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179969



# Brotherhood of Locomotive Engineers

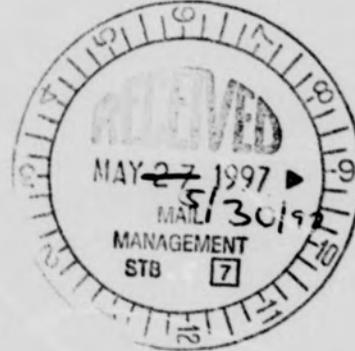
1370 ONTARIO STREET  
CLEVELAND, OHIO 44113-1702  
TELEPHONE: (216) 241-2630  
FAX: (216) 241-6516

D

C. V. MONIN  
International President

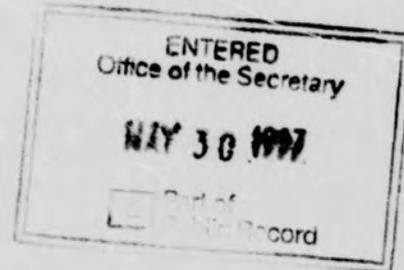
May 21, 1997

Mr. Vernon Williams, Secretary  
c/o Case Control Unit  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 204223-0001



179769

Re: CSX Corp., etc. and Norfolk Southern Ry. Co. ---  
Control and Operating Leases/Agreements ---  
Conrail, Inc. and Consolidated Rail Corp.  
STB Finance Docket No. 33388



Dear Sir:

Enclosed for filing in the above proceeding are the original and 25 copies of the Notice of Intent to Participate and Initial Comments of the Brotherhood of Locomotive Engineers. Service has been made in accordance with the certificate attached to this document.

Very truly yours,

Clarence V. Monin  
International President

cc: Judge Jacob Leventhal  
Dennis G. Lyons, Esq.  
Richard A. Allen, Esq.  
Paul A. Cunningham, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388**



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

ENTERED  
Office of the Secretary

MAY 30 1997

cord

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**NOTICE OF INTENT TO PARTICIPATE  
AND INITIAL COMMENTS OF  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

---

Now comes the Brotherhood of Locomotive Engineers ("BLE") and hereby gives notice of its present intent to participate in this proceeding. BLE is the duly designated and authorized collective bargaining representative for the craft of locomotive engineers on CSX Transportation, Inc., Norfolk Southern Railway Company and Consolidated Rail Corporation, the rail carrier applicants herein. As such BLE and the employees of the three rail carriers represented by it have a vital interest in the joint application to be filed herein and the impact that the authority sought may have upon those employees.

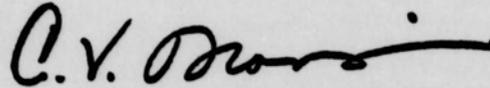
BLE is a railway labor union which is organized and governed by the Railway Labor Act, 45 U.S.C. §§151 et seq. Its principal offices and headquarters are located at the Mezzanine, Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113-1702.

At the present time, BLE believes that its interests are aligned with the protestants in opposition to approval of the authority sought. In any event, BLE submits that the Board must

impose the appropriate employee protective provisions as specified by law.

The undersigned, as President of BLE, may be served with copies of the Joint Application and other documents in this proceeding.

Respectfully submitted,



---

**Clarence V. Monin**  
**International President**

**Dated: May 21, 1997**

**CERTIFICATE OF SERVICE**

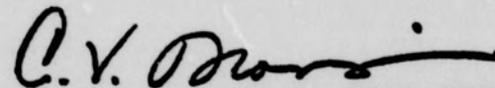
I hereby certify that copies of the foregoing were served by mailing copies, first class postage prepaid, on this 21st day of May, 1997 to:

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

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

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, Co. L.P.A.  
888 Seventeenth Street, N.W.  
Washington, D.C. 20006-3939

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



---

Clarence V. Monin

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5-27-97

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179945

**SLOVER & LOFTUS**

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

D

WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III

202 347-7170

May 27, 1997



BY HAND

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

79845

Re: Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc. 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.*

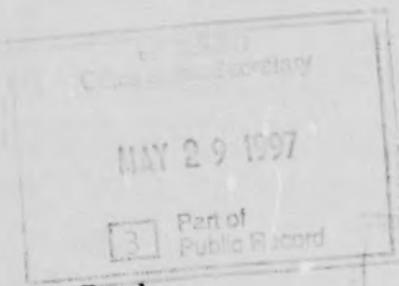
Dear Mr. Secretary:

Enclosed for filing in the captioned proceeding please find an original and twenty-five (25) copies of a "Notice of Appearance" for Amvest Corporation and the Vaughan Railroad Company.

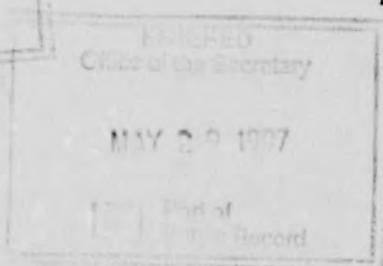
Thank you for your attention to this matter.

Sincerely,

Donald G. Avery



Encl.



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

Finance Docket No. 33388

179945



**NOTICE OF APPEARANCE OF AMVEST CORPORATION  
AND THE VAUGHAN RAILROAD COMPANY**



AMVEST Corporation ("AMVEST") and the Vaughan Railroad Company ("Vaughan") (collectively, "AMVEST/Vaughan") hereby give notice that they intend to participate in this proceeding as may be necessary to protect their interests, and ask that they be placed on the official service list as full parties of record (POR) at the address shown below.

AMVEST owns and operates several coal mining properties in Virginia and West Virginia, including as here pertinent the "Fola" Mine, which is located in Nicholas and Clay Counties, West Virginia, and which is served by both CSX Transportation, Inc. ("CSXT") and Consolidated Rail Corporation ("Conrail") via the Vaughan Railroad, a 17-mile Class III rail carrier owned by AMVEST. The Fola Mine is currently producing about four million

tons of coal per year, of which CSXT handles about one-third and Conrail handles the rest.

Information made public thus far by CSXT and Norfolk Southern Railway Company ("NS") indicates that NS will acquire and operate the Conrail rail lines serving the Fola Mine, thereby preserving -- at least on paper -- the dual-carrier access it currently enjoys. It remains to be seen how real that competition will be in light of the radical changes that are proposed for the Eastern route map.

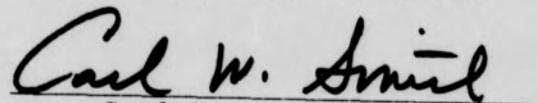
For the foregoing reasons, AMVEST/Vaughan intend to participate in this proceeding as their interests may dictate, and ask that they be placed on the official service list as full parties of record, with the following address and phone number:

Mr. Carl W. Smith  
President  
AMVEST Corporation  
One Boar's Head Place  
Charlottesville, VA 22905  
(804) 977-3350

Respectfully Submitted,

AMVEST Corporation and  
the Vaughan Railroad Company  
One Boar's Head Place  
Charlottesville, VA 22905

By:

  
Carl W. Smith, President

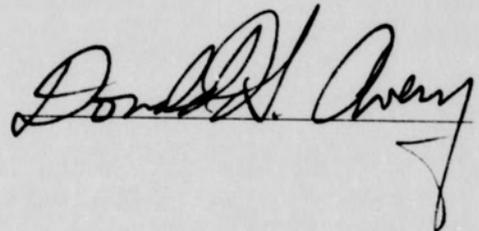
Certificate of Service

I hereby certify that I have this 27th day of May, 1997, caused copies of the foregoing document to be served by first-class mail upon counsel for Applicants, as follows:

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

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

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 16th Street, N.W.  
Washington, D.C. 20006-3939

A handwritten signature in cursive script, appearing to read "Donald H. Avery". The signature is written in dark ink and is positioned to the right of the typed text.

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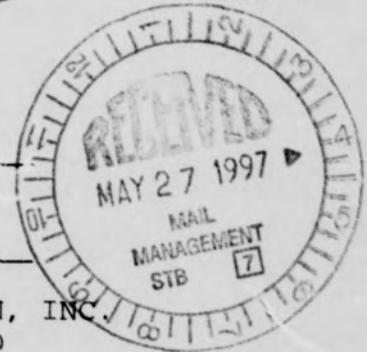
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NRPC-1

BEFORE THE  
SURFACE TRANSPORTATION BOARD

179942

FINANCE DOCKET NO. 33388



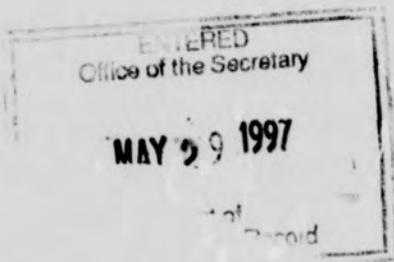
CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
--CONTROL AND OPERATING LEASES/AGREEMENTS--  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**AMTRAK'S NOTICE OF INTENT TO PARTICIPATE**

The National Railroad Passenger Corporation (Amtrak) hereby gives notice that it intends to participate as a party of record (POR) in the above-captioned proceeding and that it will use the acronym "NRPC."

Respectfully submitted,

Richard G. Slattery  
NATIONAL RAILROAD PASSENGER  
CORPORATION  
60 Massachusetts Avenue, N.E.  
Washington, D. C. 20002  
(202) 906-3987



Counsel for National Railroad  
Passenger Corp.

Date: May 27, 1997

CERTIFICATE OF SERVICE

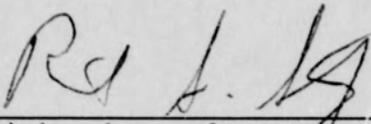
I hereby certify that on the 27th day of May, 1997, I served a copy of the foregoing Amtrak's Notice of Intent to Participate by first class mail, postage prepaid, upon:

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

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

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

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

  
\_\_\_\_\_  
Richard G. Slattery

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5-27-97

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LAW OFFICES

**WICK, STREIFF, MEYER, METZ & O'BOYLE, P.C.**

HENRY M. WICK, JR.  
CHARLES J. STREIFF  
CARL F. MEYER  
LeROY L. METZ, II  
DAVID M. O'BOYLE  
VINCENT P. SZELIGO  
LUCILLE N. WICK  
PATRICIA L. McGRAIL  
RONALD J. RADEMACHER  
JOHN M. SMITH

1450 TWO CHATHAM CENTER  
PITTSBURGH, PA 15219-3427

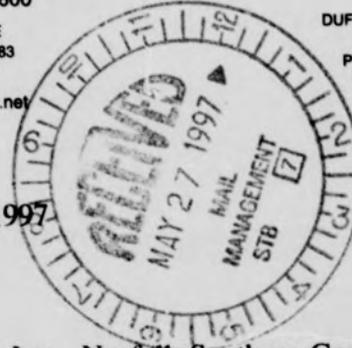
(412) 765-1600

FACSIMILE  
(412) 261-3783

E-MAIL  
wsmmo@sgi.net

3001 JACKS RUN ROAD  
WHITE OAK, PA 15131-2507  
(412) 664-4433

DUFF OFFICE CENTER, SUITE 203  
10 DUFF ROAD  
PITTSBURGH, PA 15235-3206  
(412) 241-7227



May 23, 1997

Re: CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corporation  
Finance Docket No. 33388  
Our File: 2452.052

Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch  
1925 K Street, N.W.  
Washington, DC 20423-0001

179912

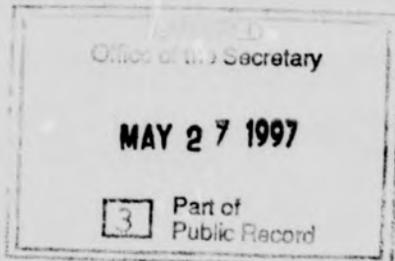
Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and 25 copies of Notice of Appearance on behalf of U.S. Clay Producers Traffic Association, Inc. Copies are being served upon Applicants' representatives and The Honorable Jacob Leventhal as required by the Board's orders.

Sincerely yours,

WICK, STREIFF, MEYER,  
METZ & O'BOYLE, P.C.

*Henry M. Wick, Jr.*  
Henry M. Wick, Jr.



HMW\rm  
Enclosure  
24522288.WP



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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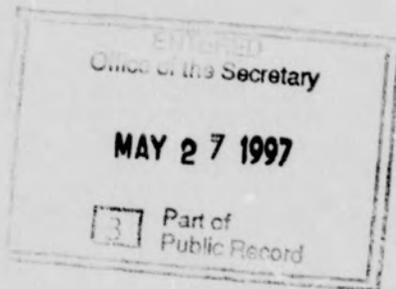
Finance Docket No. 33388

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

---

**NOTICE OF APPEARANCE OF U.S. CLAY PRODUCERS  
TRAFFIC ASSOCIATION, INC.**

175912



Henry M. Wick, Jr.  
WICK, STREIFF, MEYER,  
METZ & O'BOYLE, P.C.  
1450 Two Chatham Center  
Pittsburgh, PA 15219  
(412) 765-1600

Attorneys for U.S. Clay Producers  
Traffic Association, Inc.

May 23, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 33388

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

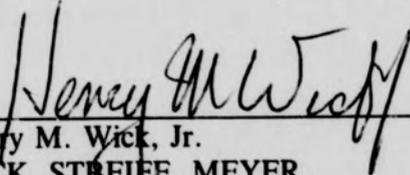
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**NOTICE OF APPEARANCE OF U.S. CLAY  
PRODUCERS TRAFFIC ASSOCIATION, INC.**

U.S. Clay Producers Traffic Association, Inc. hereby provides notice of its intent to participate as a party in this proceeding. Please include the undersigned on the official list for the proceeding to receive copies of all notices, pleadings and decisions:

Henry M. Wick, Jr.  
Wick, Streiff, Meyer,  
Metz & O'Boyle, P.C.  
1450 Two Chatham Center  
Pittsburgh, PA 15219

Respectfully submitted,

  
Henry M. Wick, Jr.  
WICK, STREIFF, MEYER,  
METZ & O'BOYLE, P.C.  
Attorneys for U.S. Clay Producers  
Traffic Association, Inc.

**CERTIFICATE OF SERVICE**

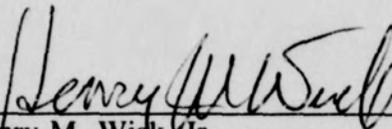
The undersigned hereby certifies that a copy of the foregoing Appearance was served upon the following by first class mail, postage prepaid this 23rd day of May, 1997:

The Honorable Jacob Leventhal  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Suite 11F  
Washington, DC 20426

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

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

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

  
\_\_\_\_\_  
Henry M. Wick, Jr.  
Attorney for U.S. Clay Producers  
Traffic Association, Inc.

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# united transportation union



General Committee of Adjustment  
CSX-CHESAPEAKE AND OHIO-PROPER (GO-201)  
Conductors-Trainmen-Yardmen-Firemen-Hostlers

R. K. SARGENT, General Chairman  
R. L. RAMSEY, Vice Chairman  
J. R. TOWNSEND, Secretary  
E. M. YATES, Assistant Chairman  
J. K. FANNIN, Assistant Chairman

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1319 Chestnut Street  
Kenova, WV 25530  
Phone (304) 453-1102  
Fax (304) 522-5475

May 5, 1997

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



Re: Entry of Appearance, Finance Docket No. 33388  
CSX Corp., *et al.*, Norfolk Southern Corp., *et al.*, -  
Control and Operating Leases/Agreements - Conrail  
Inc., *et al.*, - Transfer of Railroad Line By Norfolk  
Southern Railway Co. to CSX Transportation, Inc.

179874

Dear Secretary Williams:

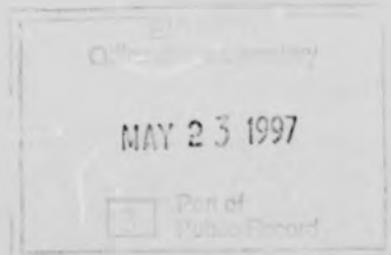
Please enter my appearance on behalf of the United Transportation Union General Committee of Adjustment CSX in the above-referenced proceeding and include me on the service list.

Thank you for your attention to this matter.

Sincerely,

*R. K. Sargent*  
General Chairperson

cc: C. L. Little, International President  
D. R. Elliott, III, Assistant General Counsel



## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 15 day of MAY, 1997 upon the following:

James C. Bishop, Jr.  
William C. Woolridge  
J. Gary Lane  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
Norfolk Southern Corp.  
Three Commercial Place  
Norfolk, VA 23510-9241

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

Larry Pruden, Esquire  
Transportation Communications  
International Union  
3 Research Place  
Rockville, MD 20850

Larry Willis, Esquire  
Transportation Trades Dept.  
AFL-CIO  
400 N. Capitol Street, N.W.  
Washington, DC 20001

Richard Edelman  
Highsaw, Mahoney & Clarke  
1050 11th Street, N.W., Suite 210  
Washington, DC 20036

The Honorable Jacob Leventhal  
Federal Energy Regulatory  
Commission  
888 First Street, N.E., Suite 11F  
Washington, DC 20426

Richard A. Allen  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zuckert, Scoutt &  
Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Washington, DC 20006-3939

Paul A. Cunningham  
Harkins Cunningham  
Suite 1600  
1300 19th Street, N.W.  
Washington, DC 20036

Mark G. Aron  
Peter J. Shultz  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23219

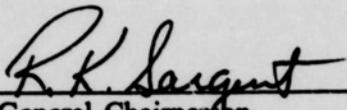
P. Michael Giftos  
Paul R. Hitchcock  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

Dennis G. Lyons  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12th Street, N.W.  
Washington, DC 20004-1202

John M. Nannes  
Scot B. Hutchins  
Skadden, Arps, Slate,  
Meagher & Flom, L.L.P.  
1440 New York Avenue, N.W.  
Washington, DC 20005

Timothy T. O'Toole  
Constance L. Abrahms  
Consolidated Rail Corp.  
Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

Samuel M. Sipe, Jr.  
Timothy M. Walsh  
Stepco & Johnson, L.L.P.  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795

  
\_\_\_\_\_  
General Chairperson

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J. R. BARBEE  
General Chairman

J. H. CLARK  
Assistant General Chairman

**united  
transportation  
union**



Post Office Box 9599  
Knoxville, Tennessee 37940

GENERAL COMMITTEE OF ADJUSTMENT  
CONDUCTORS, TRAINMEN/YARDMEN,  
AND ENGINEMEN  
SOUTHERN RAILWAY SYSTEM

May 14, 1997



The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

179875

Re: Entry of Appearance, Finance Docket No. 33388  
CSX Corp., et al., Norfolk Southern Corp., et al., --  
Control and Operating Leases/Agreements -- Conrail  
Inc., et al., -- Transfer of Railroad Line by Norfolk  
Southern Railway Co. to CSX Transportation, Inc.

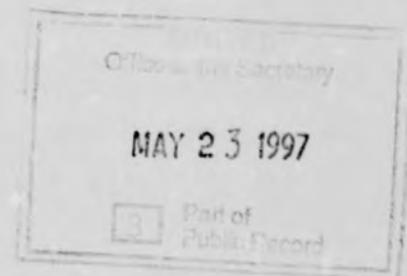
Dear Secretary Williams:

Please enter my appearance on behalf of the United  
Transportation Union General Committee of Adjustment GO-898 in  
the above-referenced proceeding and include me on the service  
list.

Thank you for your attention to this matter.

Sincerely,

J.R. Barbee  
General Chairperson



cy: Mr. C.L. Little, International President  
Mr. D.R. Elliott, III, Assistant General Counsel

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 14<sup>th</sup> day of May, 1997 upon the following:

James C. Bishop, Jr.  
William C. Woolridge  
J. Gary Lane  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
Norfolk Southern Corp.  
Three Commercial Place  
Norfolk, VA 23510-9241

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

Larry Pruden, Esquire  
Transportation Communications  
International Union  
3 Research Place  
Rockville, MD 20850

Larry Willis, Esquire  
Transportation Trades Dept.  
AFL-CIO  
400 N. Capitol Street, N.W.  
Washington, DC 20001

Richard Edelman  
Higsaw, Mahoney & Clarke  
1050 17th Street, N.W., Suite 210  
Washington, DC 20036

The Honorable Jacob Leventhal  
Federal Energy Regulatory  
Commission  
888 First Street, N.E., Suite 11F  
Washington, DC 20426

Richard A. Allen  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zuckert, Scoutt &  
Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Washington, DC 20006-3939

Paul A. Cunningham  
Harkins Cunningham  
Suite 1600  
1300 19th Street, N.W.  
Washington, DC 20036

Mark G. Aron  
Peter J. Shudtz  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23219

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

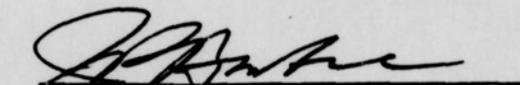
Dennis G. Lyons  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12th Street, N.W.  
Washington, DC 20004-1202

John M. Nannes  
Scot B. Hutchins  
Skadden, Arps, Slate,  
Meagher & Flom, L.L.P.  
1440 New York Avenue, N.W.  
Washington, DC 20005



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Consolidated Rail Corp.  
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Philadelphia, PA 19103

Samuel M. Sipe, Jr.  
Timothy M. Walsh  
Steptoe & Johnson, L.L.P.  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795

  
General Chairperson

STB

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179831



# united transportation union

GENERAL COMMITTEE OF ADJUSTMENT e-l-c-b-y  
NORFOLK SOUTHERN - N&W - WABASH  
11017-F Gravois Industrial Plaza  
St. Louis, MO 63128  
314-843-4554



May 15, 1997

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001



Re: Entry of Appearance, Finance Docket  
No. 33388 CSX Corp., et al., Norfolk  
Southern Corp., et al., -- Control and  
Operating Leases/Agreements -- Conrail  
Inc., et al., -- Transfer of Railroad Line By  
Norfolk Southern Railway Co. to CSX  
Transportation, Inc.

Dear Secretary Williams:

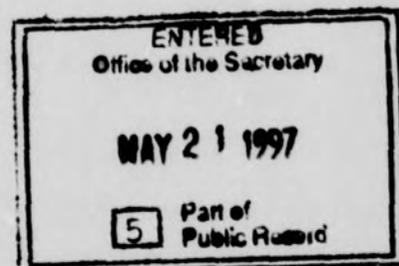
Please enter my appearance on behalf of the United Transportation Union  
General Committee of Adjustment 719 in the above-referenced proceeding and  
include me on the service list.

Thank you for your attention to this matter.

Sincerely,

*K. N. Thompson*  
K. N. Thompson  
General Chairman

KNT/kap  
cc: C. L. Little, International President  
D. R. Elliott, III, Assistant General Counsel



## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 15<sup>th</sup> day of May, 1997 upon the following:

James C. Bishop, Jr.  
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The Honorable Jacob Leventhal  
Federal Energy Regulatory  
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Washington, DC 20426

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Peter J. Shultz  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23219

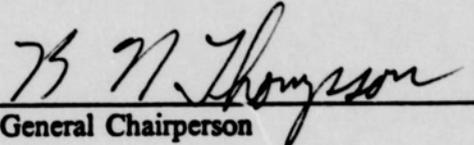
P. Michael Giftos  
Paul R. Hitchcock  
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Jacksonville, FL 32202

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Meagher & Flom, L.L.P.  
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1330 Connecticut Avenue, N.W.  
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General Chairperson

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179763

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ENTERED  
Office of the Secretary  
MAY 16 1997  
ARVID E. ROACH II  
DIRECT DIAL NUMBER  
(202) 662-5388  
DIRECT FACSIMILE  
(202) 778-5388

May 16, 1997

**BY HAND**

Honorable Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Room 2215  
Washington, D.C. 20423



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

179763

Dear Secretary Williams:

Please note the appearance of the undersigned in this proceeding for Union Pacific Corporation and Union Pacific Railroad Company. I would appreciate being added to the service list for receipt of all orders of the Board and the presiding Administrative Law Judge.

By copy of this letter, I am requesting of the applicants and all other known parties of record that they serve me with all pleadings and correspondence filed to date, and filed hereafter, in the proceeding, and in related matters such as requests for informal clearance of voting trusts.

Sincerely,

*Arvid E. Roach II*

Arvid E. Roach II

Attorney for Union Pacific Corporation and Union Pacific Railroad Company

ENTERED  
Office of the Secretary  
MAY 16 1997  
Part of Public Record

cc: All Parties of Record

STB

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5-16-97

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Robert E. Murray  
President & Chief Executive Officer

May 12, 1997

D



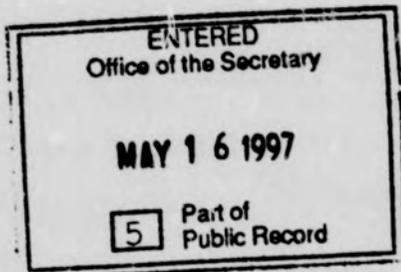
The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

Re: Finance Docket No. 33388: CSX Corp., et al, Norfolk Southern Corp., et al, -  
-- Control and Operating Leases/Agreements - Conrail Inc, et al Transfer of  
Railroad Line by Norfolk Southern Railway Co. To CSX Transportation, Inc.

Dear Secretary Williams:

This is to notify the Board and all known interested parties that it is the intent of The Ohio Valley Coal Company ("Ohio Valley") to participate in the above referenced proceeding. Please enter the following individual to the service list on behalf of Ohio Valley:

Mr. Robert E. Murray  
President and Chief Executive Officer  
The Ohio Valley Coal Company  
29525 Chagrin Boulevard, Suite 111  
Pepper Pike, Ohio 44122



Sincerely,

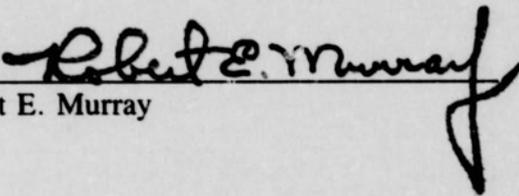
THE OHIO VALLEY COAL COMPANY

Robert E. Murray  
President and  
Chief Executive Officer

REM:arw  
Attachment  
cc: All other parties

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Intent to Participate was served, by first-class mail, postage prepaid, this 12th day of May, 1997, upon all known parties in Finance Docket 33388.

  
\_\_\_\_\_  
Robert E. Murray

STB

FD-

33388

5-15-97

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ARU-3

ENTERED  
Office of the Secretary

MAY 16 1997

5 Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corp. and Norfolk  
Southern Ry. Co.--Control and Operating  
Leases/Agreements--Conrail Inc.  
and Consolidated Rail Corporation  
Transfer of Railroad Line by Norfolk  
Southern Railway Company to CSX Transportation, Inc.

