

STB

FD

33388

10-21-97

D

182776

182776

CONIGLIO & UTHOFF

A PROFESSIONAL LAW CORPORATION

110 WEST OCEAN BOULEVARD, SUITE C
LONG BEACH, CALIFORNIA 90802-4615

TERRY J. CONIGLIO*
STEPHEN M. UTHOFF

TELEPHONE: (562) 491-4644
TELECOPIER: (562) 435-1976
E-MAIL: candulaw@aol.com

*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

October 20, 1997

VIA FEDERAL EXPRESS



Secretary Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 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

Our File No. 2312

Dear Secretary Williams:

Enclosed for filing please find an original, twenty-five (25)
copies and a 3.5 diskette of The Rail Bridge Terminals (New Jersey)
Corporation's Comments and Request for Conditions on Behalf of The
Rail-Bridge Terminals (New Jersey) Corporation, Inc., and Verified
Statement of Mark Schepp in Support Thereof designated RBTC-9. The
Comments and Request is saved on the disk in WordPerfect 5.1 and
Text formats.

Please file the enclosed and return a conformed copy to our
office in the enclosed self-addressed stamped envelope.

Regards,

Stephen M. Uthoff

SMU:lme2
Enclosures

182776

ORIGINAL



RBTC-9

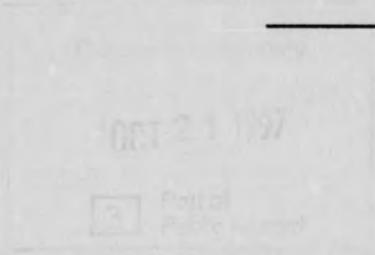
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 33388

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

RBTC-9

**COMMENTS AND REQUEST FOR CONDITIONS
ON BEHALF OF THE RAIL-BRIDGE TERMINALS
(NEW JERSEY) CORPORATION, AND
VERIFIED STATEMENT OF MARK SCHEPP
IN SUPPORT THEREOF**



**TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
110 West Ocean Boulevard
Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644**

**Attorneys for The Rail-Bridge
Terminals (New Jersey) Corporation**

TABLE OF CONTENTS

	<u>Page No.</u>
I. Background.....	2
II. Conditions Requested.....	4
III. Argument	5
A. The Applicable Board Standards Require the Imposition of the Requested Conditions.....	5
B. The Conditions Seek to Preserve Competition which the Applicants Intended to Create within the North Jersey Shared Assets Area.....	7
C. The shipping public, also loses the ability to have an equal alternative at RBTC's E-Rail.....	9
D. The Conditions Requested Should Not be Disallowed on the Basis that RBTC at E-Rail is a "1 to 1" Terminal.....	11
IV. Conclusion	13

ADDENDA

Verified Statement of Mark Schepp

Excerpts from the Deposition of James W. McClellan

Comes now, The Rail-Bridge Terminals (New Jersey) Corporation ("RBTC") and submits its comments and request for conditions in the above-captioned proceeding:

I. BACKGROUND

RBTC currently holds a long term lease for 90% of Conrail's E-Rail facility located in Elizabeth, New Jersey. RBTC, through its Lease and related contracts with Conrail is charged with operating all of the E-Rail facility including that portion which is retained by Conrail. (Schepp Statement, attached, para. 4).

The North Jersey Shared Assets Area comprises twenty Conrail rail yards and approximately one hundred and eighty nine miles of track (CSX/NS-18, Vol. 1, pp. 46 - 47; CSX/NS-20, Vol. 3A, p. 217). The New York/New Jersey area which is found in the North Jersey Shared Assets Area is the single largest market in this transaction and was given top priority during the negotiation of this deal. (see McClellan Deposition, p. 297, ll. 15 - p. 298, l. 2). CSX/NS' self proclaimed purpose for the North Jersey Shared Assets Area is to allow direct delivery to customers and to allow equal "physical access" by CSX and NS to those customers (see McClellan Deposition, p. 232, ll. 1 - 3, and p. 233, ll. 10 - 17; see also Mohan Statement CSX/NS-20, Vol. 3A, p. 14).

The North Jersey Shared Assets Area is the largest of the Shared Assets Areas. It was intended to provide to customers and shippers direct competitive service from two Class I railroads, (see Goode Statement CSX/NS-18, Vol. 1, pp. 330 - 331), and is especially important to this transaction considering the tremendous

increase in business that is anticipated in intermodal business and competition that the transaction will bring (see Goode Statement CSX/NS-18, Vol. 1, p. 333; McClellan Deposition p. 249, l. 21 - p. 250, l. 12). RBTC, as the lessor of the E-Rail facility, is in a unique position in the scheme of the intermodal market in the North Jersey Shared Assets Area. E-Rail, as a rail terminal, is one of the "four essential operating elements" of any intermodal system (Finkbinner Statement CSX/NS-19, Vol. 2B, p. 233) and is currently one of the four "current discrete intermodal yards" owned by Conrail in the North Jersey Shared Assets Area (see Finkbinner Statement CSX/NS-19, Vol. 2B, p 236). Conrail also has direct access to the port of New York/New Jersey.

RBTC is also in a unique position in that, among the intermodal yards found in the North Jersey Shared Assets Area that were not allowed equal access, E-Rail is the only one that is independently leased from Conrail. The intermodal yards which are leased or controlled by third parties, South Kearny (APL Portion), Dockside (Expressrail), and Port Newark, etc., have all been given equal access under the contemplated transaction (see Letter Agreement, CSX/NS-25, Vol. 8A, p. 370; CSX Operating Plan, CSX/NS-20, Vol. 3A, p. 227; NS Operating Plan, CSX/NS-20, Vol. 3B, p. 194). For unknown reasons, only RBTC (E-Rail) has been disallowed this preference. Such haphazard allocation of the assets in the North Jersey Shared Assets Area will cause irreparable harm to RBTC.

///

At the inception of the lease with Conrail, RBTC was charged with developing the E-Rail facility (see Schepp Statement, para. 3). After investing millions of dollars, RBTC began actual operations at the E-Rail facility in late 1988. Now, after RBTC has made E-Rail a first-class intermodal facility, this CSX/NS, transaction seeks to destroy what it has built.

II. CONDITIONS REQUESTED

To preserve the competition among the intermodal rail yards located in the North Jersey Shared Assets Area, RBTC requests that in any approval of this transaction, the Board impose conditions which require the following:

1. That RBTC at E-Rail be granted "equal access" to both NS and CSX.

Or, in the alternative,

2. That South Kearny (APL portion), Port Newark and Dockside (Expressrail) not be allowed equal access to both CSX and NS, but rather Kearny be maintained as a sole CSX facility and Dockside and Port Newark to be either given access to CSX or NS.

///

///

///

///

///

///

///

III. ARGUMENT

A. The Applicable Board Standards Require the Imposition of the Requested Conditions.

When the Board determines whether or not to approve this Application, the Board must decide whether the proposed split of Conrail is consistent with the public interest, 49 U.S.C. §11344(c) Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 395 (5th Cir. 1980), cert. denied 451 U.S. 1017 1981, see also, Penn-Central Merger and N & W Inclusions cases, 39 U.S. 486, 498-99 (1968).

To determine the public interest, the Board is charged with balancing the benefits of the proposed transaction against any competitive harm that cannot be mitigated by conditions. See 49 U.S.C. §11344(b)(1).

The effect of a transaction on competition is a critical factor in the Board's consideration in determining the public interest of the transaction. Santa Fe Southern Pacific Corp.-Control-SPT Co., 2 I.C.C. 2d 709, 726 (1986). The Board has unlimited authority to impose conditions on any approval of this Application in order to reduce or ameliorate any competitive harm caused by the proposed transaction and to insure that the public interest is protected. 49 C.F.R. §1180.1(d)(1). See also, Milwaukee Reorganization-Acquisition by GTC, 2 I.C.C. 2d 161, 263-264 (1984).

///

///

If a proposed transaction eliminates competitive alternatives to the public, conditions may be imposed to eliminate such harm provided that the conditions are of greater benefit to the public than detrimental to the transaction. Union Pacific Corp.-Control-Missouri Pacific Corporation, 366 I.C.C. 462, 562, 484 (1982). Imposition of this type of conditions addresses the statutory requirement in rail merger proceedings that the Board consider the "adequacy of transportation to the public." Lamoille Valley R. Co. v. I.C.C., 71 F.2d 295, 309 (D.C. Cir. 1983). See also, 49 U.S.C. 11344(b)(1)(A).

The public will lose E-Rail as an effective competitor if the Board approves this transaction without the requested conditions. Only by imposing the conditions that RBTC seek can the Board insure that competition is maintained to provide the public with the benefits of a competitive marketplace in the North Jersey Shared Assets Area for intermodal cargo. Indeed, the granting of the RBTC conditions will only complete the intent of the Applicants, i.e., to give all customers in the North Jersey Shared Assets Area a direct choice of rail services where none now exists. (See Mohan Statement, CSX/NS-20, Vol. 3B, p. 20).

///

///

///

///

///

///

B. The Conditions Seek to Preserve Competition which the Applicants Intended to Create within the North Jersey Shared Assets Area.

At present, virtually all intermodal terminals located in the North Jersey Shared Assets Area are solely serviced by Conrail. Thus, in competing for intermodal cargo, E-Rail is on equal footing with other intermodal yards such as APL's South Kearny, The Port of New York/New Jersey's Dockside (Expressrail), and to a certain extent Conrail's own Croxton facility. The fact E-Rail is now serviced by a single rail carrier does not alone define the parameters of providing competitive service. Indeed, other factors such as operational ability and efficiencies at the terminal, space availability, and strategic agreements with customers all are factors when considering the relative competition between intermodal yards in the North Jersey Shared Assets Area.

On its face, the creation of the North Jersey Shared Assets Area should have the effect of increasing intermodal competition by giving customers the ability to negotiate for the best rates among two rail carriers instead of one. However, it is acknowledged that Conrail controlled intermodal space is in short supply (see generally Finkbiner Statement, CSX/NS-19, Vol 2B pp. 217 et. seq.; Schepp Statement, para. 4) and, stacktrain operators such as K-Line (an RBTC customer), in particular are the intermodal customers that provide cargo to Conrail in trainload quantities, (Finkbiner Statement, CSX/NS-19, Vol. 2B, p. 232). Admittedly, a stacktrain operator is the "most efficient" shipper of intermodal cargo, and

thus, is in a better market position to negotiate rates than other types of shippers that must move intermodal containers by rail. (Finkbiner Statement, CSX/NS-19, Vol. 2B, p. 232). The choke points, however, are the intermodal yards which must handle this intermodal cargo.

While many shippers will obtain the benefit of the Shared Assets Area in being able to choose between NS and CSX as their rail carrier, E-Rail will not have the ability to equally compete with the intermodal terminals. Instead, E-Rail will be captive to intermodal cargo moving on NS trains and not be able to compete with the other terminals for such business, especially those serviced by CSX.

