VIA FEDERAL EXPRESS

Office of the Secretary
Case Control Branch
Attn: STB Finance Docket 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

August 21, 1997

Dear Sir or Madam:

Enclosed for filing are the original and twenty-five copies of the “Description by Massachusetts Central Railroad Corporation of Responsive Application.” Also enclosed is a 3.5” diskette formatted for Word 7.0 containing the Description.

Would you please date-stamp and return the extra copy of this document in the self-addressed, stamped envelope enclosed? Thank you very much for your assistance.

Very truly yours,

[Signature]
James E. Howard
DESCRIPTION BY
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
OF RESPONSIVE APPLICATION

Massachusetts Central Railroad Corporation ("MCER"), a party of record in these proceedings, is a rail carrier which operates a line of railroad between Palmer, Massachusetts and Barre, Massachusetts. In accordance with the decision of the Board dated May 22, 1997 setting forth a procedural schedule (Decision No. 6; Notice of Issuance of Procedural Schedule), MCER is submitting this description of a responsive application which it intends to file.¹

Background

MCER serves customers located on its line and operates an intermodal container facility in Palmer, Massachusetts. MCER currently has an interchange with Conrail at

¹ MCER has, in compliance with Decision No. 6, reserved Sub-No. 41 for its responsive application. MCER was advised by a Board staff member not to use such number until the application is filed.
Palmer, which is located on the Conrail main line between Boston and Albany. In addition, MCER interchanges with New England Central at Palmer.

The interchange between Conrail and MCER currently takes place on a line in Palmer between Mile Post 0.0 and Mile Post .83. The line is owned by Conrail, and MCER has operating rights over the line. Between Mile Post .83 and Mile Post 1.6, also in Palmer, Conrail has leased its line to MCER. MCER uses a portion of the leased line to conduct its intermodal services. MCER owns and has significantly improved property adjacent to the leased line for purposes of its intermodal operations and headquarters.

As described in the primary application in these proceedings, CSX is scheduled to acquire the Conrail lines in Massachusetts, including the Conrail main line and the Conrail line which is leased to MCER. At the current time, MCER works in conjunction with Conrail to handle intermodal business at Palmer. In addition, however, Conrail and MCER compete for intermodal traffic which Conrail handles to and from points between Palmer and Boston.

The lease agreement between Conrail and MCER contains certain provisions which potentially restrict MCER from competing effectively with respect to intermodal business. For example, the lessor could take certain actions to make the operation of MCER’s intermodal business more costly or to terminate the lease.

In response to the proposed acquisition by CSX of the Conrail lines in Massachusetts, NS has reportedly entered into an haulage arrangement with Canadian Pacific enabling NS to reach Albany. NS has also been exploring the possibility of using routes east of Albany in order to reach short-lines and customers in New England,
including MCER, and thereby to compete with CSX. MCER would welcome the opportunity to interchange with NS as well as CSX.

Anticipated Harm and Responsive Application

The acquisition of the Conrail lines in Massachusetts by CSX and the assumption by CSX of the Conrail lease with MCER will potentially have a harmful impact on MCER. CSX will be a much stronger competitor than Conrail has been and will have the ability to impose additional restrictions on MCER or increase rental payments in order to limit the ability of MCER to provide competition with respect to intermodal container business. CSX may also react commercially and competitively to any attempt by NS to reach short-lines in New England, such as MCER.

In order to address these competitive concerns, MCER anticipates the filing of a responsive application to request protection of the ability of MCER to continue to compete effectively with CSX. The specific relief to be requested in the application may include a requirement that CSX sell to MCER the line which MCER currently leases from Conrail or that CSX grant trackage rights to MCER in order to enable it to interchange with carriers other than CSX at Albany or elsewhere. In addition, MCER may request the Board, as a condition of approving the primary application (but not as a matter which would be the subject of a responsive application), to reform the lease
between MCER and Conrail in certain respects in order to prohibit CSX from imposing restrictions on the ability of MCER to continue to operate competitively.

Respectfully submitted,

[Signature]
James E. Howard LLC
90 Canal Street
Boston, MA 02114
(617) 263-1322

Attorney for Massachusetts Central Railroad Corporation

Dated: August 21, 1997
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 22, 1997 he served the "Description by Massachusetts Central Railroad Corporation of Responsive Application" by causing copies to be mailed by first class mail, postage prepaid, to the Parties of Record on the service list compiled by the Board and included in Decision 21 dated August 19, 1997 and on Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington D.C. 20426.

James E. Howard
90 Canal Street
Boston, MA 02114
(617) 263-1322
August 21, 1997

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

DESCRIPTION OF COMMENTS

RE: CSX Corporation and Conrail; STB Finance Docket No. 33388

Dear Secretary:

The Metropolitan Development Association of Syracuse and Central New York, Inc. (MDA) is a private, not-for-profit organization whose membership includes the chief executive officers of the 70 leading firms in the region. The MDA seeks to encourage the growth and development of Central New York. To accomplish its goals, the MDA undertakes projects in economic development, transportation, urban revitalization and comprehensive planning.

The MDA has an established transportation committee whose membership includes major businesses and leading shippers in Central New York. The committee has held several meetings on the proposal by CSX and Norfolk Southern to acquire Conrail, including meetings with representatives of CSX, the Canadian National, the Delaware-Otsego Railroad (New York, Susquehanna and Western) and the New York State Department of Transportation.
The MDA has no objection to the CSX/NS acquisition of Conrail, but it has a number of concerns, which it hopes will be favorably resolved through this process:

1. **Future of the Delaware-Otsego and the Syracuse-Binghamton Line**

   Fifteen years ago, Onondaga, Cortland and Broome Counties nearly lost rail service on this line when Conrail petitioned to abandon and demolish a section of it. At that time, the three county industrial development agencies (IDAs) acquired the line to provide tax relief, the Delaware-Otsego agreed to operate it, and New York State invested heavily in the rehabilitation of the line. This partnership protected rail service to a number of shippers.

   We understand that CSX, NS, and Walter Rich have developed a plan to take the line private. At this time however, there are very few details available on the agreement. We understand that 70% of the D&O’s traffic on this line is from CSX and NS. If that overhead traffic is taken away, the line is not likely to be profitable.

   MDA wants to see more details of this agreement and understand how the considerable public investment in this line will be protected. If this line is lost as a result of this agreement, considerable harm would be caused to this region. We are asking the STB to seek specific assurances and to share information with us on the continued operation of this line.