**ALLIED RAIL UNIONS' REPLY IN  
OPPOSITION TO PETITIONS FOR  
WAIVER OF 49 CFR §1180.4(c)(2)(vi)**

INTRODUCTION

On May 2, 1997 CSX Corp. and its subsidiaries ("CSX"), and Norfolk Southern Corp. and its subsidiary Norfolk Southern Ry. Co. ("NS") filed unprecedented petitions for waiver of 49 CFR §1180.4(c)(2)(vi). These petitions were the first steps in processes that would allow them to complete construction projects ("Construction Projects") related to their joint acquisition of control of Consolidated Rail Corp. ("Conrail") and division of Conrail between CSX and NS ("Transaction") prior to Board approval of the Transaction. The Allied Rail Unions ("ARU")<sup>1/</sup>

<sup>1/</sup> American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employes; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; The National Conference of Firemen & Oilers/SEIU; and Sheet Metal

oppose these petitions for waiver as grossly improper and inconsistent with the entire procedure for STB review of the Transaction. Simply put, CSX and NS seek to evade the process of applicant disclosure, public scrutiny and comment and STB review, and to create advance leverage for STB approval, substantive or otherwise, of the Transaction. And NS and CSX have offered not a single shred of bona fide evidence, and no, even facially, adequate arguments for their waiver requests. These requests should therefore be denied.

ARGUMENT

**A. The Construction Projects Are Entirely Transaction-Related and Should Be Considered Only In Conjunction With STB Review Of The Transaction.**

Both CSX and NS expressly state that the Construction projects are being proposed solely because of the Transaction; they concede that they need a waiver of 49 C.F.R. §1180.4(c)(2)(vi) to obtain authorization for the projects outside the Transaction review process, and they concede that the projects involve linking their lines with Conrail lines that they expect to acquire in the Transaction. NS-1 at 1-2, 4-7; CSX-1 at 1-2, 4-5. Since these Construction Projects are directly related to, and are dependent upon, approval of the Transaction for their business rationale, authorization for the Construction Projects should come only if the Transaction itself is authorized.

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Workers' International Association.

NS and CSX have stated that their requests are "somewhat out of the ordinary" and "not typical" for major control transactions (NS-1 at 2, CSX-1 at 2); in fact their requests are unprecedented.<sup>2/</sup> The Board's regulations require that it consider all aspects of a major control/merger transaction together and do not provide for exceptions. 49 CFR §1180.4(c)(2)(vi).

Moreover, it must be recognized that the regulations actually provide an advantage to applicants like NS and CSX. Absent these regulations, applicants like CSX and NS have to wait until after their control/acquisition/merger transactions are approved to file for authorization of any transaction related abandonment, line sale, trackage rights and/or construction. They have to delay their efforts on the related transactions because they can not abandon or sell lines that they do not own or control, and they would not want to abandon or sell their own

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<sup>2/</sup> NS and CSX tried to draw feeble precedential support for their petitions by citing *Hastings Industrial Link Railroad-- Construction and Operation Exemption*, F.D. No. 32984 (decided December 2, 1996) and *Jackson County Port Authority Construction Exemption*, F.D. No. 31536 (decided August 6, 1990), (NS-1 at 8-9, CSX-1 at 10). However, these two transactions involving comparatively tiny railroads with relatively little transportation impact are so grossly dissimilar from the Transaction as to render them utterly useless as authority in support of the waiver requests. Indeed, the fact that these decisions were the only ones cited by NS and CSX shows precisely how extreme their requests are, and that NS and CSX have mischaracterized their requests in describing them as merely atypical and out of the ordinary.

lines or begin construction work related to the control/merger until after authorization of the control/merger. Thus the Board's regulations already confer a significant benefit on CSX and NS and they have no basis to request additional advantages.

**B. NS And CSX Have Offered Nothing To Support Their Waiver Requests.**

As is noted above, NS and CSX have cited no authority to support their requests. And they have offered no competent evidence in support of their purported justifications for their requests. Both NS and CSX have argued that approval of their request is necessary to allow them to compete effectively against each other once the Transaction is approved, and that denial of their requests would mean that the public would be unnecessarily denied the alleged "benefits" of the Transaction in the first six months or so after the Transaction. These contentions do not justify the requested waivers.

First, the CSX and NS arguments presume that the Transaction will be authorized; obviously there will be no competitive disadvantage to CSX and NS, or denial of alleged Transaction related benefits to the public, if the waivers are not granted and the Transaction is not authorized. Arguments for waiver of rules requiring consolidation of related transactions in a single application which depend entirely on ultimate approval of the principal transaction have no force whatsoever. Since approval of the Transaction is hopefully still uncertain, the Transaction

itself cannot justify waivers of STB review of Transaction-related projects as part of Board consideration of the overall Transaction.

Second, the NS and CSX requests and their proffered justifications are not supported by competent evidence. Notably absent from the petitions for waiver are statements of CSX or NS officials purporting to describe the actual necessity for the Construction Projects and the alleged benefits to the public that possibly would be lost. The Board has been offered only conclusory statements of the lawyers for CSX and NS. In their Application, NS and CSX officials will presumably offer statements explaining both how they will "compete" if the Transaction is approved and how the public will allegedly benefit from the Transaction. However, in their petitions CSX and NS have offered no statements to support their "competitive disadvantage" and "delay of public benefits arguments". In essence, they expect the Board to accept on faith that their claims as to competition and public benefits will ultimately be demonstrated, so that they should be presumed in the context of the petitions for waiver, but there is no factual or legal basis for the Board to make such presumptions.

Third, the NS and CSX arguments on competitive disadvantages are inherently inconsistent. CSX states that it will be at a competitive disadvantage against NS if it cannot begin

construction early; and NS similarly claims that if it cannot begin construction soon it will be at a competitive disadvantage against CSX. Since both carriers assert that they will be disadvantaged unless their petitions are granted, it appears that reasonable competitive balance would be maintained if both petitions were denied. Instead they both seek early authorizations for construction projects to improve their respective systems, but they have not shown that the relative balance of competition between them will be significantly altered whether both petitions are granted or both petitions are denied.

**C. The Petitions Are Merely Efforts To Ratchet Up Pressure For Ultimate Approval Of The Transaction.**

For years Carriers have complained about how expensive it is for them to extend their rights of way. Now that they seek to engage in pre-approval Transaction related construction, NS and CSX suggest that the cost of the Construction Projects is inconsequential. NS-1 at 7, CSX-1 at 9. However, when it comes time for the Board to decide whether to approve the Transaction, the decision will be made in the context of significant expenditures by NS and CSX.<sup>2/</sup> Although CSX and NS state that granting the requested waivers for the Construction Projects would not hinder the Board's ability to independently assess the

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<sup>2/</sup> CSX and NS have stated that the costs of construction will be dwarfed by the overall costs of the Transaction (NS-1 at 8, CSX-1 at 10) but they have not described what the work would cost or how it would be done.

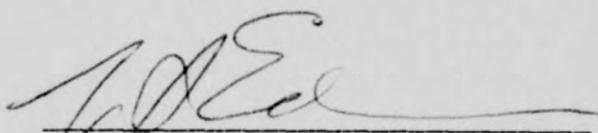
merits of the Transaction (NS-1 at 7, CSX-1 at 9), they cannot deny the fact that if the waivers are granted and construction is completed, the significant expenditures by NS and CSX for the Construction Projects will be known to the Board and will represent expenses that obviously could not be recovered by CSX and NS if the Board does not approve the Transaction.

Much of the CSX and NS effort in seeking approval of the Transaction is already directed to creating momentum for approval and injecting an element of fait accompli into the proceedings. The current petitions for waiver are just part of that effort.

**CONCLUSION**

For all of the foregoing reasons, the NS and CSX petitions for waiver of 49 CFR §1180.4(c)(2)(vi) (NS-1 and CSX-1) should be denied.

Respectfully submitted,



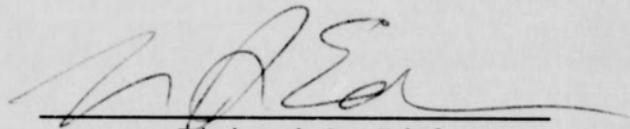
William G. Mahoney  
Richard S. Edelman  
L. Pat Wynns  
HIGSAW, MAHONEY & CLARKE, P.C.  
1050 17<sup>th</sup> Street, N.W., Ste. 210  
Washington, D.C. 20036  
(202) 296-8500

Date: May 15, 1997

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served one copy of the foregoing Allied Rail Unions' Reply In Opposition To Petitions For Waiver of 49 CFR §1180.4(c)(2)(vi), by first-class mail, postage prepaid, to the offices of the parties on the attached list.

Dated at Washington, D.C. this 15<sup>th</sup> day of May, 1997.

A handwritten signature in dark ink, appearing to read 'R. S. Edelman', is written over a horizontal line.

Richard S. Edelman

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NC Department of Transportation  
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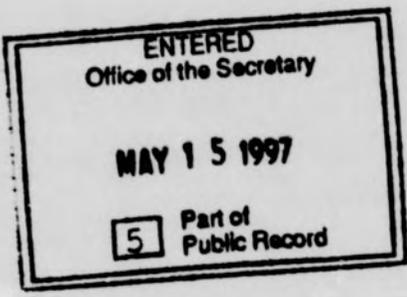
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D

BEFORE THE  
 SURFACE TRANSPORTATION BOARD  
 Finance Docket No. 33388  
 CSX-NORFOLK SOUTHERN-CONRAIL  
 RAILROAD CONTROL TRANSACTION  
 Notice of Intent to Participate



Comes now the West Virginia State Rail Authority, ("WVSRA") for and on behalf of the State of West Virginia, through counsel, and files this Notice of Intent to Participate in the above referenced proceeding.



*Francis G. McKenna*

Francis G. McKenna  
 Anderson & Pendleton, C.A.  
 1700 K Street, N.W., Suite 1107  
 Washington, DC 20006  
 (202)659-2334  
 fax (202) 659-0156  
 Email fgmckenna@juno.com

Attorney for  
 West Virginia State Rail Authority

CERTIFICATE OF SERVICE

The undersigned herewith certify that a copy of this notice has been sent to all Parties of Record known to the undersigned, a list of such parties is attached, this 15th day of May, 1997.

*Francis G. McKenna*  
 Francis G. McKenna

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P.O. Box 700  
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STB

FD-

33388

5-15-97

D

179730

J. T. REED, General Chairman  
J. L. MATEER, Vice Chairman  
J. E. LESNIEWSKI, Secretary



D

179730

7785 Baymeadows Way #109  
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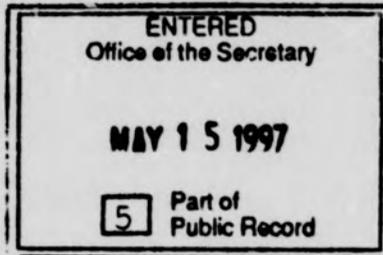
# united transportation union

General Committee of Adjustment  
CSXT Baltimore & Ohio System — C & T  
Buffalo & Pittsburgh RR — C, T, & E

JTR/la



May 13, 1997  
In reply refer to  
File: FD 33388



The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

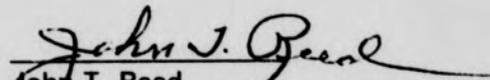
Re: Entry of Appearance, Finance Docket No. 33388  
CSX Corp, *et al.*, Norfolk Southern Corp., *et al.*, --  
Control and Operating Leases/Agreements --  
Conrail Inc., *et al.*, -- Transfer of Railroad Line By  
Norfolk Southern Railway Co. to CSX  
Transportation, Inc.

Dear Secretary Williams:

Please enter my appearance on behalf of the United Transportation Union General Committee of Adjustment "B&O" in the above-referenced proceeding and include me on the service list.

Thank you for your attention to this matter.

Sincerely,

  
John T. Reed  
General Chairperson

cc: C. L. Little, International President  
D. R. Elliott, III, Assistant General Counsel

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 13 day of MAY, 1997 upon the following:

James C. Bishop, Jr.  
William C. Woolridge  
J. Gary Lane  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
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Constance L. Abrams  
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The Honorable Jacob Leventhal  
Federal Energy Regulatory  
Commission  
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Andrew R. Plump  
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CSX Corporation  
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901 East Cary Street  
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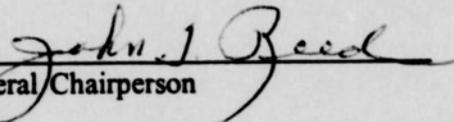
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General Chairperson

STB

FD-

33388

5-14-97

D

1779725

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

APPLICANTS' REPLY TO TCU/UTU/IAM-4,  
TRANSPORTATION•COMMUNICATIONS INT'L UNION, ET AL'S  
AMENDMENT TO COMMENTS ON PROPOSED PROCEDURAL SCHEDULE

On May 9, 1997, the Transportation•Communications International Union, et al. ("TCU") petitioned the Board (in pleading TCU/UTU/IAM-3) for leave to amend their previously filed comments on the applicants' proposed procedural schedule, and filed with the Board their proposed amendment to their comments (TCU/UTU/IAM-4).

Pursuant to 49 C.F.R. § 1104.13, the Applicants<sup>1/</sup> hereby reply to TCU's amendment.<sup>2/</sup>

<sup>1/</sup> "Applicants" are CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSRC"), Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC"). CSXC and CSXT collectively are referred to as "CSX"; NSC and NSRC collectively are referred to as "NS"; and CRI and CRC collectively are referred to as "Conrail."

<sup>2/</sup> Pursuant to 49 C.F.R. § 1104.13, a party may file a reply addressed to a pleading within 20 days after the pleading is filed. The Applicants submit that documents

(continued...)

TCU argues that since the filing of initial comments on the procedural schedule, the Applicants have filed "a blizzard of petitions," the "multitude" of which compels the Board to establish a procedural schedule of no less than fifteen months. TCU/UTU/IAM-4 at 2. The "blizzard" TCU cites consists of precisely three petitions: the Applicants' joint petition for waiver or clarification (CSX/NS-10), and CSX's and NS's individual petitions for waiver with respect to various contemplated construction projects (CSX-1 and NS-1, respectively).

Despite TCU's hyperbole, their argument is baseless. The Board's need to review and rule upon the pleadings TCU cites has absolutely no bearing on the proposed procedural schedule.

The proposed procedural schedule pertains to the Board's consideration of the Applicants' primary application for control of Conrail, and establishes a frame of reference relative to the date of filing of the primary application. With one exception, the deadlines in the proposed procedural schedule regulates the timing of events after the primary application filed.<sup>2/</sup> Moreover, the schedule is established relative to the date of filing the primary application; the various deadlines are not fixed on dates certain until the primary application is filed.

That the Board must consider and decide the petitions cited by TCU has no bearing on the length of time needed after the filing of the primary application for parties to respond

---

<sup>2/</sup>(...continued)

TCU/UTU/IAM-3 and TCU/UTU/IAM-4 are pleadings to which the Applicants are permitted to reply.

<sup>3/</sup> The one exception is that the schedule requires the Applicants to provide to the Board's Section of Environmental Analysis a Preliminary Environmental Report at least 30 days before filing the primary application.

to that application or for the Board to review and rule on it. First, it should be noted that petitions for waiver or clarification are specifically contemplated under the Board's regulations. See 49 C.F.R. § 1180.4(f). Indeed, a petition for waiver or clarification was filed by the applicants in UP/SP, in the context of a proceeding of the same 255-day duration as the Applicants seek here, see UP/SP-3 in F.D. 32760, filed August 4, 1995, and in every other recent proceeding under Part 1180 of the Board's regulations.<sup>4/</sup> Moreover, in CSX/NS-10 the Applicants seek waiver or clarification on a number of matters with respect to the primary application that necessarily must be resolved before the primary application is filed. See CSX/NS-10 at 8-12. The time needed for the Board to review and respond to that petition, therefore, logically has no bearing on the appropriateness of the proposed procedural schedule, which governs the timing of events following the filing of the primary application.

Second, with respect to the other two petitions TCU cites, the Board already has announced it will accept and consider public comments on the relief CSX and NS request, and has established the schedule for doing so. See F.D. 33388, Decision No. 5, served May 13, 1997. The Board has noted it will render a decision "as soon after June 4, 1997 [the deadline for the Applicants' reply], as is practicable." Id., slip op. at 6. Again, there simply is no logical connection between the time needed for the Board to consider CSX-1

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<sup>4/</sup> See, e.g., Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision served October 3, 1994 (deciding the applicants' petition for waiver or clarification); Canadian Pacific Limited, et al. -- Purchase and Trackage Rights -- Delaware & Hudson Railway Company Waiver, Finance Docket No. 31700, Decision dated June 27, 1990 (same).

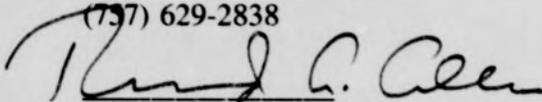
and NS-1 -- the schedule for which the Board already has decided -- and the length of the procedural schedule needed for consideration of the Applicants' primary application.

### **CONCLUSION**

For the foregoing reasons, and as set forth more fully in CSX/NS-4 and CSX/NS-11, the Applicants respectfully request that the Board approve the procedural schedule the Applicants have proposed.

Respectfully submitted,

**James C. Bishop, Jr.**  
**William C. Wooldridge**  
**J. Gary Lane**  
**James L. Howe III**  
**Robert J. Cooney**  
**George A. Aspatore**  
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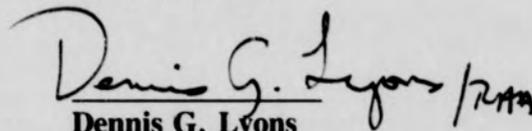
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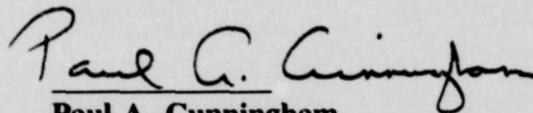


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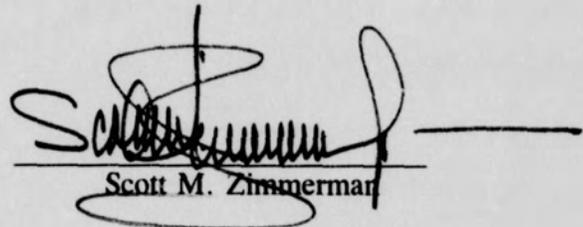
*Counsel for Conrail Inc. and Consolidated  
Rail Corporation*

May 14, 1997

CERTIFICATE OF SERVICE

I, Scott M. Zimmerman, certify that on May 14, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing CSX/NS-12, Applicants' Reply to TCU/UTU/IAM-4, Transportation Communications Int'l Union, et al.'s Amendment to Comments on Proposed Procedural Schedule, on all parties that have appeared in STB Finance Docket No. 33388 and by hand delivery on the following:

The Honorable Jacob Leventhal  
Administrative Law Judge  
Federal Energy Commission  
Office of Hearings  
825 North Capitol Street, N.E.  
Washington, D.C. 20426



Scott M. Zimmerman

Dated: May 14, 1997

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RICHARD A. ALLEN



May 14, 1997

Via Hand Delivery

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

179725

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty-five copies of CSX/NS-12, Applicants' Reply to TCU/UTU/IAM-4, Transportation Communications Int'l Union, et al.'s Amendment to Comments on Proposed Procedural Schedule.

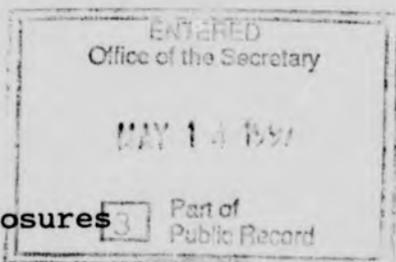
Also enclosed is a 3 1/2" computer disk containing the filing in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

Applicants are serving this pleading on persons who have made an appearance in Finance Docket No. 33388, and on Administrative Law Judge Leventhal.

Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen



Enclosures

Part of  
Public Record

STB

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33388

5-14-97

D

179722

GALLAND, KHARASCH & GARFINKLE, P.C.  
ATTORNEYS AT LAW

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ROBERT N. KHARASCH  
OF COUNSEL  
GEORGE F. GALLA'D (1910-1985)

May 9, 1997

WRITER'S DIRECT DIAL NUMBER

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

179722

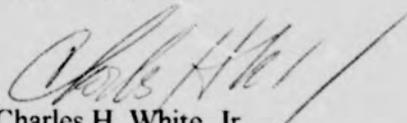


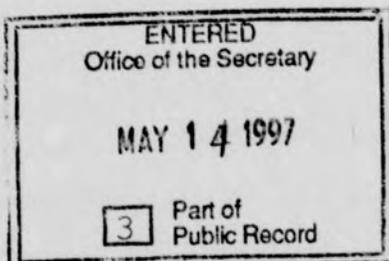
**Re: Finance Docket No. 33388**  
**CSX Corporation And CSX Transportation, Inc.,**  
**Norfolk Southern Corporation And**  
**Norfolk Southern Railway Company**  
**--Control And Operating Leases/Agreements--**  
**Conrail Inc. And Consolidated Rail Corporation**

Dear Mr. Williams:

On May 1, 1997 I filed an original and 25 copies of Comments on behalf of the Wheeling and Lake Erie Railway Company concerning the proposed procedural schedule in the above-proceeding. In my service letter I stated that: "I have served copies of the Comments on counsel as directed in Decision No. 2." A subsequent phone call from the Board indicated that a Certificate of Service was still required. Enclosed please find an original and 25 copies of such a Certificate attesting to the fact earlier stated in the service letter.

Very truly yours,

  
Charles H. White, Jr.  
Counsel for Wheeling & Lake Erie  
Railway Company

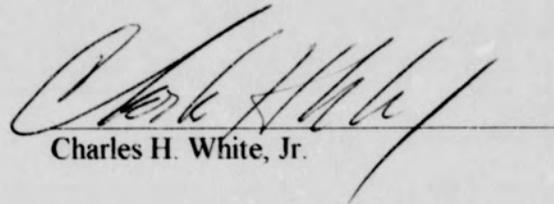


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INTERNET: xjylaw@pku.edu.cn

**ORIGINAL**

**CERTIFICATE OF SERVICE**

I, Charles H. White, Jr., certify that on the first day of May, 1997 I served true copies of the Comments of Wheeling and Lake Erie Railway Company concerning the procedural schedule in Finance Docket No. 33388, on Administrative Law Judge Leventhal, Federal Energy Regulatory Commission, 888 First St., NE, Suite 11F, Washington, DC 20426; Dennis J. Lyons, Esq., Arnold & Porter, 555 12th St., NW, Washington, DC 20004-1202; Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., 888 17th St., NW, Washington, DC 20006-3939; and Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th St., NW, Suite 600, Washington, DC 20036 by first class mail, postage pre-paid.

  
Charles H. White, Jr.

Dated: May 9, 1997



STB

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33388

5-13-97

D

179694

BEFORE THE  
SURFACE TRANSPORTATION BOARD

-----  
Finance Docket No. 33388  
-----



CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corp. And Norfolk  
Southern Ry. Co. --Control and Operating  
Leases/Agreements--ConRail Inc.  
and Consolidated Rail Corporation  
Transfer of Railroad Line by Norfolk  
Southern Railway Company to CSX Transportation, Inc.  
-----

**NOTICE OF APPEARANCE**

179694

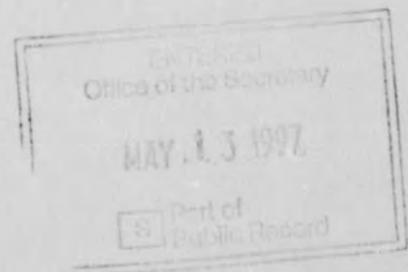
Please enter the appearance of Charles M. Chadwick, in the above captioned matter on behalf of Maryland Midland Railway, Inc..

Charles M. Chadwick  
Maryland Midland Railway, Inc.  
PO Box 1000  
Union Bridge, MD 21791-0568

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of May, 1997, a copy of the foregoing Notice of Appearance was served upon the following people by first class mail, postage prepaid:

Dated: May 7, 1997



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PO Box 30014  
Lansing, MI 48909

Honorable Eric Bash  
House of Representatives  
State Capitol  
Lansing, MI 48913

Honorable Wayne M. Jones  
Ohio House of Representatives  
Statehouse  
Columbus, OH 43215

Honorable Robert F. Hagan  
Ohio 64th House District  
562 Madera Avenue  
Youngstown, OH 44504

Honorable Sandra J. Hill  
House Representative  
State Capitol  
Lansing, MI 48913

Doreen C. Johnson  
Chief, Antitrust Section  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, OH 43215

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Attn: Peter Phipps  
United States Senate  
Washington, DC 20510

Honorable Jacob Leventhal  
Administrative Law Judge  
Ferc. Office of Hearings  
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Washington, DC 20426

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State Representative  
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Executive Director  
Transportation Trades Department AFL-CIO  
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Washington, DC 20001

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Managing Director - Transportation  
American Electric Power  
PO Box 700  
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Susan T. Morita  
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Washington, DC 20004-1202

A handwritten signature in black ink, appearing to read "C. M. Chadwick", written over a horizontal line.

Charles M. Chadwick

STB

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33388

5-13-97

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179686

**HERCULES**

79686

D

**Hercules Incorporated**  
Hercules Plaza  
1313 North Market Street  
Wilmington, DE 19894-0001  
(302) 594-5000

**SURFACE TRANSPORTATION BOARD  
CASE CONTROL BRANCH  
1201 CONSTITUTION AVENUE, N.W.  
WASHINGTON, DC 20423-0001**

**STB FINANCE DOCKET  
#33388**



**COMMENTS OF**

**HERCULES INCORPORATED  
HERCULES PLAZA  
WILMINGTON, DE 19894**

**MAY 5, 1997**



May 5, 1997

**Hercules Incorporated**  
Hercules Plaza  
1313 North Market Street  
Wilmington, DE 19894-0001  
(302) 594-5000

My name is John E. Thomas, and I am Manager, Bulk Transportation of Hercules Incorporated. I have held my present position for five years and have been in other transportation related fields for twenty-one years.

Hercules Incorporated manufactures chemical specialty products for a variety of markets world wide. Its businesses include Paper Technology, Resins, Fibers, Food Gums and Aqualon water-soluble polymers. The corporation concentrates on value-added, high-performance products where it has a market or technology advantage. Hercules operates 45 manufacturing plants worldwide including 14 domestic plants in the United States.

