83348
GNWR	493513301	GNWR CALEDONIA YARD/GROVELAND BRANCH REHAB	6		0		D000073	001	043083	100687	061989	522581
GNWR	493514301	GNWR REHAB 13 9 MI. GROVELAND-GREIGSVILLE	6	D250314	330136	110883	D000074	001			110883	0
GNWR	493518301	GNWR MAPLEWOOD TRACK CONNECTIONS	6		0		D000217	001	063084		062395	373067
GNWR	493517301	GNWR CALEDONIA TRACK CONNECTIONS	6		0		D000217	002	063084		062395	349662
Genesee & Wyoming Railroad												1,822,581
GRS	593701321	ITS ADV. COMM. @ RAIL CROSSINGS PHASE 1	0		0		C009819	001				2625000
General Railway Signal Company												2,825,000
IT	193544301	FORT EDWARD INDUSTRIAL RAIL SIDING	1		0		D011059	001	031899			450000
Irving Tissue												450,000
KENT	193542301	PORT KENT RAIL PASSENGER SHELTER	6		0		D006847	001	093095			25000
Village of Kent												25,000
LA&L	493528301	TRACK & BRIDGE REHAB	8		0		D008141	001				10000
LA&L	493600371	LA&L REHAB OF ROCHESTER SOUTH CLUSTER	1		0		D010753	001				1017000
LAL	493512301	LAL RR TRACK RECONSTRUCTION	8		0		D140832	001		020483	012583	430000
LAL	493519301	LAL RR YARD EXPANSION AT LAKEVILLE	6		0		D000491	001	090187	120888	061689	125000
LAL	493519301	LAL RR YARD EXPANSION AT LAKEVILLE	6		0		D000491	002	090187		061689	0
LAL	493520301	LAL RR EMERGENCY REPAIR OF WASHOUT	6		0		D000490	001		120185	022088	100000
Livonia, Avon & Lakeville Railroad												1,682,000
LCDC	593574301	GATEWAY INDUST. PARK TRACK CONNECTION	6		0		D002274	001	123188		031491	250000
LCDC	593579301	GATEWAY METROPORT SIDING AND RAIL EXTENSION	6		0		D002663	001	063089			0
LCDC	593579301	GATEWAY METROPORT SIDING AND RAIL EXTENSION	6		0		D002663	002	063089			671000
Lackawanna Community Development Corp												921,000
LI	593557102	FOREST PARK DR/PARK LANE SO. TRACK LOWERING	8		0		D003048	001		061389	111589	547760
LI	593557301	ELLISON AVE CLEARANCE IMPROVEMENT PROJECT	8	D250255	706999	112183	D001197	001			062889	183993
LI	593557302	CARLE PLACE PEDESTRIAN BRIDGE RAISING	8		0		D001417	001			062889	144287

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LI	593558371	BAY RIDGE LINE CLEARANCE IMPROVEMENT&REHAB	0	D250238	2788228.69	012787	D001786	001				180000
LI	593558371	BAY RIDGE LINE CLEARANCE IMPROVEMENT&REHAB	0	D250238		1 012787	D001786	002				182737
LI	093600371	CONSTRUCT FRT CAR REPAIR PAC AT HOLBAN YARD	0		0		D140219	001		120182	062989	2500000
Long Island Rail Road												3,718,777
LIDA	493526301	HUNT HOLLOW ROAD BRIDGE CLEARANCE IMP.	9		0		C900424	001			021396	45100
LIDA	493527301	CHAT HOLLOW ROAD BRIDGE CLEARANCE IMP.	9		0		C900424	002			021396	43000
LIDA	493531301	AKZO SALT RAIL ACCESS	1		0		D009855	001	123199			10500000
LIDA	593551301	LOCKPORT IND PARK - SIDING EXTENSION	8		0		D002223	001	110186	012387	062988	500000
LIDA	593551301	LOCKPORT IND PARK - SIDING EXTENSION	8		0		D002223	002	110186	012387	062788	37000
Livingston County Industrial Development Agency												11,125,100
LINK	59355830C	OAK POINT LINK SAFETY MAINTENANCE	B	D252528	0							0
LINK	X93558301	OAK POINT LINK - CONTRACT 2A	B	D252612	4531859							0
Oak Point Link												0
LIRR	593558302	EAST NY TUNNEL CLEARANCE IMPROVEMENT	B	D500441	2064126	071385	D540135	001				648378
LIRR	X93540301	LIRR FREIGHT IMPROVEMENT PROJECTS	B		0		D140371	001	120181			1455000
LIRR	X93549301	LIRR LONG ISLAND CITY YARD PIT TRACK	B		0		D002247	001	050187			250000