It is the creation of the North Jersey Shared Assets Area which provides the vehicle for potential increased competition. Indeed, all of the trackage located in the geographic region surrounding and leading up to the intermodal terminals in question, including E-Rail, will be shared between NS and CSX pursuant to the North Jersey Shared Assets Agreement. (See generally, Conrail System map, showing proposed allocation of Conrail Lines and rights, Metro New York and New Jersey blow-up, found in CSX/NS-25, Vol. 8B). However, in their wisdom, NS and CSX decided to exempt certain terminals from the North Jersey Shared Assets Agreement, those being E-Rail and Croxton which will be allocated to NS and North Bergen and portions of Kearny which will be allocated to CSX. However, Kearny which is the home base for one of E-Rail's customer's competitors, APL, has been given equal access to both

CSX and NS. RBTC understands the necessity of having dedicated facilities in the North Jersey Shared Assets Area for both CSX and NS. However, the problem lies in that RBTC has leased the E-Rail terminal for a long term from Conrail and other terminals similarly situated such as those found in the Port of New York/New Jersey, Dockside (Expressrail) and Port Newark as well as the South Kearny portion which has been leased by APL have been given equal access. RBTC only seeks equal treatment for E-Rail when compared to those terminals which are being leased or controlled by third parties.

CSX and NS has not presented to the Board or RBTC any reasonable explanation of this disparity. It is clear that providing APL and other competitors such as Dockside and Port Newark with equal access to both CSX and NS will create a competitive disadvantage to E-Rail now and in the future. RBTC has a vested interest in the E-Rail facility by way of the development costs, equipment purchases and a long term lease but now risks losing the ability to keep the customers which it has, and the ability to solicit new customers because of the haphazard way in which the assets found in the North Jersey Shared Assets Area were given or exempted from equal access.

C. The shipping public, also loses the ability to have an equal alternative at RBTC's E-Rail.

The North Jersey Shared Assets Area market was determined to one of the most important aspects of this transaction (McClellan Deposition, p. 297, ll. 15 - p. 298, ll. 2).

Furthermore, both CSX and NS felt that their intermodal

prospects in this area were one of the most advantageous aspects of this Application and opportunities for growth (McClellan Deposition, p. 249, ll. 21 - p. 250, l. 12; Goode Statement, CSX/NS-18, Vol. 1, p. 326).

While intermodal business in the North Jersey Shared Assets Area was identified as one of the most important aspects of this transaction, both CSX and NS have apparently chosen certain terminals which will obtain the competitive benefits therefrom.

As stated above, of the intermodal terminals which are controlled or leased by third parties, namely the Ports of New York/New Jersey or APL and RBTC, only RBTC was disallowed equal access. The customers that will suffer prejudice because of this disparaging treatment potentially encompass anyone shipping intermodal cargo. While indeed, RBTC's current primary customer is a "stacktrain operator" it does have the ability to obtain other business which could be virtually any intermodal movement which NS or CSX may handle. For example, RBTC now handles Conrail intermodal cargo at E-Rail. Keeping in mind, that one of the primary problems with the North Jersey Shared Assets Area is that intermodal space is at a premium (see generally, Finkbiner Statement, CSX/NS-19, Vol. 2B, pp. 217, et seq.; Schepp Statement, p. 4), RBTC through E-Rail will be captive to those customers which move their cargo with NS. To the extent CSX has intermodal shipments which RBTC could conceivably handle at E-Rail, RBTC is precluded from doing so because of a lack of equal access.

The conditions which RBTC seeks are minor. Simply, it

requests the ability to have equal access to CSX and NS at the E-Rail facility. A cursory review of the Shared Assets Area maps indicate the trackage leading to the E-Rail facility is slated to have equal access. RBTC simply requests that CSX be allowed to travel those few additional steps and have access to the E-Rail facility.

CSX's use of the E-Rail facility would depend on shippers choosing CSX over NS as their railroad to haul their intermodal cargo and choosing RBTC as the facility to serve their interests. Indeed, CSX and NS individually are also potential RBTC/E-Rail customers as Conrail is now. However, given the limitations of the planned transaction, CSX is no longer in that equation. If the conditions are granted, however, any individual or company which ships goods intermodally will have the opportunity to have meaningful competition in the North Jersey Shared Assets Area.

D. The Conditions Requested Should Not be Disallowed on the Basis that RBTC at E-Rail is a "1 to 1" Terminal.

The current transaction before the Board is unique. The most unique part, is the institution of broad geographic areas which will be known as "Shared Assets Areas" for North Jersey, South Jersey/Philadelphia and Detroit.

///

///

Prior to this transaction, Conrail essentially had a monopoly on shippers in Northern New Jersey. Because, North Jersey, South Jersey and Detroit were determined to be important markets for both CSX and NS, the Shared Assets Area concept was designed and developed to allow both NS and CSX the opportunity to serve all shippers in these areas. (CSX/NS-18, Vol. 1, p. 45; McClellan Deposition, p. 230, ll. 21 - p. 231, ll. 18). Thus, the current situation is not akin to traditional railroad mergers. For example, in a traditional railroad merger where there were two Class I railroads competing for the same business which combined into one railroad, certain shippers would be declared "2 to 1". Ameliorating these "2 to 1" shippers is always an important point of review for the Board, and indeed, CSX and NS have indicated to the Board their plans for curing any potential "2 to 1" harmful effects (Goode Statement, CSX/NS-18, Vol. 1, p. 334).

The Shared Assets Areas are a prime "selling point" for both CSX and NS in this transaction. Both CSX and NS go to great lengths explaining the history of the New York/New Jersey areas being served only by Conrail as a result of the bankruptcies, mergers, etc., of its predecessors and how, after decades of being locked into one Class I railroad, (Conrail), shippers and customers in the Shared Assets Area will now have the benefit of having the ability to chose between NS and CSX. (See generally, Hoppe Statement, CSX/NS-18, Vol. 1, pp. 342 - 361; McClellan Statement, CSX/NS-18, Vol. 1, p. 503 - 553).

///

There are certain geographic areas encompassed by this Application where "2 to 1" shippers have been identified and addressed in the traditional sense. (See Goode Statement Id.).

However, the North Jersey Shared Assets Area which admittedly is the most important geographic region to the success of this transaction, (McClellan Deposition, p. 297, ll. 15, pg. 298, l. 2) has created entirely new precedent in railroad transactions.

Where all shippers and rail terminals in the Shared Assets Areas previously had only access to Conrail, now, virtually all will have access to NS and CSX (with the exception of the terminals identified herein). Thus, RBTC will experience the same competitive disadvantages of a "2 to 1" shipper. In effect, by making every other terminal/shipper in its geographic region, i.e., the North Jersey Shared Assets Area, a "1 to 2" entity, RBTC has effectively become a "2 to 1" entity.

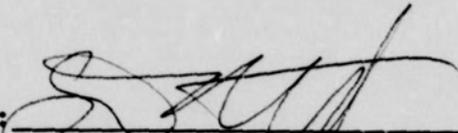
IV. CONCLUSION

The Applicants, in order to white wash the problematic details of the Shared Assets Areas, have described them as the great panacea for all of the businesses located in the Shared Assets Areas. However, upon closer review, RBTC for one, is being left out in the cold. The disparity between the treatment RBTC is receiving in this transaction and virtually every other independent intermodal rail yard and shipper located in the North Jersey Shared Assets Area must be remedied. The minor condition which RBTC seeks will preserve competition as it existed before the anticipated divestiture of Conrail with minimal impact to this transaction and

would give the shipping public a great additional benefit of having a choice for handling intermodal cargo in what was touted to be the most important marketplace for this transaction.

DATED: October 17, 1997

Respectfully submitted,

By: 

STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge
Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644

VERIFIED STATEMENT
OF
MARK SCHEPP

I, MARK SCHEPP declare:

1. That since the inception of The Rail-Bridge Terminals (New Jersey) Corporation ("RBTC"), I have been Terminal Manager of E-Rail and am currently Assistant Director of the E-Rail facility located in Elizabeth, New Jersey. I have personal knowledge as to the matters stated herein, and if called upon as a witness, I could and would competently testify thereto.

2. As an assignee, RBTC became a lessor of the entire E-Rail facility in 1987. As that time, E-Rail was not a viable intermodal facility. Instead, it had been leased out by Conrail to various tenants.

3. At that time, RBTC was charged with the development of E-Rail as an intermodal facility. RBTC invested millions of dollars in terminal improvements, construction and equipment to make E-Rail a viable intermodal facility.

4. At that time, RBTC leased the entire E-Rail facility. However, because of Conrail's lack of intermodal capacity in the North Jersey area, in 1994 an agreement was reached with Conrail whereby the RBTC leased portion of E-Rail was reduced by approximately 10%, and the remaining portion reverted back to Conrail. However, because RBTC had proved its operational ability, the entire E-Rail facility is completely operated by RBTC as its subcontractors.

5. E-Rail's primary competitors are the other intermodal yards located in the North Jersey area. These include Croxton, North Bergen, Kearny, Dockside (Expressrail) and Port Newark. It is my understanding that portions of the South Kearny yard are leased exclusively to APL, and the Dockside (Expressrail) and Port Newark terminals are owned and operated by the Port of New York/New Jersey. At this time, Croxton and North Bergen are dedicated Conrail facilities.

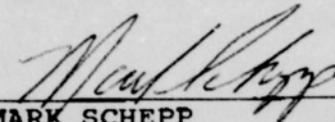
6. One of E-Rail's primary customers at this time is K-Line. K-Line is a stacktrain operator and E-Rail handles its transcontinental double-stack intermodal trains. One of K-Line's chief competitors is APL which operates its own stacktrains through the South Kearny yard.

7. It is our understanding from the Application that CSX and NS intend to give equal access to the South Kearny (APL portion) intermodal yard as well as the intermodal yards controlled by the Port of New York and New Jersey. E-Rail, thus remains the only independently leased intermodal yard in the entire geographic region which will not benefit from equal access under this transaction. Clearly, it places RBTC and E-Rail at a competitive disadvantage since it will not have the ability to compete with those yards with equal access.