We have 14 facilities in the United States located at Chicopee, MA; Parlin, NJ; West Elizabeth, PA; Hopewell, VA; Franklin, VA; Savannah, GA; Brunswick GA; Covington, GA; Milwaukee, WI; Kalamazoo, MI; Louisiana, MO; Hattiesburg, MS; Portland, OR; Kenedy, TX. These facilities are presently served by the ST; CR; NS; CSX; CPRS; BNSF; IC; UP.

Since the announcement of the CSX Corporation purchase of Conrail in October 1996, we have followed the events over the last several months with great interest. Hercules' concerns have been greatly relieved with the solution which Norfolk Southern and CSX have presented to divide up Conrail. Initially, Hercules was concerned that our industry would suffer with the loss of competitive services of a rail carrier when CSX was to acquire all of Conrail thereby forming a single railroad. Hercules has

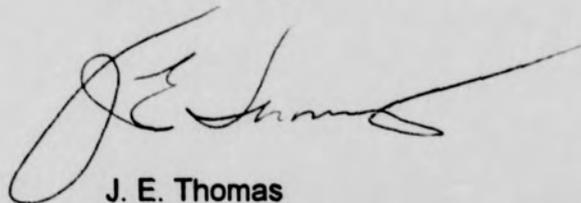
three facilities currently located on Conrail. However, with the proposed division, two would be located on the Norfolk Southern and one jointly served in New Jersey.

Competitive rail service is important to Hercules. There is a distinct need for balanced rail competition in the East. Hercules must compete on a global basis. Both our domestic and international competitors look for cost savings whenever possible. Because transportation expenses are a major product cost item for Hercules, we need to have two rail providers available in order to serve as a competitive force to keep rail rates in check. We believe the division of Conrail will promote competition throughout the North East and preserve the interest of the shipping public.

We therefore request the STB to support the division of Conrail as proposed by the NS and CSX.

We thank the STB for the opportunity to present our comments and respectfully request that our recommendations be strongly considered.

Respectfully submitted

A handwritten signature in black ink, appearing to read "J. E. Thomas", with a long, sweeping horizontal stroke extending to the right.

J. E. Thomas  
Manager, Bulk Transportation  
Purchasing & Transportation Department

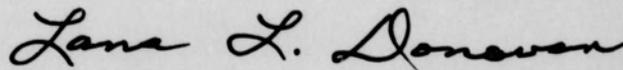
VERIFICATION

I, John E. Thomas, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed on May 5, 1997.

  
(Name)

SUBSCRIBED AND SWORN TO BEFORE ME THIS

5TH DAY OF MAY 1997.

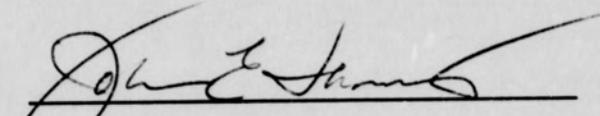
  
NOTARY PUBLIC

My commission expires July 10, 1997

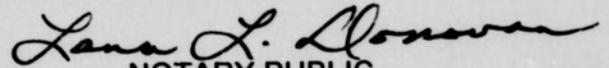


**CERTIFICATION**

I, John E. Thomas, certify that Hercules Incorporated has served copies of this Support Statement to the Norfolk Southern, CSX Transportation and Consolidated Rail. Executed on May 9, 1997.

  
\_\_\_\_\_  
(Name)

SUBSCRIBED AND SWORN TO BEFORE ME THIS  
9TH DAY OF MAY 1997.

  
NOTARY PUBLIC  
My commission expires July 10, 1997

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May 6, 1997

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, D.C. 20423

RE: Finance Docket No. 33388: CSX Corp., et al., Norfolk Southern Corp., et al. — Control and Operating Leases/Agreements — Conrail Inc., et al. Transfer of Railroad Line by Norfolk Southern Railway Co. To CSX Transportation, Inc.

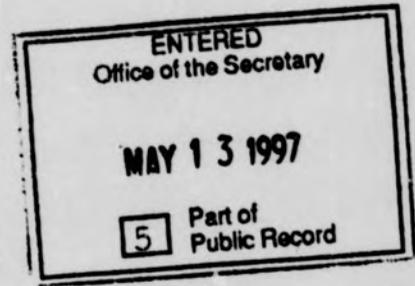
Dear Secretary Williams:

This is to notify the Board and all known interested parties that it is the intent of the Transportation Trades Department, AFL-CIO (TTD) to participate in the above referenced proceeding. Please enter the following individuals to the service list on behalf of TTD:

Edward Wytkind, Executive Director  
Larry Willis, Esq.  
Transportation Trades Department, AFL-CIO  
400 North Capitol Street, NW Suite 861  
Washington, D.C. 20001

Sincerely,

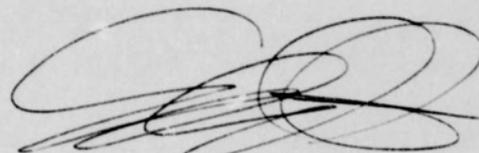
Edward Wytkind  
Executive Director



cc: All parties of record

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Intent to Participate was served, by first-class mail, postage prepaid, this 6<sup>th</sup> day of May, 1997, upon all known parties in Finance Docket 33388.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the printed name.

**Edward Wytkind**

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5-5-97

D

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179600

GALLAND, KHARASCH & GARFINKLE, P.C.  
ATTORNEYS AT LAW

CHARLES H. WHITE, JR.  
E-MAIL: cwhite@gkmg.com

D

May 1, 1997

CANAL SQUARE  
1054 THIRTY-FIRST STREET, N.W.  
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ROBERT N. KHARASCH  
OF COUNSEL  
GEORGE F. GALLAND (1910-1985)

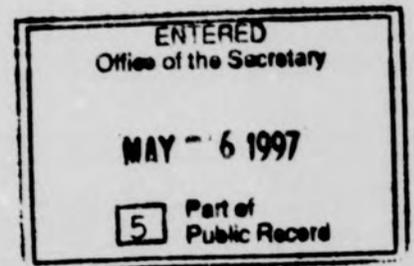
WRITER'S DIRECT DIAL NUMBER

(202) 342-6789



Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

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



Dear Mr. Williams:

Enclosed for filing please find an original and 25 copies of Comments filed on behalf of Wheeling and Lake Erie Railway Company concerning the procedural schedule in the above proceeding. I have served copies of the Comments on counsel as directed in Decision No. 2.

Will you kindly stamp and return the enclosed copy of this service letter when the Comments are filed.

Very truly yours,

Charles H. White, Jr.  
Counsel for Wheeling & Lake Erie  
Railway Company

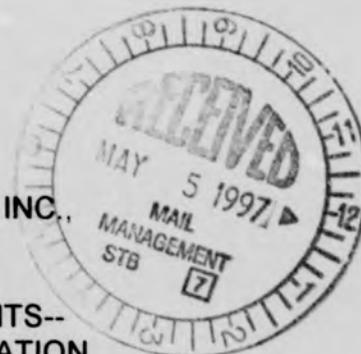
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AFFILIATED FIRM  
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WLE-1

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



COMMENTS OF WHEELING AND LAKE ERIE RAILWAY COMPANY  
CONCERNING APPLICANTS' PROPOSED PROCEDURAL SCHEDULE

In Decision No. 2, served April 21, 1997, in the above-styled proceeding, the Surface Transportation Board invited all interested parties to comment on the Applicants' proposed procedural schedule. Wheeling and Lake Erie Railway Company ("WLE"), an interested party, believes the proposed schedule is adequate if the Applicants fully cooperate, both on discovery matters and during pre-filing settlement negotiations. WLE, which may be substantially harmed if it does not obtain relief from locally anticompetitive aspects of the transaction, has requested the initiation of such negotiations and stands ready to pursue them in good faith and with expedition. WLE has been informed that Applicants will similarly approach these negotiations, and, with that understanding, supports the proposed procedural schedule.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Charles H. White, Jr.", written over a horizontal line.

Charles H. White, Jr.  
GALLAND, KHARASCH & GARFINKLE, P.C.  
1054 Thirty-First Street, NW  
Washington, DC 20007-4492  
Telephone: 202/342-5200  
Facsimile: 202/342-5219

May 1, 1997

Counsel for  
WHEELING & LAKE ERIE RAILWAY COMPANY

STB

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33388

5-12-97

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179667

WACHTELL, LIPTON, ROSEN & KATZ

D

MARTIN LIPTON  
HERBERT M. WACHTELL  
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RICHARD D. KATCHER  
DOUGLAS S. LIEBHAFSKY  
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CHARLES T. MEDERRICK  
CHAIM J. FORTGANG  
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ALLAN A. MARTIN  
BARRY A. BRYER  
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ROBERT B. NAZUR  
PAUL VIZCARRONDO, JR.  
PETER C. HEIN  
HAROLD S. NOVIKOFF  
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KENNETH B. FORREST  
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THEODORE N. MIRVIS  
EDWARD D. HERLIHY  
RICHARD D. FEINTUCH  
DANIEL A. NEFF  
ERIC M. ROTH  
WARREN R. STERN  
ANDREW R. BROWNSTEIN  
MICHAEL H. BYOWITZ  
PAUL K. ROWE  
MICHAEL B. BENNER  
MARC WOLINSKY  
DAVID GRUENSTEIN

PATRICIA A. VLAHAKIS  
STEPHEN G. GELLMAN  
SETH A. KAPLAN  
BARBARA ROBBINS  
STEVEN A. ROSENBLUM  
PAMELA S. SEYMON  
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JOHN F. SAVARESE  
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RICHARD G. MASON  
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DAVID A. KATZ  
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AMY R. WOLF

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ALEXANDER SHAKNES  
SARAH E. STRASSER  
GARY M. SWIDLER  
WAYNE W. YU

U.S. DEPARTMENT OF JUSTICE  
MAY 12 1997  
U.S. DEPT. OF JUSTICE

May 9, 1997

**BY FEDERAL EXPRESS**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1201 Constitution Avenue, N.W.  
Room 2215  
Washington, D.C. 20423

179667

RECEIVED  
MAY 12 1997  
MAIL  
MANAGEMENT  
STB  
7

**Re: Amendment No. 26 to Schedule 14D-1 and Amendment No. 36 to Schedule 13D Filed Pursuant to 49 C.F.R. Section 1013.3(c); CSX/Norfolk Southern Acquisition of Control of Conrail; Finance Docket No. 33388**

Dear Secretary Williams:

Pursuant to Section 1013.3(c) of Title 49, Code of Federal Regulations, we deliver to you herewith, on behalf of CSX Corporation and its wholly owned subsidiary, Green Acquisition Corp., for filing twenty-five (25) photocopies of Amendment No. 26 to CSX Corporation's Schedule 14D-1 and Amendment No. 36 to Schedule 13D, as filed via EDGAR with the Securities and Exchange Commission on April 25, 1997.

U.S. DEPARTMENT OF JUSTICE  
MAY 12 1997  
U.S. DEPT. OF JUSTICE

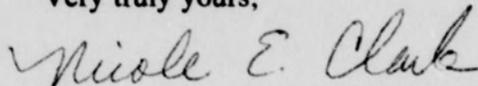
Surface Transportation Board

May 9, 1997

Page 2

The amendment filed herewith is a hard copy version of the computerized EDGAR filing with the Securities and Exchange Commission and, as filed with the Securities and Exchange Commission, contains the computerized equivalent of the necessary signatures.

Very truly yours,

A handwritten signature in cursive script that reads "Nicole E. Clark". The signature is written in dark ink and is positioned above the printed name.

Nicole E. Clark

Enclosure

cc: Dennis G. Lyons

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549



Schedule 14D-1  
Tender Offer Statement  
(Amendment No. 26)

Pursuant to  
Section 14(d)(1) of the Securities Exchange Act of 1934  
and  
Amendment No. 36  
to  
Schedule 13D†  
and  
Amendment No. 13  
to  
Schedule 13D††

Conrail Inc.  
(Name of Subject Company)

CSX Corporation  
Norfolk Southern Corporation  
Green Acquisition Corp.

(Bidders)  
Common Stock, Par Value \$1.00 Per Share  
(Title of Class of Securities)  
208368 10 0  
(CUSIP Number of Class of Securities)  
Series A ESOP Convertible Junior Preferred Stock, Without Par Value  
(Title of Class of Securities)  
Not Available  
(CUSIP Number of Class of Securities)

Mark G. Aron  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4031  
Telephone: (804) 782-1400

James C. Bishop, Jr.  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510  
Telephone: (757) 629-2750

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications on Behalf of Bidder)

With a copy to:

Pamela S. Seymon  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Telephone: (212) 403-1000

Randall H. Doud  
Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 735-3000

† of CSX Corporation and Green Acquisition Corp.

†† of Norfolk Southern Corporation.

This Statement amends and supplements the Tender Offer Statement on Schedule 14D-1 filed with the Securities and Exchange Commission (the "SEC") on December 6, 1996, as previously amended and supplemented (the "Schedule 14D-1"), by Green Acquisition Corp., a Pennsylvania corporation ("Purchaser"), CSX Corporation, a Virginia corporation ("Parent" or "CSX"), and Norfolk Southern Corporation, a Virginia corporation ("NSC"), to purchase all shares of (i) Common Stock, par value \$1.00 per share (the "Common Shares"), and (ii) Series A ESOP Convertible Junior Preferred Stock, without par value (together with the Common Shares, the "Shares"), of Conrail Inc., a Pennsylvania corporation (the "Company"), including, in each case, the associated common stock purchase rights, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 6, 1996, the Supplement thereto, dated December 19, 1996 (the "First Supplement"), the Second Supplement thereto, dated March 7, 1997 (the "Second Supplement"), the Third Supplement thereto, dated April 10, 1997 (the "Third Supplement") and the related Letters of Transmittal (which, together with any amendments or supplements thereto, constitute the "Second Offer") at a purchase price of \$115 per Share, net to the tendering shareholder in cash. Capitalized terms used and not defined herein shall have the meanings assigned such terms in the Offer to Purchase, the Supplement, the Second Supplement, the Third Supplement and the Schedule 14D-1.

**ITEM 10. ADDITIONAL INFORMATION.**

(b) By letter dated May 8, 1997, the Honorable Vernon A. Williams, Secretary of the STB, issued an informal opinion, which is not binding on the STB, that the joint voting trust, which CSX and NSC propose to hold all Shares previously acquired and to be acquired by CSX and NSC, will effectively insulate CSX and NSC from the violation of Subtitle IV of Title 49 of the United States Code and the policy of the STB that would result if CSX and/or NSC were to acquire, without authorization, what would otherwise be a controlling interest in carrier subsidiaries of the Company. A copy of such letter has been filed as Exhibit (c)(16), and the foregoing summary description is qualified in its entirety by reference to such exhibit.

**ITEM 11. MATERIAL TO BE FILED AS EXHIBITS.**

(c)(16) Letter from the Honorable Vernon A. Williams, dated May 8, 1997.

**SIGNATURE**

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

CSX CORPORATION

By:           /s/ MARK G. ARON            
Name: Mark G. Aron  
Title: Executive Vice President  
      -- Law and Public Affairs

Dated: May 9, 1997

**SIGNATURE**

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

NORFOLK SOUTHERN CORPORATION

By: \_\_\_\_\_ /s/ JAMES C. BISHOP, JR.  
Name: James C. Bishop, Jr.  
Title: Executive Vice President-  
Law

Dated: May 9, 1997

**SIGNATURE**

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

ATLANTIC ACQUISITION CORPORATION

By:           /s/ JAMES C. BISHOP, JR.            
Name: James C. Bishop, Jr.  
Title: Vice President and  
          General Counsel

Dated: May 9, 1997

**SIGNATURE**

After due inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

GREEN ACQUISITION CORP.

By:           /s/  MARK G. ARON            
Name: Mark G. Aron  
Title: Vice President, General  
Counsel and Secretary

Dated: May 9, 1997

## EXHIBIT INDEX

### Exhibit No.

- \* (a) (1) Offer to Purchase, dated December 6, 1996.
- \* (a) (2) Letter of Transmittal.
- \* (a) (3) Notice of Guaranteed Delivery.
- \* (a) (4) Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- \* (a) (5) Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- \* (a) (6) Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.
- \* (a) (7) Tender Offer Instructions for Participants of Conrail Inc. Dividend Reinvestment Plan.
- \* (a) (8) Text of Press Release issued by Parent and the Company on December 6, 1996.
- \* (a) (9) Form of Summary Advertisement, dated December 6, 1996.
- \* (a) (10) Text of Press Release issued by Parent on December 5, 1996.
- \* (a) (11) Text of Press Release issued by Parent and the Company on December 10, 1996.
- \* (a) (12) Text of Advertisement published by Parent and the Company on December 10, 1996.
- \* (a) (13) Text of Press Release issued by Parent on December 11, 1996.
- \* (a) (14) Text of Advertisement published by Parent and the Company on December 12, 1996.

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\* Previously filed.

- \* (a) (15) Supplement to Offer to Purchase, dated December 19, 1996.
- \* (a) (16) Revised Letter of Transmittal.
- \* (a) (17) Revised Notice of Guaranteed Delivery.
- \* (a) (18) Text of Press Release issued by Parent and the Company on December 19, 1996.
- \* (a) (19) Letter from Parent to shareholders of the Company, dated December 19, 1996.
- \* (a) (20) Text of Press Release issued by Parent on December 20, 1996.
- \* (a) (21) Text of Press Release issued by Parent and the Company on January 9, 1997.
- \* (a) (22) Text of Press Release issued by Parent and the Company on January 13, 1997.
- \* (a) (23) Text of Press Release issued by Parent and the Company on January 15, 1997.
- \* (a) (24) Text of Press Release issued by Parent on January 17, 1997.
- (a) (25) Deleted.
- \* (a) (26) Text of Letter issued by Parent and the Company dated January 22, 1997.
- \* (a) (27) Text of Advertisement published by Parent and the Company on January 29, 1997.
- \* (a) (28) Text of Press Release issued by Parent and the Company on January 31, 1997.
- \* (a) (29) Text of Press Release issued by Parent on February 14, 1997.

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\* Previously filed.

- \* (a) (30) Text of Press Release issued by Parent on March 3, 1997.
- \* (a) (31) Second Supplement to Offer to Purchase, dated March 7, 1997.
- \* (a) (32) Revised Letter of Transmittal.
- \* (a) (33) Revised Notice of Guaranteed Delivery.
- \* (a) (34) Text of Press Release issued by Parent on March 7, 1997.
- \* (a) (35) Form of Summary Advertisement, dated March 10, 1997.
- \* (a) (36) Letter from Parent to employees of the Company, published on March 12, 1997.
- \* (a) (37) Text of Press Release issued by Parent and NSC on April 8, 1997.
- \* (a) (38) Third Supplement to Offer to Purchase, dated April 10, 1997.
- \* (a) (39) Revised Letter of Transmittal circulated with the Third Supplement.
- \* (a) (40) Revised Notice of Guaranteed Delivery circulated with the Third Supplement.
- \* (b) (1) Credit Agreement, dated November 15, 1996 (incorporated by reference to Exhibit (b) (2) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (b) (2) Credit Agreement, dated as of February 10, 1997, by and among NSC, Morgan Guaranty Trust Company of New York, as administrative agent, Merrill Lynch Capital Corporation, as documentation agent, and the banks from time to time parties thereto (incorporated by reference to NSC's and Atlantic Acquisition Corporation's Tender Offer Statement on Schedule 14D-1, dated February 12, 1997).

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\* Previously filed.

- \* (b) (3) Commitment Letter, dated April 22, 1997, among Morgan Guaranty Trust Company of New York, J.P. Morgan Securities Inc., Merrill Lynch Capital Corporation, Merrill Lynch & Co. and Norfolk Southern Corporation.
- \* (c) (1) Agreement and Plan of Merger, dated as of October 14, 1996, by and among Parent, Purchaser and the Company (incorporated by reference to Exhibit (c) (1) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (c) (2) Company Stock Option Agreement, dated as of October 14, 1996, between Parent and the Company (incorporated by reference to Exhibit (c) (2) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (c) (3) Parent Stock Option Agreement, dated as of October 14, 1996, between Parent and the Company (incorporated by reference to Exhibit (c) (3) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (c) (4) Voting Trust Agreement, dated as of October 15, 1996, by and among Parent, Purchaser and Deposit Guaranty National Bank (incorporated by reference to Exhibit (c) (4) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (c) (5) First Amendment to Agreement and Plan of Merger, dated as of November 5, 1996, by and among Parent, Purchaser and the Company (incorporated by reference to Exhibit (c) (7) to Parent and Purchaser's Tender Offer Statement on Schedule 14D-1, as amended, dated October 16, 1996).
- \* (c) (6) Second Amendment to Agreement and Plan of Merger, dated as of December 18, 1996, by and among Parent, Purchaser and the Company.
- \* (c) (7) Form of Amended and Restated Voting Trust Agreement.
- (c) (8) Deleted.

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\* Previously filed.

- \* (c) (9) Text of STB Decision No. 5 of STB Finance Docket No. 33220, dated January 8, 1997.
- (c) (10) Deleted.
- \* (c) (11) Text of opinion of Judge Donald VanArtsdalen of the United States District Court for the Eastern District of Pennsylvania as delivered from the bench on January 9, 1997.
- \* (c) (12) Third Amendment to Agreement and Plan of Merger, dated as of March 7, 1997, by and among Parent, Purchaser and the Company.
- \* (c) (13) Form of Amended and Restated Voting Trust Agreement.
- \* (c) (14) Letter Agreement between CSX and NSC, dated April 8, 1997.
- \* (c) (15) Fourth Amendment to Agreement and Plan of Merger, dated as of April 8, 1997, by and among CSX, Purchaser and the Company.
- (c) (16) Letter from the Honorable Vernon A. Williams, dated May 8, 1997.
- (d) Not applicable.
- (e) Not applicable.
- (f) Not applicable.

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\* Previously filed.

Surface Transportation Board  
Washington, D.C 20423-0001

Office of the Secretary

May 8, 1997

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth St., N.W.  
Washington, D.C. 20006-3939

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

Dear Mr. Allen:

SUMMARY. By letter dated April 24, 1997, you submitted, on behalf of Norfolk Southern Corporation (NSC),<sup>1</sup> CSX Corporation (CSXC),<sup>2</sup> and Green Acquisition Corporation (Acquisition), and pursuant to 49 CFR 1013.3(a), an Amended and Restated Voting Trust Agreement (hereinafter referred to as Joint-VTA-1) that NSC, CSXC, and Acquisition propose to enter into with an institutional trustee, Deposit Guaranty National Bank (Deposit Guaranty or Trustee), and a limited liability company to be formed shortly (LLC). NSC and CSXC intend that the Trustee will hold, in the voting trust (hereinafter referred to as the Joint Voting Trust) to be established pursuant to Joint-VTA-1, all common shares of Conrail Inc. (CRI).<sup>3</sup> (1) acquired previously, and separately, by NSC and CSXC and currently held in the separate voting trusts referenced below; or (2) hereafter acquired by NSC and CSXC pursuant to the Third Supplement (the Third Supplement, dated April 10, 1997) to the Second Offer to Purchase (the Second Offer,

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1 NSC is the parent holding company of Norfolk Southern Railway Company (NSR). NSC and NSR are referred to collectively as NS.

2 CSXC is the parent holding Company of CSX Transportation, Inc. (CSXT). CSXC and CSXT are referred to collectively as CSX.

3 CRI is the parent holding company of Consolidated Rail Corporation (CRC). CRI and CRC are referred to collectively as Conrail.

dated December 6, 1996).<sup>4</sup> NSC and CSXC intend that the Joint Voting Trust to be established pursuant to Joint-VTA-1 will be a single consolidated voting trust ultimately superseding and replacing the previously established separate voting trusts.

In my opinion, the Joint Voting Trust to be established under Joint-VTA-1 will effectively insulate NSC and CSXC, and their respective affiliates, from the violation of Subtitle IV of Title 49 of the United States Code (Subtitle IV of Title 49) and the policy of the Surface Transportation Board (the Board) that would result if NSC and/or CSXC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.

BACKGROUND: THE CSX-VTA'S. By letter dated October 23, 1996, Mr. Dennis G. Lyons submitted, on behalf of CSXC and Acquisition (which was then a wholly owned subsidiary of CSXC), a voting trust agreement (hereinafter referred to as CSX-VTA-1) proposed to be entered into by and between CSXC, Acquisition, and a trustee, for use in connection with the acquisition, by CSXC and Acquisition, of a controlling interest in CRI. On November 1, 1996, Mr. Lyons submitted a revised VTA (hereinafter referred to as CSX-VTA-2), which provided that Deposit Guaranty was to be the trustee in place of the previously designated trustee. By letter dated November 1, 1996, I advised that, in my opinion, the voting trust to be established under CSX-VTA-2 would effectively insulate CSXC and its affiliates from the violation of Subtitle IV of Title 49 and the policy of the Board that would result if CSXC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.

On November 26, 1996, CSXC, acting through Acquisition, bought and paid for approximately 19.9% of the common stock of CRI. This stock was deposited in a voting trust (hereinafter referred to as the CSX Voting Trust) pursuant to a voting trust agreement in the form of CSX-VTA-2.

By letter dated December 27, 1996, Mr. Lyons submitted, again on behalf of CSXC and Acquisition, another revised VTA (hereinafter referred to as CSX-VTA-3) proposed to be entered into by and between CSXC, Acquisition, and Deposit Guaranty. By letter dated January 8, 1997, I advised that, in my opinion, the voting trust to be established under CSX-VTA-3 would effectively insulate CSXC and its affiliates from the violation of Subtitle IV of Title 49

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<sup>4</sup> The Second Offer, dated December 6, 1996, was made by CSXC. The Third Supplement, dated April 10, 1997, includes NSC as a co-bidder.

and the policy of the Board that would result if CSXC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.<sup>5</sup>

BACKGROUND: THE NS-VTA'S. By letter dated October 25, 1996, you submitted, on behalf of NSC and Atlantic Acquisition Corporation (Acquiror), a voting trust agreement (hereinafter referred to as NS-VTA-1) proposed to be entered into by and between NSC, Acquiror, and a Bank (to be named as trustee) for use in connection with the acquisition, by NSC and Acquiror, of a controlling interest in CRI. By letter dated November 1, 1996 (addressed to your colleague, Mr. James A. Calderwood), I advised that, in my opinion, the voting trust to be established under NS-VTA-1 would effectively insulate NSC and its affiliates from the violation of Subtitle IV of Title 49 and the policy of the Board that would result if NSC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.