LIRR	X93552371	LIRR FREIGHT IMPROVEMENTS - WEST END	0		0		D002621	001				2873418
LIRR	X93600371	BUSHWICK BRANCH INDUSTRIAL TRACK REHAB	0		0		D008395	001	123195			687389
LIRR	093501001	LIRR TRACK IMPROVEMENTS	B		0		D088003	001				7720901
LIRR	093554301	LIRR FRT OPERATIONS-ML EAST END	0		0		D002821	002				1150000
LIRR	093662301	PURCHASE 33 RAIL BOGIES	B		0		D005362	001				924000
Long Island Rail Road												15,709,084
LRHS	980359321	LEATHERSTOCKING RAILROAD PURCHASE	0		0		D011316	001	123198			1125000
Leatherstocking Railroad Historical Society												1,125,000
LV	693500301	OWEGO-FREEVILLE/MORAVIA-CORTLAND TRK REHAB	B		0		D089621	001		040178	101279	850000
Leigh Vally Railroad												850,000
M&NJ	893547301	TRACK IMP M&NJ, MIDDLETOWN TO SLAVE HILL	8		0		D008194	001				120000
Middletown & New Jersey Railroad												120,000
MA&N	593598301	TRACK & BRIDGE REHAB CARTHAGE TO LOWVILLE	8		0		D008143	001				200000
MA&N	293526301	REHAB RAILROAD BR. OVER MOHAWK RIVER	5		0		D007637	001	060196			300000
MA&N	293530301	EAST COAST OLIVE OIL/UNIVERSAL WASTE SIDING	8		0		D008173	001				140000
MA&N	793507371	REHAB OF LOWVILLE INDUSTRIAL TRACK	0		0		D007599	001	100195			400000
Mohawk, Adirondack & Northern Railroad												1,040,000
MDA	393523001	SYRACUSE STAD. MARKET CTR. INTERMODAL STUDY	9		0		C920301	001	041594			250000
MDA	393601301	SYRACUSE MARKET CENTER REHAB BLDG. 4	9		0		D007657	011	123197			500000
Metropolitan Development Association of Syracuse and Central New York												750,000
MN	593553303	LUDLOW ST & 9 OTHER BRIDGE CLEAR IMPROVEMENTS	B	D096619	1 112383						112383	0
MN	593553306	HIGH-BD YD E END CONN & REPAIR CORNWALL STA	B		0		D000386	001			012491	86050
MN	593558303	HIGHBRIDGE-HARLEM RIVER YARD R-O-W FENCING	B	D250777	125394.92	032184					032184	0
MN	593558304	OAK POINT LINK TRESTLE AND RR CONSTRUCTION	B	D250829	1 083188		D003219	001				20530
MN	593558304	OAK POINT LINK TRESTLE AND RR CONSTRUCTION	B	D250829	1 083188		D003219	002				15545.75
MN	X93559301	OAK POINT LINK MAINTENANCE CONTRACT 2B	B	D500792	3798481.75	111892	D004963	001				30789
MN	X93581301	OAK POINT LINK RESUMPTION	B	D254273	510,5697		D008764	001				0
MN	X93581301	OAK POINT LINK RESUMPTION	B	D254273	510,5697		D008408	001	123197			7948000

Exhibit
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MN	893020321	BABCOCK ST BRIDGE CLEARANCE PROJECT	B	D250234	1 032884	D001789	001				062189	88530 98
MN	893020321	BABCOCK ST BRIDGE CLEARANCE PROJECT	B	D250234	1 032884	D001789	002				062189	10005 75
MN	893600301	LAUREL ST CLEARANCE IMPROVEMENT, CONTR 1	B	D252452	2127559 121989	D004501	001					389405
MN	893601302	UPPER STATION RD CLEAR. IMPROVE, CONTR 2	B	D252561	4495207.25 062290	D004541	001					314117
MN	893602302	RT 9A CLEARANCE IMPROVEMENT, CONTR 2	B	D252561	1 062290	D004542	001					194148
MN	893603301	NORTH BROADWAY CLEARANCE IMPROV, CONTR 4	B	D252562	12791284.8 022791	D004525	001					530742
MN	893604301	SECOR RD CLEARANCE IMPROVEMENT, CONTR 4	B	D252562	1 022791	D004526	001					413109
MN	893606301	RUDCO RD CLEARANCE IMPROVEMENT, CONTR 1	B	D252452	1 121989	D004500	001					92568
MN	893607301	MAIN ST PED BRIDGE CLEARANCE IMPR, CONTR 4	B	D252562	1 022791	D004527	001					208187
MN	893608301	OSSINING STA CLEARANCE IMPROVE, CONTR 4	B	D252562	1 022791	D004528	001					476278