8. At present, RBTC/E-Rail is on an equal footing with the remaining intermodal yards in the area in the ability to negotiate for potential customers that can be served at E-Rail. However, if E-Rail is saddled with only one rail line as an option, that being

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: 10/18/97



MARK SCHEPP

James W. McClellan **HIGHLY CONFIDENTIAL** September 26, 1997

PAGE 215 TO PAGE 308

ALDERSON REPORTING COMPANY, INC

COMPRESSED TRANSCRIPT & WORD INDEX
WORLDWIDE COURT REPORTING AND LITIGATION SUPPORT SERVICES

ALDERSON REPORTING COMPANY, INC
(202) 289-2260
1111 14th Street, NW Fourth Floor
Washington, DC 20005-5650
Phone: (800) FOR-DEPO
FAX: (202) 289-2221

Page 227

- (1) Q. Are you aware of whether this interchange can take place today at Tift Yard?
- (2) A. I think we go to CN, they don't come to us, that's my understanding.
- (3) Q. Do you have an understanding as to whether it could be done the opposite way today, with CN coming to you at Tift Yard?
- (4) A. My understanding of - my understanding of what the CN can or cannot do in Buffalo is derived directly from conversations with senior CN management.
- (5) Q. What is your understanding?
- (6) A. That they don't come to Tift Yard today, but they'd like to.
- (7) Q. Do you have an understanding as to whether CN has the right to come to Tift Yard today?
- (8) A. I don't know.
- (9) Q. If they did have that right to interchange with NS at not only the Black Rock area but also at Tift Yard, would that strike you as useful flexibility?
- (10) A. I have no opinion on that at this point. The facts I've gotten on that are from Canadian National. I don't have any independent

Page 228

- (1) assessment from my own people, Norfolk Southern officials.
- (2) Q. Is it correct that, as part of the proposed transaction, NS will obtain the right to interchange traffic with the South Buffalo Railway at Seneca Yard?
- (3) A. We interchange with South Buffalo today. But that's - I think the arrangement is not operationally as good as we would like so we got more direct access to the South Buffalo.
- (4) Q. Do you know whether the precise trackage over which NS would operate in order to reach Seneca Yard has been determined?
- (5) A. Exact trackage I think is specified.
- (6) There is a question about designation of yard tracks within Seneca Yard in terms of where we're going to pick up and deliver.
- (7) Q. What is your understanding of the trackage over which NS would operate?
- (8) A. I would have to look at the map.
- (9) That's the key document. We always go back to the map.
- (10) I see a little blip of orange where I think Seneca Yard - it says Seneca Yard. Lead, right here. I believe that is the piece we're

Page 229

- (1) talking about right here.
- (2) Q. So can you describe for me which track NS would operate over to reach the yard?
- (3) A. We would come down the Buffalo line it says right here. You see the Buffalo line? And reach into Seneca Yard that way.
- (4) Q. Are you familiar with NS's Bison Yard at Buffalo?
- (5) A. As I testified yesterday, the last time I was there it was before really the new facility was built.
- (6) Q. What is your understanding of the future use NS proposes to make of that yard if this transaction is approved?
- (7) A. The use of Bison Yard will continue as I understand it from the operating plan to be essentially as it is today.
- (8) Q. Will Bison Yard at any point in the future be used for interchange of traffic with other carriers?
- (9) A. I don't think that's in the operating plan. And, in fact, Bison Yard has been essentially, except for the portion that we've rebuilt, it's gone.
- (10) Q. Gone, do you mean in the sense that

Page 230

- (1) it's not a functional yard as it originally was?
- (2) A. Gone in the sense it doesn't have any tracks.
- (3) Q. Is it possible that at any point in the future NS would use Bison for interchange with other carriers?
- (4) A. Certainly it's possible. Only I would add, though, it requires - we have a yard that functions there for delivery of autos and intermodal, it has a specific function. I don't think there are any plans or I can't conceive of anything where we would change it, we're not set up to run interchange, we would have to build additional tracks there to do a different function.
- (5) Q. Do the principles of balanced competition, balanced rail competition as espoused by NS apply to shared asset areas?
- (6) A. I don't follow the question. I'm sorry.
- (7) Q. Let me rephrase it. Is your understanding that shared asset areas as utilized under the proposed transaction are intended to accomplish balanced rail competition?
- (8) A. The shared asset area was one of the

Page 231

- (1) techniques we used to meet the principles, yes.
- (2) Q. Is it the intent of the proposal that CSX and NS will be balanced competitors within a shared asset area?
- (3) A. No. That will be determined by the marketplace. What the shared asset area does is give each carrier an equal shot at the traffic.
- (4) But how all that is sorted out, that's going to be - the customers are going to decide that.
- (5) Q. Well, of course, the customers always decide. But is it your intent that each of CSX and NS would have an equal shot at the traffic moving to and from points within the shared asset area?
- (6) A. The way the shared asset areas are set up essentially guarantees a neutral service to the customers inside the asset area for connectivity to the line haul carriers.
- (7) Q. Is it your intent that, within a shared asset area, neither NS nor CSX would enjoy an operating advantage over the other with respect to reaching particular customers within a shared asset area?
- (8) A. No. Under the arrangement it would be possible for either CSX or NS to gain an

Page 232

- (1) operating advantage. For example, we have the right - each carrier has the right to make direct deliveries to customers. That is the practice today by Conrail crews and it's something we want to continue in the future.
- (2) So, if Norfolk Southern, for example, won a major contract with company A and that permitted us to avoid running the cars through Oak Island but rather delivering direct to the customer, we could do that. And vice versa obviously.
- (3) Q. So how would that result in an operating advantage for one over the other?
- (4) A. The carrier that was able to make direct delivery would have a shorter service schedule than the carrier that had to switch the cars through Oak Island through the processing - through the shared asset processing.
- (5) Q. But, if I understand your hypothetical, the direct delivery you posit is based on having won the traffic. But, from an operating standpoint, each of CSX and NS would have the ability to make a direct delivery, the same direct delivery, would they not?
- (6) A. Yes, that would be their choice.

Page 233

- (1) Q. And isn't it the intent of the shared
(2) asset area concept that, from an operating
(3) standpoint, CSX and NS would be more or less on
(4) an equal footing within the shared asset area?
(5) A. They're at an equal footing when the
(6) gun goes off. But there will be dynamics after
(7) that. Again, if you win the and deliver 20 cars
(8) and the other guy can direct deliver one car,
(9) that's what competition is about.
(10) Q. I understand. My questions are geared
(11) toward physical access. And I'm just seeking to
(12) determine whether it's your intent that, as to
(13) physical access, CSX and NS would be on an equal
(14) footing in reaching customers located within a
(15) shared asset area; is that your intent?
(16) A. That's I think the intent of the
(17) parties, yes.
(18) Q. Turning your attention to Detroit,
(19) there were some questions yesterday with respect
(20) to how the limits of the shared asset area were
(21) defined. And I believe you made a reference to
(22) access over Conrail's Utica branch I believe you
(23) called it on the north was a driving
(24) consideration; is that correct?
(25) A. That access to -- joint access to the

Page 234

- (1) Utica line was a part and parcel of the map that
(2) we put out to CSX in the very beginning, yes.
(3) Q. And I believe yesterday you made a
(4) reference to commercial and operating reasons
(5) that led to the definition of the south boundary
(6) of the shared asset area. Could you explain
(7) those commercial and operating reasons?
(8) A. I think they were more commercial than
(9) operating. In the course of the negotiations,
(10) CSX requested access as far south as Trenton;
(11) and, in the course of those negotiations, they
(12) were granted. We extended the parameters of the
(13) shared asset area to include Trenton.
(14) Q. So the intent was that CSX and NS would
(15) be balanced competitors as far south as Trenton,
(16) is that correct?
(17) A. The intent was that both carriers would
(18) have access to the customers along that line,
(19) yes.
(20) Q. Would you agree that the Detroit
(21) terminal area is rather complex in terms of the
(22) existing railroad operations?
(23) A. The railroad network in most urban
(24) areas is complex and Detroit is complex, it's a
(25) large urban area, yes

Page 235

- (1) Q. Are you aware that there are many
(2) crossings and control points in Detroit?
(3) A. Not of my own knowledge. I mean I've
(4) looked at maps and I've been there, but I
(5) haven't spent any time observing operations in
(6) Detroit.
(7) Q. I believe you, in answering a question
(8) yesterday, made a reference to the mechanism by
(9) which one railroad sometimes applies pressure in
(10) one place and the other railroad can apply
(11) pressure in a different place and I believe you
(12) said that's how it works. Do you recall that
(13) response?
(14) A. I don't recall the response yesterday,
(15) but I know that's -- that is how it works.
(16) Q. Do you think it's a useful thing for a
(17) railroad operating in a congested terminal area
(18) to have control over at least one line crossing
(19) within the terminal area?
(20) A. I think, as a general rule, that every
(21) railroad operating man would want to control
(22) every crossing for his own account. That's what
(23) makes negotiations.
(24) Q. If you were in a terminal area where
(25) other railroads controlled multiple crossings

Page 236

- (1) through which your own operations had to pass,
(2) would you want on behalf of your company to have
(3) control of at least one reciprocal crossing
(4) within the same terminal area?
(5) A. I think we face those circumstances
(6) many places. And sure, the operating guys would
(7) love to have them. They rarely get them, but
(8) they would love to have them.
(9) Q. Do you think that's a healthy thing,
(10) when control is dispersed, at least to the extent
(11) that each major railroad operating through a
(12) terminal area has control over at least one
(13) control point?
(14) A. You're asking me to put on my public
(15) policy hat. And I really -- as between CSX and
(16) NS, as we went forward, we certainly tried to
(17) develop a pattern where there was some sort of
(18) balance in terms of one guy controls A, one guy
(19) controls B.
(20) I don't know at the end of the day
(21) whether -- I suspect CSX still controls a lot
(22) more interlockings than we do at the end of the
(23) day. We did try to fix some things in terms of
(24) the new system. We didn't go back and try to fix
(25) everything in terms of the rest of the system.

Page 237

- (1) that wasn't what we were trying to do.
(2) Q. But, if you did put on your public
(3) policy hat, would you feel some dispersion of
(4) control would create balance and would be a
(5) healthy thing for the overall operation of a
(6) congested and complex terminal area?
(7) A. Well, it would partly depend on who the
(8) players were and it would partly depend on how
(9) important the particular junction was to the
(10) individual players. I don't think I would want
(11) to make a categorical statement without knowing
(12) that.
(13) I mean you could give control to a
(14) shortline over a crossing point or a guy that had
(15) one train a day. And, if I had 20 trains a day,
(16) that would not be a good deal from a public
(17) policy standpoint. So you better give me some
(18) specific facts.
(19) Q. Is it your suggestion that the volume
(20) of traffic should be an important consideration
(21) in determining who controls a particular control
(22) point?
(23) A. That would be a factor. I mean now
(24) we're playing public policy, you understand,
(25) we're putting me back at U.S. Railway. But that

Page 238

- (1) would be one of the things I would look at.
(2) Q. And, if you were wearing your corporate
(3) hat, on behalf of your own company, you would
(4) argue for the volume of traffic that you were
(5) moving through a particular control point, would
(6) you not?
(7) A. If I was wearing my corporate hat, I
(8) would argue for control. That's what my
(9) operating people like.
(10) Q. Are you familiar with the proposal that
(11) CN has made for the creation of the paired track
(12) arrangement in Detroit?
(13) A. My knowledge of what CN wants in
(14) Detroit very directly has come from senior
(15) Canadian National officials with whom we are
(16) negotiating. They represented their needs. A
(17) month ago I guess I read the CN filing. But
(18) basically the explanation of the issues was made
(19) to me by senior Canadian National people. And
(20) then I went to Europe. So I haven't checked with
(21) my own people.
(22) Q. Is there any view you'd like to express
(23) on that subject and that proposal at this point?
(24) A. I'm very reluctant to express opinions
(25) on something where the information is coming from

Page 245

(1) the Staten Island Railroad, the freight portions
 (2) thereof, which extend from Cranford Junction
 (3) across a very large bridge into Staten Island.
 (4) The bidding had been closed. Its
 (5) bidders included Canadian Pacific, Delaware and
 (6) Otsego, and New York and Atlantic which has the
 (7) freight operations of the Long Island Railroad.
 (8) The bidding was closed, but we were
 (9) requested orally by members of the Port Authority
 (10) staff to consider making a bid of our own, a
 (11) joint bid with CSX, the theory being that, with
 (12) the creation of a shared asset area in Northern
 (13) New Jersey, it might be more efficient just to
 (14) extend that operation over to Staten Island as
 (15) opposed to having yet another operator in the
 (16) food chain.
 (17) So that's where it stands. We were
 (18) asked to do that. We have submitted a proposal,
 (19) it was jointly developed obviously with CSX. I
 (20) signed the letter. So the Port Authority has
 (21) it. And I don't know who I sent it to, but I
 (22) signed the letter.
 (23) Q. Could you explain a bit more what you
 (24) just said relating to more efficient to do that
 (25) than to continue on the food chain?