By letter dated November 6, 1996, you submitted, again on behalf of NSC and Acquiror, an alternative version of NS-VTA-1 (hereinafter referred to as NS-VTA-2). By letter dated November 18, 1996, I advised that, in my opinion, the voting trust to be established under NS-VTA-2 would effectively insulate NSC and its affiliates from the violation of Subtitle IV of Title 49 and the policy of the Board that would result if NSC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.

By letter dated January 31, 1997 (as supplemented by an errata letter dated February 3, 1997), you submitted, again on behalf of NSC and Acquiror: NS-VTA-3, which was another alternative version of NS-VTA-1; and NS-VTA-4, which was an entirely new voting trust agreement. By letter dated February 14, 1997, I advised that, in my opinion, the voting trusts to be established under NS-VTA-3 and NS-VTA-4 would effectively insulate NSC and its affiliates from the violation of Subtitle IV of Title 49 and the policy of the Board that would result if NSC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries.<sup>6</sup>

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<sup>5</sup> The letters and other submissions respecting the CSX-VTA's were docketed in STB Finance Docket No. 33220.

<sup>6</sup> The letters and other submissions respecting the NS-VTA's were docketed in STB Finance Docket No. 33286.

On February 18, 1997, NSC, acting through Acquiror, bought and paid for approximately 9.9% of the common stock of CRI. This stock was deposited in a voting trust (hereinafter referred to as the NS Voting Trust) pursuant to a voting trust agreement substantially in the form of NS-VTA-3.

THE JOINT CONRAIL ACQUISITION TRANSACTION. Joint-VTA-1 reflects the fact that whereas NSC and CSXC formerly planned to pursue two separate CRI acquisition transactions, they now plan to pursue one joint CRI acquisition transaction. Under the Third Supplement to the Second Offer, CSXC and NSC, acting in concert through Acquisition, are now offering to purchase all outstanding common shares of CRI for \$115 per share in cash. Unless further extended, the Second Offer will expire on May 23, 1997.

NSC and CSXC have agreed that, upon consummation of the Second Offer (as supplemented by the Third Supplement), they will establish a single consolidated voting trust to hold: (i) the CRI shares previously acquired by NSC and CSXC and now held in the separate voting trusts; and (ii) the remaining CRI shares to be acquired in the Second Offer (as supplemented by the Third Supplement). This single consolidated voting trust will be an amended and restated version of the CSX Voting Trust (i.e., the voting trust established pursuant to CSX-VTA-2), which is currently holding the 19.9% of the common stock of CRI acquired by Acquisition for CSXC on November 26, 1996.

NSC and CSXC intend to form a new limited liability company (LLC), to which CSXC will contribute both 100% of the stock of Acquisition and also a specified amount of cash, and to which NSC will contribute both 100% of its interest in the approximately 9.9% of the common stock of CRI now held in the NS Voting Trust and also a specified amount of cash. NSC and CSXC will have equal voting control of LLC, but it is contemplated that NSC will own 58% of the equity of LLC and that CSXC will own 42% of the equity of LLC. The cash contributed by NSC and CSXC to LLC will be transferred to Acquisition to pay for the remaining CRI shares that Acquisition will acquire pursuant to the Second Offer (as supplemented by the Third Supplement). Upon consummation of the Second Offer (as supplemented by the Third Supplement), Acquiror will cause the trustee of the NS Voting Trust to transfer to the Trustee of the Joint Voting Trust to be established pursuant to Joint-VTA-1 the approximately 9.9% of the common stock of CRI now held in the NS Voting Trust. Once this stock has been transferred, the NS Voting Trust will be terminated.

THE JOINT VOTING TRUST: MY OPINION. In my opinion, the Joint Voting Trust to be established under Joint-VTA-1 will effectively insulate NSC and CSXC, and their respective affiliates, from the violation of Subtitle IV of Title 49 and the policy of the Board that would

result if NSC and/or CSXC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's carrier subsidiaries. By and large, the language of Joint-VTA-1 mirrors the language of the prior VTA's submitted by NSC and CSXC (respecting such matters as the irrevocability of the voting trust, the independence of the Trustee, the ban on direct or indirect business arrangements or dealings between the Trustee and either NSC or CSXC, etc.), and, like the language in the prior VTA's, effectively insulates NSC and CSXC from premature control of CRI.

The key issue concerns the control of CRI prior to such time (if ever) as the Board approves, and NSC and CSXC consummate, control of CRI.

Joint-VTA-1 provides, in general, that, prior to the merger of an Acquisition subsidiary into CRI (at which time CRI shall become a wholly owned subsidiary of Acquisition), the Trustee shall vote the Trust Stock with respect to all matters in the same proportion as all shares of CRI Common Stock other than Trust Stock are voted with respect to such matters. This provision is acceptable because, during the time it is effective, it will leave control of CRI in the hands of CRI shareholders other than NSC and CSXC.

Joint-VTA-1 further provides, in general, that, after the merger of an Acquisition subsidiary into CRI, the Trustee shall vote the Trust Stock "in accordance with the instructions of a majority of the persons who are currently the directors of [CRI] and their nominees as successors and who shall then be directors of [CRI]." This provision is acceptable because, during the time it is effective, it will leave control of CRI in the hands of its current directors and/or successors nominated by the current directors.

Joint-VTA-1 further provides "that if there shall be no such persons qualified to give such instructions hereunder, or if a majority of such persons refuse or fail to give such instructions, then the Trustee shall vote the Trust Stock in its sole discretion, having due regard for the interests of the holders of Trust Certificates as investors in the stock of [CRI], determined without reference to such holders' interests in railroads other than the subsidiaries of [CRI]." This provision is acceptable because, during the time it is effective, it will leave control of CRI in the hands of an independent Trustee.

**DIVESTITURE.** I think it appropriate to reiterate and emphasize what I said in my prior letters concerning the divestiture of the CRI stock that will be necessary in the event that either: (a) the CRI control transaction does not receive regulatory authorization; or (b) the CRI control transaction does receive regulatory authorization, but NSC and CSXC choose not to exercise that authorization. If the CRI control transaction ultimately collapses, the Board will have the

authority to approve both a plan of divestiture and the sale (or other disposition) of the CRI stock, whenever such divestiture and disposition take place, and whether or not the person acquiring the CRI stock requires 49 U.S.C. 11323 authority to consummate such acquisition. See Santa Fe Southern Pacific Corp.--Control--SPT Co., 2 I.C.C.2d 709, 834 (1986) (the jurisdiction of the Interstate Commerce Commission "to oversee the orderly divestiture" of the Trust Stock is "inherently within [its] authority to approve consolidations and acquisitions of control.").

INFORMAL STAFF OPINION NOT BINDING ON BOARD. My opinion respecting the Joint Voting Trust to be established under Joint-VTA-1 is an informal staff opinion that is not binding on the Board. See 49 CFR 1013.3(a).

MERITS NOT CONSIDERED. In arriving at my opinion respecting the Joint Voting Trust to be established under Joint-VTA-1, I have given no consideration whatsoever to the merits of the 49 U.S.C. 11323-25 control application that NSC and CSXC have indicated they intend to file on or about June 10, 1997. Thus, my opinion should not be interpreted by any person as an indication that I think the Board will or will not approve any such application.

ANCILLARY MATTER. By letter dated April 25, 1997, Mr. Michael F. McBride, representing American Electric Power Service Corporation, Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company, has asked that, in arriving at my opinion respecting the Joint Voting Trust to be established under Joint-VTA-1, I consider certain pleadings (hereinafter referred to as the ACE-1 and CURE-1 pleadings) that were filed in STB Finance Docket No. 33388 on or about April 18, 1997. See Decision No. 4, slip op. at 1-2 (reference to the ACE-1 and CURE-1 pleadings). See also Decision No. 4, slip op. at 2-3 (discussion of the issues raised in the ACE-1 and CURE-1 pleadings).

For the reasons below, in arriving at the opinion expressed in this letter, I have given no consideration to the ACE-1 and CURE-1 pleadings. My opinion is limited to the question whether the Joint Voting Trust to be established under Joint-VTA-1 will effectively insulate NSC and CSXC, and their affiliates, from the violation of Subtitle IV of Title 49 and the policy of the Board that would result if NSC and/or CSXC were to acquire, without authorization, what would otherwise be a controlling interest in CRI's other subsidiaries. The ACE-1, and CURE-1 pleadings are not directed to this question; rather, these pleadings (particularly the ACE-1 pleading) are directed to the question whether the price NSC and CSXC have agreed to pay for the CRI shares still outstanding is too high. This is a matter that the Board has addressed. See Decision No. 4, slip op. at 3 (any arguments respecting the reasonableness of the purchase price

Richard A. Allen  
May 7, 1997  
Page 7

STB Finance Docket No. 33388

will be addressed by the Board in its review of the merits of the 49 U.S.C. 11323-25 control application).

PUBLIC DOCKET. A copy of this letter will be placed in the public docket in STB Finance Docket No. 33388.

Sincerely,

/s/ Vernon A. Williams

Vernon A. Williams  
Secretary

cc: Dennis G. Lyons  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1202

Michael F. McBride  
LeBoeuf, Lamb, Greene & MacRae  
1875 Connecticut Avenue, N.W.  
Washington, D.C. 20009-5728

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Office of the Secretary

MAY - 9 1997

5 Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

TRANSPORTATION•COMMUNICATIONS INTERNATIONAL UNION,  
UNITED TRANSPORTATION UNION AND  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS'  
AMENDMENT TO COMMENTS ON PROPOSED PROCEDURAL SCHEDULE

On April 30, 1997, the Transportation•Communications International Union ("TCU"), United Transportation Union ("UTU") and the International Association of Machinists and Aerospace Workers ("IAM") filed comments on Applicants' proposed procedural schedule in the above captioned matter. The unions hereby amend those comments to incorporate the position of Senator Arlen Specter, attached as Unions' Exhibit A.

Amended Comments

As set forth in Senator Specter's letter, Section 11324(b) of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) requires that the Surface Transportation Board consider at least (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest

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

Since filing our initial comments, there have been several developments concerning the dismemberment of Conrail which will require the Board to expend additional time reviewing the matter. Furthermore, Applicants have filed a blizzard of petitions with the Board seeking certain exceptions, or to shorten or waive altogether certain requirements under 49 C.F.R. 1180. (See NS-1, CSX-1, and CSX/NS-10, in addition to Applicants' Notice of Intent to File Railroad Application wherein they asked the Board, and the Board granted, a waiver of the three month waiting period established under 49 C.F.R. § 1180.4(b).) These filings will undoubtedly generate opposition filings from many parties which will require consideration by the Board, not to mention the fact that both CSX and NS will file separate operating plans with the Board, twice the number of operating plans filed in all prior merger applications.

It is obvious that the multitude of filings by Applicants, including joint filings such as CSX/NS-1, mandate that the Board adhere to the full statutory period permitted under Section 11325(b) of the ICCTA), which is fifteen months.

Respectfully submitted,

*Larry R. Pruden*

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Mitchell M Kraus  
General Counsel  
Larry R. Pruden  
Assistant General Counsel  
Transportation•Communications  
International Union  
3 Research Place  
Rockville, MD 20850  
(301) 948-4910

*Clinton J. Miller, III /LRP*

---

Clinton J. Miller III  
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Daniel R. Elliott III  
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14600 Detroit Avenue  
Cleveland, OH 44107  
(216) 228-9400

*Joseph Guerrieri, Jr. /LRP*

---

Joseph Guerrieri, Jr.  
Debra S. Willen  
Guerrieri, Edmond & Clayman, P.C.  
1331 F Street, NW, 4th Floor  
Washington, DC 20001  
(202) 624-7400  
Counsel for IAM

Dated: May 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were mailed this 9th day of May, 1997, via first-class mail, postage prepaid, to the following:

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

James C. Bishop, Jr., Esquire  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-9241

Mark G. Aron, Esquire  
Peter J. Shudtz, Esquire  
CSX Corporation  
902 East Cary Street  
Richmond, VA 23129

Richard A. Allen, Esquire  
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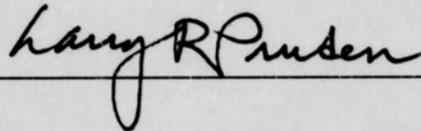
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\_\_\_\_\_

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## United States Senate

COMMITTEE ON VETERANS' AFFAIRS

WASHINGTON, DC 20510-6375

May 1, 1997

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

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

Dear Madam Chairman:

I am writing in opposition to the joint petition by Norfolk Southern Corp. and CSX Corp. for an expedited procedural schedule for consideration of their acquisition of Conrail. The applicants have argued in their petition that their proposed transaction is not as complex as the previous application from CSX and Conrail and the Norfolk Southern hostile bid last Fall. I must emphatically disagree. There are too many outstanding issues that are unresolved: too many communities whose economic health is at stake, too many families of Conrail employees in Pennsylvania and elsewhere whose livelihoods hang in the balance; and too many businesses which are unsure of whether the takeover of Conrail will be anti-competitive.

I have said at Congressional hearings and in private conversations with the Chief Executive Officers of the railroads that there may be no more significant issue for Pennsylvania's economy at present than the future of Conrail. In my letter to you dated March 7, 1997, I noted that Conrail employs more than 8,000 Pennsylvanians and that it plays a vital role in the Commonwealth's economy and communities and that special attention should be paid to preserving relatively small companies such as Conrail in this era of megamergers.

When Congress established the Surface Transportation Board in the Interstate Commerce Commission Termination Act of 1995, the Interstate Commerce Commission at that time could take up to 31 months to approve a transaction involving two Class I railroads. Recognizing the need for some increased efficiencies, the 1995 law adopted a 15-month overall time limit for agency review and final action. 49 U.S.C. § 11325(b). Given its potential impact on Pennsylvania and other Northeastern States, the Surface Transportation Board should not shortcut the allotted 15 months to study the proposed takeover of Conrail and to find whether "the transaction is consistent with the public interest." 49 U.S.C. § 11324(c).

Section 11324(b) of ICCTA requires the Board to consider at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed

transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. I am advised that the proposed dismemberment of Conrail by CSX and NS is unique and unprecedented because never before in our nation's history have two rail competitors combined to eliminate their other, financially healthy competitor. The uniqueness of this transaction coupled with the Board's required public interest investigation under Section 11324(b) mandates that the full period of time allowed by Section 11325(b) be used to carefully analyze whether this transaction indeed is in the public's interest.

The following unresolved issues are just a sample of what I believe the Board must address in the coming months in considering the takeover of Conrail:

1. Impact on Conrail Employees -- From the headquarters in Philadelphia to the locomotive repair shops in Altoona to the rail yard in Conway to the Customer Service Center in North Fayette Township, there are more than 8,000 Conrail employees in Pennsylvania. They had every reason to expect that the initial Conrail-CSX merger would have been a positive development for them. They should expect to benefit from the CSX-Norfolk Southern transaction at least as much. Their dedication throughout Conrail's turbulent past enabled the railroad to succeed to the point where it is worth \$10 billion. The Board must take concrete steps to determine what the impact will be on those employees, and has wide statutory discretion to impose conditions on the transaction to benefit them beyond the doctrine of New York's Dock, which are grossly inadequate.
2. Impact on Communities -- Conrail provides essential rail service to hundreds of communities, which depend on such service as a significant part of their local economy. Further, Conrail employees live in communities and their job security will play a role in fostering continued economic development or in hastening adverse economic conditions.
3. Impact on Shippers -- Shippers in the Northeast and other parts of the country will be affected by this transaction, both in their access to competitive service and the rates they will pay. Congress has heard testimony from the coal industry and other shippers that depending on how the Board structures this merger, it could provide new opportunities for economic growth across several States, or could cripple budding attempts to open new markets for American products.
4. Impact on Ports -- Throughout the Eastern Seaboard, rail service is essential to the operations of ports in communities such as Philadelphia, Camden, Hampton Roads, Baltimore, and New York. The Conrail acquisition has the potential to alter the competitiveness of the Port of Philadelphia and others in the region.

The Honorable Linda J. Morgan  
Page Three

5. Impact on Other Railroads – The Board has to analyze how the Delaware and Hudson and short line railroads are going to be affected. The presence of competing railroads will do much to keep shipping prices down and the access issue for short lines is of great importance to small businesses who are dependent on rail to bring their products to market or to obtain their raw materials.

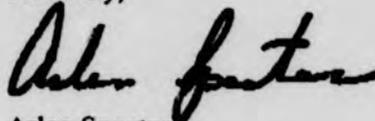
These are all complicated issues and merit the fullest attention of the Board. I would also note that the Board currently lacks a third member. Certainly a \$10 billion transaction with such far-reaching effects deserves to be considered by a fully constituted Surface Transportation Board.

The Applicants state on page 5 of their petition that because they have paid for their Conrail stock "up front," an expedited procedural schedule will reduce the alleged loss of the "substantial benefits that will certainly result from the acquisition and division of Conrail." As far as I know, the Applicants structured their deal for their own purposes, not for the public interest. The fact that their funds are tied up is no reason for the Board to shortcut its public obligation to carefully review and investigate this proposed transaction.

Finally, the Applicants claim that expedition is necessary because undue delay will cause an attrition of Conrail management and a possible degradation of Conrail's physical plant. (Petition at 5-6). I trust that Conrail management understands that it has a continuing obligation to provide quality rail carrier service to all of its shippers during the pendency of this proceeding and to continue maintenance and rehabilitation efforts, particularly where safety is involved. Accordingly, any fears about Conrail's behavior during the pendency of this proceeding are misplaced and do not constitute a legitimate reason for expediting the Board's investigation of this unprecedented transaction.

In conclusion, I strongly urge the Board to deny the Applicants' request for an expedited procedural schedule. The public's interest in the Board's careful analysis of this transaction requires that the full statutory period permitted under Section 11325(b) be utilized.

Sincerely,



Arlen Specter

AS:dr

cc: The Honorable Gus A. Owen, Vice Chairman  
The Honorable Vernon Williams, Secretary

STB

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5-8-97

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179654

MARCY KAPTUR

MEMBER  
9TH DISTRICT, OHIOCOMMITTEES:  
APPROPRIATIONSSUBCOMMITTEES:  
RURAL DEVELOPMENT  
AGRICULTURE, AND RELATED AGENCIES  
DISTRICT OF COLUMBIA  
VA, HUD, AND INDEPENDENT AGENCIES

D

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TOLEDO, OH 43604  
(419) 259-7500

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3509**  
May 8, 1997

The Honorable Linda Morgan  
Chairman  
Surface Transportation Board  
1925 K St NW Room 842  
Washington, D.C. 20423-0001

Dear Ms. Morgan

FD33388



I am writing to express my support for the Surface Transportation Board's schedule of 365 days to consider the acquisition of Conrail by CSX and Norfolk Southern (NS). I strongly urge the Board to reject a proposal by CSX and NS, or any other proposal that might be submitted, to reduce the Board's schedule for deliberations on this critically important matter.

The Board was correct and acted in the public interest when, in its final rule making on the merger schedule, the Board extended the time for consideration from the CSX proposed 255 days to 365 days to allow for full and equitable input from all parties affected by the merger. I do not support the view of CSX and NS that less time is needed for Board review simply because the two acquiring parties have reached agreement on the breakup of Conrail. To the contrary, based on preliminary reports outlining the agreement between CSX and NS, even more time is needed to assess the impact of the acquisition of Conrail because of the far reaching effects on the Northeast, Midwest, and other regions of the country. Because so many major questions have been raised a full 365 day schedule is mandatory to allow full review of the merger and ensure the public interest is truly served.

I, therefore, request that the STB decide to keep the current 365 day review schedule and reject the schedule proposed by CSX and NS to reduce the review period.

Sincerely,

*Marcy Kaptur*  
MARCY KAPTUR  
Member of Congress

<p><b>ENTERED</b> Office of the Secretary</p> <p><b>MAY - 9 1997</b></p> <p><b>5</b> Part of Public Record</p>
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J. B. Hunt Transport Services, Inc.

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Senior Vice President and  
Chief Counsel  
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Vice Presidents and Deputy  
Chief Counsels  
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**Kenneth E. Siegel**

Director of Development  
**Adrienne R. Lewis**

May 8, 1997

VIA MESSENGER

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001



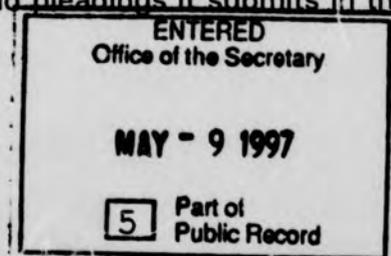
*Re: Finance Docket No. 33388, CSX Corporation et al.--  
Control and Operating Leases/Agreements -- Conrail  
Inc. and Consolidated Rail Corp.*

Dear Mr. Williams:

This letter is to notify the Board and the parties that, pursuant to 49 C.F.R. § 1180.4(c)(5)(v), we are requesting that the applicants serve a copy of their primary application on the following, as representatives of American Trucking Associations, Inc.

Kenneth E. Siegel  
ATA Litigation Center  
2200 Mill Road  
Alexandria, VA 22314-4677

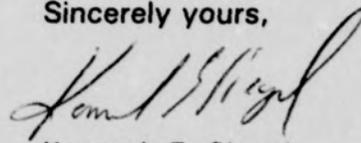
This letter is also to request the Board to place American Trucking Associations, Inc. and the above representatives on the list of all parties of record that will be prepared and issued under the provisions 49 C.F.R. § 1180.4(a)(4). In accordance with 49 C.F.R. § 1180.4(a)(2), ATA selects the acronym "ATA-x" for identifying all documents and pleadings it submits in this proceeding.



*In accordance with 49 C.F.R. § 1104.3, as amended, we respectfully request that all parties to this proceeding, to the extent they are able, also serve on the above representatives a computer diskette with copies of all pleadings and documents filed with the STB. Diskettes can be in or DOS format, but should be on 3.5 inch floppy diskettes. Document files can be in any widely used word-processing format, such as WordPert or Microsoft Word for DOS or Windows.*

Copies of this letter are being served on all persons presently on the Board service list, including the applicants' representatives identified in the notice of prefiling notification published in the Federal Register at 62 Fed. Reg. 19390 (April 12, 1997).

Sincerely yours,



Kenneth E. Siegel

cc: Dennis G. Lyons, Esquire  
Arnold & Porter  
555 12th Street, NW  
Washington, DC 20004-1202

Richard A. Allen, Esquire  
Zuckert, Scoutt & Rasenberger, L.L.P.  
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RICHARD A. ALLEN

D

May 8, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty five copies of CSX/NS-11, Applicants' Consolidated Reply to Comments on CSX/NS-4, Applicants' Petition to Establish Procedural Schedule.

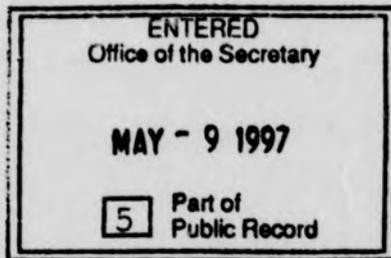
Also enclosed is a 3 1/2" computer disk containing the filing in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

Applicants are serving this pleading on persons who have made an appearance in Finance Docket No. 33388, and on Administrative Law Judge Leventhal.

Should you have any questions regarding this, please call.

Sincerely,

*Richard A. Allen* / SMZ  
Richard A. Allen



Enclosures

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CSX/NS-11

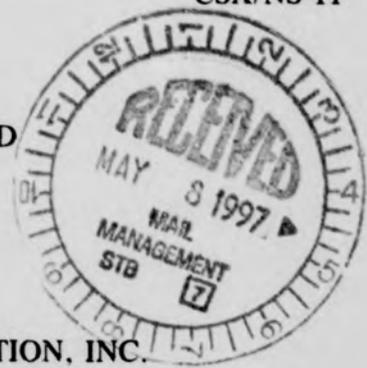
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

APPLICANTS' CONSOLIDATED REPLY  
TO COMMENTS ON CSX/NS-4,  
PETITION TO ESTABLISH PROCEDURAL SCHEDULE

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),<sup>1/</sup> Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSRC"),<sup>2/</sup> Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC")<sup>3/</sup> hereby reply to the comments filed in this docket in response to the Petition to Establish Procedural Schedule (CSX/NS-4), filed April 10, 1997.

As discussed below, many of the comments, including those of officials of the most directly affected states and local governments, support the schedule proposed by Applicants

<sup>1/</sup> CSXC and CSXT are referred to collectively as "CSX."

<sup>2/</sup> NSC and NSRC are referred to collectively as "NS."

<sup>3/</sup> CRI and CRC are referred to collectively as "Conrail." CSX, NS and Conrail are referred to collectively as the "Applicants."

and confirm Applicants' view that the proposed schedule will provide ample time for affected parties to analyze the transaction and respond to the application and for the Board to render a decision fully addressing the issues. The schedule Applicants have proposed is the same in length as the schedule adopted by the ICC and followed successfully by the Board in the UP/SP case last year, notwithstanding very substantial opposition to that merger.

Parties seeking a longer schedule here have simply given the Board no persuasive reasons why a longer schedule is warranted in this case. While various differences have been cited (this is the East, not the West, etc.), they cannot obscure the principal and essential feature of the proposed transaction: the reintroduction of vigorous rail competition in a huge and vital region of the country. The public, therefore, has a tremendous interest in the Board reviewing the proposed transaction as expeditiously as possible, while giving a full and fair hearing to all sides. The Applicants believe a 255-day schedule here, as in UP/SP, not only appropriately balances the interests of the various parties to the proceeding, but also ultimately serves the interests of the most important of the Board's constituencies -- the public.

**I. NUMEROUS PARTIES SUPPORT THE APPLICANTS' PROPOSED SCHEDULE.**

A number of parties -- shippers, governmental, and rail -- support the Applicants' proposed 255-day schedule.<sup>4/</sup>

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<sup>4/</sup> See Comments of the Chemical Manufacturers Association (CMA-1); Notice of Intent to Participate of Pennsylvania Power & Light Company and Comments on Proposed Procedural Schedule (PPL-1); Comments of Wheeling and Lake Erie Railway Company  
(continued...)