2. **Competitive Access/Reciprocal Switch Charges**

   While Syracuse is a large rail market, since the creation of Conrail, the community has not had true competitive rail freight service. Markets much smaller than Syracuse are served by two or more railroads.

   MDA would like to see an opportunity emerge out of this agreement to restore some level of competition to our rail market. We believe that ultimately, competition is the best guarantee of good service and reasonable prices. We believe that this could be provided by either allowing NS more access to our market through the D&O, or by granting another railroad access rights to Syracuse via the Montreal Secondary.
We believe that the problems created by lack of competition can be remedied by dual service, and by granting competitive access to all shippers in Central New York. We appreciate CSX’s assurances that they intend to build the traffic on the Montreal Secondary, but by providing some form of competitive access (e.g. shared asset, trackage rights and access to shippers), the benefits of competition could be extended to this market.

We are concerned that without dual access either through the D&O or another railroad over the Montreal Secondary, Syracuse will suffer competitive harm relative to Detroit and Buffalo. If Buffalo gains relief that it requests (which we support), Syracuse could be disadvantaged relative to international trade with Canada.

We also believe that reasonable reciprocal switching charges are necessary to make this competition effective. CSX has not been able to address this issue, as they told us that they are not allowed to examine Conrail’s costs. We need the STB to require reasonable reciprocal switch charges to make competition work in this community. We also would like to see the reciprocal switch charge district large enough to include the five-county region (Onondaga, Madison, Cortland, Cayuga and Oswego).

3. Reliability/Predictability/Demurrage Rates

Several of our members have stated that carload deliveries have often been unpredictable from Conrail, and that there is little opportunity to schedule cars. We know that this has driven some manufacturers away from rail.

We look forward to the accelerated schedules and reduced delivery times promised by CSX. They assured us that they want to build up this business. We wholeheartedly support them in this effort, and would like to see the reduction in travel times promised included in performance criteria to be stated in the agreement.

The demurrage rates charged by Conrail have also discouraged the use of rail freight. While shippers understand the need to return cars, the high rates, when combined with the unpredictability of delivery, have made rail an unnecessarily expensive option, when cars are delivered just before weekends or holidays. MDA would also like to see the demurrage rates that CSX intends to charge addressed in the agreement.
Again, MDA has no objection to the CSX/NS acquisition of Conrail. Like the acquiring railroads, we share their enthusiasm for true competition as the best means to guarantee good service at a reasonable cost. We ask that the STB insure that we do not lose rail service as a result of the acquisition and request your assistance in building an opportunity for better rail freight service in Central New York.

Sincerely,

[Signature]

Irwin L. Davis
Executive Vice President

ILD/nm

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

APPEAL FROM ADMINISTRATIVE LAW JUDGE’S
DISCOVERY RULING

The Allied Rail Unions ("ARU") hereby appeal to the Board
for review of a decision of Administrative Law Judge Jacob
Leventhal regarding a dispute between the ARU and Applicants'
with respect to Applicants' objections to certain ARU
interrogatory discovery requests.

FACTS

On August 21, 1997, Judge Leventhal held a discovery
conference to consider certain interrogatories propounded by ARU
to the Applicants, Applicants' objections to those

1 "Allied Rail Unions" means the American Train Dispatchers
Department/BLE ("ATDD"); Brotherhood of Locomotive Engineers
("BLE"); Brotherhood of Maintenance of Way Employees ("BMWE");
Brotherhood of Railroad Signalmen ("BR3"); Hotel Employees and
Restaurant Employees International Union ("HERE"); International
Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths,
Forgers and Helpers ("IBR"); International Brotherhood of
Electrical Workers ("IBEW"); The National Conference of Firemen &
Oilers/SEIU ("NCFO"); and Sheet Metal Workers' International
Association ("SMWIA").
interrogatories and ARU's response to those objections. Among the interrogatories at issue were ARU interrogatories No.s 48-51. Those interrogatories are as follows:

**Interrogatory No. 48**

Identify all savings that CSX believes were obtained by the following consolidations:

a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.

b. Consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district.

c. Consolidation of Waycross, Georgia carmen work to CSXT's Raceland, Kentucky shops.

d. Consolidation of CSX dispatching work in Jacksonville.

**Interrogatory No. 49**

Explain how CSX believes that the public benefitted by the following consolidations (to the extent CSX believes that rates were reduced or rate increases were avoided, provide specific explanations regarding the bases for those beliefs):

a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.

b. Consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district.

c. Consolidation of Waycross, Georgia carmen work to CSXT's Raceland, Kentucky shops.

d. Consolidation of CSX dispatching work to Jacksonville.
Interrogatory No. 50

Identify all savings that NS believes were obtained by consolidation of locomotive power distribution in Atlanta.

Interrogatory No. 51

Explain how NS believes that the public benefitted by the consolidation of locomotive power distribution work in Atlanta (to the extent CSX believes that rates were reduced or rate increases were avoided, provide specific explanations regarding the basis for that belief).

Applicants asserted that these interrogatories did not seek information relevant to this proceeding, were not reasonably calculated to lead to the discovery of admissible evidence, and were unreasonably burdensome and unduly vague. Applicants also asserted that the ARU sought this information to relitigate issues that the Board had previously decided against rail labor, citing Union Pacific Corp. et al.--Control and Merger--Southern Pacific R.R. Corp. et al., Finance Docket No. 32760, Decision No. 4. (served August 6, 1996) (“Union Pacific Control”), and CSX Corp.--Control--Chessie System et al., Finance Docket No. 28905 (Sub-no. 27) (served July 1, 1997) (“CSX Control Sub-no. 27”), and that the disputed interrogatories were therefore impermissible. A copy of the relevant portions of Applicants’ Objections are attached hereto as Attachment A.