Page 246

(1) A. That was the Port Authority - the Port
 (2) Authority's characterization of their thoughts on
 (3) the matter.
 (4) Q. Characterization to Norfolk Southern?
 (5) A. Norfolk Southern, that, rather than
 (6) have operator A at Staten Island handing off
 (7) traffic to a shared asset operator, that it might
 (8) be more efficient for the shared asset operator
 (9) to simply go across the bridge to Staten Island.
 (10) But obviously we have not seen the other bids and
 (11) I have no clue whether our proposal would be -
 (12) our proposal would wind up being more efficient
 (13) or not.
 (14) Q. And is CSX also bidding on this
 (15) operation?
 (16) A. Because it's in the shared asset area,
 (17) it's a joint proposal by CSX and Norfolk
 (18) Southern.
 (19) Q. It was the Port Authority of New York
 (20) and New Jersey that initiated this proposal, this
 (21) arrangement?
 (22) A. Yes.
 (23) Q. Why didn't CSX and Norfolk Southern
 (24) initiate this arrangement or try to negotiate
 (25) such an arrangement?

Page 247

(1) A. Because, at the time the bidding on
 (2) this operation was going on, we were at war with
 (3) CSX, we didn't have an agreement. So we
 (4) didn't - Norfolk Southern had a lot of other
 (5) stuff going on and so did CSX.
 (6) Q. As far as the application, though, and
 (7) the transaction agreement with CSX, why does that
 (8) not address the Howland Hook area?
 (9) A. Because it's not Conrail property.
 (10) It's Port Authority property. And the bidding
 (11) process had been closed. So it was a moot issue
 (12) as far as either CSX or NS were concerned.
 (13) Q. In arriving at the application in this
 (14) transaction, did Norfolk Southern and/or CSX look
 (15) at Howland Hook and try to devise a method of
 (16) incorporating that into postacquisition
 (17) operations?
 (18) A. No. Our concern in developing the plan
 (19) was the disposition of Conrail properties. We
 (20) couldn't obviously legally reach out for
 (21) disposition of properties owned by the Port
 (22) Authority or the Long Island Railroad or
 (23) whoever.
 (24) I mean, for example, the New York and
 (25) Atlantic has the freight franchise of the Long

Page 248

(1) Island, there's a float operation that connects
 (2) them. We assumed, in our planning for the
 (3) Conrail properties, that we would both reach the
 (4) float operations at Greenville. And somehow we
 (5) both reached the junction at Cranford to reach
 (6) Staten Island.
 (7) But they weren't Conrail properties so
 (8) there's nothing we could do. It would be a
 (9) little presumptuous of us to take in properties
 (10) that weren't Conrail properties.
 (11) Q. Was there any discussion or
 (12) consideration by Norfolk Southern or CSX in
 (13) arriving at the transaction or since then to
 (14) acquire or to finance the acquisition of Staten
 (15) Island Railway?
 (16) A. No.
 (17) Q. Why was that never considered?
 (18) A. It was not considered - I mean we -
 (19) our focus was Conrail.
 (20) Q. I understand.
 (21) A. Okay. And that's the answer, our focus
 (22) was Conrail. You know, there are hundreds and
 (23) hundreds of connecting properties to Conrail. We
 (24) didn't look at buying any of those.
 (25) Q. If the transaction is approved, it is

Page 249

(1) true, is it not, that CSX will operate former
 (2) Conrail lines on the east side of the Hudson
 (3) River south of Albany into the New York City
 (4) Metropolitan Area?
 (5) A. Yes, they will.
 (6) Q. Does Norfolk Southern plan to compete
 (7) for traffic that originates or terminates east of
 (8) the Hudson River south of Albany, for example, in
 (9) New York City and Long Island?
 (10) A. There are - yes, we'll compete and
 (11) we'll compete in two ways. As I discussed the
 (12) New York and Atlantic serves Long Island freight
 (13) carload business. And there's a float operation
 (14) from Long Island to Greenville, Greenville, New
 (15) Jersey.
 (16) And Greenville will be accessed by the
 (17) shared asset company. So both NS and CSX will
 (18) have a shot at handling carload traffic that's
 (19) floated to and from Long Island, point number
 (20) one.
 (21) Point number two, New York has a huge
 (22) intermodal complex. And we will reach - we have
 (23) a number of plans for reaching those markets,
 (24) both from Northern New Jersey and from other
 (25) terminals we may construct in the future.

Page 250

(1) intermodal terminals we may construct in the
 (2) future.
 (3) Q. If I could just go back to what you
 (4) just said, I didn't catch what you said about the
 (5) huge intermodal facility?
 (6) A. It's a huge intermodal market. And we
 (7) will reach that from Croxton, we'll reach -
 (8) well, E-Rail, we'll reach it from perhaps other
 (9) terminals we may construct years in the future
 (10) But we plan to compete vigorously for the
 (11) intermodal traffic and for the carload traffic in
 (12) conjunction with float operations.
 (13) Q. When you talk about Greenville, you're
 (14) talking about the Cross Harbor Railroad
 (15) operation; is that correct?
 (16) A. I believe they are the current
 (17) operator, yes.
 (18) Q. And is that the method that Norfolk
 (19) Southern would use to compete for that traffic on
 (20) the east side of the Hudson River?
 (21) A. For carload traffic, yes, for railcar
 (22) traffic.
 (23) Q. Is there another method or another link
 (24) that Norfolk Southern plans to use other than the
 (25) Cross Harbor to link the east side of the Hudson

- (7) Q. Mr. Pinkbiter testified I think that
 (8) there was rather limited physical expansion space
 (9) at Croxton. Is that consistent with your
 (10) understanding?
 (11) A. Sure.
 (12) Q. And he also testified that he believed
 (13) there was room for internal efficiency
 (14) improvements to enhance capacity. Is that also
 (15) your understanding?
 (16) A. I read his statement, his deposition,
 (17) yes.
 (18) Q. And you agree with that?
 (19) A. Yes.
 (20) Q. Is there any money budgeted in the plan
 (21) for expansion at Croxton?
 (22) A. I believe we have \$35 million, 25 or 35
 (23) million in for North Jersey terminals which
 (24) includes Croxton and E-Rail.
 (25) Q. Are you aware of anything in the plan

Page 297

- (1) which indicates how much of that 25 million would
 (2) be specifically for Croxton?
 (3) A. No.
 (4) MR. ALLEN: I believe he said 35
 (5) million.
 (6) THE WITNESS: He said specifically for
 (7) Croxton. And the answer is I don't know.
 (8) MR. ALLEN: But I thought you said 35
 (9) and then you said 25.
 (10) MR. LAURENZA: I believe he said 35 and
 (11) then corrected it to 25, which I believe is the
 (12) figure that's referenced at various places in the
 (13) application.
 (14) BY MR. LAURENZA:
 (15) Q. Mr. McClellan, I realize that probably
 (16) all of geographic markets or areas discussed in
 (17) the application are very important. But if you
 (18) had to rank or prioritize geographic markets or
 (19) areas in terms of their importance to this
 (20) transaction, where would you rank the greater New
 (21) York City/North Jersey area?
 (22) A. Probably first.
 (23) Q. And what are your reasons for saying
 (24) that?
 (25) A. It's the largest single market other

Page 298

- (1) than perhaps the Monongahela coal fields that
 (2) come as part of this Conrail acquisition.
 (3) Q. You testified at some length yesterday
 (4) regarding the situation with NS and North
 (5) Carolina Railroad. I have no interest in that
 (6) particular issue, but I do want to refer you to
 (7) the discussion in your verified statement in
 (8) which you refer to the possibility of rerouting
 (9) the traffic over the Shenandoah route. And I
 (10) believe that's discussed at pages 536 and 538
 (11) which is 34 and 36 of your statement.
 (12) A. Okay.
 (13) Q. At the top of page 538, you talk about
 (14) the possibility of rerouting trains using the
 (15) Shenandoah route. What would be the volume of
 (16) traffic that would be potentially diverted to the
 (17) Shenandoah route if the North Carolina situation
 (18) isn't resolved?
 (19) A. I suspect it's, you know, no more than
 (20) two trains in each direction a day.
 (21) Q. Would any portion of this rerouted
 (22) traffic be routed over the NS line between the
 (23) Riverton Junction and Alexandria?
 (24) A. No. The traffic flows - the NCRR
 (25) wouldn't influence that particular - well, let

CERTIFICATE OF TRANSMITTAL AND SERVICE

I hereby certify that I have this day served the foregoing document upon:

Secretary Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" St., N.W.
Washington, D.C. 20423-0001

Administrative Law Judge
Jacob Leventhal
Federal Energy Regulatory Commission
888 First St., N.E.
Suite 11F,
Washington, D.C. 20426;

Samuel Sipe
David H. Coburn
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795

Dennis Lyons
Drew A. Harker
Arnold & Porter
555 12th St., N.W.
Washington, D.C. 20004-1202

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom, LLP
1440 New York Ave., N.W., 9th Flr.
Washington, D.C. 20005-2107

Paul A. Cunningham
Harkins & Cunningham
1300 19th St., N.W.
Suite 600
Washington, D.C. 20036

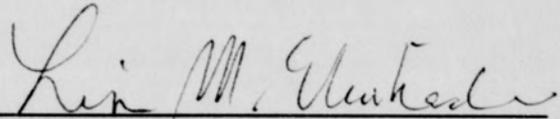
Richard A. Allen
John V. Edwards
Patricia Bruce
Zuckert, Scoutt & Rasenberger
888 17th St., N.W.
Washington, D.C 20006

And all Parties of Record, by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 20th day of October, 1997 at Long Beach, California.

By: _____



LISA M. ELIAKEDIS

STB

FD

33388

10-21-97

D

182770

182770

RUTGERS ENVIRONMENTAL LAW CLINIC

15 Washington Street, Room 304
Newark, New Jersey 07102-3192
(973) 353-5695
(973) 353-1249 (FAX)

Rutgers, The State University of New Jersey
School of Law - Newark

October 20, 1997



Vernon A. Williams, Secretary (Via Federal Express)
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

RE: FINANCE DOCKET NO.33388

Dear Mr. Williams:

The following comments are submitted on behalf of the Tri-State Transportation Campaign (TSTC). TSTC is a consortium of thirteen environmental, transportation and planning groups working together to promote an economically and environmentally sound transportation system in a thirty-three county area in metropolitan New York. TSTC seeks to reduce reliance on cars and trucks throughout the region in order to reduce congestion and pollution and support rational land use planning. One hundred citizens' groups and local officials have joined TSTC as affiliate members.