According to the Secretary of Transportation of Maryland, "it is in the interest of the citizens of Maryland and in the general public interest that the Board accept the expedited schedule that the applicants have proposed."<sup>5/</sup> Other public officials urge the Board to adopt the Applicants' proposed schedule so as not to delay the economic benefits that will flow from the introduction of vigorous rail competition where now there is none.<sup>6/</sup> And two governors, while not specifically referring to the proposed 255-day schedule, nevertheless urge the Board to act on the underlying transaction expeditiously.<sup>7/</sup> The Pennsylvania

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<sup>4/</sup>(...continued)

Concerning Applicants' Proposed Procedural Schedule (WLE-1); Letter dated May 1, 1997, from David L. Winstead, Secretary of the Maryland Department of Transportation to Secretary Williams; Letter dated April 29, 1997, from Garland Garrett, Secretary of the North Carolina Department of Transportation to Secretary Williams; Letter dated April 29, 1997, from Curtis Hertel, Speaker of the Michigan House of Representatives, to Chairman Morgan; Letter dated April 29, 1997, from David M. Beasley, Governor of South Carolina, to Chairman Morgan; Letter dated April 29, 1997, from State Senator John C. Land, III, South Carolina, to Chairman Morgan; Letter dated April 29, 1997, from Ronald P. Townsend, Chairman of the Education and Public Works Committee of the South Carolina House of Representatives to Chairman Morgan; Letter dated April 29, 1997, from Robert C. Cible, Mayor of Columbia, South Carolina, to Chairman Morgan; Letter dated April 25, 1997, from Virginia Secretary of Transportation Robert E. Martinez to Secretary Williams; Letter dated April 25, 1997, from John R. Gregg, Speaker of the Indiana House of Representatives to Chairman Morgan; Letter dated April 24, 1997, from Wayne Shackelford, Commissioner, Georgia Department of Transportation to Chairman Morgan; Letter dated April 24, 1997, from James A. Graham, Commissioner, North Carolina Department of Agriculture, to Chairman Morgan.

<sup>5/</sup> Letter dated May 1, 1997, from David L. Winstead, Secretary of the Maryland Department of Transportation, to Secretary Williams.

<sup>6/</sup> See, e.g., Letter dated April 29, 1997, from David M. Beasley, Governor of South Carolina, to Chairman Morgan; Letter dated April 24, 1997, from Wayne Shackelford, Commissioner, Georgia Department of Transportation, to Chairman Morgan.

<sup>7/</sup> Letter dated April 28, 1997, from Paul E. Patton, Governor of the Commonwealth of Kentucky, to Secretary Williams; Letter dated April 23, 1997 from Fob James, Jr., Governor of the State of Alabama, to Secretary Williams.

Power & Light Company (PPL) "supports the applicants' proposed procedural schedule," PPL-1 at 1; the Chemical Manufacturers Association (CMA) (a major participant in UP/SP) notes that its members "will not be prejudiced" by the proposed schedule, CMA-1 at 3, even if, as CMA believes, there remain "unique and potentially difficult issues" for the Board to resolve, id. at 2; and the Wheeling and Lake Erie Railway Company (WLE) "supports the proposed procedural schedule," WLE-1.

## **II. THE PROPOSED SCHEDULE ACCOMMODATES THE NEEDS OF THE PARTIES AND THE PUBLIC.**

As noted, the Applicants propose essentially the same 255-day schedule adopted in the UP/SP case.<sup>8/</sup> In UP/SP, the Board was able to consider fully and fairly a complex, major merger transaction involving dozens of parties, several substantial responsive applications, numerous comments and requests for conditions,<sup>9/</sup> and major settlement agreements, all within essentially the same 255-day period proposed here. See F.D. 32760, Decision No. 44, slip op. at 190 (noting that the UP/SP procedural schedule "has allowed ample time for all concerned"). In this case, the Applicants believe, as the Board found in UP/SP, that the

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<sup>8/</sup> Compare CSX/NS-4 at 2-3 with the schedule set forth in F.D. 32760, Decision No. 9, October 17, 1995.

<sup>9/</sup> See, e.g., F.D. 32760, Decision No. 44, slip op. at 23-44, describing, among other things, Conrail's request for divestiture of "SP East," Kansas City Southern Railway Company's request for denial or divestiture, Montana Rail Link's request for Central Corridor divestiture, The Texas Mexican Railway Company's request for trackage rights, The National Industrial Transportation League's request for divestiture of SP East, and The Society of the Plastics Industry's request for denial or, in the alternative, substantial divestitures.

proposed 255-day schedule "will ensure that all parties are accorded due process and allow [the Board] time to consider fully all of the issues in this proceeding." F.D. 32760, Decision No. 6, slip op. at 5. The 255-day schedule the Applicants propose here fairly balances, as it did in UP/SP, the interests of the Applicants, the non-applicant parties, the Board, and the public. As the Board noted in UP/SP, "[setting] a procedural schedule that is longer than necessary for all parties to present concerns and for [the Board] to carefully consider those concerns and the effects of the proposed transaction on the public interest . . . would be a step backward in [the Board's] effort to process applications fairly but efficiently." Id.

**A. The Commentors Widely Support the Important Deadline for Opposition Evidence.**

The Applicants propose, as approved in UP/SP, a consolidated deadline of 120 days after filing of the primary application for filing comments, requests for conditions, protests, responsive or inconsistent applications, and other opposition evidence. See CSX/NS-4 at 2; F.D. 32760, Decision No. 6, slip op. at 15.

Among the commentors, support is overwhelming for this deadline. Additionally, this "front end" deadline may be among the most important in the schedule for non-applicants; in supporting the overall schedule as proposed, both CMA and PPL premise that support on not reducing that 120-day period. CMA notes that "it and other interested parties would under the proposed schedule be afforded a 120-day period within which to analyze the application, take discovery, and prepare written comments. This is the same length of time . . . granted by the Board in the previous proceedings involving a Conrail merger." CMA-1 at 3.

Indeed, many of the commentors who urge the Board to modify the Applicants' proposal in other respects nevertheless believe, either implicitly or explicitly, that a

consolidated deadline at F+120 for opposition evidence is fair and appropriate and should not be disturbed. Canadian National, for example, believes the Board "wisely adopted" a consolidated F+120 deadline in the CSX/Conrail and NS/Conrail dockets, and "should adhere to that approach" again here. CN-6 at 2-3.

**B. The Reasons Advanced For Extending the "Back End" of the Proposed Schedule Are Not Persuasive.**

Several commentors urge the Board to extend the "back end" of the proposed schedule (that is, the portion beyond the F+120 deadline) in various ways, in many cases urging adoption of the 365-day schedule adopted in the previous CSX/Conrail and NS/Conrail dockets. See, e.g., CN-6 at 3-8; TCU/UTU/IAM-2.<sup>10/</sup> A number of commentors argue that more time is needed because they believe the proposed transaction is at least as complicated as, or more complicated than, the competing merger applications contemplated in the prior, now discontinued, dockets initiated by CSX and NS to acquire Conrail. See, e.g., Comments of Steel Dynamics, Inc. at 2.

Applicants respectfully but strongly disagree. Again, we note that the proposed time between F+120 and the service of the Board's final decision is the same as in UP/SP; indeed it is 30 days longer than the comparable period in the BN/SF case.<sup>11/</sup> Obviously, the transaction contemplated in CSX's and NS's joint application differs in important respects

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<sup>10/</sup> Some, however, suggest a period shorter than 365 days. See, e.g., Comments of U.S. Dep't of Transportation; Comments of the National Industrial Transportation League on Proposed Procedural Schedule (NITL-2).

<sup>11/</sup> See Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, decision served March 7, 1995, Appendix A.

from the competing transactions that would have been proposed in separate applications by CSX and NS. And, as the Applicants have noted before, because they propose to acquire different portions of Conrail and will be spirited competitors within Conrail's current territory, the joint application necessarily will include separate operating plans, market impact and traffic analyses and other studies.

Nevertheless, the volume of information that other parties will have to review in the primary application in the current proceeding will be substantially less than would have been the case if, as previously contemplated, CSX and NS had filed two mutually-exclusive, competing applications. In that case, the Board and other non-applicant parties would have been faced with:

- two mutually-exclusive operating plans, each showing rail operations of one or more rail carriers over the entire Conrail system (as opposed to a two-part, complementary operating plan in the present proceeding showing the operating plan of NS over certain lines of Conrail, CSX over other lines of Conrail, and both rail carriers over the joint access areas);
- two mutually-exclusive environmental analyses, each evaluating the impact of two inconsistent and conflicting proposals for the acquisition of Conrail (as opposed to a two-part, complementary environmental analysis in the present proceeding);
- comments and analyses from several parties on the effects of two mutually-exclusive proposals for the acquisition of Conrail (as opposed to comments and analyses from several parties on the effects of one proposal for the acquisition and division of Conrail, and the breakup of the Conrail monopoly); and
- the probability of responsive and inconsistent applications filed against not one, but two, essentially primary applications.

Moreover, the 365-day schedules adopted in the previous separate dockets reflected the expectation that fully half of the voluminous information to be filed in the separate

affirmative cases of CSX and NS to which opponents would have to respond, would not have been known until either CSX or NS filed its inconsistent application some time -- perhaps up to 120 days -- after the primary application had been filed.

Here, in contrast, the Applicants' full proposal will be available for examination by other parties from the day of filing of the application. Indeed, as some commentors have noted, substantial details about the plan already have been public since early April.<sup>12/</sup>

Although some commentors insist that the anticipated absence of inconsistent or responsive applications in this proceeding is merely speculative, see TCU/UTU/IAM-2 at 2, there has been no indication, and no reason to anticipate, that any competing, mutually exclusive inconsistent application for control of Conrail will be forthcoming, as was certain to be the case before CSX and NS reached agreement on a joint proposal. The prospect of a fully competing, inconsistent application by either CSX or NS was clearly a primary reason for adopting a lengthened 365-day schedule in the CSX/Conrail and NS/Conrail dockets. See F.D. 33220, Decision No. 8 at 7; F.D. 33286, Decision No. 4 at 7. Although CN notes that it is "likely to seek affirmative relief through a responsive application," CN-6 at 6, it suggests no reason why its responsive application and any other responsive applications that may be filed cannot be thoroughly considered on the same schedule within which the Board thoroughly considered several substantial responsive applications in UP/SP.

Some commentors argue for extending the proposed schedule because of assertedly unique circumstances involving Conrail, see CN-6 at 3, and the absence of recent experience

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<sup>12/</sup> See Comments of Consumers United For Rail Equity at 5; Comments of Steel Dynamics, Inc at 4.

in major eastern rail mergers, see Comments of U.S. Dep't of Transportation at 3.

These commentators are correct in one respect; there is a fundamental difference between the present transaction and rail mergers in the past -- namely, that this transaction will introduce substantial new rail competition. In locations where for more than 20 years shippers desiring competitive rail service have been served by one, government-created, rail carrier, now two will compete vigorously for shippers' business. If anything, the public benefit to be derived from the introduction of new and robust rail competition argues in favor of the Board reviewing the proposed transaction at least as expeditiously as in UP/SP, and certainly no less so.

Indeed, the manifestly pro-competitive effects of the proposed transaction are clearly perceived by one group that obviously wishes to postpone those effects as long as possible: the American Trucking Associations, Inc. ("ATA"). Both CSX and NS anticipate that one of the main benefits of this transaction will be to increase substantially the ability of each to compete for intermodal traffic and take freight traffic off the highways. The fact that ATA, for the first time in recent memory, has appeared in a rail merger case, in order to urge the longest possible procedural schedule, tellingly reflects its members' recognition of those likely public benefits.

The U.S. Department of Transportation ("DOT") notes that the Board must conduct an environmental review of the proposed transaction. Comments of U.S. Dep't of Transportation at 3-4. Applicants believe, however, that the proposed 255-day schedule will accommodate the environmental review process for this application, as it did in the UP/SP proceeding. Moreover, the fact that Applicants will submit a Preliminary Environmental

Report to the Section of Environmental Analysis ("SEA") 30 days before the application is filed will give the Board somewhat greater time for the environmental review process than it had in UP/SP.

With respect to DOT's opportunity to review and comment on environmental issues, Applicants can assure DOT that it will have notice of potential environmental issues as early as the filing of the application. Applicants will serve DOT (and a host of other federal, state, and local agencies) with the Environmental Report which will be filed with the Board as part of the application. Further, Applicants understand that SEA will consult with DOT (and other appropriate federal, state, and local agencies) shortly after the application is filed in the process of analyzing the Environmental Report and preparing the environmental documentation required by the National Environmental Policy Act. Moreover, Applicants stand ready to consult with DOT, at DOT's request, about any potential environmental effects of the proposed transaction at any time after the application is filed. Thus, DOT, and other agencies, will have adequate opportunity to assess, and comment upon, the potential environmental effects of the proposed transaction.

A number of commentors take issue with the Applicants' arguments that the 255-day schedule is justified in part because of the substantial "up front" cash outlay by CSX and NS, and because of the need to prevent deterioration of Conrail operations due to employment uncertainty pending Board review. See, e.g., CE-01 at 6-9; DPL-01 at 6-9; CEC-01 at 6-9. With respect to the former, the Applicants are taking the steps they believe necessary to achieve the goal of more vigorous, balanced competition in the East while dealing fairly with Conrail and its shareholders. Applicants' financial commitments are appropriate for the

Board to consider in setting the procedural schedule. In any event, it must be remembered again that the Applicants request nothing more than the same schedule followed in the previous major control transaction. The Applicants do not claim that their financial decisions in any way entitle them to a shorter process than in UP/SP, but they do believe that those commitments are an important reason why the Board should not lengthen the process here beyond that which the Board found workable and appropriate in that case.

Similarly, with respect to the issue of employment uncertainty and possible deterioration in Conrail's operations, it may be true that similar concerns have come into play in other transactions, see TCU/UTU/IAM-2 at 3; that still, however, is not a reason for lengthening the schedule adopted in UP/SP.

Finally, a number of commentators express concern that the proposed schedule may not include sufficient time at the end of the process for the Board to reach a reasoned decision. See, e.g., SPI-1 at 4; ANK-2 at 3-4.<sup>13/</sup> The Applicants recognize, of course, that the Board is, appropriately, the ultimate judge of the time needed for its own internal decisionmaking. See SPI-1 at 4. We believe, however, that particularly in light of the absence of any major inconsistent applicant, 255 days remains, as it was in UP/SP, an appropriate outer boundary for bringing to conclusion a process that is fair and will adequately balance the interests of all the parties and the public.

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<sup>13/</sup> Additionally, the Society of the Plastics Industry requests that the Board "clarify and revise" the Board's longstanding language regarding discovery. SPI-1 at 5-6. Applicants submit there is no reason to depart from this well-settled language, and that, pursuant to the Board's well-established practice, once the application is filed disputes over discovery matters should be for the Administrative Law Judge to decide in the first instance.

**III. THE BOARD SHOULD PERMIT NS AND CSX TO FILE SEPARATE 50-PAGE BRIEFS.**

Only a few parties commented on the Applicants' request that CSX and NS be permitted to file separate 50-page briefs; some argue that the Applicants should be limited to a single brief of 50 pages. See CE-01 at 9-10; DPL-01 at 9-10; CEC-01 at 9-10.

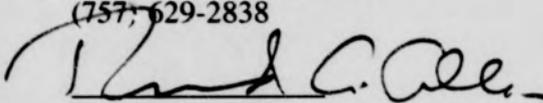
The Applicants believe, for the reasons stated in their petition, that permitting separate briefs by CSX and NS of up to 50 pages each is appropriate in this case. Should the Board determine that some adjustment for the benefit of other parties is required as well, Applicants do not object to CN's suggestion to permit CSX and NS to file separate briefs of up to 50 pages each, and to allow other parties to file briefs of up to 75 pages. See CN-6 at 9.

**CONCLUSION**

For the foregoing reasons, the Applicants respectfully request that the Board establish the 255-day schedule as set forth in the Applicants' petition (CSX/NS-4), and provide with respect to briefs that CSX and NS may file separate briefs of up to 50 pages each (and, if the Board deems necessary, parties other than the Applicants may file briefs of up to 75 pages each).

Respectfully submitted,

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**J. Gary Lane**  
**James L. Howe III**  
**Robert J. Cooney**  
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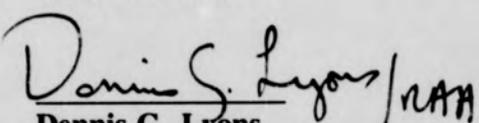
  
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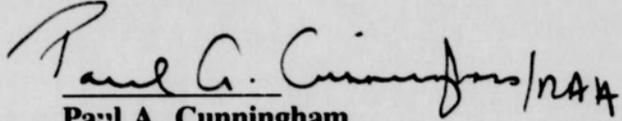
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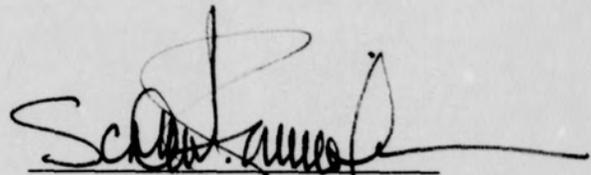
*Counsel for Conrail Inc. and Consolidated  
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May 8, 1997

CERTIFICATE OF SERVICE

I, Scott M. Zimmerman, certify that on May 8, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing CSX/NS-11, Applicants' Consolidated Reply to Comments on CSX/NS-4, Petition to Establish Procedural Schedule, on all parties that have appeared in STB Finance Docket No. 33388 and by hand delivery on the following:

The Honorable Jacob Leventhal  
Administrative Law Judge  
Federal Energy Commission  
Office of Hearings  
825 North Capitol Street, N.E.  
Washington, D.C. 20426



Scott M. Zimmerman

Dated: May 8, 1997

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**Beaufort and Morehead Railroad**

P.O. BOX 25201  
RALEIGH, N.C. 27611-5201

April 29, 1997



The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
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 - Control and Merger - Conrail, Inc. And Consolidated Rail Corporation - Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc.

Dear Secretary Williams,

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of (1) Beaufort And Morehead Railroad Company's Notice of Appearance. Also enclosed is a 3.5 inch diskette, formatted for WordPerfect 5.x for Windows, containing the pleading.

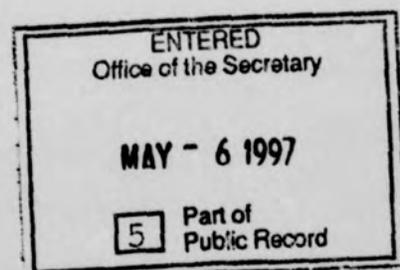
Thank you for your assistance,

Sincerely,

*Garland B. Garrett, Jr.*  
for  
Garland B. Garrett, Jr.  
President

Beaufort and Morehead Railroad Company

Enclosures  
cc: All Counsel of Record



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 33388

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

---

BEAUFORT AND MOREHEAD RAILROAD COMPANY  
NOTICE OF APPEARANCE

DAVID D. KING  
Secretary Treasurer  
Beaufort And Morehead Railroad Company  
P.O. Box 25201  
Raleigh, NC 27611-5201  
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April 29, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
- CONTROL AND OPERATING LEASES/AGREEMENTS -  
- CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION -  
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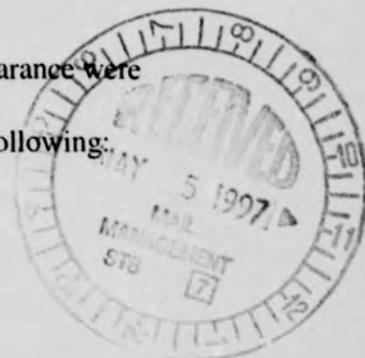
BEAUFORT AND MOREHEAD RAILROAD COMPANY  
NOTICE OF APPEARANCE

The Beaufort And Morehead Railroad Company hereby provides notice of their intent to participate as active parties in this proceeding. Please include the following individuals in the official Service List for the proceeding, so that copies of all pleadings and decisions are served on them:

DAVID D. KING  
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class mail, postage prepaid, this 29<sup>th</sup> day of April, 1997, upon the following:



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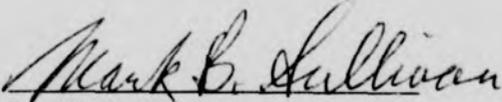
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STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

JAMES B. HUNT JR.  
GOVERNOR

P.O. BOX 25201, RALEIGH, N.C. 27611-5201  
April 29, 1997

GARLAND B. GARRETT JR.  
SECRETARY

The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch

Attn: STB Finance Docket Number 33388  
1925 K Street, N.W.  
1201 Constitution Ave., NW  
Washington, D.C. 20423-0001

Re: STB Finance Docket Number 33388  
CSX Corporation and CSR Transportation, Inc., and Norfolk Southern Corporation and  
Norfolk Southern Railway Company—Control and Operating leases/Agreements—Conrail  
Inc., and Consolidated Rail Corporation

Dear Secretary Williams:

This letter is in support of the petition before the Surface Transportation Board to expedite the application by CSX and Norfolk Southern to acquire Conrail (Docket Number 33388). In our review of the proposed acquisition, we believe that an expedited 255 day schedule is adequate to address the concerns of the parties, now that Norfolk Southern will no longer file a competing application, thus simplifying the process.

Enclosed with this original are twenty-five copies and a 3.5 inch diskette, formatted for WordPerfect 5.X for Windows containing this information.

Thank you for the opportunity to comment.

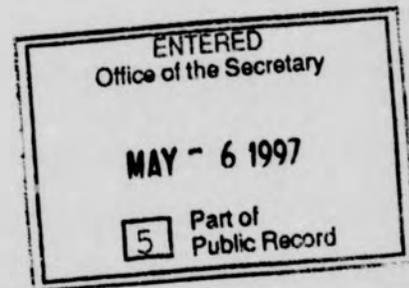
Sincerely,

*David A. King*  
for

Garland B. Garrett  
Secretary  
North Carolina Department of Transportation

GBG/DDK/PBS

Enclosures:  
cc: All Counsel of Record



CERTIFICATE OF SERVICE



I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class mail, postage prepaid, this 29<sup>th</sup> day of April, 1997, upon the following:

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STATE OF NORTH CAROLINA  
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April 29, 1997



The Honorable Vernon A. Williams  
Secretary, Surface Transportation Board  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
Surface Transportation Board  
1925 K Street, N.W.  
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RE: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc. Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Merger - Conrail, Inc. And Consolidated Rail Corporation - Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc.

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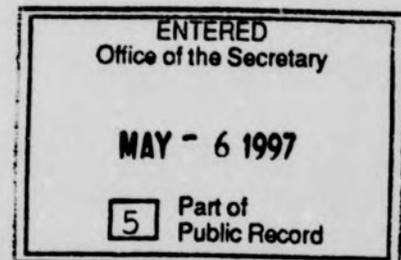
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Thank you for your assistance.

Sincerely,

*for David B. King*  
Garland B. Garrett, Jr.  
Secretary  
NC Department of Transportation

Enclosures  
cc: All Counsel of Record



BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 33388

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

---

STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION  
NOTICE OF APPEARANCE

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April 29, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
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- CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION -  
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN  
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

---

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
NOTICE OF APPEARANCE

The North Carolina Department of Transportation hereby provides notice of their intent to participate as active parties in this proceeding. Please include the following individuals in the official Service List for the proceeding, so that copies of all pleadings and decisions are served on them:

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NC Department of Transportation  
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NC Department of Justice  
P.O. Box 629  
Raleigh, NC 27602  
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class mail, postage prepaid, this 29<sup>th</sup> day of April, 1997, upon the following:



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Gary Lane  
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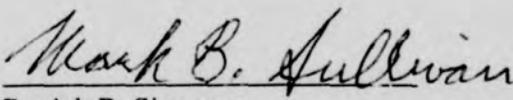
L. John Osborn  
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Deputy County Attorney  
One County Complex Court  
Prince William, VA 22192

*for*   
Patrick B. Simmons

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ARLEN SPECTER, PENNSYLVANIA, CHAIRMAN

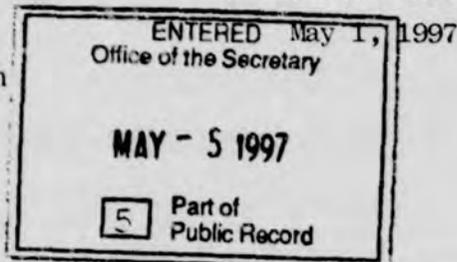
STROM THURMOND, SOUTH CAROLINA  
FRANK H. MURKOWSKI, ALASKA  
JAMES M. JEFFORDS, VERMONT  
BEN NICHTHORSE CAMPBELL, COLORADO  
LARRY E. CRAIG, IDAHO  
Y. TIM HUTCHINSON, ARKANSAS

JOHN D. ROCKEFELLER IV, WEST VIRGINIA  
BOB GRAHAM, FLORIDA  
DANIEL K. AKAKA, HAWAII  
PAUL WELLSTONE, MINNESOTA  
PATTY MURRAY, WASHINGTON

CHARLES BATTAGLIA, STAFF DIRECTOR  
JIM GOTTLIEB, MINORITY CHIEF COUNSEL/STAFF DIRECTOR

# United States Senate

COMMITTEE ON VETERANS' AFFAIRS  
WASHINGTON, DC 20510-6375



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

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

Dear Madam Chairman:

I am writing in opposition to the joint petition by Norfolk Southern Corp. and CSX Corp. for an expedited procedural schedule for consideration of their acquisition of Conrail. The applicants have argued in their petition that their proposed transaction is not as complex as the previous application from CSX and Conrail and the Norfolk Southern hostile bid last Fall. I must emphatically disagree. There are too many outstanding issues that are unresolved: too many communities whose economic health is at stake; too many families of Conrail employees in Pennsylvania and elsewhere whose livelihoods hang in the balance; and too many businesses which are unsure of whether the takeover of Conrail will be anti-competitive.

I have said at Congressional hearings and in private conversations with the Chief Executive Officers of the railroads that there may be no more significant issue for Pennsylvania's economy at present than the future of Conrail. In my letter to you dated March 7, 1997, I noted that Conrail employs more than 8,000 Pennsylvanians and that it plays a vital role in the Commonwealth's economy and communities and that special attention should be paid to preserving relatively small companies such as Conrail in this era of megamergers.

When Congress established the Surface Transportation Board in the Interstate Commerce Commission Termination Act of 1995, the Interstate Commerce Commission at that time could take up to 31 months to approve a transaction involving two Class I railroads. Recognizing the need for some increased efficiencies, the 1995 law adopted a 15-month overall time limit for agency review and final action. 49 U.S.C. § 11325(b). Given its potential impact on Pennsylvania and other Northeastern States, the Surface Transportation Board should not shortcut the allotted 15 months to study the proposed takeover of Conrail and to find whether "the transaction is consistent with the public interest." 49 U.S.C. § 11324(c).