The ARU responded by asserting that the interrogatories are relevant to assertions by CSX and NS that their acquisition of control and division of Conrail (“Transaction”) is consistent
with the public interest and that the public will somehow benefit from savings that are allegedly likely to flow from the Transaction. Among other things, the ARU cited Appendix A to each Operating Plan (Application Volumes 3A and 3B). ARU responded to the claim that the STB had rebuffed rail labor on requests for conditions which addressed issues to which these discovery requests were directed by noting that an agency may accept in a later case an argument that was rejected in a prior case, and that new evidence could be the catalyst for such a change in views. A copy of this portion of the ARU response to Applicants' objection is attached hereto as Attachment B.2

ALW Leventhal declined to compel Applicants to respond to ARU Interrogatories Nos. 43-51. He noted that the requested information concerned separate proceedings from the one which is presently before the Board.3

The ARU respectfully submits that the information sought in its interrogatories nos. 48-51 is relevant to this proceeding and that Applicants should have been compelled to respond to those discovery requests; they therefore appeal to the STB for review

2 The ARU response erroneously referred only to interrogatories nos. 48-50. At the Discovery Conference the ARU Counsel noted that the response was intended to also cover interrogatory no. 51.

3 The ARU does not yet have a copy of the transcript of the hearing before Judge Leventhal so the ARU has described the gist of his holding on this point from review of counsel's notes of the hearing.
and reversal of the ALJ’s ruling, and for an order directing the Applicants to answer those requests.

**BACKGROUND**

A. RECENT CONTROL/MERGER DECISIONS AND THEIR EFFECT ON RAIL WORKERS

The proposed CSX/NS acquisition of control/division of Conrail follows the 1980 control transaction that created CSXT and the 1982 transaction that created the current NS system. The impact of these transactions on railroad workers was far greater than transactions prior to 1980 because they were utilized to change collectively bargained rights of those employees who continued working. For the first time, ICC approval of a control or merger transaction was successfully utilized to force changes in collective bargaining agreements (“CBAs”) and/or to immunize such changes, implemented by the carriers involved, from challenge under the Railway Labor Act ("RLA"), 45 U.S.C. §151 et seq., and from strikes. Each carrier argued that changes in employee collective bargaining rights or rights under existing collective bargaining agreements were permitted by the ICC approvals of the transactions. In those cases and subsequent cases, the carriers have argued that their actions were

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reasonably contemplated by the merger/control transactions approved by the ICC. They have also argued that the abrogation of employee rights was permitted under the 49 U.S.C. §11341(a) [now Section 11321(a)] immunity from other laws afforded to those involved in approved merger and control transactions, or by the selection of forces/assignment of employees implementing arrangement process under Article I Section 4 of the New York Dock employee protective conditions. (New York Dock Ry.--Control--Brooklyn Eastern District Terminal, 360 ICC 60 (1979), aff’d sub nom. New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979).

As the Board is well aware, the rail unions have contested the actions of these carriers and decisions of the ICC, charging that the carrier actions violated the RLA, that the carrier actions were not supported by the Interstate Commerce Act and that their actions were prohibited by the employee protective conditions including Art. I. Section 2 of the New York Dock conditions which requires that pre-transaction rates of pay,

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5 See e.g. Carmen I, 4 ICC 2d at 650; Carmen II, 6 ICC 2d at 727; CSX Corp.--Control--Chessie System, Inc., F.D. No. 28905 (Sub-No. 27) (Served December 7, 1995), “O’Brien Review Decision” (Attachment A) at 8-10.

6 See e.g. Carmen II, 6 ICC 2d at 720-722; O’Brien Review Decision at 3 n.7 and 12-15.
rules, working conditions and other rights, privileges and benefits under existing agreements be preserved. 360 ICC at 84.7

In the Springfield Terminal case the ICC held that an arbitrator acting under Art. I §4 of the protective conditions could override existing agreements.8 The case was appealed to the Court of Appeals for the D.C. Circuit which held that Art. I §2 could not have been meant to freeze every word of every agreement and that carriers could not use ICC authorization to modify agreements "willy-nilly".9 The Court stated that carriers could not change or ignore CBAs merely to transfer wealth from rail workers to the railroad and that for a change to be permitted, there must be a showing of necessity related to the attainment of some transportation benefit to the public that would not be available if the CBA was "left in place." 987 F. 2d at 815.10

As the Board also knows, the D.C. Circuit recently reviewed an ICC decision concerning arguments by CSXT that it could

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9 Railway Labor Exec's Ass'n v. U.S., 987 F.2d 806, 815 (D.C. Cir. 1993), ("Executives").

abrogate existing CBA rights by virtue of ICC approval of the 1986 CSX control transaction. Although the Court affirmed the ICC's decision, it reiterated a number of the key holdings in the Executives' case, noted that no rates of pay, rules or working conditions (but only "rights, privileges and benefits") were at issue in that case (108 F.3d at 1430 n.4), that contract provisions "treading upon rights, privileges, or benefits in a CBA 'are immutable'" (id. at 1429), but that the unions in that case had not made a showing as to losses of particular rights, privileges or benefits (id. at 1430). The Court specifically stated that Article I §2 of the New York Dock conditions requires that rates of pay, rules and working conditions be preserved (id. at 1429) and that to the extent the changes in CBA terms are permitted, there must be a requisite showing of necessity (id. at 1431).

And the STB, in a recent decision on review of a New York Dock Art. I Section 4 arbitrator, affirmed the arbitrator's decision against a challenge based on an asserted violation of Art. I §2. However, the STB noted that in Executives' "the


13 Union Pacific Corp. et al.--Control and Merger--Southern Pacific Transp. Co. et al., F.D. No. 32760 (Sub-No. 22) (Served June 26, 1997). (Attachment C)
Court admonished the ICC to refrain from approving [CBA] modifications that are not necessary for realization of the public benefits of the consolidation, but are merely devices to transfer wealth from employees to their employer.” Id. at 6.

ARGUMENT

A. APPLICABLE STANDARDS FOR STB REVIEW

Under 49 U.S.C. §11324, the STB must consider whether the proposed transaction is "consistent with the public interest" (49 U.S.C. §11324(c)). The employees of the Applicants and other railroad workers are clearly part of the public whose interests must be considered. Additionally, the STB the Board is directed to specifically consider the "the interest of rail carrier employees affected by the proposed transaction". 49 U.S.C. §11324(b)(4). This requirement exists separate and apart from the mandate for imposition of employee protective conditions if the Transaction is approved. 49 U.S. C. §11326. Great Northern Pac. & Burlington Lines, Inc.—Merger, etc.—Great Northern Ry. Co. et al., 328 ICC 460, 528 (1966).

In addition to the express commands of the statute, the Supreme Court held that the ICC had the authority to impose conditions on approval of a transaction which would operate to ameliorate the effects of the transaction on railroad workers. United States v. Lowden, 308 U.S. 225, 238 (1939). Indeed, the Court noted that consolidations often have adverse consequences
for workers and subject railroad labor relations to "serious
stress" (id. at 233) and described "just and reasonable treatment
of railroad employees" as "an essential aid to the maintenance of
service uninterrupted by labor disputes" and as "promoting
efficiency which suffers through the loss of employee morale when
the demands of justice are ignored" (id. at 235-36).