Congress has established important principles in its Rail Transportation Policy including the encouragement of competitive rail service, efficient management of existing railroads and improved utilization of equipment and infrastructure. Among these policies is "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and **with other modes**, to meet the needs of the public and national defense" in regulating the railroad industry. 49 U.S.C. 10101(4) (emphasis added). Congress has also established national policy "to operate transportation facilities and equipment without detriment to the public health and safety" and "to encourage and promote energy conservation." 49 U.S.C. 10101(8) and (14). TSTC seeks to further these national objectives in the following comments and recommendations.

Trucks are responsible for most of the wear and tear on our highways and local roads. Truck delivery of goods accounts for 80% of the energy use in the freight sector, and most of the air pollution. The New York metropolitan region is a "severe" non-attainment area for ozone. One of the two principal precursors of ozone is oxides of nitrogen (NOx), to which trucks make a significant contribution. Part of the region also currently fails to meet federal health-based standards for particulate matter, and, in view of the USEPA's adoption of new, more stringent standards, a much larger portion of the Tri-State region is expected to be out of attainment for particulate matter in the near future. Trucks are major emitters of particulate matter in areas of high truck activity, which includes many urban residential areas in New York City and northern

New Jersey. Inability to reduce emissions of either NOx or particulates to meet federal standards may result in the imposition of sanctions in portions of the region, which would have potentially serious adverse economic impact. All three problems (decaying roads, air pollution and energy inefficiency) are critical in the NY/NJ metropolitan region covered by the Conrail acquisition, and need to be addressed in the proceedings, to the extent that STB has jurisdiction over the rail operators who can improve the situation.

Presently, there are only two land-based routes for rail freight to reach destinations east of the Hudson River, and both are time-consuming and awkward. Yet destinations east of the Hudson River comprise a significant segment of the market for goods entering the region. Reaching destinations east of the Hudson by rail is in the public interest because it is the only realistic option for the region to reduce, or reduce the rate of growth in, trucking for goods movement. A more efficient way to provide rail freight service to destinations east of the Hudson would be advantageous and would serve the policy goals that Congress has clearly enunciated. A more efficient rail freight option would also reduce truck movements.

Conrail's near monopoly on rail freight west of the Hudson is duplicated by similar conditions east of the Hudson. Over two-thirds of the Tri-State Region's metropolitan population would remain served by a single carrier, namely CSX, which would be the sole successor to Conrail if the current acquisition plan is approved by STB. If STB insists that CSX and NS modify their acquisition and operating plans, however, two-carrier rail competition in the New York City, suburban Long Island, Westchester and Connecticut sectors of the Tri-State Region can be achieved. The key to achieving two-carrier, competitive rail freight service is to extend NS operation into the east of Hudson sector.

The New York Cross Harbor Railroad (NYCHR) currently operates a limited car float service from Jersey City to Brooklyn. Many once-thriving Brooklyn waterfront industries continue to depend on this float operation for access to Conrail's mainline rail services across the Hudson, serving points to the west and south. A small amount of NYCHR freight connects to the New York and Atlantic Railway, the private freight carrier that now operates the Long Island Railroad freight service. This carrier, in turn, connects with Conrail's freight operation from the north that crosses the Hell Gate Bridge.

In the interest of reducing truck use and its substantial negative impacts on the Tri-State region, and improving the economic competitiveness of the metropolitan area, TSTC requests that STB ensure improvements to cross-Harbor rail operations and ensure rail competition east of the Hudson River. It would be in the public interest and is within STB's jurisdiction to impose the five conditions listed below on the on the approval of the NS/CSX application. TSTC believes that these conditions, if added to the acquisition plan, will produce a viable, truck-competitive rail freight system for the Tri-State Region, both east and west of the Hudson. The region has suffered from single-carrier rail service for too long. The public investments made to facilitate

rail-freight service east of the Hudson have languished because Conrail chose to optimize its financial condition at the expense of the public good. TSTC believes that the effective use of these investments (by NS at 65th St. yard in Brooklyn and by CSX at the Harlem River Yard in the Bronx) will be sound business decisions for the two railroads and will bring reductions in truck use. TSTC urges the STB to include these conditions in its approval of the acquisition.

1. With regard to the car float operation, one of three options be incorporated into the agreement before the STB:

- a) The STB should require NS to file an application for a certificate of public convenience and necessity with the STB to operate additional, competitive car float service across the New York-New Jersey Harbor. This would provide competition across the Harbor as to rates, quality and level of service, locations for pick-up and drop-off of carloads and would promote maximum efficiency of operations. While NS could construct a new short line from several points to the water line, it could also operate over the existing line owned by NYCHR, since the line is underutilized for much of the day.
- b) The STB should require NS to purchase the NYCHR operation and make improvements that would complement long-standing investments made by city and state agencies. Specifically, NS would repair and place in operation the disused 65th St. float bridges and would maintain the existing, operational float bridges at Greenville, in Jersey City. NS would lease the 65th St. intermodal yard, a public asset unused since it was constructed over a dozen years ago. NS would establish an intermodal, double stack yard at this location. Trucks accessing east of Hudson businesses would avoid congested river crossings. Further, an interchange point between NS and NY and Atlantic Railway should be established at this location. This short line carrier would then have direct connections to both eastern systems.
- c) The STB should investigate the level and quality of service provided by the NYCHR and require the NYCHR, along with the government agencies who have invested in equipment (such as float bridges, 65th St. Rail Yard, etc.), to prepare a plan regarding management, operations, capital and physical plant that will ensure effective and efficient service across the Harbor.

As more cross-Harbor freight routing options are added, the economic performance of the car float would improve. NS may decide to invest in larger vessels or upgrade more float bridges, if it is economic to do so. In its January 1997 Intermodal Goods Movement Study, NYC Economic Development Corporation estimated that as much as six million tons of truck freight could be diverted to a revitalized car float operation. The agency found that a cross-Harbor rail tunnel, a major transportation investment, would divert up to twelve million tons of truck freight annually to rail. NYCEDC is continuing its detailed studies of the tunnel option, but in the near term the

car float serves as a surrogate for this link.

2. NS should be given trackage rights permitting them to run through trains from 65th St. to Bronx Oak Point and Hunts Point Market.

The Hunts Point market in the Bronx is New York City's primary produce market. The lack of rail competition has contributed to the market's substantial dependence on truck transportation, even for distant origins. Direct NS trains could offer time-sensitive freight service through its 65th St. link. Much of this route is on Conrail trackage and NS could gain trackage rights as part of the acquisition package. NS would need to acquire additional trackage rights over a short segment of NY and Atlantic line.

3. Grant trackage rights to NS allowing it to establish service on NE Corridor to Connecticut and Massachusetts.

NS would join CSX and share Conrail's trackage rights on the Metro-North New Haven Line as far as New Haven as part of the acquisition. NS could then reach short lines serving Hartford, Providence and Boston, providing more options for competitive rail service to the eastern part of the Tri-State Region. This "I-95 Corridor" route from Washington to Boston, via the cross-harbor car float, would offer a less circuitous NS rail freight routing than through Harrisburg and Albany - the only NS alternative. A rail option is clearly needed for this congested truck route.

Such a service should only be permitted, however, on the condition that any labor disputes, strike activity, etc. affecting freight service would not be allowed to interrupt passenger service on the NE corridor.

4. Transfer to NS residual Conrail freight rights through Pennsylvania Railroad Tunnels

Except during unusual wartime conditions, neither Conrail nor its predecessors have routinely operated rail freight service through the Pennsylvania Railroad tunnels through midtown Manhattan. The near-total extinction of the sleeping car passenger train from this terminal operation has been replaced by a very intensive commuter rail service and high-speed corridor rail service. Amtrak has strongly opposed the operation of freight trains through the tunnel, even at late night hours.

Any residual Conrail rights to operate freight trains through the tunnels should be transferred to NS as part of the acquisition. NS should then seek permission to use its rights and operate roadrailer trains, and perhaps other low profile freight cars, through the tunnels. If Amtrak and NS are unable to reach agreement on the times and characteristics of this freight operation, NS should request that STB arbitrate this dispute.

Vernon Williams
October 20, 1997
Page 5 of 5

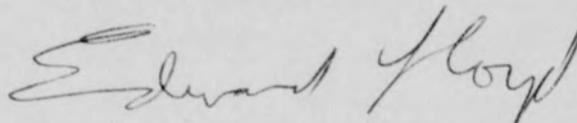
NS would seek to operate its roadrailer equipment along the NE Corridor from Washington to Boston, to the Hunts Point Market in the Bronx, and in cooperation with NY and Atlantic to one or more terminals in Queens or Long Island. To augment this service during busy daytime hours, or in the event that it is unable to secure rights through Penn Station, NS should operate roadrailers on its cross-Harbor car float.

5. Require CSX to establish an intermodal terminal at Harlem River Yard

State and City officials, at considerable public expense, have cleared a route for a conventional piggyback operation from Selkirk to the Harlem River Yard in the Bronx. A portion of this yard has been set aside for an intermodal terminal. As a condition for its approval of the acquisition, STB should require CSX to operate a regular piggyback service to this terminal. This should appear in CSX's operating plan.

These conditions, if accepted, would lead to two-carrier competition east of the Hudson and to a viable alternative to trucking across the New York-New Jersey Harbor.

Respectfully submitted,



Edward Lloyd
General Counsel
Tri-State Transportation Campaign

cc. Parties of Record

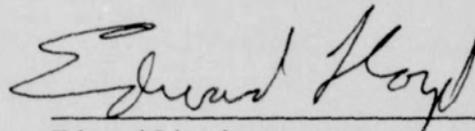
Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 1997, a copy of the foregoing document was served by first-class mail upon Administrative Law Judge Leventhal and upon all parties of record, as listed on the official service list issued by the Board on August 19, 1997 in Decision No. 21.



Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington Street
Newark, N.J. 07102

STB

FD

33388

10-21-97

D

182769

182769

OxyChem[®]

Responsible Care[®]
A Public Commitment 

October 20, 1997



VIA FEDERAL EXPRESS

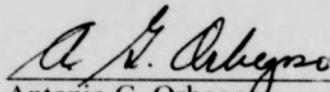
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388, CSX and Norfolk Southern
Control Operating Leases/Agreements - Conrail

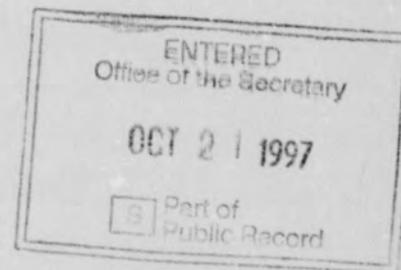
Dear Secretary Williams:

Enclosed for filing please find an original and twenty-five (25) copies of Occidental Chemical Corporation's Comments in Finance Docket No. 33388. Also enclosed is a diskette (3.5-inch, IBM-compatible floppy formatted for WordPerfect 7.0) containing this filing.