Section 11324(b) of ICCTA requires the Board to consider at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; and (5) whether the proposed

transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. I am advised that the proposed dismemberment of Conrail by CSX and NS is unique and unprecedented because never before in our nation's history have two rail competitors combined to eliminate their other, financially healthy competitor. The uniqueness of this transaction coupled with the Board's required public interest investigation under Section 11324(b) mandates that the full period of time allowed by Section 11325(b) be used to carefully analyze whether this transaction indeed is in the public's interest.

The following unresolved issues are just a sample of what I believe the Board must address in the coming months in considering the takeover of Conrail:

1. Impact on Conrail Employees -- From the headquarters in Philadelphia to the locomotive repair shops in Altoona to the rail yard in Conway to the Customer Service Center in North Fayette Township, there are more than 8,000 Conrail employees in Pennsylvania. They had every reason to expect that the initial Conrail-CSX merger would have been a positive development for them. They should expect to benefit from the CSX-Norfolk Southern transaction at least as much. Their dedication throughout Conrail's turbulent past enabled the railroad to succeed to the point where it is worth \$10 billion. The Board must take concrete steps to determine what the impact will be on those employees, and has wide statutory discretion to impose conditions on the transaction to benefit them beyond the doctrine of New York Dock, which are grossly inadequate.
2. Impact on Communities -- Conrail provides essential rail service to hundreds of communities, which depend on such service as a significant part of their local economy. Further, Conrail employees live in communities and their job security will play a role in fostering continued economic development or in hastening adverse economic conditions.
3. Impact on Shippers -- Shippers in the Northeast and other parts of the country will be affected by this transaction, both in their access to competitive service and the rates they will pay. Congress has heard testimony from the coal industry and other shippers that depending on how the Board structures this merger, it could provide new opportunities for economic growth across several States, or could cripple budding attempts to open new markets for American products.
4. Impact on Ports -- Throughout the Eastern Seaboard, rail service is essential to the operations of ports in communities such as Philadelphia, Camden, Hampton Roads, Baltimore, and New York. The Conrail acquisition has the potential to alter the competitiveness of the Port of Philadelphia and others in the region.

The Honorable Linda J. Morgan  
Page Three

5. Impact on Other Railroads -- The Board has to analyze how the Delaware and Hudson and short line railroads are going to be affected. The presence of competing railroads will do much to keep shipping prices down and the access issue for short lines is of great importance to small businesses who are dependent on rail to bring their products to market or to obtain their raw materials.

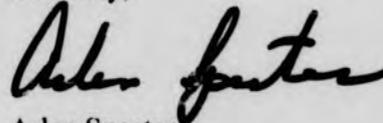
These are all complicated issues and merit the fullest attention of the Board. I would also note that the Board currently lacks a third member. Certainly a \$10 billion transaction with such far-reaching effects deserves to be considered by a fully constituted Surface Transportation Board.

The Applicants state on page 5 of their petition that because they have paid for their Conrail stock "up front," an expedited procedural schedule will reduce the alleged loss of the "substantial benefits that will certainly result from the acquisition and division of Conrail." As far as I know, the Applicants structured their deal for their own purposes, not for the public interest. The fact that their funds are tied up is no reason for the Board to shortcut its public obligation to carefully review and investigate this proposed transaction.

Finally, the Applicants claim that expedition is necessary because undue delay will cause an attrition of Conrail management and a possible degradation of Conrail's physical plant. (Petition at 5-6). I trust that Conrail management understands that it has a continuing obligation to provide quality rail carrier service to all of its shippers during the pendency of this proceeding and to continue maintenance and rehabilitation efforts, particularly where safety is involved. Accordingly, any fears about Conrail's behavior during the pendency of this proceeding are misplaced and do not constitute a legitimate reason for expediting the Board's investigation of this unprecedented transaction.

In conclusion, I strongly urge the Board to deny the Applicants' request for an expedited procedural schedule. The public's interest in the Board's careful analysis of this transaction requires that the full statutory period permitted under Section 11325(b) be utilized.

Sincerely,



Arlen Specter

AS:dr

cc: The Honorable Gus A. Owen, Vice Chairman  
The Honorable Vernon Williams, Secretary

STB

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# United Mine Workers of America

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LOCAL UNION NO. 1810



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Alledonia, Ohio

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

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

Dear Secretary Williams:

This is to inform you that United Mine Workers of America, Local 1810, adopts and incorporates by reference the "Comments on Applicants' Proposed Procedural Schedule." filed by AEP, et al." filed with the Surface Transportation Board today, May 1, 1997.

Enclosed are the 25 copies of this request. Thank you for your attention to this matter.

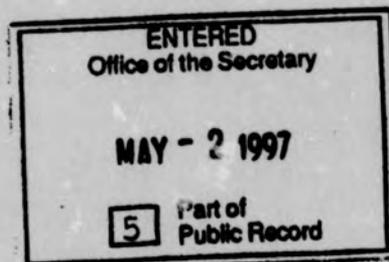
Very truly yours,

*Ronnie Marquardt*

Ron Marquardt  
President  
Local Union 1810 UMWA  
Valley View Sub-Division  
R.D. #2  
Rayland, Ohio 43943

Enclosures

cc: Paul A. Cunningham, Esq.  
Dennis G. Lyons, Esq.  
Richard A. Allen, Esq.  
All Other Parties on Service List



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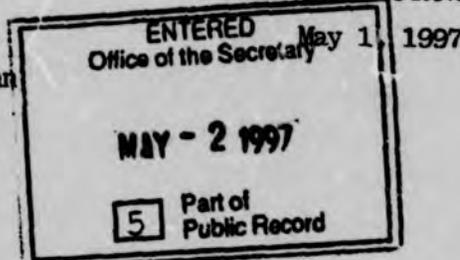
ARLEN SPECTER, PENNSYLVANIA CHAIRMAN

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JIM GOTTLIEB, MINORITY CHIEF COUNSEL/STAFF DIRECTOR


# United States Senate

COMMITTEE ON VETERANS' AFFAIRS

WASHINGTON, DC 20510-6375



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

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The Honorable Linda J. Morgan  
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The Honorable Linda J. Morgan  
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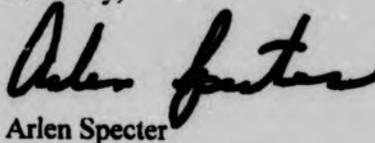
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Sincerely,



Arlen Specter

AS:dr

cc: The Honorable Gus A. Owen, Vice Chairman  
The Honorable Vernon Williams, Secretary

STB

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**SLOVER & LOFTUS**

ATTORNEYS AT LAW

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ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III

May 1, 1997



BY HAND DELIVERY

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

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

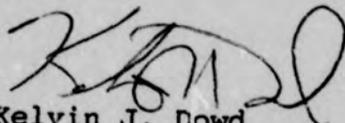
Dear Secretary Williams:

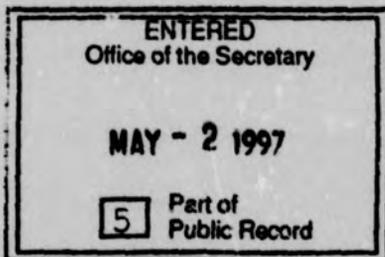
Enclosed for filing in response to Decision No. 2 in the above-referenced proceeding are an original and 25 copies of the Comments of Consumers Energy Company on Proposed Procedural Schedule (CE-01). Also enclosed is a diskette containing the text of this filing in WordPerfect 5.1 format.

An additional copy of this pleading is also enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it with our messenger.

Thank you for your attention to this matter.

Sincerely,

  
Kelvin J. Dowd  
An Attorney for Consumers  
Energy Company



Enclosures

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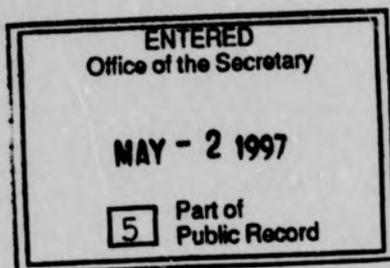
BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 33388

COMMENTS OF  
CONSUMERS ENERGY COMPANY  
ON PROPOSED PROCEDURAL SCHEDULE



CONSUMERS ENERGY COMPANY

By: A. T. Udry  
Assistant General Counsel  
Consumers Energy Company  
212 West Michigan Avenue  
Jackson, Michigan 49201

OF COUNSEL:

Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

William L. Slover  
Kelvin J. Dowd  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Dated: May 1, 1997

Attorneys and Practitioners



cants' desire for expedited consideration of their proposed transaction, and non-Applicant participants' interest in a fair opportunity to be heard and to have their comments and/or requests for conditions considered by the Board. Further, CE's revisions fully comply with the requirements of 49 U.S.C. §11325(b).

In support hereof, CE states as follows:

I

IDENTITY AND INTEREST

CE is a public utility providing gas and/or electric service in all 68 counties in the Lower Peninsula of the State of Michigan. CE operates a number of coal-fired electric generating plants, which burn a total of 7.3 million tons of coal. These include Campbell Units 1, 2 and 3; Karn Units 1 and 2; and Weadock Units 7 and 8, all of which receive coal by rail. Currently, CE utilizes both CSX and Conrail to ship coal to its generating plants, and could utilize NS for some part of some shipments. CSX and Conrail transport some 82 percent of the coal consumed by CE's generating plants, either all or part of the way from origins to destinations, and compete head to head for a number of shipments from the Central Appalachian area.

As a customer of these rail carriers, CE has a direct and substantial interest in this proceeding. Applicants' proposed transaction will dramatically affect the operations and financial status of the railroads involved, and likely will impact the rail service available to CE as well. CE intends to

actively monitor developments in this proceeding, and to participate formally in future phases as its interests dictate. For this reason, CE has a significant stake in the adoption of a procedural schedule that protects the participation rights of affected shippers, and other commenters supporting conditions that ameliorate any anti-competitive or other adverse impacts of the proposed transaction.

CE respectfully requests that the Board enter it as a party of record in this proceeding, and that the Board add to the service list the names of CE's representatives, in order that they receive copies of all comments, other filings, orders and decisions.

## II

**THE SCHEDULE PROPOSED BY  
THE APPLICANTS IS INADEQUATE TO  
PROTECT NON-APPLICANTS' DUE PROCESS  
RIGHTS, AND SHOULD BE CHANGED**

Barely four (4) months ago, after CSX announced an intent to seek Board approval for the acquisition of Conrail in its entirety, the Board determined that a 365-day procedural schedule was necessary to "ensure that all parties are accorded due process and [to allow the Board to] consider fully all of the issues in this proceeding."<sup>2</sup> The instant proceeding presents the Board and the affected public with a complex and unprecedented proposal for the division of Conrail between CSX and NS, under

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<sup>2</sup>F.D. No. 33220, supra, Decision served January 30, 1997, at 4.

a plan that they alone negotiated in complete secrecy. While publicly available details remain incomplete, the plan appears to involve an interlocking combination of stock acquisitions, asset purchases, leases, operating agreements, and joint service arrangements. CE submits that at a minimum, this proceeding should be handled on the same basic timetable as that prescribed for the more straightforward acquisition proposed in F.D. No. 33220.

Though the Applicants claim otherwise,<sup>3</sup> their plan for the division of Conrail raises a number of significant legal and rail regulatory policy issues properly cognizable under 49 U.S.C. §11323, et seq. Inter alia, they include:

- whether the Applicants' overall division of Conrail assets is the most efficient and consistent with the public interest;
- whether rail carriers other than CSX or NS would better preserve the benefits of competition currently offered by Conrail on certain coal and other rail dependent commodity movements;
- whether and to what extent conditions can be crafted that would protect captive shippers from bearing the burden of the \$4 billion+ premium that Applicants propose to pay for Conrail, as a consequence of their extended tender offer battle; and
- whether the Applicants' plans for "joint access" to key terminal areas, such as Detroit, Toledo and New York/New Jersey, actually will result in bona fide transportation competition for shippers served by and through those terminals.

---

<sup>3</sup>See, Petition to Establish Procedural Schedule, April 11, 1997 ("Petition"), at 4.

To properly analyze and consider these and other equally important questions that will be raised by the Applicants' plan, interested parties must have adequate time to prepare their comments -- both in response to the primary application and any responsive or inconsistent applications -- and the Board, in turn, must have adequate time to consider all parties' submissions in rendering its decision. In at least two (2) significant respects, however, the schedule proposed by the Applicants fails this test.

First, the Applicants' schedule allows only thirty (30) days for the filing of responses to inconsistent or responsive applications, and only fifteen (15) days for rebuttal in support of these applications. Experience in recent Class I rail merger proceedings has shown that responsive applications can be nearly as complex and voluminous as primary applications, requiring extensive review and analysis by affected, interested parties prior to comment.<sup>4</sup> The Board recognized this in F.D. No. 33220, prescribing sixty (60) and forty (40) days, respectively, for comments on and rebuttal in support of responsive applications. Id., Decision served January 30, 1997, at 10. It should do

---

<sup>4</sup>Applicants suggest that significant responsive applications are not anticipated in this case. Petition, at 7. Applicants' expectations, however, cannot determine the schedule adopted by the Board. Even under Applicants' schedule, the existence and extent of responsive applications will not be known until 60 days after the primary application is filed. If any advance assumptions are to be made in this regard for scheduling purposes, prudence dictates that the Board assume there will be one or more responsive applicants whose proposals will merit serious and careful consideration.

likewise here.

Second, the Applicants propose that only forty (40) days elapse between the close of the record and the Board's voting conference (Petition, at 2), during which time the Board also is supposed to receive briefs and hear oral argument. In contrast, the schedule adopted in F.D. No. 33220 contemplated nearly twice as much time -- eighty-five (85) days. Even three (3) months may be insufficient to allow a full and careful review of what undoubtedly will be an extensive and complex record. However, to suggest, as Applicants do, that the task should be completed in forty (40) days is both unrealistic and improper as a matter of administrative due process.<sup>5</sup>

In their Petition, Applicants claim that their truncated schedule is justified by (1) the substantial "up front" investments in Conrail stock that CSX and NS propose to make; (2) the purported, impending "benefits of increased competition" resulting from their plan; and (3) a claimed need for expedition to avert a "deterioration of Conrail service" pending Board consideration of the plan. Petition, at 6. However, none of these arguments warrants the restriction of CE's and other parties' participatory due process rights.

---

<sup>5</sup>Adding 30 days to the period proposed by Applicants for comments on responsive applications, 25 days for rebuttal in support, and 45 days to the time allotted for Board deliberations produces an overall procedural length of 355 days, which is still expeditious by historic standards and four (4) months shorter than the maximum permitted under 49 U.S.C. §11325(b).

That CSX and NS apparently have elected to make a \$10 billion investment without prior Board approval<sup>6</sup> should have no impact whatsoever on either the procedural schedule or the Board's substantive deliberations on the merits of the primary application. The Applicants' decision to pay Conrail stockholders for their shares before, rather than after, securing necessary federal regulatory approval to acquire control of Conrail is a purely voluntary action on their part. Nowhere in the statute, regulations or applicable case law precedents is such an action directed or encouraged. It would be a clear subversion of the administrative process if the fact that Applicants voluntarily and unnecessarily have put investment dollars at risk in advance of this proceeding influences in any way the determinations of whether, when, or on what terms their plan for Conrail should be approved.

Applicants' claim that a truncated schedule is needed to hasten the "benefits of increased competition" in the East assumes an ultimate fact not yet proven; i.e., that their plan to divide Conrail actually will increase rail competition significantly. Legitimate questions exist, for example, whether the Applicants' plans for "joint access" to various terminal areas<sup>7</sup> will lead to effective dual carrier service options for shippers using these terminals, or simply replace one market dominant

---

<sup>6</sup>Petition, at 5.

<sup>7</sup>The details of these plans apparently will not be fully revealed until the primary application is filed.

carrier with another. Likewise, the Board must consider whether railroads who do not have a history of aggressively competing against one another in the transportation of coal<sup>8</sup> and who recently joined other Class I railroads in decrying the alleged dangers of increased rail competition,<sup>9</sup> will maintain a serious price and service rivalry in the face of a \$4 billion+ investment premium recovery challenge. In any event, the competitive benefits claimed by the Applicants are not so self-evident that the Board need not allow reasonable time and opportunity for the presentation of alternate views.

Finally, the Applicants profess a concern that Conrail service may deteriorate due to "employment uncertainty among Conrail management," if their accelerated schedule is not adopted. The Applicants do not explain how this "employment uncertainty" is significantly different if a 255-day schedule as opposed to a 300 or 355-day schedule. Respectfully, CE suggests that the Applicants themselves could better minimize any uncertainty among Conrail's management personnel by offering more information concerning staffing requirements, etc. in the event the Applicants' plan (or a reasonable variant) is approved. Nevertheless, given the size of the subject transaction, the multitude of affected markets, shippers and smaller rail carri-

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<sup>8</sup>See, e.g., Coal Exporters Ass'n v. United States, 745 F.2d 76, 86-87, 90-91 (D.C. Cir. 1984).

<sup>9</sup>See Docket No. 41242, Central Power & Light Company v. Southern Pacific Transportation Company, Comments of the Association of American Railroads, dated October 15, 1996, at 36-46, 54-55.

ers, and the myriad issues to be presented for resolution by the Board, the public interest in adequate procedural safeguards clearly outweighs the Applicants' loosely defined speculation about indirect, interim employee impacts.

### III

#### THE APPLICANTS SHOULD BE CONSIDERED A SINGLE PARTY FOR BRIEFING PURPOSES

Prior precedent in the Class I railroad merger context confirms that applicants are treated as a single party for purposes of briefing.<sup>10</sup> While the complex plan for a privately-negotiated division of Conrail proposed by CSX and NS sets this case apart from recent mergers in many respects, their unified front as co-sponsors of the plan and co-Applicants warrants that they be treated the same as their counterparts in prior cases for briefing purposes. CSX and NS should be required to file a single brief, not to exceed fifty (50) pages in length.

The Applicants argue that it would be more orderly for them to file separate briefs, as their plan for the division of Conrail also involves "separate, competing operating and marketing plans" for CSX and NS in the event that their plan is approved. Petition, at 8. Nowhere do the Applicants suggest, however, that their plan for Conrail is anything but a single,

---

<sup>10</sup>See, e.g., F.D. No. 32760, Union Pacific Corporation, Et. Al. -- Control and Merger -- Southern Pacific Rail Corporation, Et Al., Applicants' Brief dated June 3, 1996.

unified, all-or-nothing proposition. All indications are that planned asset acquisitions by one cannot and will not go forward absent Board approval of corresponding acquisitions by the other. Like other recent rail merger proposals, the CSX-NS plan is an integrated series of complex business transactions<sup>11</sup> that will be presented to the Board for approval as a whole. Though they are and are expected to remain separate companies, for purposes of this proceeding they speak with a single voice in support of a single proposal. In fairness to CE and other, similarly-situated parties, they should do so in a single brief.

#### IV

#### CONCLUSION

For the reasons set forth herein, the Board should modify the procedural schedule proposed by the Applicants and published in Decision No. 2 to (1) extend by an additional thirty (30) days the deadline for filing responses to responsive and inconsistent applications; (2) extend by an additional twenty-five (25) days the deadline for filing rebuttal in support of responsive and inconsistent applications; (3) extend by an additional forty-five (45) days the minimum interval between the filing of rebuttal in support of responsive and inconsistent

---

<sup>11</sup>For example, merger applications often include multiple approval requests for related line sales, abandonments or track-age rights agreements. See, e.g. F.D. No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp., Et Al., Decision served August 23, 1995.

applications and the scheduling of a Board voting conference with respect to the primary application; and (4) require Applicants to file a single brief, not to exceed fifty (50) pages in length.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

By: A. T. Udrys  
Assistant General Counsel  
Consumers Energy Company  
212 West Michigan Avenue  
Jackson, Michigan 49201

OF COUNSEL:

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William L. Slover  
Kelvin J. Dowd  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Dated: May 1, 1997

Attorneys and Practitioners

CERTIFICATE OF SERVICE

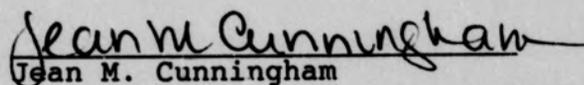
I hereby certify that copies of the foregoing Comments were served this 1st day of May, 1997, by first class mail, postage pre-paid, upon:

The Honorable Jacob Leventhal  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Suite 11F  
Washington, D.C. 20426

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Jean M. Cunningham

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5-1-97

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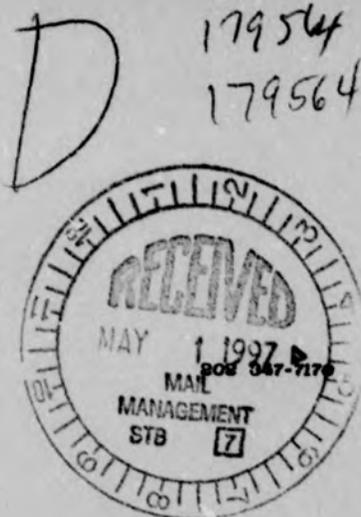
179564

**SLOVER & LOFTUS**

ATTORNEYS AT LAW

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WASHINGTON, D. C. 20036

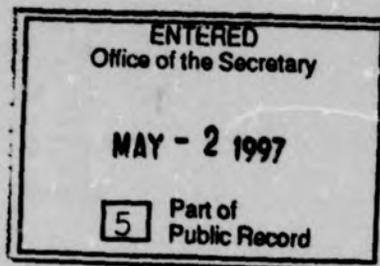
WILLIAM L. SLOVER  
C. MICHAEL LOFTUS  
DONALD G. AVERY  
JOHN H. LE SEUR  
KELVIN J. DOWD  
ROBERT D. ROSENBERG  
CHRISTOPHER A. MILLS  
FRANK J. PERGOLIZZI  
ANDREW B. KOLESAR III



May 1, 1997

BY HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed for filing in response to Decision No. 2 in the above-referenced proceeding are an original and 25 copies of the Comments of The Dayton Power and Light Company on Proposed Procedural Schedule (DPL-01). Also enclosed is a diskette containing the text of this filing in WordPerfect 5.1 format.

An additional copy of this pleading also is enclosed. Kindly indicate receipt and filing by time-stamping this extra copy and returning it with our messenger.

Thank you for your attention to this matter.

Sincerely,

*Jean M. Cunningham*

Jean M. Cunningham  
An Attorney for The Dayton  
Power and Light Company

Enclosures

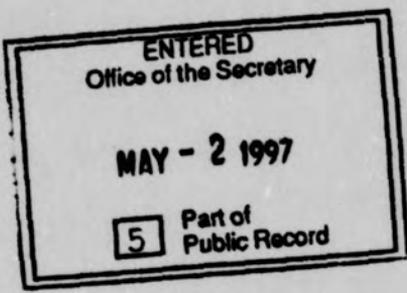
BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 33388

COMMENTS OF THE  
DAYTON POWER & LIGHT COMPANY ON  
PROPOSED PROCEDURAL SCHEDULE



THE DAYTON POWER & LIGHT  
COMPANY  
1900 Dryden Road  
Dayton, Ohio 45439

By: C. Michael Loftus  
Kelvin J. Dowd  
Jean M. Cunningham  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

OF COUNSEL  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: May 1, 1997

Attorneys and Practitioners



CSX and NS to file a single brief not to exceed fifty (50) pages in length. DPL's proposed, revised schedule better balances the Applicants' desire for expedited consideration of their proposed transaction, and non-Applicant participants' interest in a fair opportunity to be heard and to have their comments and/or requests for conditions considered by the Board. Further, DPL's proposed revisions, fully comply with the requirements of 49 U.S.C. §11325(b).

In support hereof, DPL states as follows:

I

IDENTITY AND INTEREST

DPL is an investor-owned electric utility headquartered in Dayton, Ohio. DPL serves over 1.2 million people throughout a 6,000 square-mile region in west central Ohio.

Four (4) different coal-fired generating plants operated by DPL produce approximately 92% of the electricity DPL needs to meet its customers' requirements. Approximately 8 million tons of coal are delivered to DPL-operated stations each year as fuel for this generation.

DPL is a past and present customer of CSX and of Conrail, and as such participated in prior proceedings begun separately by both CSX and NS to consider their earlier, competing proposals for the acquisition of Conrail.<sup>2</sup> The Applicants'

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<sup>2</sup>F.D. No. 33220, CSX Corporation and CSX Transportation, Inc. -- Control and Merger -- Conrail Inc. and Consolidated Rail Corporation; F.D. No. 33286, Norfolk Southern Corporation and

current proposal will dramatically affect the future of those carriers, and as a result likely will impact the rail service available to DPL. DPL thus has a direct and substantial interest in this proceeding.

DPL intends to actively monitor developments in this proceeding and to participate formally in future phases as its interests dictate. For this reason, DPL has a significant stake in the adoption of a procedural schedule that protects the participation rights of affected shippers, and other commenters supporting conditions necessary to ameliorate any anti-competitive or other adverse impacts of the proposed transaction.

DPL respectfully requests that the Board enter it as a party of record in this proceeding, and that the Board add to the service list the names of DPL representatives, in order that they receive copies of all comments or other filings, orders and decisions.

## II

THE SCHEDULE PROPOSED BY  
THE APPLICANTS IS INADEQUATE TO  
PROTECT NON-APPLICANTS' DUE PROCESS  
RIGHTS, AND SHOULD BE CHANGED

Barely four (4) months ago, after CSX announced an intent to seek Board approval for the acquisition of Conrail in its entirety, the Board determined that a 365-day procedural schedule was necessary to "ensure that all parties are accorded

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Norfolk Southern Railway Co. -- Control -- Conrail Inc. and  
Consolidated Rail Corporation.

due process and [to allow the Board to] consider fully all of the issues in this proceeding."<sup>3</sup> The instant proceeding presents the Board and the affected public with a complex and unprecedented proposal for the division of Conrail between CSX and NS, under a plan that they alone negotiated in complete secrecy. While publicly available details remain incomplete, the plan appears to involve an interlocking combination of stock acquisitions, asset purchases, leases, operating agreements, and joint service arrangements. DPL submits that at a minimum, this proceeding should be handled on the same basic timetable as that prescribed for the more straightforward acquisition proposed in F.D. No. 33220.

Though the Applicants claim otherwise,<sup>4</sup> their plan for the division of Conrail raises a number of significant legal and rail regulatory policy issues properly cognizable under 49 U.S.C. §11323, et seq. Inter alia, they include:

- whether the Applicants' overall division of Conrail assets is the most efficient and consistent with the public interest;
- whether and to what extent conditions can be crafted that would protect captive shippers from bearing the burden of the \$4 billion+ premium that the Applicants propose to pay for Conrail, as a consequence of their extended tender offer battle; and

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<sup>3</sup>F.D. No. 33220, supra, Decision served January 30, 1997, at 4.