The Supreme Court also held that ICC was required to
consider the policies and directives expressed in other laws when
considering approval of a transaction within its jurisdiction.
subsequently held that in deciding on a proposed transaction, the
ICC was required to consider the policies and directives of the
labor laws, to accommodate those policies and to draw its orders
narrowly to limit the effect of its decisions on the labor laws.
Burlington Truck Lines v. U.S., 371 U.S. 156, 172-73 ((1962). This the STB’s analysis of the proposed Transaction in this case
must give due regard for the policies and mandates of the RLA
To the extent that Applicants’ plans raise RLA issues, those
issues must be considered by the Board in deciding whether to
approve the Transaction and to impose conditions on the carrying-
out of the Transaction if it is approved.

B. SCOPE OF DISCOVERY IN THIS PROCEEDING

Under 49 CFR §1114.21 parties may obtain discovery of any
non-privileged matter which is relevant to the subject matter of
a proceeding; moreover, any information that appears "reasonably calculated to lead to the discovery of admissible evidence" is subject to discovery even if the information sought itself may not be admissible as evidence. This scope of discovery is similar to that set forth in Federal Rule of Civil Procedure 26(b) which has been described as insuring a broad scope of discovery. Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d §2007 (1994). See also Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978) -- the phrase relevant to the subject matter in the pending actions "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case".

C. APPLICANTS SHOULD BE REQUIRED TO ANSWER ARU INTERROGATORIES NO. S 48-51

In support of their Application, CSX and NS have submitted proposed Operating Plans (Volumes 3A and 3B respectively) which describe planned operations of the divided and shared Conrail territories by CSX and NS in order for the Board to assess whether the Transaction is in the public interest under 49 U.S.C. §§11323 and 11324. The Applicants assert that the planned changes in operations demonstrate that the public will benefit from the Transaction, and that the terms of the Transaction are fair to the shareholders of the various railroads. The Operating Plans repeatedly make reference to planned changes in operations
that will allegedly result in financial savings. These changes involve planned changes in existing CBA rights and seniority districts of employees of the Applicants. See e.g. Vol. 3A Appendix A (at 485-519) and Vol. 3B Appendix A (at 354-398). In this regard, it must also be noted that in this case, Applicants have agreed to pay $115 per share for Conrail stock that was selling for $76 per share last fall. In order to cover their acquisition costs including this huge acquisition premium, Applicants plan to obtain significant savings from operational changes that necessarily will affect employees represented by the ARU unions; these savings will be extracted by changes that will flow from abrogation of the CBA rights of Applicants' employees. See e.g. Vol. 3A at 300, 307, 309, 312, 487, 490-96; Vol. 3B at 324, 326, 337-340, 368-374. See also Vol. 1 at 124-127.

Because the Applicants' asserted public interest justifications for the Transaction depend heavily on changes in existing CBA rights and seniority districts, the ARU interrogatories focus heavily on Applicants' stated plans as well as their unstated plans in this regard. The ARU interrogatories also focus on the requirement that the STB respect the mandates and policies of the RLA.

ARU interrogatories No.s 48-51 ask CSX and NS to identify savings that they believe were obtained by several prior consolidations and coordinations of work that were related to the
CSX and NS control and merger transactions, and to explain how they believe that the public benefitted from those consolidations and coordinations. These interrogatories are directly responsive to Applicants' assertions that the Transaction is in the public interest: that the public will somehow benefit from the operating savings that are described in the Operating Plans, and particularly the assertions that the agreement and seniority district changes that are described in the Operating Plans and Appendix A to each plan are actually in the public interest. Each Appendix A repeatedly makes unsubstantiated, self-serving claims that the public will benefit from the planned changes. Having made these assertions, Applicants should not be allowed to refuse to respond to efforts to probe the bases for their claims.

Applicants argued, and Judge Leventhal agreed that Applicants should not be required to answer these interrogatories because they concerned prior transactions not the instant transaction, so that the information to be obtained would not be relevant here. However, the ARU respectfully submits that the information sought is relevant here since it will help test the allegations that there will be savings and, more importantly, that the public will benefit from those savings. CSX, NS and other carriers have repeatedly appeared before this agency in control and merger transactions, and in proceedings regarding coordinations related to such transactions and argued that the
public would benefit by their actions. But those have always been prospective projections. Such claims have never been tested retrospectively. In this case the STB is again offered projections as to savings and the assertion that the projected savings will benefit the public. But again there is no evidence to support any of the Applicants' claims in this regard. ARU interrogatories nos. 48-51 attempt to deal with this problem by seeking empirical evidence from prior CSX and NS transactions. The ARU submits that production of such information would be relevant to this case, and certainly would be calculated to lead to the production of relevant evidence because it attempts to test a key element of the Application. Moreover, it is especially pertinent to the issues that the ARU will address in this proceeding since the predicate for the asserted necessity for changes in existing CBAs is that the changes are necessary to assure that the public benefits of the transaction are obtained. If information from past Transactions and coordinations shows that Applicants' projections of savings and/or public benefits from those savings in those cases were not substantiated by actual experience, then the ARU can argue to the Board that it should not accept the projections of savings and public benefits from those savings in this proceeding. Furthermore, such evidence would be useful to the ARU and the Board in application of the holdings in Executives, UTU v. STB (review of O'Brien
Review Decision), and Union Pacific Sub No. 22 that the Board may not attempt to authorize agreement changes that are designed merely to reduce carrier costs without transportation benefits to the public. Such evidence would also be useful to the ARU and the Board in application of the McLean Trucking and Burlington Truck requirements that the STB's public interest determinations give due regard for the mandates and policies of the RLA.