Respectfully submitted,


Antonio G. Orbe

Vice President - Purchasing, Transportation and Energy
(972) 404-3720



Occidental Chemical Corporation

Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
972/404-3800

182769

OxyChem[®]

Responsible Care[®]
A Public Commitment 

October 20, 1997



VIA FEDERAL EXPRESS

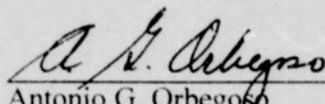
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, D.C. 20423-0001

Re: Finance Docket No. 33388, CSX and Norfolk Southern
Control Operating Leases/Agreements - Conrail

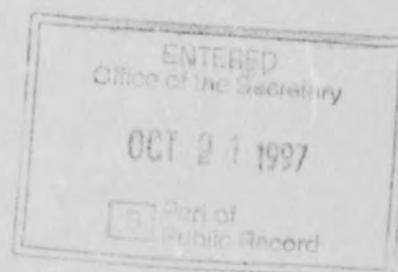
Dear Secretary Williams:

Enclosed for filing please find an original and twenty-five (25) copies of Occidental Chemical Corporation's Comments in Finance Docket No. 33388. Also enclosed is a diskette (3.5-inch, IBM-compatible floppy formatted for WordPerfect 7.0) containing this filing.

Respectfully submitted,



Antonio G. Orbe
Vice President - Purchasing, Transportation and Energy
(972) 404-3720



Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
972/404-3800

182769

OxyChem[®]

Responsible Care[®]
A Public Commitment



October 20, 1997



VIA FEDERAL EXPRESS

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 K Street, NW
Washington, D.C. 20423-0001

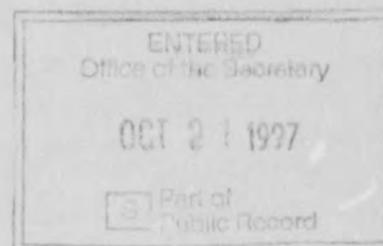
Re: Finance Docket No. 33388, CSX and Norfolk Southern
Control Operating Leases/Agreements - Conrail

Dear Secretary Williams:

Enclosed for filing please find an original and twenty-five (25) copies of Occidental Chemical Corporation's Comments in Finance Docket No. 33388. Also enclosed is a diskette (3.5-inch, IBM-compatible floppy formatted for WordPerfect 7.0) containing this filing.

Respectfully submitted,

Antonio G. Orbe
Vice President - Purchasing, Transportation and Energy
(972) 404-3720



Occidental Chemical Corporation
Corporate Office
Occidental Tower, 5005 LBJ Freeway
P.O. Box 809050, Dallas, TX 75380-9050
972/404-3800

182769

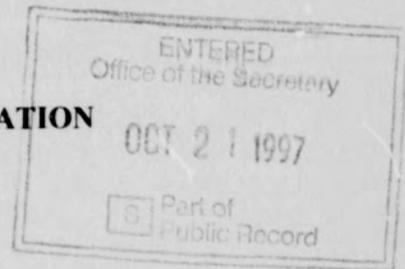


**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

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

**COMMENTS OF
OCCIDENTAL CHEMICAL CORPORATION**



**BY: Antonio G. Orbegoso
Vice President - Purchasing, Transportation and Energy
Occidental Chemical Corporation
P.O. Box 809050
Dallas, TX 75380-9050**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388



VERIFIED STATEMENT OF ANTONIO G. ORBEGOSO

On June 23, 1997, CSX Corporation and CSX Transportation, Inc. (CSX), Norfolk Southern Corporation, and Norfolk Southern Railway Company (NS), and Conrail Inc. And Consolidated Rail Corporation (Conrail) filed an application (primary application) with the Surface Transportation Board (Board) under 29 U.S.C. 11323-25. NS, CSX, and Conrail are jointly seeking authority for NS and CSX to acquire Conrail and for the subsequent division of some of Conrail's assets and for the joint operation of other Conrail assets.

INTRODUCTION

I am Antonio G. Orbegoso, Vice President - Purchasing, Transportation and Energy, for Occidental Chemical Corporation (OxyChem) with business address of P.O. Box 809050, Dallas, Texas 75380. My responsibilities include the safe and successful movement of over 60,000 carload shipments annually.

OXYCHEM'S INTEREST

OxyChem, the sixth largest chemical corporation in the United States, manufactures petrochemicals, chlor-alkali products, and plastic resin from thirty manufacturing plants located on each of the major Class I railroads. OxyChem operates a fleet of 8,500 rail cars from these plants.

Nearly all of OxyChem's shipments are made in bulk and many of the shipments are transported for long distances. It is imperative that the rail system in the United States be safe, financially healthy, and competitive to permit the movement of our products. OxyChem and other industries in the United States cannot be a continuing force in the world economy without having the best rail system possible.

OxyChem has a significant interest in the final decision in Finance Docket No. 33388.

We have fourteen plants located on CSX, NS and CR as shown below:

<u>PLANT</u>	<u>SWITCHING CARRIER</u>	<u>LINE-HAUL CARRIER</u>
Ashtabula, OH	CR	CR Only
Augusta, GA	NS	NS Only
Burlington, NJ (Stevens)	CR	CR Only
Castle Hayne, NC	CSX	CSX Only
Chicago, IL	BRC	CR, CSX, NS, et al
Cincinnati, OH	CSX, NS	CR, CSX, NS, CN
Delaware City, DE (Reybold)	CR	CR Only
Jersey City, NJ	CR	CR Only
Kenton, OH	CR	CR Only
Mobile, AL	TASD	CSX, NS et al
Muscle Shoals, AL (Evans City)	NS	NS Only
Niagara Falls, NY (BCG)	CR	CR, CPRS
Niagara Falls, NY (Durez)	CR	CR Only
Pottstown, PA	CR	CR Only

In addition to shipments from and to the above plants, OxyChem has numerous shipments from our other plants not located on CR, CSX, or NS, that are destined to locations served by CR.

OXYCHEM'S POSITION

OxyChem supports the applicants in this docket subject to the proposed implementation conditions. The reasons for our support are:

- The application provides for new rail-to-rail competition in a number of areas, including OxyChem's plants at Burlington and Jersey City, NJ.
- Approval will result in a stronger rail system in the eastern United States.

- The merger should result in improved transit times due to more single-line service and reduce the rail carriers' costs.

Our support of this application is made with the understanding that the Board will adopt the proposed implementation conditions.

I. Implementation Conditions

A. Specifically, the Board should not make its decision effective until the following actions have been taken:

- 1) The submissions by the Applicants jointly of a plan for operations within the Shared Asset Areas, including equipment allocations and assignment of dispatching functions, with a period of 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) The Board should not make its decision effective until 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) The Board should not make its decision effective until 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.

- 4) The Board should not make its decision effective until certification by the CSX and NS that the information systems are functioning properly and are merged into their respective systems.

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, on a yearly basis, beginning one year after the date that the Conrail properties are divided, provide an opportunity for comment for shippers.
- C. The Board should require specific quarterly and yearly information from NS and CSX, including, but not limited to:
 - 1) Progress reports on key aspects of the transaction, such as division and integration of Conrail locomotive and freight car fleet, customer billing, and capital investment.
 - 2) Statistics on operations such as number of employees in key categories, numbers of locomotives available, etc.
 - 3) Key service statistics against a baseline (e.g., transit times, number of turns per month for key equipment groups, train starts, or any other statistic normally kept as part of the ordinary business management of the carriers).
 - 4) Status and progress reports on implementation of operations in the Shared Asset Areas.

- 5) Reports on experience in truck market penetration.
 - 6) Rate trends, by key commodity groups, against a baseline.
 - 7) Financial performance indicators.
- D. The Board should develop objective 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 transactions 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 would 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. Rate Condition
- 1) 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 providing the lawfulness of any rate increase for market dominant shippers that exceeds a set amount.
 - 2) That amount should not exceed the RCAF-U.
- C. Regulatory Condition - - 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.

IV. Other 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 level of \$130 per car, as the carriers adopted in the UP/SP merger.
- D. The Board should require the carriers to propose, by not 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.

SUMMARY

OxyChem **supports** the application with the added implementation conditions and protective rate conditions to successfully accomplish the planned acquisitions and joint operations.

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of October, 1997, I served the foregoing document
(including three copies to each of the Applicant's representatives) upon the following:

Administrative Law Judge
Jacob Leventhal
Federal Energy Regulatory
Commission
888 First Street, NE
Suite 11F
Washington, D.C. 20426

Paul A. Cunningham
Harkins Cunningham
1300 19th Street, NW
Washington, D.C. 20036
(202) 973-7601

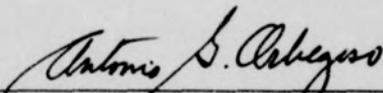
Richard A. Allen
Zuckert, Scoutt & Rasenberger
888 17th Street, NW
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

Samuel M. Sipe, Jr.
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795
(202) 492-3000

Dennis G. Lyons
Arnold & Porter
555 12th Street, NW
Washington, D.C. 20004-1202
(202) 942-5000

and all Parties of Record in STB Finance Docket No. 33388 by U.S. Mail, first-class,
postage prepaid.

I declare under penalty of perjury under the laws of the United States that the
foregoing is true and correct.

By: 
Antonio G. Orbegoso

STB

FD

33388

10-21-97

D

182766

182766



PPG Industries, Inc. One PPG Place Pittsburgh, Pennsylvania 15272 (412) 434-3628

Michael E. Petruccelli
Director
Distribution and Transportation
Chemicals Group



October 20, 1997

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

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

Dear Sir:

Enclosed please find the original and twenty five (25) copies of Michael E. Petruccelli's verified statement, filed on behalf of PPG, under F.D. 33388 and the Certificate of Service to certify that the statement has been served on all parties of record.

As required copies have been sent to Administrative Law Judge Jacob Leventhal and to each of the applicants, representatives.

Also, as required, enclosed is a copy of the verified statement on a 3.5-inch diskette formatted for Word Perfect.

In addition PPG has enclosed a duplicate copy for the Surface Board to receipt and return to us in the enclosed self addressed envelope.

Very truly yours,

M. E. Petruccelli
Director Distribution and Transportation
Chemicals
(412) 434-3628



182766



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

PPG INDUSTRIES, INC.
ONE PPG PLACE
PITTSBURGH, PA 15272

BY: M. E. PETRUCCELLI
DIRECTOR OF DISTRIBUTION AND
TRANSPORTATION

OCTOBER 20, 1997

VERIFIED STATEMENT
OF
MICHAEL E. PETRUCCELLI

My name is Michael F. Petrucelli. I am the Director of Distribution and Transportation, Chemicals for PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272 (PPG). I have been employed by PPG for 33 years in various capacities, including 24 years in rail distribution of its products. My duties include responsibility for the rail, highway and water needs of PPG Chemicals throughout North America. I am authorized to make this statement of behalf of PPG.