<sup>4</sup>See, Petition to Establish Procedural Schedule, April 11, 1997 ("Petition"), at 4.

- whether the Applicants' plans for "joint access" to key terminal areas, such as Detroit, Toledo and New York/New Jersey, actually will result in bona fide transportation competition for shippers served by and through those terminals.

To properly analyze and consider these and other equally important questions that will be raised by the Applicants' plan, interested parties must have adequate time to prepare their comments -- both in response to the primary application and any responsive or inconsistent applications -- and the Board, in turn, must have adequate time to consider all parties' submissions in rendering its decision. In at least two (2) significant respects, however, the schedule proposed by the Applicants fails this test.

First, the Applicants' schedule allows only thirty (30) days for the filing of responses to inconsistent or responsive applications, and only fifteen (15) days for rebuttal in support of these applications. Experience in recent Class I rail merger proceedings has shown that responsive applications can be nearly as complex and voluminous as primary applications, requiring extensive review and analysis by affected, interested parties prior to comment.<sup>5</sup> The Board recognized this in F.D. No. 33220,

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<sup>5</sup>Applicants suggest that significant responsive applications are not anticipated in this case. Petition, at 7. Applicants' expectations, however, cannot determine the schedule adopted by the Board. Even under Applicants' schedule, the existence and extent of responsive applications will not be known until 60 days after the primary application is filed. If any advance assumptions are to be made in this regard for scheduling purposes, prudence dictates that the Board assume there will be one or more responsive applicants whose proposals will merit serious and

prescribing sixty (60) and forty (40) days, respectively, for comments on and rebuttal in support of responsive applications. Id., Decision served January 30, 1997, at 10. It should do likewise here.

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consideration of the plan. Petition, at 6. However, none of these arguments warrants the restriction of DPL's and other parties' participatory due process rights.

That CSX and NS apparently have elected to make a \$10 billion investment without prior Board approval<sup>7</sup> should have no impact whatsoever on either the procedural schedule or the Board's substantive deliberations on the merits of the primary application. The Applicants' decision to pay Conrail stockholders for their shares before, rather than after, securing necessary federal regulatory approval to acquire control of Conrail is a purely voluntary action on their part. Nowhere in the statute, regulations or applicable case law precedents is such an action directed or encouraged. It would be a clear subversion of the administrative process if the fact that the Applicants voluntarily and unnecessarily have put investment dollars at risk in advance of this proceeding influences in any way the determinations of whether, when, or on what terms their plan for Conrail should be approved.

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<sup>9</sup>See, e.g., Coal Exporters Ass'n v. United States, 745 F.2d 76, 86-87, 90-91 (D.C. Cir. 1984).

<sup>10</sup>See Docket No. 41242, Central Power & Light Company v. Southern Pacific Transportation Company, Comments of the Association of American Railroads, dated October 15, 1996, at 36-46, 54-55.

information concerning staffing requirements, etc. in the event the Applicants' plan (or a reasonable variant) is approved. Nevertheless, given the size of the subject transaction, the multitude of affected markets, shippers and smaller rail carriers, and the myriad issues to be presented for resolution by the Board, the public interest in adequate procedural safeguards clearly outweighs the Applicants' loosely defined speculation about indirect, interim employee impacts.

### III

#### THE APPLICANTS SHOULD BE CONSIDERED A SINGLE PARTY FOR BRIEFING PURPOSES

Prior precedent in the Class I railroad merger context confirms that applicants are treated as a single party for purposes of briefing.<sup>11</sup> While the complex plan for a privately-regotiated division of Conrail proposed by CSX and NS sets this case apart from recent mergers in many respects, their unified front as co-sponsors of the plan and co-Applicants warrants that they be treated the same as their counterparts in prior cases for briefing purposes. CSX and NS should be required to file a single brief, not to exceed fifty (50) pages in length.

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<sup>11</sup>See, e.g., F.D. No. 32760, Union Pacific Corporation, Et. Al. -- Control and Merger -- Southern Pacific Rail Corporation, Et Al., Applicants' Brief dated June 3, 1996.

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#### IV

#### CONCLUSION

For the reasons set forth herein, the Board should modify the procedural schedule proposed by the Applicants and published in Decision No. 2 to (1) extend by an additional thirty

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<sup>12</sup>For example, merger applications often include multiple approval requests for related line sales, abandonments or track-age rights agreements. See, e.g. F.D. No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Co. -- Control and Merger -- Santa Fe Pacific Corp., Et Al., Decision served August 23, 1995.

(30) days the deadline for filing responses to responsive and inconsistent applications; (2) extend by an additional twenty-five (25) days the deadline for filing rebuttal in support of responsive and inconsistent applications; (3) extend by an additional forty-five (45) days the minimum interval between the filing of rebuttal in support of responsive and inconsistent applications and the scheduling of a Board voting conference with respect to the primary application; and (4) require the Applicants to file a single brief, not to exceed fifty (50) pages in length.

Respectfully submitted,

THE DAYTON POWER & LIGHT  
COMPANY  
1900 Dryden Road  
Dayton, Ohio 45439

By: C. Michael Loftus  
Kelvin J. Dowd  
Jean M. Cunningham *Jean M. Cunningham*  
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1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: May 1, 1997

Attorneys and Practitioners

CERTIFICATE OF SERVICE

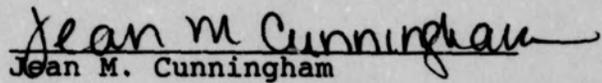
I hereby certify that copies of the foregoing Comments were served this 1st day of May, 1997, by first class mail, postage pre-paid, upon:

The Honorable Jacob Leventhal  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Suite 11F  
Washington, D.C. 20426

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

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Washington, D.C. 20036

  
Jean M. Cunningham

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ANK-2

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33388

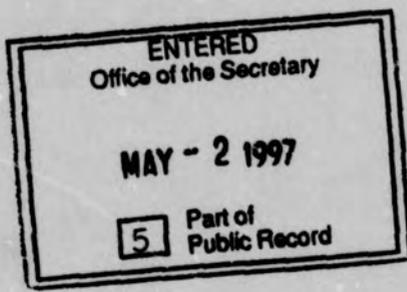
*CSX Corporation and CSX Transportation Company, Inc.  
Norfolk Southern Corporation and Norfolk Southern Railway Company  
-- Control and Operating Leases / Agreements --  
Conrail Inc. and Consolidated Rail Corporation --  
Transfer of Railroad Line by Norfolk Southern Railway Company to  
CSX Transportation Company*



**COMMENTS ON PROPOSED PROCEDURAL SCHEDULE**

Anker Energy Corporation  
Buffalo Coal Company  
Evergreen Mining Company  
Maryland Coal Association  
Mettiki Coal Corporation  
PBS Coals, Inc.  
Tri-State Coal Association  
Venture Coal Sales  
West Virginia Coals, Inc.

Nicholas J. DiMichael  
John K. Maser III  
Jeffrey O. Moreno  
DONELAN, CLEARY, WOOD AND  
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Attorneys for:  
Anker Energy Corporation  
Buffalo Coal Company  
Evergreen Mining Company  
Maryland Coal Association  
Mettiki Coal Company  
PBS Coals, Inc.  
Tri-State Coal Association  
Venture Coal Sales  
West Virginia Coals, Inc.

Due and Dated: May 1, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

*CSX Corporation and CSX Transportation Company, 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 Company*

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COMMENTS ON PROPOSED PROCEDURAL SCHEDULE

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Come now Anker Energy Corporation, Buffalo Coal Company, Evergreen Mining Company, Maryland Coal Association, Mettiki Coal Corporation, PBS Coals, Inc., Tri-State Coal Association, Venture Coal Sales, and West Virginia Coals, Inc. by their attorneys, and submit these Comments in response to the request for comments served by the Board on April 21, 1997 in this proceeding ["Decision No. 2"]. In Decision No. 2, the Board requested comments on a procedural schedule for this proceeding proposed by CSX Corporation ["CSXC"], CSX Transportation [CSXT"], Inc.<sup>1</sup>, Norfolk Southern Corporation ["NSC"], Norfolk Southern Railway Company ["NSRC"],<sup>2</sup> Conrail Inc. and Consolidated Rail Corporation [collectively, "Applicants"] on April 10, 1997 in a petition to establish a schedule for this proceeding.

The companies and associations submitting these comments are engaged in the production of coal in western Maryland, southwestern Pennsylvania or West Virginia, or represent companies that do so. The mines from which coal is produced by these parties

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<sup>1</sup> CSXC and CSXT are referred to collectively as "CSX."

<sup>2</sup> NSC and NSRC are referred to collectively as "NS."

are currently served by CSX, over the lines of the former Baltimore and Ohio Railroad. [These companies and associations are identified in Appendix A hereto and will hereafter be collectively referred to in these Comments as "B&O Coal Field Producers"].

On April 10, 1997, the Applicants filed a Notice of Intent stating that CSX and NS will participate jointly in the acquisition of Conrail, Inc. consistent with an October 14, 1996 merger agreement, as amended, and under other agreements made between CSX and NS. That Notice of Intent stated that after Conrail Inc. stock has been acquired, and contingent on and following the Board's authorization and approval of control, CSX and NS will assume control of Conrail and will cause Conrail to be restructured. Under the proposed restructuring, CSX and NS will acquire parts of Conrail, and some parts will be shared through various means; among other things, both CSX and NS will serve shippers on the former Monongahela Railroad, within the so-called "Pittsburgh Coal Field" located primarily in southwestern Pennsylvania.

The B&O Coal Field Producers are extremely concerned about possible adverse competitive effects of the proposed transaction, the effect of the proposed transaction on the adequacy of transportation to the public; and the effect on the public interest of failing to include other rail lines in the area involved in the proposed transaction. See, 49 U.S.C. 11324(b)(1), (2) and (5). The B&O Coal Field Producers are considering the possible adverse competitive effect of the proposed transaction upon the production of coal in southern Pennsylvania, western Maryland, and West Virginia, and upon employment in and the health of the economy of the area. They are currently engaged in an intensive study of the proposed transaction. The B&O Coal Field Producers have discussed, and expect to continue to discuss, their serious concerns with the Applicants. Should these discussions fail to alleviate these concerns, however, the Board is, in the final analysis, the agency charged with protecting the public interest, and has the statutory authority and obligation to condition the proposed transaction to serve the public interest. 49 U.S.C. § 11324(c).

The Board must establish procedures that will enable it to discharge that obligation effectively. Two things are required. First, persons submitting comments and requesting conditions must be given sufficient time to analyze the application and to submit evidence supporting conditions that are appropriate under the statutory requirements. Second, the Board itself must have enough time to analyze the evidence and come to a reasoned decision.

As to the first requirement, under the proposed schedule, parties submitting comments and requests for conditions must submit such filings by the 120th day after the filing of the application. This deadline is consistent with the schedule in the recent UP/SP merger proceeding,<sup>3</sup> and is consistent with the schedule approved by the Board in CSX' and NS' separate proceedings.<sup>4</sup> The B&O Coal Field Producers regard this 120-day time period as the absolute minimum necessary to enable interested parties to present comments and evidence to the Board, and the B&O Coal Field Producers urge the Board in the strongest terms not to reduce that amount of time in any way. The B&O Coal Field Producers also believe that the Board should extend the time after the submission of the written record to file briefs. Additional time for the filing of briefs would also give the staff of the Board additional time to analyze the record prior to the submittal of briefs.

As to the second requirement, under the proposed schedule, the Board must hold a voting conference only twenty days after the filing of briefs, a schedule that would appear to make it virtually impossible for the Board to carefully consider the briefs and the evidence to which they refer before voting on this important matter. In the schedule adopted by the Board just three months ago in the NS Proceeding and in the CSX Proceeding, the Board indicated that it needed forty-five days after the filing of briefs before a voting conference should be held. Moreover, in the schedules adopted by the Board in the NS Proceeding and in the CSX Proceeding, the Board afforded itself

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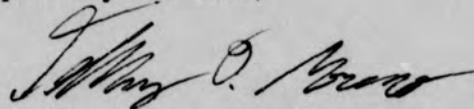
<sup>3</sup> See, STB Docket No. 32760, Decision No. 6, served October 19, 1995.

<sup>4</sup> See, STB Docket No. 33220 ["CSX Proceeding"], Decision No. 8, served January 30, 1997; and STB Docket No. 33286 ["NS Proceeding"], Decision No. 4, served January 30, 1997.

additional time to carefully consider the evidence prior to the issuance of a final written decision.

The B&O Coal Field Producers believe that the Board should take the time to carefully consider what is likely to be a substantial record in this proceeding, and should not be unduly hurried in its deliberative process. In Decision No. 3 in STB Docket No. 33220, which formed the basis of the procedural schedule adopted in the CSX Proceeding, the Board noted that “[b]ecause there has not been a major merger in the East since the early 1980s, given our merger experience, we believe it would be prudent for us to factor in some additional time to accommodate possible unique issues that may arise.” *Id.* at 7. In Decision No. 7 in STB Docket No. 33220, in which it adopted the proposed procedural schedule, the Board noted that the schedule adopted therein would “allow us sufficient time to resolve the unique issues that we anticipate will arise in connection with any merger proposal involving Conrail.” The B&O Coal Field Producers believe that these statements continue to be valid, and that the Board should factor in additional time to the Applicants’ proposed schedule, particularly after the filing of evidence, to afford the parties time to submit well-reasoned briefs and to afford the Board and its staff time to carefully consider the evidence presented.

Respectfully submitted,



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Evergreen Mining Company  
Maryland Coal Association  
Mettiki Coal Corporation  
PBS Coals, Inc.  
Tri-State Coal Association  
Venture Coal Sales  
West Virginia Coals, Inc.

Due and Dated: May 1, 1997

• • **Appendix A**

**B & O Coal Field Producers**

**Anker Energy Corporation  
2708 Cranberry Square  
Morgantown, WV 26505**

**Evergreen Mining Company  
50 Jerome Lane  
Fairview Heights, IL 62206**

**Mettiki Coal Corporation  
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Oakland, MD 21550**

**Tri-State Coal Association  
P.O. Box 259  
Kingwood, WV 26537**

**West Virginia Coals, Inc.  
P.O. Box 630  
Clarksburg, WV 26302**

**Buffalo Coal Company  
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Bayard, WV 26707**

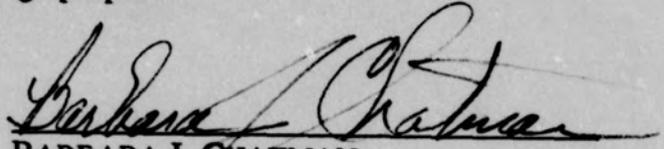
**Maryland Coal Association  
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Frostburg, MD 21532**

**PBS Coals, Inc.  
P.O. Box 260  
Fridens, PA 15541**

**Venture Coal Sales  
RD 3, Box 138A  
Meyersdale, PA 15552**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 1st day of May, 1997, served a copy of the foregoing **COMMENTS ON PROPOSED PROCEDURAL SCHEDULE** on all parties of record, by first-class mail, postage prepaid.

  
BARBARA J. CHATMAN

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 33388**



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

**TRANSPORTATION TRADES DEPARTMENT, AFL-CIO  
COMMENTS ON PROPOSED SCHEDULE**

The Transportation Trades Department, AFL-CIO (TTD)<sup>1</sup> is strongly opposed to the procedural schedule requested by the CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSRC) and Conrail, Inc. (CRI) and Consolidated Rail Corporation (CRC). If it is the intent of the Surface Transportation Board (Board) to consider this transaction in a fair and comprehensive manner then an expedited schedule as proposed by the Applicants must be rejected.

The transaction that the Board will be asked to consider is extensive, complex and unique. Never before have two competing rail carriers joined forces to split-up and essentially eliminate a healthy competitor. There is no doubt that the dismemberment of Conrail will reshape the transportation system in the Northeast with effects felt in every sector of our economy and eventually

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<sup>1</sup>Individual affiliates of TTD, through the Allied Rail Unions and in a joint filing by the Transportation Communication Union, the United Transportation Union, and the International Association of Machinists and Aerospace Workers have also filed comments on the proposed schedule which TTD strongly supports.

in other regions of the country as the movement towards further consolidation of our rail transportation system accelerates.

Clearly, it is the intent of the Applicants to portray this transaction in rosy terms by skirting key issues and concerns such as employees' jobs and rights, service to communities and shippers, and the likely effects on the Applicant rail carriers, the entire railroad network, and our national transportation system. However, as the Board is aware, a number of parties, including workers, have already raised a number of issues which deserve thorough review and which will require ample time well beyond that proposed by the Applicants. Clearly, the Board cannot accomplish its explicit statutory mandate if it accepts the Applicants' contention that an expedited schedule is appropriate.

For example, the \$115 per share that CSX and NS will pay for Conrail represent a 62 per cent increase in the stock price since CSX and Conrail first proposed a merger last fall. There is a great deal of concern that in an attempt to service the debt that will result from this \$10.2 billion sale, the two remaining carriers will have to engage in drastic cost cutting that could threaten employment levels, capital investments, safety and infrastructure maintenance. The Board will have to consider whether this situation created by the inflated purchase price will result in a rail system that is contrary to the overall public interest.

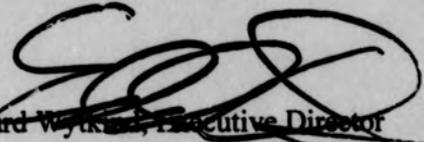
It is clear that the operating plan that will eventually be filed will present the Board with a number of unique issues and concerns. Despite this fact, the Applicants are requesting a procedural schedule that is based on the one followed by the Board in the Union Pacific/Southern Pacific merger and is simply an effort to move this transaction forward as quickly as possible with little regard for allowing the Board and interested parties sufficient time to carefully consider this transaction.

It must also be noted that in proceedings surrounding the break-up of Conrail, interested

parties will have to respond to two separate applications. This will require additional time to review and collect important documents, conduct depositions and prepare comments, protests and other evidence. The schedule contained in the Applicants' petition will not give parties adequate time to complete these tasks in a comprehensive manner and will therefore jeopardize the Board's ability to evaluate all the concerns that may be present.

Under Section 11324(b) of the Interstate Commerce Commission Termination Act of 1995 the Board has a statutory obligation to consider a number of factors, including the interest of rail carrier employees, before it approves the type of transaction that is being considered. Given the unique nature of this transaction and the complicated issues involved, it is the position of transportation labor that the Board cannot adequately fulfill this responsibility under the time-frame suggested by the Applicants. We therefore respectfully request that the petition be rejected.

Respectfully Submitted,

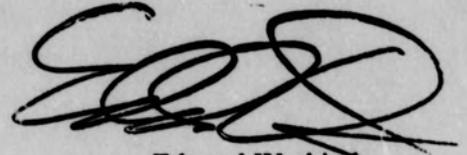


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May 1, 1997

**CERTIFICATE OF SERVICE**

I, Edward Wytkind, hereby certify that, on this the 1<sup>st</sup> day of May 1997, I have caused a copy of the foregoing document to be served by first-class mail, postage prepaid, to the parties listed in the Surface Transportation Board's Decision No. 1 in Finance Docket No. 33386.

A handwritten signature in black ink, appearing to read 'E. Wytkind', written in a cursive style.

Edward Wytkind

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BEFORE THE  
**Surface Transportation Board**

WASHINGTON, D.C. 20423

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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.

**COMMENTS OF  
THE SOCIETY OF THE PLASTICS INDUSTRY, INC.  
REGARDING PROCEDURAL SCHEDULE**

The Society of the Plastics Industry, Inc. (hereinafter sometimes referred to as "SPI") respectfully submits its Comments in response to Decision No. 2 issued by the Board on April 21, 1997, inviting comments on the procedural schedule to govern acquisition of Conrail by CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS").

**I. Statement of Interest**

The Society of the Plastics Industry, Inc. is a trade association of nearly 2,000 members representing all segments of the plastics industry in the United States. SPI's business units and committees are composed of plastics processors, raw material

industry-related groups and individuals. Founded in 1937, SPI serves as the "voice" of the plastics industry.

Plastics resins, STCC 28211, the primary material of interest to SPI in this proceeding, constitute approximately 60 billion pounds of railroad traffic, amounting to some 350,000 carloads of traffic and accounting for more than \$1.1 billion in freight revenue.

The plastics industry, as a major consumer of rail transportation service, has a substantial interest in the proposed consolidation involving the three principal carriers serving the eastern half of the United States.

## II. Comments

### A. Proposed Procedural Schedule

Applicants propose modifying the procedural schedule from that adopted in the separate CSX/Conrail and NS/Conrail control proceedings, Finance Docket Nos. 33220 and 33286, respectively, with a shortening of the schedule from 365 days to 255 days between application filing and the date of final decision. The proposed schedule is similar to that followed by the Board in the UP/SP merger proceeding except that less time is allowed from the close of the formal pleading cycle to the dates of oral argument and voting conference; and additionally, the time from the voting conference to the due date for issuance of the final decision is proposed to be expanded.

In its earlier decisions on the separate CSX and NS notices concerning control of Conrail, SPI argued for an expansion of time over that allowed in the UP/SP merger proceeding for the analysis of the application, examination of applicants' witnesses and preparation of additional comments. This was based upon SPI's experience in the UP/SP merger proceeding. The Board, while abandoning its original proposal to shorten the time for the submission of comments, adhered to the 120 days allowed in UP/SP. Although CSX and NS have reached agreement to jointly acquire and divide and/or operate Conrail, that agreement does not abate the analysis required of shippers to evaluate this transaction. Indeed, there well may be three operating plans submitted, one for CSX, one for NS, and one for the remainder of Conrail. As such, the analytical effort involved in evaluating the primary application may be more than anticipated when CSX and NS contemplated competing applications. SPI requests that the Board provide no less than 120 days for evaluation of the application and submission of comments, and further that the Board consider expansion upon that time as may be requested by other parties.

Secondly, applicants propose briefs being filed 35 days after the filing date of responses to comments, protests, requested conditions, inconsistent and responsive applications, etc. (F + 150 to F + 185). As SPI stated in the earlier phases of this transaction, the 35 days provided in UP/SP between

submission of responses and the due date for briefs clearly was inadequate considering the volume of rebuttal evidence submitted by applicants.<sup>1/</sup> In the procedural schedules adopted in the earlier phases of this proceeding, the Board allowed 80 days following the submission of response to comments to the due date for briefs (F + 180 and F + 260, respectively). SPI urges the Board to provide 60 days from the submission of responsive evidence and pleadings to the due date for briefs.

Finally, SPI notes that the applicants have proposed constricting the time provided in the UP/SP procedural schedule from the brief due date to the dates of oral argument and the voting conference, and moving that time to the period following the voting conference during which the final decision is written. SPI notes that the schedules adopted in Finance Docket Nos. 33220 and 33286, in comparison with the UP/SP procedural schedule, provided for an expansion of the time both following the close of the written record and the oral argument and also for the time between the voting conference and the issue date for the final decision. While the Board obviously can judge the time needed for internal processing, SPI cautions that the procedural schedule should allow adequate time for a thorough review of the issues raised in the record, and that the schedule should not permit any inference that there is a rush to judgment in this proceeding.

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<sup>1/</sup> See e.g., SPI-1, F.D. No. 33286, at p. 5.

B. Discovery.

In the paragraph following the proposed procedural schedule, the Board sets forth provisions regarding the document depository and discovery. The Board further states that "Discovery on responsive and inconsistent applications will begin immediately upon their filing." SPI urges the Board to clarify and revise this statement to read:

Discovery on participants and on responsive and inconsistent applications will begin immediately upon filing of comments and such applications.

SPI bases this request on the experience in UP/SP wherein applicants, in what generally was construed to be a harassing tactic, sought to initiate discovery on interested parties before any comments were filed. See STB Decision No. 23, Finance Docket No. 32760 (served March 26, 1996). Applicants in this proceeding have taken the position that until the application is filed, discovery is a "premature and disruptive burden" and should not be available.<sup>2/</sup> According to their argument, the time for examination of the application and the merits of the transaction follows--not precedes--the submission of the application. The same rationale applies to discovery on non-primary applicant parties: until an interested party has filed comments or an inconsistent/responsive application,

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<sup>2/</sup> See CR-1 (F.D. No. 33220)/CR-1 (F.D. No. 33286) (letter from Paul A. Cunningham to Honorable Jacob Leventhal, January 23, 1997) at p. 4; see also CSX-1, F.D. Nos. 33220 and 33286 (letter from Dennis G. Lyons to Honorable Jacob Leventhal, January 23, 1997).

discovery upon any such party is premature. Conrail so asserted in the UP/SP proceeding. See F.D. No. 32760, Decision No. 23 at p. 2. Indeed, in rejecting applicants' appeal from the ALJ's order severely limiting discovery in UP/SP, the Board noted the identical language quoted above concerning discovery on responsive and inconsistent applications and stated: "To be consistent with Paragraph 1 of the discovery guidelines, applicants' discovery requests must not be premature." Id. At p. 5.<sup>2/</sup>

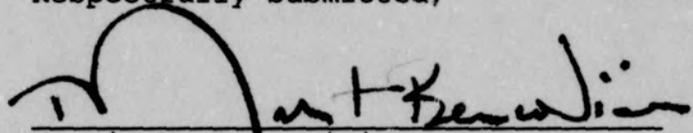
WHEREFORE, THE PREMISES CONSIDERED, The Society of the Plastics Industry, Inc. respectfully urges the Surface Transportation Board to (i) allow adequate time, a minimum of 120 days, for the analysis of the application and the preparation of comments, (ii) provide 60 days following the submission of responses to comments and inconsistent/responsive applications for examination of those pleadings, including review of underlying work papers and deposition of applicants' witnesses,

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<sup>2/</sup> According to counsel for CSX, the beginning point for document production is the depository, and only after review of said documents is it appropriate to "invoke compulsory discovery in an effort to obtain whatever else [the party] believes it needs." CSX-1, supra at p. 2. Moreover, expedited procedures regarding discovery, including motions to compel and appeals from decisions of the Administrative Law Judge assigned to resolving discovery disputes, apply in railroad merger proceedings. To the extent applicants may desire more time than provided from the due date for comments and inconsistent/responsive applications to conduct discovery than available under the proposed procedural schedule, they always are free to request the Board to modify the schedule to accommodate their needs.

and thereafter for the preparation of briefs, and (iii) provide that discovery on any interested party, in addition to non-primary applicants, may begin only after the submission of comments by said party.