Applicants recognize that the STB has denied two prior requests that carriers report on savings realized by consolidations and on alleged public benefits from such savings, in Union Pacific Control and CSX Control Sub. No. 27. However, there is no authority that suggests that a party may not present to an administrative agency an argument that has been rejected in another case, or that discovery into a particular area may not be had for the purpose of obtaining a change in an existing interpretation of the law. Evidence pertinent to the ARU argument on this point might be key to inducing the Board to change its mind on this subject. Moreover, the ARU notes that in CSX Control Sub-No. 27, (which concerned a request for a supplemental order in connection with the O'Brien Review Decision), while the Board held that the carrier had presented evidence which projected that the public would benefit from anticipated savings from the planned coordination, it did not find that the public had actually received benefits from the
coordination. Nor did the D.C. Circuits' decision affirming the O'Brien Review Decision make any finding that the carrier's claims were supported by actual evidence. Actual evidence as to benefits to the public of prior coordinations is the type of information sought by ARU here. Additionally, it must be noted that the D.C. Circuit observed that the unions in that case had offered no evidence to refute the carrier's efficiency/necessity assertions (106 F. 3d at 1431) thus rendering it even more important that Applicants be required to produce the information sought by ARU. ¹⁴

The ARU further notes that the Board must recognize that its reasoning in the prior decisions was premised largely on the assumption that the public will necessarily benefit from savings realized by carriers effecting a coordination pursuant to an approved transaction. See e.g O'Brien Review Decision at 12-13. This is problematic for the Board given the fact that it is required to make findings and balance competing public interest

¹⁴ Additionally, it must be recognized that since the only agreement change issue addressed by the Court in that case involved the consolidation of seniority rosters of previously separate lines in connection with coordinated train operations over those previously separate lines, the Court accepted the ICC's finding that the carrier's action was necessary to the transaction, and to the realization of benefits to the public from the coordinations of service on the previously separate lines. 108 F. 2d at 1431. And again the Court noted that the unions offered no evidence to contradict the carrier, thereby rendering the current ARU information request even more important.
concerns, must consider the interests of railroad workers and must accommodate the mandates and policies of the K&W. If the Board has assumed that the public would benefit from savings obtained from prior transaction-related coordinations, and retrospective evidence shows that the assumptions were erroneous, then the ARU can argue to the Board that facile assertions of public benefits should not be accepted here, and the Board would have to make significant findings to uphold the Applicants in the face of such assertions. The only way to test the validity of the assumptions on which the Board's prior decisions have been predicated is to seek actual evidence from prior transactions and coordinations to test whether prior savings/public benefits assertions have been verified by actual experience.

Finally, the ARU submits that the probative value of this information outweighs Applicants' concerns as to the burden of responding to these interrogatories; in particular they ought to be able to explain how they believe that the public benefitted from the prior co-ordinations. However, the ARU submits that any further dispute in this regard could be resolved by the parties or Judge Leventhal once the more significant issue raised by this Appeal is decided by the Board. Similarly, the ARU submits that these interrogatories are not vague, or unclear. For example CSX and NS assert that the phrase "how . . . the public benefitted" is vague. Objections to Interrogatories No.s 49 and 51. Not only
is the meaning of the phrase clear on its face, these
interrogatories asks CSX and NS to explain how CSX and NS believe the public benefitted, thereby allowing them to apply their own definitions of the phrase. And NS claims that the phrase "all savings" is vague, even the word all seems to have a fixed meaning. In any event, such questions in that regard could be resolved by the parties or Judge Leventhal after a decision by the Board on this Appeal.

CONCLUSION

For the foregoing reasons the ARU respectfully submits that Applicants should be required to answer ARU interrogatories nos. 48-51.

Respectfully submitted,

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

Counsel for Railway Labor Executives Association and its, affiliated organizations, Brotherhood of Maintenance of Way Employees, and International Brotherhood of Electrical Workers

Dated: August 26, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Appeal From Administrative Law Judge's Discovery Ruling, by first-class mail, postage prepaid, to the offices of the parties on the restricted service list.

Dated at Washington, D.C. this 26th day of August, 1997.

Richard S. Edelman
ATTACHMENT A
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

APPLICANTS' INITIAL OBJECTIONS TO
THE ALLIED RAIL UNIONS'
FIRST SET OF INTERROGATORIES
TO APPLICANTS (ARU-7)

Applicants' hereby submit their initial objections to The Allied Rail Unions' First Set of Interrogatories to Applicants (ARU-7) served by The Allied Rail Unions ("ARU") on August 5, 1997. These initial objections are filed pursuant to Paragraph 16 of the Discovery Guide lines adopted by Decision No. 10, served June 27, 1997, which provide that "[a] responding party shall, within five business days after receipt of service, serve a response stating all its objections to any discovery request as to which the responding party has then decided that it will be providing no affirmative response...." Applicants reserve their right to answer or object to all other discovery requests, definitions and instructions set

1"Applicants" refers to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").
is used by the Board either with regard to the imposition of labor conditions or to determine whether the transaction meets the statutory criteria for approval.

Under long-standing Board precedent, labor protection is not extended to employees of non-applicant railroads in railroad control proceedings. See Union Pacific—Control—Missouri Pacific: Western Pacific, 366 ICC 459, 621 (1982). Therefore, information regarding the elimination of engineer positions on non-applicant railroads is not relevant to this proceeding, nor is it reasonably calculated to lead to the discovery of admissible evidence. Moreover, Applicants do not have information regarding the engineer staffing needs of other railroads.

Interrogatory No. 48:

Identify all savings that CSX believes were obtained by the following consolidations:

a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.

b. Consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district.

c. Consolidation of Waycross, Georgia carmen work to CSXT’s Raceland, Kentucky shops.

d. Consolidation of CSX dispatching work in Jacksonville.

CSX objects to Interrogatory No. 48 on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, Interrogatory No. 48 is unduly burdensome and seeks to relitigate issues already decided by the Board.

The requested information is irrelevant to this proceeding because the amount of the
savings from CSX's operations of its allocated share of Conrail's assets will obviously be different from the amount of savings from those prior coordinations. In addition, it would be unduly burdensome to have to try to calculate all savings from these transactions, some of which occurred many years ago. For example, the consolidation referred to in subpart c occurred nine years ago. The consolidation of dispatching referred to in subpart d occurred about nine years ago.

In addition, in a case arising from the coordination referenced in subpart a, CSX Corporation -- Control -- Chessie System Inc. and Seaboard Coast Line Industries, Inc. et al., Finance Docket No. 28905 (Sub-No. 27), decided July 1, 1997, the Board rejected several unions' request that CSX be ordered to submit quarterly reports detailing the savings realized by that coordination. See also Union Pacific Corporation et al. -- Control and Merger -- Southern Pacific Railroad Corporation et al., Finance Docket No. 32760, Decision No. 44, decided August 6, 1996. The ARU cannot, through this Interrogatory, relitigate an issue that the Board has already decided.