PPG is a multi-business, multi-plant corporation with manufacturing plants and other interests throughout much of the free world. In 1996, worldwide sales were in excess of \$7 billion, of which approximately \$4.7 billion was generated in the United States. In 1996, PPG had approximately 31,000 employees worldwide and approximately 20,000 in the United States. PPG owns and leases approximately 2,500 rail cars to transport approximately 2.2 million tons of industrial and specialty chemicals each year to North American Customers, including rail dependent commodities such as chlorine, vinyl chloride and 73% caustic soda.

As a major user of rail transportation, PPG has significant concerns on the proposed Consolidated Rail Corporation (CR) acquisition by CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation (NS). This acquisition should not be approved by the Surface Transportation Board (Board) without certain conditions and restrictions being imposed on both acquiring carriers.

Railroads continue to merge, reducing rail to rail competition and eliminating shipper options. CR has a basic monopoly in its present territory. Approval of the acquisition will create few, if any, two to one points. Approval would eliminate yet another Class One railroad. Simultaneously it would have a negative impact on competitive traffic moving to the current CR markets. Geographic competition to CR territory would disappear. Origins served by competing carriers to a CR destination have enjoyed some competition in that the origin carrier would try to maintain the traffic on its line to be interchanged with CR to avoid having another competitive line originate the traffic and interchange with CR.

Depending on the origin and destination points, the proposed split of CR would cause joint line traffic to become single line. In theory this is supposed to improve service, reduce costs and permit the shipper to remain competitive in the market. The absence of rail to rail competition makes it exactly that, a theory. The fact is a monopoly is created, thereby eliminating competition and any options for the shipment of rail captive goods. In reality the most effective impetus for improved service and productivity is competition among railroads.

The Union Pacific Railroad (UP) merger with the Southern Pacific Railroad (SP) was to be a panacea for the shipping industry. It has been a debacle. Service has been deplorable. Cars are idle and not moving for days and weeks at a time. There is an extreme shortage of power and crews. Shut downs of several industries and excessive costs have resulted due to the Union Pacific's inability to perform. The UP's transit times are totally unpredictable. Transit times have increased anywhere from 50 to 300 percent longer than pre-merger. Erratic and unpredictable service is now the norm rather than the exception.

All of these conditions have dramatically hurt the shipper whom the merger was intended to help. It is critical that the Board not permit these same conditions to occur in the acquisition of CR by the CSX and NS. The Board has to require both railroads to have the necessary operating plans, sufficient crews and power, in place to guarantee acceptable and consistent transit times on all traffic.

PPG cannot over emphasize the importance of the Board addressing all critical issues and requiring that all corrective measures be in place prior to approving the acquisition. It is extremely important that interchange and junction points be maintained and kept open with other railroads to protect and provide options for routing and rating purposes. Maintaining competition, competitive pricing and an effective operating plan is a must and should be ordered by the Board where it is not currently included in the plans proposed by the railroads. Competitive access, divestitures and reciprocal switching should also be implemented wherever possible to maintain rail to rail competition. Reciprocal switching charges, as in the Union Pacific merger, should be capped at a reasonable figure. The Board should establish and require a specific number, which PPG feels should not exceed one hundred and fifty dollars. The practice of single served origins remaining served by one carrier should be discarded.

Rate increases should be capped. They should not exceed a formula established by the Board (such as the RCAF) on captive traffic created by this merger for a specified period. Market dominance, as applied today, using stand alone costs, should not be an acceptable defense for the railroads. Access to other carriers, when logical, reasonable switching charges or proportional rates to interchange points, should be required. Rules and regulations need to be included in the final ruling in order to insure the applicability of current contracts held by CR.

Operating plans of both acquiring carriers, including labor agreements with Union approval, should be submitted and approved by the Board, prior to approval of the acquisition. Computer systems should be implemented in a timely and orderly manner to make sure they are compatible and do not create operational problems.

In addition to approving the railroads' operations, the Board needs to specify the terms and conditions applicable to the Shared Assets Regions, including

operations, equipment, contracts and exactly how the new companies operation relates back to CSX and NS. It is presumed that the "Shared Company" will operate on behalf of both carriers and that traffic originating or terminating in that region will be accessible to both CSX and NS.

PPG does have some specific issues that need to be addressed. One of PPG's facilities is located in Beauharnois, QC and is currently served by CR. The plant is open to the Canadian National Railroad and, through the Canadian switching regulations, is accessible to the Canadian Pacific Railroad. It is our understanding that CSX will be the railroad acquiring this line in the current proposal.

We are not aware of CSX's future plans regarding this line, but rail service is critical to the operation of this facility. PPG wants to insure that the current level of service and access to the other railroads, as it presently exists, are both maintained. CSX has advised us the line is considered instrumental in their future plans, but cannot comment on operations or pricing at this time. Switching charges must be maintained at or below the current levels.

A long term contract is currently in effect among PPG, Canadian National and CR on an inbound product critical to the basic operation of this facility. It is extremely important that CSX continue to serve the plant and maintain the terms and conditions of the current CR contract.

PPG also has a facility located in Natrium, WV that is and has been served exclusively by CSX. PPG realizes that precedent dictates that the plant will remain exclusively served by CSX. However due to the loss of CR and the limited number of railroads in the east, PPG would prefer to be in a position of having an additional railroad serving this facility. With the demise of CR geographic competition will be virtually eliminated. CSX and NS will be in a strong position to dictate our markets and not allow us to pick and choose, based on reasonable transportation charges, especially on rail captive commodities.

We have contacted both CSX and NS about having another railroad serve the facility. CSX declined our proposal and stated that another railroad was not needed in Natrium. Because of the acquisition agreement, NS would not even entertain a proposal to serve the plant.

Another option would be the Wheeling and Lake Erie Railroad (WE), which currently interchanges with CSX at Benwood, WV, approximately 35 miles north of our plant. In discussions, WE indicated a willingness to serve the plant. The WE is notably concerned about the proposed acquisition and stated that if approved without conditions to protect them, their survival is in jeopardy.

WE's demise should not be condoned. In order to ensure their survival the Board should grant the WE access to additional traffic including but not limited to Natrium. If WE service to Natrium is not operationally practical then a reasonable haulage or proportional rate should be established from Natrium to Benwood. The Board should establish a reasonable charge if the railroads cannot reach an agreement themselves. This charge cannot be set at a level that would prohibit the WE from competing for traffic.

PPG also has completed and returned, a survey from Senator John D. Rockefeller IV, expressing our concerns about the lack of rail to rail competition and in particular the existing trend of mergers that are further reducing competition. PPG's Natrium facility and the lack of rail to rail competition was a major topic of concern covered in the response.

In addition to the direct effects of the proposed acquisition there are many indirect effects to PPG's suppliers and customer base, too numerous to detail and will no doubt be included in their filings with the Board. They share our same concerns and we feel certain the Board will give them serious consideration before reaching a decision in this important acquisition.

PPG trusts that the Board will thoroughly review the proposed acquisition and consider the adverse consequences to the entire shipping industry if the terms and conditions of approval are not conducive to a safe, reliable and competitive rail transportation system in the Eastern United States. Prior to approving the acquisition, the Board must be assured that the railroads are in a position to implement the terms and conditions.

Once assured, the Board must maintain oversight of the conditions for a minimum of five years and be in a position to order corrective action if the acquisition is not working. The oversight conditions should include reports from CSX and NS on progress and implementation of the acquisition as often as the Board deems them to be necessary. At the same time the shipping industry should be given the opportunity to comment.

VERIFICATION

Michael E. Petruccelli, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents, and that the same are true and correct.

Michael E. Petruccelli

Subscribed and sworn to before me by

Michael E. Petruccelli this 20th

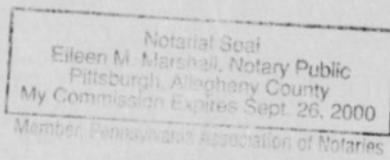
day of October, 1997

Witness my hand and official seal.

My commission expires 9/26/2000

Eileen M. Marshall

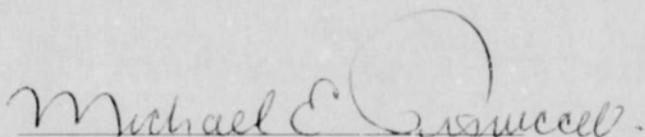
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing PPG's Industry, Inc.,
VERIFIED STATEMENT OF MICHAEL E. PETRUCCELLI, on all parties of
record on the service list in this proceeding, Finance Docket No. 33388, and an original plus twenty
five copies on the Secretary of the Surface Transportation Board by first class mail, postage
prepaid this 20th day of October 1997. A copy has been sent to Administrative Law Judge,
Jacob Leventhal and to each of the following applicants representatives:

Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.



Michael E. Petrucci
Director Distribution and Transportation
Chemicals

STB

FD

33388

10-21-97

D

182758

182758

CHARLES L. LITTLE
International President

BYRON A. BOYD, JR.
Assistant President

ROGER D. GRIFFETH
General Secretary and Treasurer

united transportation union



14600 DETROIT AVENUE
CL EVELAND, OHIO 44107-4250
PHONE: 216-228-9400
FAX: 216-228-0937

LEGAL DEPARTMENT

CLINTON J. MILLER, III
General Counsel

• KEVIN C. BRODAR
Associate General Counsel

• ROBERT L. McCARTY
Associate General Counsel

• DANIEL R. ELLIOTT, III
Assistant General Counsel

October 20, 1997

UPS NEXT DAY AIR

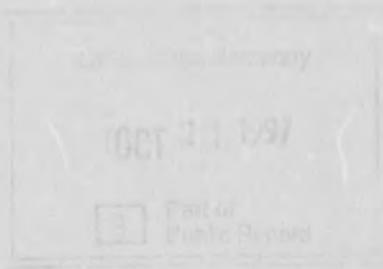


Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001
(202) 525-1650

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 -- Transfer of Railroad Line By Norfolk
Southern Railway Company to CSX Transportation, Inc.
Comments of United Transportation Union

Dear Mr. Williams:

Please find enclosed the original and 25 copies of the Comments of United Transportation Union in subject matter. Also we have enclosed a disk in WordPerfect 5.1 format.



Very truly yours,

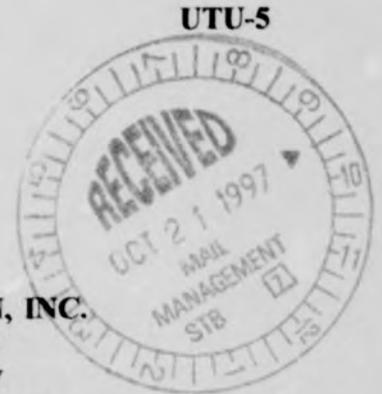
Daniel R. Elliott, III
Assistant General Counsel

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
- CONTROL AND OPERATING LEASES/AGREEMENTS -
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION -
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.**



COMMENTS OF THE UNITED TRANSPORTATION UNION

Pursuant to 49 C.F.R. § 1180.4 and the Board's Decision No. 12 served July 23, 1997, the United Transportation Union ("UTU") respectfully submits the following comments in the above-captioned proceeding. UTU has some obvious employee protection and general safety concerns regarding this transaction it is presently discussing with the Applicants in hopes of achieving satisfactory commitments from them, but until they are achieved UTU conditionally opposes the Railroad Control Application. It will advise the Board of its support of the application if the outcome of its on-going discussions with the Applicants is favorable.