MN	893609301	SCARBOROUGH STA PED BRDG CLEAR IMPR, CONTR 5	B	D252620	2349289.2 071190	D004537	001					181274
MN	893610301	SCARBOROUGH STA RD CLEAR IMPROVE, CONTR 5	B	D252620	2349289.2 071190	D004529	001					181274
MN	893611301	PHILIPSE MANOR STA PED BRDG CLEAR IMP, CONTR 5	B	D252620	2349289.2 071190	D004530	001					208187
MN	893612301	PALMER AVE BRIDGE CLEARANCE IMPROV, CONTR 3	B	D252599	1647271.8 070589	D004531	001					208187
MN	893613301	HUDSON LINE CLEAR IMPR, TRACK LOWERING/LINING	B		0	D004507	001					1000400
MN	893614301	HUDSON LINE TUNNEL REHAB/CLEARANCE IMPROVE	B		0							5400000
Metro-North Railroad												18,137,239
MNJ	893539301	MNJ RR TRACK SURFACING	B		0	D000317	001	111483	070190		121590	40000
MNJ	893539302	MNJ RR ENGINE HOUSE CONSTRUCTION	B	D251341	339920 050586	D001578	001				050586	0
Middletown & New Jersey Railroad												40,000
MTA	093528301	MTA PURCHASE 22 FREIGHT LOCOMOTIVES	B		0	D094302	001			120180	121581	8622872
MTA	093601371	LIRR HOLBAN YARD HUMP REHAB	B		0	D094785	001			042678	080289	70000
MTA	093508301	POUGHKEEPSIE PASSENGER STA IMPROVEMENTS	B		0	D094907	001			080180	032268	129350
Metropolitan Transportation Authority												8,822,322
NPDD	593581301	PEMCO SIDING CONSTRUCTION	B		0	D005350	001	123189			011087	190500
NPDD	593581301	PEMCO SIDING ENVIRONMENTAL CLEAN UP	B		0	D005350	002				011087	196387
Niagara Falls Development Authority												386,887
NFTA	593597301	RAIL SERVICE TO EURO PLASTICS	B		0	D550137	002					90000
NFTA	595011301	PORT OF BUF - ACCESS, SECURITY & STAGGING	B		0	D550137	001					1420000
Niagara Falls Transit Authority												1,510,000
NYC	093514302	1ST AVE TRACK REBUILDING, 42D TO 58TH ST	B		0	D140575	001			101962	080288	4000000
NYC	093514372	65TH ST RAIL YARD CONSTRUCTION	B		0	D000114	001	070185				8000000
City of New York												12,000,000
NYCP	093518371	HUNTS POINT TERMINAL MARKET RAIL REHAB	B		0	D139338	001	050180	120181	080288		1540000
New York City Ports & Terminals												1,540,000
NYCT	593558304	OAK POINT LINK TRESTLE AND RR CONSTRUCTION	B	D250829	62281157.5 083188	D004363	001					319738.19
NYCT	X93561302	OAK POINT LINK RESUMPTION	B	D264273	1	D006897	001					370000
New York City Transit Authority												689,736
NYD	093514301	BUSH TERMINAL AREA IMPROVEMENT, PHASE 1	B		0	D084986	001	022881	030183	092089		2700000
New York Dock Railroad												2,700,000
NYED	X93568301	HUNTS POINT RAIL REHAB	B		0	D008477	001					2500000
NYED	X93567301	TRACK REHAB TO SERVICE HOWLAND HOOK	B		0	D008478	001					2100000
City of New York Economic Development Corporation												4,600,000

August 21, 1997

FREIGHT AND ECONOMIC DEVELOPMENT DIVISION
ALL ACTIVE AND CLOSED PROJECTS
IN 2ND PARTY ORDER

AGREE. WITH	PIN	PROJECT DESCRIPTION	PRIM FUND	DOT LET CONTRACT NUMBER	DOT LET BID PRICE	DOT LET COMP. ACTUAL	AGREE. NUMBER	NUM.	COMP. SCHED.	COMP. ACTUAL	ACCOUNT CLOSED	AGREE. AMOUNT
NYP&	509100301	NY PORT AUTH. DRAYAGE SUBSIDY PROGRAM	5		0		D142881	001	063083	063083	063083	530000
New York & New Jersey Port Authority												530,000
NYSW	593577301	NYSW UTICA BRANCH REHAB-91 MILES	8	D250477	2748774.8	111384	D001419	001			022889	495924
NYSW	593598001	SYRACUSE BR. TRACK REHAB. JAMESVILLE/BINGHAM	8		0		D008898	001	080894			3000000
NYSW	593598001	SYRACUSE BR. TRACK REHAB. JAMESVILLE/BINGHAM	8		0		D008898	002	123195			1000000