Interrogatory No. 49:

Explain how CSX believes that the public benefitted by the following consolidations (to the extent CSX believes that rates were reduced or rate increases were avoided, provide specific explanations regarding the bases for those beliefs):

a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.

b. Consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district.

c. Consolidation of Waycross, Georgia carmen work to CSXT's Paducah, Kentucky shops.
d. Consolidation of CSX dispatching work to Jacksonville.

CSX objects to Interrogatory No. 49 on the basis that it is unduly burdensome, and requests only information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence that can be used by the Board either with regard to the imposition of labor conditions or to determine whether the transaction meets the statutory criteria for approval. CSX further objects to Interrogatory No. 49 as unduly vague in that it seeks to learn "how . . . the public benefitted," terms that are susceptible to more than one meaning.

**Interrogatory No. 50:**

Identify all savings that NS believes were obtained by consolidation of locomotive power distribution in Atlanta.

NS objects to Interrogatory No. 50 on the basis that it requests only information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence that is used by the Board either with regard to the imposition of labor conditions or to determine whether the transaction meets the statutory criteria for approval. NS also objects to Interrogatory No. 50 on the basis that it is unduly burdensome. Answering this interrogatory would require a special study compiling information from thousands of documents and the classification of any identified public benefits into artificial categories. NS further objects to Interrogatory No. 50 as unduly vague in that it seeks identification of "all savings," a term that is susceptible to more than one meaning, and as requiring NS to classify any identified savings into artificial categories not reasonably identifiable.

**Interrogatory No. 51:**

Explain how NS believes that the public benefitted by the consolidation of
locomotive power distribution work in Atlanta (to the extent [NS] believes that rates were reduced or rate increases were avoided, provide specific explanations regarding the basis for that belief).

NS objects to Interrogatory No. 51 on the basis that it requests only information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence that is used by the Board either with regard to the imposition of labor conditions or to determine whether the transaction meets the statutory criteria for approval. NS also objects to Interrogatory No. 51 on the basis that it is unduly burdensome. Answering this interrogatory would require a special study compiling information from thousands of documents and the classification of any identified public benefits into artificial categories. NS further objects to Interrogatory No. 51 as unduly vague in that it seeks identification of "how the public benefitted," a term that is susceptible to more than one meaning, and as requiring NS to classify any identified benefits into artificial categories not reasonably identifiable.

Interrogatory No. 76:

With respect to the signal construction work and signal upgrade work referred to in the CSX Operating Plan and related statements (including but not limited to those in Vol. 3A pp. 24, 56-59, 258-269) and CSX's assertion (Vol. 3A p. 493) that sufficient skilled employees and equipment "will likely not be available to perform all of this work" so it may be necessary to utilize contractors.

c. State whether CSX would agree not to use contractors unless all CSX, and Conrail signalmen were employed and likely to be working in at least 10 out of 12 months of years 1 through 3 after consummation of the Transaction.

d. State whether CSX believes that a condition on approval of the Transaction that no contractors may be utilized for Transaction-related construction work unless CSX and Conrail signalmen are working would impede or interfere with the Transaction; if the
ATTACHMENT B
The Honorable Jacob Leventhal  
Presiding Administrative Law Judge  
Federal Energy Regulatory Commission  
833 First Street, N.E.  
Washington, D.C. 20426  

Re: STB Finance Docket No. 33333

Dear Judge Leventhal:

As was indicated by Applicants’ notice for a discovery conference regarding their objections to interrogatories propounded by the Allied Rail Unions ("ARU"), (CSX/NS-33 in response to ARU -7), the ARU disputes the validity of Applicants’ objections. The parties have discussed this matter by telephone and have not been able to resolve their differences, so a discovery conference is necessary. This letter is respectfully submitted as a response to Applicants’ objections and in support of the ARU interrogatory discovery requests.

BACKGROUND

The proposed CSX/NS acquisition of control/division of Conrail follows on the heels of a series of railroad industry consolidations over the last fifteen years which have greatly reduced the number of major rail carriers. Included among those consolidations are the 1980 control transaction that created CSXT and the 1982 transaction that created the current NS system. The impact of these transactions on railroad workers was far greater than transactions prior to 1980 because the transactions not only reduced the number of employees and consolidated work, they were utilized to change collectively bargained rights of those employees who continued working. For the first time, ICC approval of a control or merger transaction was successfully utilized to force changes in collective bargaining agreements ("CBAs") and/or to immunize such changes, implemented by the carriers involved, from challenge under the Railway Labor Act ("RLA"), 45 U.S.C. §151 et seq., and from strikes. Both the CSX and NS transactions led to such carrier actions, in each case the carriers argued that changes in employee collective bargaining rights or rights under existing collective bargaining agreements...
other railroads and they have also provided estimates as to the projected increases in positions in crafts on the Applicant railroads. By the same methodology they should be able to provide estimates of the possible reductions in employment on other railroads due to traffic losses.

Interrogatories No.s 48-50

These interrogatories ask CSX and NS to identify savings that they believe were obtained by several prior consolidations and coordinations of work that were related to the CSX control and NS merger transactions, and to explain how they believe that the public benefitted from those consolidations and coordinations. These interrogatories are plainly relevant to CSX and NS assertions that the Transaction is in the public interest, that the public will somehow benefit from the operating savings that are described in the Operating Plans and particularly the assertions that the agreement and seniority district changes that are described in the Operating Plans and Appendix A to each plan are actually in the public interest. Indeed, each Appendix A repeatedly makes unsubstantiated, self-serving claims that the public will benefit from the planned changes. Having made these assertions, Applicants can not now object to efforts to probe the bases for their claims.

Applicants also note that the STB has denied two prior requests that carriers report on savings realized by consolidations and they assert that the ARU cannot obtain the requested information because the Board has previously rejected a reporting requirement. This is a rather peculiar contention. The ARU is not aware of any authority that suggests that a party may not present to an administrative agency an argument that has been rejected in another case. Indeed, evidence pertinent to the ARU argument on this point might be key to inducing the agency to change its mind on the subject.