BACKGROUND

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc. ("CRR") and Consolidated Rail Corporation ("CRC"), collectively "Applicants," filed a joint Railroad Control Application (the "Application") pursuant to 49 U.S.C. §§ 11321-25 and the Surface

Transportation Board's (the "Board's") Railroad Consolidation Procedures, 49 C.F.R. Part 1180, for authorization of the acquisition of control by CSX and NSC of Conrail, and for the division of the use and operation of Conrail's assets between them.¹ Applicants are also seeking authorization for operating agreements, the construction of new connections, limited abandonments, trackage rights and other related matters.

This Application presents a complex proposal to reconfigure the railroad industry in the eastern United States and causes some obvious concern to UTU due to potential job loss, certain job dislocation and safety impacts. If approved, the integration of Conrail's rail lines into the existing CSX and NS networks, and the operation of those lines by CSX and NS, will yield tremendous changes in the railroad industry. CSX and NS currently operate rail networks that serve important commercial areas throughout the Southeast and Midwest. To a large extent, both CSX and NS depend on Conrail to reach commercially important mid-Atlantic and northeastern communities. This transaction will eliminate that dependence. It will create two rail networks of broad geographic scope that will reach virtually all major ports, gateways and commercial areas in the eastern United States.

The trend toward the creation of rail networks with broad geographic coverage and substantial traffic densities has become apparent over the last four years. These new larger rail networks have raised substantial job loss/dislocation and monumental safety concerns to rail labor in general. UTU has had certain difficulties when railroads spread their operations over a broader traffic base since the substantial change causes traffic and safety problems for all involved.

¹CSXC and CSXT are referred to collectively as "CSX," NSC and NSR as "NS" and CRR and CRC as "Conrail."

As part of the Application, both carriers have submitted operating plans that demonstrate how their respective rail service will be changed through the operation of specified Conrail lines and the service of the Shared Assets Areas ("SAA") of South New Jersey/Philadelphia, North New Jersey and Detroit. Numerous new single-line routes will be created between the Northeast and the Southeast and the Northeast and the Midwest. As a result, many changes will take place.

CSX and NS have agreed that certain areas will be served by both of them, including the three "Shared Assets Areas" of South New Jersey/Philadelphia, North New Jersey and Detroit, as well as the coal fields served by the former Monongahela Railroad and the Ashtabula, Ohio dock facility. CSX and NS will compete for automotive traffic moving from Detroit to Baltimore, Philadelphia and New York, for coal moving off the former Monongahela Railroad and for coal moving to the Ashtabula Dock facility for subsequent lake movement.

The potency of CSX and NS as forces in eastern freight movements is evident. However, the difficulty of making these changes to the eastern rail sector seems equally evident.

POSITION OF UTU

I. UTU CONDITIONALLY OPPOSES THE APPLICATION GENERALLY.

The applicable statutory provisions for this major transaction are codified at 49 U.S.C. §§ 11321-27. "The Act's single and essential standard of approval is that the [Board] find the [transaction] to be 'consistent with the public interest.'" *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 395 (5th Cir. 1980), *cert. denied*, 451 U.S. 1017 (1981). *Accord Penn-Central Merger and N&W Inclusion Cases*, 389 U.S. 486, 498-99 (1968) (*Penn-Central Merger Cases*). To determine the public interest, the Board balances the benefits of the merger against any competitive harm that cannot be mitigated by conditions.

Section 11324(b) provides that, in a proceeding involving the merger or control of at least two Class I railroads, five factors must be considered: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of carrier employees affected by the proposed transaction; and (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region.

At this time, UTU has some concerns regarding the Applicants' ability to satisfy the fourth factor set forth in this statutory provision. Specifically, UTU is concerned about whether the typical labor protective conditions normally imposed in control transactions, *New York Dock Ry. -- Control -- Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will adequately protect the interests of UTU-represented employees adversely affected by the proposed transaction. The adequacy of the labor protective conditions are an important consideration when examining the interest of carrier employees factor. UTU and the Applicants recently have been engaged in serious discussions over this matter. UTU's concerns can be satisfied if the Applicants make an adequate commitment to a form of heightened labor protection with respect to the manner in which the New York Dock conditions will be applied. While this type of commitment appears possible, and perhaps imminent, unfortunately it is not at a stage before the filing of these Comments to fully satisfy UTU's concerns. Therefore, UTU for the present conditionally opposes the application as a general matter.

Moreover, UTU is somewhat troubled by the potential safety ramifications of this transaction for the employees it represents in light of the recent safety problems arising out of

implementation of the Union Pacific ("UP")/Southern Pacific ("SP") merger transaction. Significant evidence of ineffective crew utilization, which leads directly to crew fatigue, stress, a lowering of morale, violations of the Hours of Service Act, and a reduced ability to comply with operating rules, was found by the Federal Railroad Administration ("FRA") to exist on UP post-merger. Further, after the merger, the FRA found that at nearly all management levels on UP, supervisors performed a multitude of tasks that are not directly related to their supervisory responsibilities, thereby contributing to a breakdown in the safety process. Also, UP supervisors were found by the FRA to be unfamiliar with the territories of the dispatchers that they supervise, causing problems with rule compliance. These problems after the merger, in addition to a heavy dispatchers' workload, an inadequate operational compliance process, harassment and intimidation of employees, and improper mechanical inspections caused questions with regard to safety from the FRA and the UTU. UTU has been cooperating in joint efforts with UP to solve these safety problems, and is hopeful that the traffic and safety problems involved in the implementation of that merger can be resolved in this manner.

CSX has alleviated some of these concerns in this transaction by creating a safety compliance task force as a result of a recent safety audit by the FRA. Steps of this nature lead UTU to believe that the Applicants intend to address these serious safety issues before implementation of the transaction, if approved. This too will be a significant factor in any eventual support by UTU of the application, but for the present, as noted above, UTU is in conditional opposition.

II. DELAWARE & HUDSON RAILWAY OPERATING EMPLOYEES SHOULD BE PROTECTED.

In addition to its general conditional opposition to the Application, UTU has a specific concern regarding Delaware & Hudson Railway ("D&H") operating employees it represents, who should be entitled to labor protection as a result of this transaction. These employees work in the Southern Tier portion of New York (Buffalo to Binghamton) and from Binghamton to Montreal, Canada and Binghamton to Allentown, Pennsylvania and to Philadelphia, Pennsylvania. The traffic that currently operates within these corridors is all overhead traffic received from the NS and the CSX. These trains are identified as follows:

EASTBOUND

- 1) Train 270 received from the NS at Buffalo;
- 2) Train 268 received from the NS at Buffalo;
- 3) Train 252 (solid steel) received from the NS at Buffalo;
- 4) Train 258 (piggyback) received from the NS at Buffalo;
- 5) Train 269 received from NS (piggyback) operates Allentown - Binghamton - Buffalo;
- 6) Train 257 (solid intermodal) received from NYS&W at Binghamton (CSXT train).

The D&H employees on these trains represented by UTU will be adversely affected because the NS is to acquire the Southern Tier in the transaction, where all of these trains now operate. It is obvious that the NS will operate these trains themselves, with NS crews, which will in all likelihood place all of the D&H operating employees that are working in this corridor in an adversely affected status.

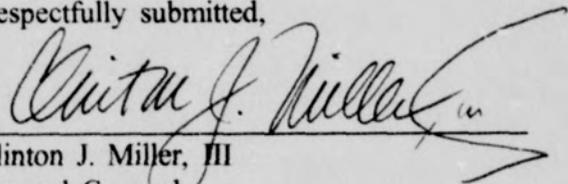
While employees of third-party carriers generally have not received labor protection as a result of merger or control transactions in the recent past, this situation presents a unique factual circumstance where such protection is warranted. Here, NS is acquiring territory over which D&H has trackage rights. This is classically different from the normal scenario where a

third-party carrier loses work due to a diversion of traffic upon implementation of the transaction. Therefore, UTU urges the Board to impose labor protective conditions, whether they are New York Dock or Mendocino Coast protection, since the adverse impact is a result of either the trackage rights or the transaction(s) described in the Application. UTU is currently engaged in discussions with the Applicants regarding this matter also.

CONCLUSION

Based on foregoing discussion, UTU conditionally opposes the Application at this time. However, UTU intends to support the Application if the ongoing discussions with the Applicants regarding UTU's concerns yield a commitment from them sufficient to permit such support.

Respectfully submitted,



Clinton J. Miller, III
General Counsel
Daniel R. Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107-4750
(216) 228-9400
FAX (216) 228-0937

VERIFICATION

I, Charles L. Little, United Transportation Union International President, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing Comments of the United Transportation Union are true and correct. Further, I certify that I am qualified and authorized to file these Comments.

Executed on October 17, 1997.

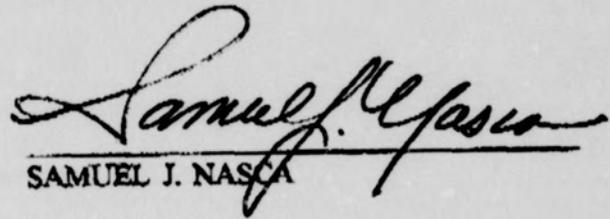
A handwritten signature in cursive script, reading "Charles L. Little". The signature is written in dark ink and is positioned above a horizontal line.

Charles L. Little
International President
United Transportation Union

VERIFICATION

I, Samuel J. Nasca, United Transportation Union ("UTU") State Legislative Director-New York, pursuant to 28 U.S.C. § 1746, declare that I have personal knowledge of the factual allegations contained in the Section II of the foregoing Comments, and the same are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 17, 1997.


SAMUEL J. NASCA

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of October, 1997, caused the foregoing document to be served by first-class mail on counsel for the Applicants and on the FERC Administrative Law Judge assigned to handle discovery matters, as indicated below. Copies have also been served by first-class mail on all parties of record on the official service list.

Richard A. Allen
James A. Calderwood
Zuckert, Scoutt &
Rasenberger, LLP
888 17th Street, N.W., #600
Washington, D.C. 20006

James L. Howe, III
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Dennis G. Lyons
Richard L. Rosen
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Paul A. Cunningham
Robert M. Jenkins, III
Harkins Cunningham
1300 19th Street, N.W., #600
Washington, D.C. 20036

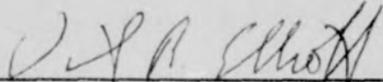
Constance L. Abrams
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate
Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Samuel M. Sipe, Jr.
Timothy M. Walsh
Steptoe & Johnson, LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

Mark G. Aron
Peter J. Shutz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Comm'n
Suite 11F
888 First Street, N.W.
Washington, D.C. 20426



Daniel R. Elliott, III