NYSW	593598001	SYRACUSE BR. TRACK REHAB. JAMESVILLE/BINGHAM	8		0		D008898	003	123197			241578
NYSW	593598001	SYRACUSE BR. TRACK REHAB. JAMESVILLE/BINGHAM	8		0		D008898	004	123197			200000
NYSW	593598001	SYRACUSE BR. TRACK REHAB. JAMESVILLE/BINGHAM	0		0		D008898	005	123198			499737
NYSW	593664301	SOUTHERN TIER BRIDGE CLEARANCE IMPROVEMENTS	9		0		D006837	001	051493			1002560
NYSW	593664301	SOUTHERN TIER BRIDGE CLEARANCE IMPROVEMENTS	9		0		D006837	002	051493			250000
NYSW	593664301	SOUTHERN TIER BRIDGE CLEARANCE IMPROVEMENTS	9		0		D006837	003	123198			900000
NYSW	293518301	NYSW UTICA YARD IMPROVEMENTS	8	D500473	343478.82	112087	D540138	001			121191	13320
NYSW	293518371	SCHUYLER STREET RECONSTRUCTION	8	D500474	825825	121388	D540225	001			121388	0
NYSW	293519371	SCHUYLER STREET RECONSTRUCTION	8	D500474	1	121388	D540225	002			121388	0
NYSW	293519371	SCHUYLER STREET RECONSTRUCTION	8	D500474	1	121388	D540225	003			121388	0
NYSW	293529301	McCRAITH RAIL SIDING	8		0		D008180	001				50000
NYSW	293525301	CORTLAND INDUSTRIAL RAIL SIDING - BUCKBEE M	8		0		D008898	003	123197			150000
NYSW	293527301	RAIL SPUR TO ROTH STEEL CORPORATION	U		0							107182
NYSW	993512103	BINGHAMTON RAIL RESTRUCTURING: P.E.	9	D253008	1	091191	D004595	011				6500
NYSW	993512302	BINGHAMTON RAIL RESTRUCTURING	9	D253008	1	091191	D004828	001				55801
NYSW	993512303	BINGHAMTON RAIL RESTRUCTURING	9	D253008	1	061191	D004828	002				5105
New York Susquehanna & Western Railroad												7,977,507
O&HR	693508301	TRACK & STRUCTURE REHAB	8		0		D008142	001	123198			450000
Owego & Hartford Railroad												450,000
OBPA	793503301	OBPA REBUILDING NSL #10 LOCOMOTIVE	8		0		D094482	001		112277	112277	91800
OBPA	793508301	OBPA TRACK/LOCOMOTIVE REHAB	8		0		D210512	001	123182			1512000
OBPA	793508001	REHAB OF ST. LAWRENCE & RAQUETTE RIVER RR	8		0		D007816	001	123194			400000
OBPA	793508001	REHAB OF ST. LAWRENCE & RAQUETTE RIVER RR	8		0		D007816	002	123194			450000
Ogdensburg Bridge & Port Authority												2,453,800
OC	993508301	PONY FARM INDUSTRIAL PARK RAIL SIDING	8		0		D000482	001	123184	052185	042889	300000
Otsego County Industrial Development Agency												300,000
OCID	393521001	JAMESVILLE IND. TRACK SYRACUSE RAIL SUPPORT	9		0		C910510	001	031994			771200
OCID	393521001	JAMESVILLE IND. TRACK SYRACUSE RAIL SUPPORT	9		0		C910510	002	031994			500000
OCID	393521001	JAMESVILLE IND. TRACK SYRACUSE RAIL SUPPORT	8		0		C910510	003	123195			3100000
OCID	393521001	JAMESVILLE IND. TRACK SYRACUSE RAIL SUPPORT	9		0		C910510	004	123195			175000
OCID	393521001	JAMESVILLE IND. TRACK SYRACUSE RAIL SUPPORT	9		0		C910510	005	123195			331087.53
OCID	393522001	SOUTHERN CONTAINER RAIL SIDING	8		0		D008150	001				150000
OCID	393526301	RAIL SIDING TO BALL CORPORATION	8		0		D011033	001	123198			79000
Onondaga County Industrial Development Agency												8,108,268
OCR	493529301	GRADE CROSSINGS REHAB	8		0		D008153	001			101895	25000
Ontario Central Railroad												25,000
OMD	593637301	OMD RR ENGINE HOUSE CONSTRUCTION	8		0		D140318	001		123180	102889	165000
OMD	593637302	OMD RR WOLCOTT RUN/AROUND TRACK CONSTRUCT	8		0		D140318	002			102888	72000
OMD	393518301	OMD RR TRACK REHAB, MP 18.4-18.8	8	D250357	182348.22	101183	D000071	001			101183	0
Ontario Midland Railroad												237,000