Interrogatory No. 94

This interrogatory seeks information relating to CSX’s assertion that it will move some of the Conrail rail welding work to what is referred to as a CSX facility in Russell, KY. The Brotherhood of Maintenance of Way Employees is aware that CSX has used a welding plant in Russell to do some of its welding work and that this facility is somehow affiliated with CSX. This facility...not an organized (union) facility, CSX apparently claims that the Russell facility is not a railroad operation. And BMWE believes that the facility makes no contributions on
August 21, 1997

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


Dear Secretary Williams:

Enclosed are one original and twenty five copies of the State of Maine Department of Transportation’s “Description of Responsive Application.” Also enclosed are one original and twenty five copies of Certificate of Service.

Very truly yours,

Robert D. Elder  
Director  
Office of Freight Transportation

RDE/pjv  
Encs.

cc w/encs.: Honorable Angus S. King, Jr., Governor  
John G. Melrose, Commissioner, MDOT
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.

DESCRIPTION BY
STATE OF MAINE DEPARTMENT OF TRANSPORTATION
OF RESPONSIVE APPLICATION

The State of Maine Department of Transportation (the "Department") concurs in the Responsive Application filed by the Coalition of Northeastern Governors. The Department reserves the right to file a Responsive Application in its own behalf when responsive applications are due at "F + 120."

Respectfully submitted,

Robert D. Elder, Director
Office of Freight Transportation
State of Maine
Department of Transportation
16 State House Station
Augusta, Maine 04333-0016
(207) 287-2841

Dated: August 21, 1997
CERTIFICATE OF SERVICE

I hereby certify that on August 21, 1997, a copy of the foregoing "Description By State of Maine Department of Transportation Responsive Application" was served by first-class, U.S. mail, postage prepaid upon the following.

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

Richard A. Aller, Esq.
Zuckert Sc stout & Rasenberger, L.L.P.
Suite 600
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

Robert D. Elder
August 2, 1997

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

RE: STB Finance Docket No. 33388 (Sub-Number 42)
Conrail Acquisition - CSX & Norfolk Southern Railroads
Anticipated Responsive Application & Request For Conditions Filing

Dear Mr. Williams:

The Rhode Island Department of Transportation, as a party of record in these proceedings, is submitting the attached Anticipated Responsive Application filing.

We look forward to working with the STB and the railroad applicants as the Conrail acquisition proceedings continue.

Sincerely yours,

[Signature]
William D. Ankner, Ph.D.
Director
I. Introduction

(a) State of Rhode Island's Role and Infrastructure Investment

The mission of the Rhode Island Department of Transportation (RIDOT) is to provide a safe, effective, and environmentally responsible intermodal transportation system that supports economic development and improves the quality of life for all Rhode Islanders. The acquisition of Conrail by the CSX and Norfolk Southern (NS) railroads, as proposed in Railroad Control Application, dated June, 1997, would hinder RIDOT's ability to provide an effective intermodal transportation system that supports economic development.

The State of Rhode Island has, and will continue to make significant investments in railroad infrastructure and operations of both freight and passenger rail systems. The state is currently investing over $120 million in upgrading 22 miles of Amtrak's Northeast Corridor to provide safe, effective modern double stack; containerized freight rail as part of the Freight Rail Improvement Project (FRIP). The project includes the construction of a separate, freight-dedicated track (third track), parallel to the Amtrak Main Lines, between Boston Switch and Quonset Point/Davisville (Q/D).

The FRIP will permit safe operations of modern freight cars to/from Q/D, the former naval base through which a public/private partnership is investing hundreds of millions of dollars in infrastructure improvements to develop a world class containerized port. The Providence & Worcester Railroad Company (P&W), the state's sole short line railroad, will provide the modern freight service to/from Q/D via the third track on the Northeast Corridor, along the P&W Main Line between Central Falls, RI and Worcester, MA.

The P&W currently interchanges its freight with Conrail at Worcester. As proposed in the CSX/NS operating plan, Conrail would be replaced by CSX, and P&W would interchange future freight from Q/D with CSX at Worcester.

In addition to the freight rail investments underway, the state has made significant investments in passenger rail equipment and operations. As part of RIDOT's Pilgrim Partnership Agreement with the Massachusetts Bay Transportation Authority (MBTA), RIDOT has spent approximately $20 million for commute rail operations between Providence and Boston. Also, RIDOT has spent over $10 million toward construction of the Providence Station and the rebuilding of the Kingston and Westerly stations along the Northeast Corridor.
Also, being located within the heavily-congested Northeast Corridor, intercity passenger rail, in particular the upcoming high speed rail, is very critical to the traveling public in Rhode Island. A successful high speed service will help to alleviate the overcrowded conditions on our highways and airports, in addition to providing air quality benefits.

(b) Public Investment in Conrail

As a result of the Final System Plan during the freight railroad breakup in the 1970s, the federal government established Conrail to continue freight rail operations in the Northeast. The Final System Plan established certain monopolies for Conrail, resulting in a profitable operation in the Northeast. With over $8 billion invested in Conrail by the United States taxpayers, the federal government was able to recover much of its costs to establish Conrail.

With the proposed acquisition, CSX and NS will benefit greatly as a result of significant taxpayer investments in Conrail. What particularly concerns Rhode Island about this is that this private acquisition will occur without the establishment of competitive Class I rail service throughout the New England region. Reasonable rate structures in New England must be ensured.

Under this acquisition application, as proposed, direct access to ports in the Northeast would be improperly established. While direct, competitive port access has been established at several Mid-Atlantic ports New England has been unilaterally excluded from direct competitive access to a Class I rail system. This scenario has put New England ports at a major economic disadvantage with other East Coast ports, and will have serious national and international implications. Competitive rail access to New England, through Massachusetts, is warranted and should be mandated as part of the STB's approval of this acquisition application.

ii. Specific Concerns/Impacts

(a) Freight Competition

The acquisition, as proposed, fails to provide direct, competitive Class I access for markets east of the Hudson River. We strongly support the establishment, through these proceedings, of a competitive Class I rail system in New England. A balanced, competitive freight rail system is critical to the continued and future development of economic opportunities both in our state and the region.

The proposed CSX/NS operating plan provides direct, competitive access to ports located in New York and northern New Jersey. These ports were previously served directly by one Class I only - Conrail. New England has, and as proposed in the operating plan, will continue to be served by one Class I railroad. We could accept the status quo with one Class I railroad if the operating plan proposed a level playing field. If the competitive rules change in one region (New York/New Jersey), then they can and should change in another region (New England).