Respectfully submitted,



Maureen A. Healey  
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Transportation Issues  
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Attorney for  
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Industry, Inc.

Due Date: May 1, 1997

CERTIFICATE OF SERVICE

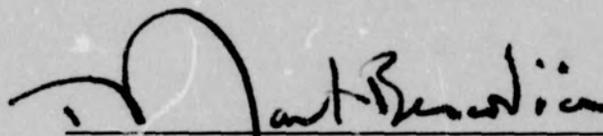
I hereby certify that a copy of the foregoing Comments on behalf of The Society of the Plastics Industry, Inc. has been served this 1st day of May, 1997, by first-class mail, postage prepaid, upon:

Administrative Law Judge Jacob Leventhal  
Federal Energy Regulatory Commission  
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Washington, D.C. 20426

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Zuckert, Scoutt & Rasenberger, L.L.P.  
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Washington, DC 20006-3939

Dennis G. Lyons, Esquire  
Arnold & Porter  
555 12<sup>th</sup> Street, NW  
Washington, DC 20004-1202

Paul A. Cunningham, Esquire  
Harkins Cunningham  
Suite 600  
1300 Nineteenth Street, NW  
Washington, DC 20036

  
Martin W. Bercovici

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corp. and Norfolk  
Southern Ry. Co.--Control and Operating  
Leases/Agreemen. --Conrail Inc.  
and Consolidated Rail Corporation  
Transfer of Railroad Line by Norfolk  
Southern Railway Company to CSX Transportation, Inc.

**COMMENTS OF THE  
RAILWAY LABOR EXECUTIVES' ASSOCIATION,  
ITS AFFILIATED ORGANIZATIONS, THE  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, AND  
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
TO APPLICANTS' PETITION TO ESTABLISH A PROCEDURAL  
SCHEDULE OTHER THAN AS SPECIFIED UNDER 49 U.S.C.  
§ 11325, AND TO BOARD REQUESTS FOR COMMENTS**

These Comments constitute the response of the Railway Labor Executives' Association ("RLEA")<sup>1/</sup> and its affiliated organizations, and the Brotherhood of Maintenance of Way Employees and the International Brotherhood of Electrical Workers (collectively referred to herein as "Allied Rail Unions", "ARU") to the proposals of CSX Corp. and its affiliates ("CSX") and Norfolk Southern Corp. ("NSC") (jointly referred to herein as

<sup>1</sup> The RLEA affiliated organizations are: American Train Dispatchers Department/BLE; Brotherhood of Locomotive Engineers; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Firemen & Oilers; and Sheet Metal Workers' International Association.

"Applicants") for a procedural schedule to govern their anticipated acquisition of the Consolidated Rail Corp. ("Conrail"), merger of the acquired portions of Conrail into the CSX and NSC systems and related transactions. The acquisitions, mergers and related transactions are referred to herein as the "Transaction." The Applicants seek a schedule 200 days shorter than the schedule otherwise applicable under 49 U.S.C. §11325.

The ARU opposes the 255-day schedule sought by the Applicants, but suggests a 365-day schedule as is set forth below.

#### **INTRODUCTION**

The proposed CSX and NS acquisition of Conrail would eliminate one of the three eastern rail carriers and would create two huge rail carriers that clearly would dominate rail transportation in the eastern half of the country. Furthermore these two carriers will engage in an unprecedented joint division of their present competitor, Conrail. Additionally, CSX and NSC will enter a cooperative arrangement regarding the provision of rail service in the East, under which they have jointly decided which of them will serve particular regions, and that they will share service in particular areas.

It must also be recognized that approval of this transaction will likely lead to the creation of true transcontinental railroads. While the Union Pacific--Southern Pacific merger was

under consideration, the President of Burlington Northern Santa Fe remarked on BNSF's interest in a merger with NS. A BNSF--NS merger would then surely be followed by a merger of the Union Pacific and CSX leaving the country with two mega-carriers dominating rail transportation. The proliferation of statements among persons familiar with the railroad industry that this transaction will lead to transcontinental mergers demonstrates that eventuality cannot be ignored. The potential for such future transactions heightens the importance of the Board's review of the proposed Transaction and militates heavily in favor of a deliberate proceeding that would allow the parties and the Board to address the proposed transaction in the context of likely future transactions.

The ARU notes that the Interstate Commerce Commission ("ICC" or "Commission") regularly insisted that it would consider only the transaction presented to it, and not potential future transactions, but the experience of the 1980s and early 1990s with the western railroads revealed the error in that approach. The BNSF and UPSP transactions demonstrated that those mergers were the direct result of Commission decisions in the 1980s, beginning with the SP's acquisition of the Tucumcari line and UP's acquisition of the Western Pacific, through the SFSP proceeding and the RGI Industries acquisition of control of SP, up to UP's acquisition of control of CNW. According to UP and

SP, the transactions at the beginning of the 1980s created inefficient routings that had to be remedied by the UPSP merger, the SFSP acquisition of control of SP irreparably damaged SP, and evidence adduced in the UPSP case shows that the RGI transaction further weakened SP. And BNSF and UPSP cited the transactions of the early 1990s as creating market pressure which drove the BNSF and UPSP transactions. Thus, the Commission's refusal to consider the impact of a pending transaction on future transactions actually rendered the future transactions inevitable. Prevailing market circumstances were seen as justifying each transaction, but those circumstances flowed from the Commission's approval of each separate transaction. A view of the national rail transportation policy as having a forward-looking element might have led to a result other than the current situation of two huge railroads dominating the entire western half of the country.

The Board should respond to that experience of the ICC and recognize that the instant proceeding involves more than the proposed Transaction, and it should allow itself and the non-applicant parties adequate time to address all of the issues presented by this transaction.

**RESPONSE TO THE SCHEDULE PROPOSED BY THE APPLICANTS**

Section 11325 of the Act provides a maximum time period of 455 days for the handling of Class I mergers. Given the

significance of this case and the complexity of the issues presented, it would certainly be reasonable, indeed it would be prudent, for the Board to take the full period of time allowed by the statute. However, despite the size and complexity of the proposed Transaction, the market dominance consequences of its approval, and the potential impacts on shippers, communities, and workers of such a transaction, the Applicants seek to have the Board review their plan in 255 days (56% of the maximum statutory period).

The Applicants have cited the UPSP schedule as supporting their proposal since they essentially adopt the UPSP schedule. Petition To Establish Procedural Schedule at 4-5. However, the UPSP case schedule does not support the proposal of the Applicants.

UP and SP and the Commission cited two reasons for the expedited handling of the UPSP case. First, UP and SP asserted that SP was in such dire financial circumstances that approval of the merger on an expedited basis was necessary to preserve the value of SP, and they implied that it was necessary to prevent a reorganization. Second, UP and SP argued that they were at such a significant competitive disadvantage as against BNSF that every day that approval of the merger was delayed impeded both their short-run and long-run abilities to compete with BNSF. While many parties were skeptical of those claims, they were the key

bases for the Commission's decision to adopt the 255-day schedule in that proceeding.

The instant case does not involve any circumstances akin to those which compelled an expedited schedule in the UPSP case. Conrail, CSXT and NS are all doing well financially; they cannot possibly be compared to SP in that regard. Indeed, they are experiencing robust growth. And none of them faces an overwhelming competitive threat which can be cited as support for expedited handling of this case. Accordingly, neither of the factors which was relied upon as justification for the expedited UPSP schedule is present here, so the UPSP schedule does not support either the schedule proposed by the Applicants or the schedule proposed by the Board.

Additionally, it must be recognized that many parties had substantial complaints about the schedule in the UPSP case, particularly with respect to the period of time allowed for discovery. There were complaints by numerous parties of a lack of adequate time to complete discovery, and some written discovery was never completed. Additionally, Applicants complained about the number of discovery requests that they had to answer. While their complaints were understandable given the large volume of discovery requests, their predicament was largely of their own making because of their push for expedited handling but often the information gathering process suffered along with

UP and SP. There were also problems with the expedited schedule for depositions: follow-up depositions were hard to schedule, some depositions occurred on the same days as discovery conferences (requiring counsel to choose between the conference and a deposition), and some of them occurred too close to the date for the filing of comments. Moreover, the tight clumping of deposition dates was burdensome for small parties who did not have multiple attorneys to cover all of the depositions and other proceedings. Thus, the UPSP schedule was hardly a model which should be copied in the instant case, especially given the absence of any circumstances compelling expedition.

A particular concern of the ARU is the time allotted for non-applicant parties to engage in discovery and develop their affirmative cases.

Given the circumstances of this Transaction it simply will not be possible for non-applicant parties to engage in meaningful discovery in the time allowed under the Applicant's proposal. Smaller parties such as the rail unions, small shippers, and communities would be especially hindered because they cannot afford to deploy squadrons of lawyers to respond to the demands of such a huge Transaction in a compressed schedule.

It must be recognized that the simultaneous presentation of plans to acquire Conrail and merge parts of Conrail into CSXT and NS will present a daunting challenge to all parties to this

proceeding. While the Transaction has been described as a single joint control arrangement with a single Application, it really involves the split-up of Conrail and enlargement of the NS and CSXT systems. The true nature of this Transaction will require the Applicants to file at least two operating plans, two employee impact statements and two of environmental filings. For rail labor and others, the Application will look like two applications. Indeed, in support of their own request to file separate 50-page briefs, Applicants have stated that this Transaction "involves the extension of two separate and competing railroads into the territory now served by Conrail. It also involves separate and competing operating and marketing plans for those two railroads. **The process thus has many of the aspects of separate applications by the two carriers.**" Petition to Establish Procedural Schedule at 8, emphasis added. Not only will representatives have to review documents and statements for both NS and CSXT, they will have to depose two sets of officials in similar positions from both NS and CSXT. Moreover, the operating plans that will be provided will be especially complex because NS and CSX will explain not only their individual expansions but also how they decided to divide Conrail and the ways in which they will interact in shared facilities and compete in other areas. It is simply unrealistic to expect that non-applicant parties can adequately engage in discovery and prepare

comments for what is essentially two transactions in the same period of time allowed for the UPSP and BNSF transactions.

The Applicants have offered no substantial reason why they need such a fast schedule. The only reasons offered by Applicants are that they have decided to pay a substantial premium for the stock of Conrail, and to pay the stockholder consideration "'up front' while holding the acquired Conrail stock in a voting trust or trusts" pending completion of STB processes; and that they have a concern that a schedule longer than they have proposed could cause attrition of Conrail's management. Petition to Establish Procedural Schedule at 5. None of these concerns is sufficient justification for adoption of Applicants' expedited schedule. Simply put, the choices to pay a huge premium on Conrail's stock and to pay the money "up front" were choices freely made by the Applicants.

If not for their macho bidding war which engendered NS' commitment to a purchase price of \$115 per share, the cost of the Transaction could have been significantly less. The Applicants made a conscious choice to pay substantially more than market value for Conrail's stock and to pay it up front; they should not be able to use that choice to speed regulatory review of their own proposal. If the Application is approved as presented the result surely will be that shippers and consumers ultimately contribute to defray the cost of this Transaction through higher

rates, and that railroad employees will be forced to sacrifice in jobs and losses of important work rules and practices. Shippers, consumers and rail workers should at least be provided adequate time to analyze the two parts of the Transaction and to prepare comments and requests for conditions to protect their interests.

Similarly, the alleged concerns about attrition of Conrail management and deterioration of Conrail operations are not sufficient to justify the expedited schedule sought by the Applicants. These concerns are present any time that an Application is filed by one railroad to acquire control of another. This problem is presumably accounted for in the 455-day schedule established by Congress for all Class I transactions, and the 455-day schedule is the result of recent Congressional reduction of the statutory schedule. Concerns have also been voiced by other parties about Conrail generally being in "limbo" during the pendency of STB proceedings; but again, these concerns are present in every large control/acquisition date. Accordingly, concerns for what might happen to Conrail while the Application is pending are not unique to this proceeding and do not justify the schedule sought by the Applicants.

Applicants note that the Board adopted a 365-day schedule in the now dismissed rival CSX and NS bids to acquire Conrail. They argue that the only reason for the longer schedules in those cases was the need to consider competing bids, a problem that is

not present here. However, as the ARU have shown the fact that the Transaction is, as Applicants acknowledged (Petition at 8), effectively two transactions, presents similar concerns as in the prior CSX and NS transactions. Furthermore, it is inaccurate to say that the only consideration in the longer schedule in those cases was the competing bids, the Board specifically noted that it had not dealt with an Eastern merger for some time which suggested a need for longer schedule. That same consideration is obviously present in the instant case.

The Board may feel some pressure to accept the Applicants' schedule out of a desire to prove to some in Congress that the Board can handle regulatory oversight quickly. But there is a difference between reducing regulatory delay and just providing the appearance of a review. The non-applicant parties and the Board have been presented with two huge transactions within the single mega-transaction that will forever alter the shape of railroad operations in this country. This is not a time for political gamesmanship. If the Board cannot provide a review process which allows non-applicant parties to develop an adequate record, and the Board to give deliberate consideration to this most important Transaction, then there really is no reason for the Board to exist. If a transaction like this is hurried through the process and then rubber-stamped then there has been no real regulatory oversight.

Rejection of the Applicants' proposed schedule will mean that they will just have to wait while the public and the Board scrutinize their plans. But, again, any adverse consequences to them of a more deliberate process are purely the result of their own actions. By contrast, the public interest militates strongly in favor of a more deliberative process and there are no countervailing public interest concerns (such as in UPSP with respect to the financial health of SP and competitive balance in the West) which militate in favor of the Applicants' proposal.

The ARU therefore respectfully submits that the Board should adopt their proposal for the schedule in this proceeding which is set forth below.

**ARU PROPOSED SCHEDULE**

Although the ARU submits that the Board cannot possibly perform a minimally adequate review of the proposed merger in the time frames proposed by Applicants, the ARU further submits that it will not be necessary for the Commission to follow the full schedule set forth in 49 U.S.C. § 11325. The ARU proposes that the schedule set forth below be applied in this proceeding.

**Schedule**

- F Primary application and related applications filed.
- F + 30 Commission notice of acceptance of primary application and related applications published.
- F + 45 Notification of intent to participate in proceeding due.

- F + 60 Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification with regard to such applications due.
- F + 75 Comments due.
- F + 90 Comments by DOJ and DOT due.
- F + 120 Inconsistent and responsive applications due.
- F + 140 Notice of acceptance (if required) of inconsistent and responsive applications published in the *Federal Register*.
- F + 170 Discovery closed; all opposition evidence, requests for conditions and supporting arguments due.
- F + 190 Responses to inconsistent and responsive applications due.
- F + 220 Responses to comments, protests, requested conditions, and other opposition arguments and evidence due. Rebuttal in support of primary application and related applications due.
- F + 220 Rebuttal in support of inconsistent and responsive applications due.
- F + 250 Briefs due, all parties (not to exceed 80 pages).
- F + 310 Oral argument.
- F + 320 Voting conference.
- F + 365 Date for service of final decision.

The ARU proposal would add 50 days to the period allowed in the UPSP case for completion of the initial round of discovery and submission of requests for conditions and opposition evidence and argument, but it would still be half a year less than the period allowed for development of evidence under Section

ATTACHMENT D-500

AND COTTON PAPER

11325(b)(3). Adoption of the ARU proposal would involve only a modest increase in the due date for completion of discovery and submission of requests for conditions and opposition evidence and argument, but given the problems with the discovery in the UPSP case and the absence of circumstances supporting a shorter period in the instant case, such a modest increase is eminently reasonable. There will be a vast number of documents to review, many expert statements to examine, multiple depositions to be conducted in short periods of time, and large numbers of documents produced relatively contemporaneously. And this process will have to be duplicated for many parts of Transaction given its dual nature. Then, after discovery is completed, opponents and parties seeking conditions will have to prepare their protests, requests for conditions, and opposition evidence and argument. The ARU submits that 170 days for this work is certainly not excessive.<sup>2/</sup>

The ARU further submits that the time allotted for Applicants to respond to inconsistent and responsive applications and comments and protests and requests for conditions is also too

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<sup>2</sup> If the Board is firmly committed to a schedule that is less than 365 days because the Board believes that it can perform its regulatory functions in a shorter time span, the ARU nonetheless urges the Board to set the time for non-applicant parties to engage in discovery and submit comments and requests for conditions at F + 170. If the Board Accepts the remainder of the Applicants' schedule but accepts this aspect of the ARU proposal, the total schedule would be 305 days.

short. The ARU suggests that Applicants' response time be 70 days from the submission of inconsistent and responsive applications and fifty days from the submission of requests for conditions and opposition evidence and argument.

Assuming that the time for discovery, submission of requests for conditions, and opposition evidence and argument is increased as urged by the ARU and that there will be no need for submission of additional evidence with the briefs, ARU believes that the time periods it has allowed between the rebuttals in support of inconsistent and responsive applications and the due date for briefs, are reasonable. However, the ARU has proposed an 80-page limit for briefs. In this regard the ARU notes that the Applicants propose to file separate 50-page briefs because of the need to address the individual aspect of the two components of this Transaction. Petition at 8. Obviously, non-applicant parties have the same problem and should have at least an 80-page limit if Applicants are each to be allowed to file 50-page briefs..

For all of these reasons, the ARU urges the adoption a 365-day schedule in this case with the due dates set in accordance with the ARU proposal. This proposed schedule is significantly shorter than the maximum time allowed by the statute, but it would still allow all of the parties to this proceeding to participate in a meaningful way and would allow the Board to

effectively perform its statutory function. By contrast, the schedules proposed by the Applicants' would simply allow for fast approval of the Transaction regardless of the interests of other parties. The proposals of Applicants and the Board should be rejected, and the ARU proposal should be accepted.

Respectfully submitted,

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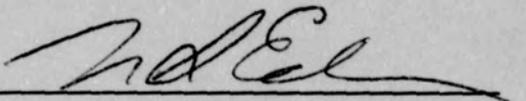
  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served one copy of the foregoing Comments of the Railway Labor Executives' Association, its Affiliated Organizations, The Brotherhood of Maintenance of Way Employees and the International Brotherhood of Electrical Workers To Applicants' Petition To Establish A Procedural Schedule Other Than As Specified Under 49 U.S.C. §11325, And To Commission Requests For Comments, by first-class mail, postage prepaid, to the offices of the parties on the attached list.

Dated at Washington, D.C. this 1<sup>st</sup> day of May, 1997.

  
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May 1, 1997



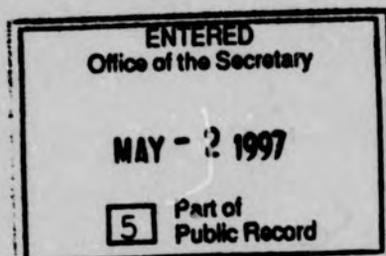
Vernon A. Williams, Secretary  
Surface Transportation Board  
Suite 700  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

By Decision No. 2 in the above-referenced proceeding, the Surface Transportation Board requested comments on a procedural schedule submitted by the Applicants in this matter. Enclosed herewith are an original and twenty-five copies of the comments of the United States Department of Transportation on the proposed procedural schedule. Pursuant to the Board's request, these comments are also contained on the enclosed computer diskette, formatted for WordPerfect 5.1 and therefore suitable for conversion into WordPerfect 7.0.

I have also included two additional copies that I ask be date-stamped and returned to the messenger.



Respectfully submitted,

*Paul Samuel Smith*  
Paul Samuel Smith  
Senior Trial Counsel

Enclosures

cc: Hon. Jacob Leventhal  
Dennis G. Lyons, Esq.  
Richard A. Allen, Esq.  
Paul A. Cunningham, Esq.



U.S. Department of  
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May 1, 1997

Hon. Vernon A. Williams, Secretary  
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Washington, D.C. 20423-0001

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

Dear Secretary Williams:

The Surface Transportation Board ("STB" or "Board") has requested comment on a procedural schedule proposed by the Applicants in the above-referenced proceeding. Decision No. 2, 62 Fed. Reg. 19390 (April 21, 1997). For the reasons discussed below, the United States Department of Transportation ("DOT" or "Department") submits that the schedule should be expanded to allow additional time for creation and analysis of the record and preparation of briefs in this critical case.

The Applicants (also referred to herein as Conrail, CSX, and Norfolk Southern) seek Board approval of a series of transactions and agreements by which CSX and Norfolk Southern would gain control of Conrail and then (for the most part) divide its assets between them by various direct and indirect corporate means. Id. The Applicants have proposed a procedural schedule that encompasses a total of 255 days from the submission of the initial application to issuance of a written decision by the STB.

This schedule is substantially similar to that adopted by the Board in the recently

concluded merger involving the Union Pacific and Southern Pacific railroads ("UP/SP"). *Id.* 19392. It is also virtually identical to that proposed by both Norfolk Southern and CSX in their now-dismissed independent efforts to secure total control of Conrail. Finance Docket Nos. 33286 and 33220, respectively. The Board in each of these dockets immediately extended this period to 300 days, and asked for comment thereon, in light of two factors: (1) the fact these would be the first proposed mergers to be considered under the terms of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), and (2) the fact that the proposed mergers would have been the first major rail mergers in the East in approximately 15 years. 61 Fed. Reg. 60318-19 (November 27, 1996,) and 61 Fed. Reg. 58611-12 (November 15, 1996), respectively.

In its comments on the Board's proposed schedules the Department in each case agreed with these factors and urged that additional time was necessary in order to afford interested parties an adequate opportunity to analyze record evidence and to express their views on the important issues presented. The Board was receptive to these concerns and thereafter adopted an expanded procedural schedule totaling 365 days, taking into account the likelihood at the time that two competing applications for Conrail would be filed. F.D. No. 33220, Decision No. 8, served January 30, 1997; F.D. No. 33286, Decision No. 4, served January 30, 1997.

The Department appreciates that there is no longer any prospect for multiple applications for the control of Conrail by a single carrier. Nonetheless, there is every reason to return to a schedule approximating the 300 days initially put forward by the STB in each of the individual Conrail dockets. First, this proceeding does not concern the usual acquisition of one rail carrier by another, with the resultant single operating plan, one set of financial documents, and other combined data. The prospective division of Conrail into NS and CSX will produce two operating plans, two sets of financial documents, and two compilations of related data. The substantive material to be produced, analyzed, and responded to in this case will of necessity require more time than that associated with traditional rail consolidations.

Second, the Applicants' proposal is still the first major rail consolidation to be

considered under the terms of the ICCTA, and this is still the first major railroad consolidation in the East in some 15 years. The former factor requires that the Board and interested parties consider the effect of the proposal on competition not only on rail carriers in the affected region, but also "in the national rail system." 49 U.S.C. § 11324(b)(5). This may include the competitive implications of the dwindling number of Class I railroads not just in the East but nationally as well, and the possibility that new consolidations may be spawned.<sup>1</sup>

This transaction's Eastern locale also remains significant. A series of rail mergers in the West has generated an ongoing familiarity among public and private parties with pertinent markets, traffic, intramodal and intermodal competition, and other relevant factors in that region. This exposure effectively reduced the time required to create and assess the records in the more recent consolidations. Such a background is totally lacking in this proceeding. Even the benefits derived from experience with prior Western cases did not wholly make up for the expedited schedule in the UP/SP merger. As we pointed out in our prior procedural comments in Finance Dockets 33286 and 33320, DOT found it extremely difficult even to review each new round of evidence submitted by the parties and to prepare its brief on a timely basis. The task was certainly even more daunting for those parties that undertook to produce their own evidentiary filings. Given the importance of this pivotal case, a small amount of extra time is required at critical junctures in the schedule to ensure the opportunity for a thorough analysis and a sound ultimate decision.

There is one more factor that may require the attention, and thus the time, of the Board and interested parties. This transaction may present distinct instances of environmental consequences similar to, and perhaps greater in number than, those affecting Reno, Nevada, and Wichita, Kansas, in the UP/SP merger. These issues first became apparent to all parties in that case through the preliminary report produced by the Board's Section of Environmental Analysis, which was responded to by the Applicants, DOT, and other parties. Environmental Assessment, served April 12, 1996; see DOT-3. That report and those responses

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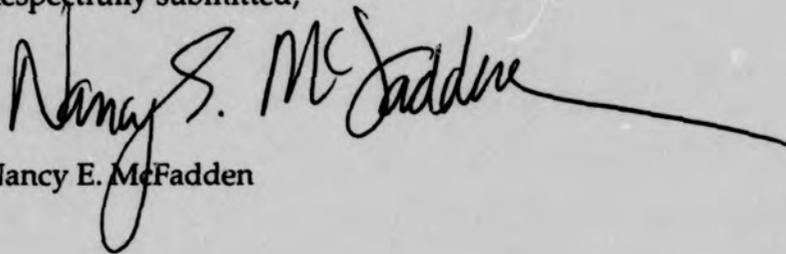
<sup>1</sup>/ DOT notes that the Canadian National Railway Company, a commuter rail line, and coal shippers in the East and Midwest have already expressed concerns about various implications of the proposed transaction.

were not specifically provided for in the UP/SP proceeding's procedural schedule, yet just as surely required time and attention. It is not possible to discount the prospect of such circumstances in this case. We therefore urge the Board to bear this factor in mind as it considers the schedule appropriate for this proceeding.

The Department accordingly proposes that the schedule in this proceeding should permit the parties at least a modest amount of additional time at each stage of the evidentiary and briefing process. Specifically (where "F" is the date of the primary application), the initial submission of evidence in opposition to the primary application should be due on F+135, rather than F+120 (allowing 135 days rather than 120), rebuttal evidence in favor of the primary application should be due on F+175, rather than F+150 (allowing 40 days rather than 30), rebuttal evidence in support of opposition parties should be due on F+205, instead of F+ 165 (allowing 30 days rather than 15), and briefs should be due on F+240, instead of F+185 (allowing 35 days rather than 20).<sup>2</sup>

Adoption of DOT's recommendation would entail a proceeding of only 310 days, assuming no other changes.<sup>3</sup> It would comply with ICCTA procedural constraints (49 U.S.C. § 11325(b)), and serve the public interest in sound decisionmaking based upon a thorough record.

Respectfully submitted,



Nancy E. McFadden

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<sup>2</sup>/ DOT considers adequate the proposal for 15 days to prepare for oral argument.

<sup>3</sup>/ DOT takes no position on the time allotted for a voting conference and release of the Board's written decision.