A reasonable structure must be ensured by the Class I carriers for New England to be economically competitive with other regions.
(b) Passenger Rail

As stated above, Rhode Island has also invested significantly in its passenger rail operations and facilities. The operating plan has very limited information relating to the joint operation of freight and passenger operations on the Northeast Corridor. Although Conrail does not operate on the Rhode Island portion of the Northeast Corridor, our commuter rail service between Providence and Boston is directly impacted by freight operations on the Massachusetts portion of the Northeast Corridor.

In addition, considering the massive public investments made on the much anticipated Northeast Corridor Improvement Project, it is critically important that passenger rail remain the primary focus of the Northeast Corridor. The State of Rhode Island has recognized this to the point that we are spending over $120 million to construct a freight-dedicated third track so freight rail and high-speed rail are separated to provide safe, efficient services for both rail systems.

III. Proposed Remedies

(a) Freight Competition

The railroads and the STB must address the above concerns through a joint effort to reinstitute Class I competitive freight access to New England. We propose one of the following remedies for STB consideration to restore competitive Class I service to New England:

1. Considering the recent NS agreement with Canadian Pacific for NS access to Albany, grant Norfolk Southern trackage rights to the Boston & Albany line, currently owned and operated by Conrail, and to be controlled by CSX, to allow interchanges with the P&W at Worcester, MA.; or

2. Grant Norfolk Southern trackage rights to the Boston & Maine line, currently owned and operated by the Guilford Transportation Co., to allow interchanges with the P&W at Gardner, MA.

RIDOT is prepared to cooperate fully in discussions with the STB, Class I railroads, short line railroads, and other New England states to ensure competitive Class I access to/from New England, and to establish a reasonable rate structure to ensure our continued economic competitiveness.

(b) Passenger Rail

The railroads and the STB need to clearly and fully describe in a detailed operating plan, the impacts this acquisition will have on existing and planned intercity and commuter rail operations on the Northeast Corridor. RIDOT is prepared to cooperate fully in discussions with all involved parties to ensure passenger rail on the Northeast Corridor remains the primary focus.
RIDOT intends to monitor these proceedings closely and if required, will include in its upcoming final responsive application a request for conditions seeking a remedy to the harm of uncompetitive Class I freight rail in New England, as proposed in the CSX/NS operating plan.

Respectfully,

[Signature]

William D. Ankner, Ph.D.
Director
Rhode Island Department of Transportation

Dated: August 21, 1997
CERTIFICATE OF SERVICE

I hereby certify that a true and authentic copy of the foregoing document to Vernon A. Williams, Secretary, Surface Transportation Board, constituting an "Anticipated Responsive Application Filing", under STB Finance Docket No. 33388 (Sub-Number 42) proceedings, was mailed on the 21st Day of August, 1997, upon the following:

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

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

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

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

WILLIAM D. ANKNER, Ph.D.
DIRECTOR
The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Suite 700  
1525 K Street, N.W.  
Washington, D.C. 20423  

RE: Finance Docket No. 33388  

Dear Secretary Williams:  

Enclosed please find the original and twenty-five (25) copies of the Southeastern Pennsylvania Transportation Authority’s Description of Responsive Application to be filed on or before October 21, 1997. Along with the original and copies, the Description is also being submitted on a diskette formatted for Microsoft Word 7.0.  

Kindly date stamp the enclosed two (2) additional copies of the Description at the time of filing and return them in the enclosed self-addressed, stamped envelope.  

Thank you for your assistance in this matter. Should you have any questions, please contact me at (215) 580-7321.  

Very truly yours,  

[Signature]  

G. Roger Bowers  
General Counsel  

cc: The Honorable Jacob Leventhal  
Dennis C. Lyons, Esq.  
Richard A. Allen, Esq.  
Paul A Cunningham, Esq.
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

DESCRIPTION OF RESPONSIVE APPLICATION OF THE
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
TO BE FILED ON OR BEFORE OCTOBER 21, 1997

G. ROGER BOWERS
General Counsel
EUGENE N. CIPRIANI
Assistant Deputy Counsel
Southeastern Pennsylvania Transportation Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

JOHN J. EHLINGER, JR.
THOMAS E. HANSON, JR.
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Counsel for Southeastern Pennsylvania Transportation Authority
The Southeastern Pennsylvania Transportation Authority ("SEPTA") operates an extensive integrated local mass transportation system, consisting of trolley, motorbus, subway, elevated and regional commuter rail routes primarily throughout the Philadelphia Metropolitan Area pursuant to the Pennsylvania Public Transportation Law, Act 26 of 1991 as amended by Act 4 of 1994, 74 Pa. C.S.A. §§ 1701 et seq. SEPTA is a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, and has its executive offices at 1234 Market Street, Philadelphia, Pennsylvania 19107-3780.

SEPTA has been operating its regional rail commuter system for its own account since January 1, 1983, pursuant to the provisions of the Northeast Rail Services Act of 1981, which mandated that Conrail no longer operate commuter rail services for transit agencies after December 31, 1982. SEPTA carries an average of 90,000 passengers per day on its regional rail system.

A portion of SEPTA's regional rail system, involving two commuter lines, operates on trackage owned by Consolidated Rail Corporation ("Conrail"), and Conrail’s freight operations
utilize all or portions of ten of SEPTA's commuter lines pursuant to a Trackage Rights Agreement dated October 1, 1990 (the “Trackage Rights Agreement”). SEPTA’s operations on lines shared with Conrail (the “Shared Lines”) has been a key component of SEPTA’s passenger service. SEPTA and Conrail have had a cordial and mutually advantageous working relationship under the Trackage Rights Agreement.

SEPTA’s principal concern with respect to the proposed acquisition of control of Conrail by CSX Corporation (“CSX”) and Norfolk Southern Corporation (“NS”) is its effect on the operation of its regional rail division. CSX and NS have indicated in their Joint Application and relating Operating Plan, that they intend to assume and honor the terms of the Trackage Rights Agreement. SEPTA has begun discussions with representatives of both CSX and NS concerning a limited number of operating issues raised by the Operating Plan and a long term extension of the Trackage Rights Agreement which would solidify the existing relationship between Conrail and SEPTA and ensure that a workable and mutually beneficial arrangement continued to exist in the future with respect to freight operations of CSX and NS and the commuter rail operations of SEPTA over the Shared Lines. SEPTA believes that these discussions will be fruitful and that an extension of the Trackage Rights Agreement will be executed by SEPTA, Conrail, CSX and NS on or before October 1, 1997, subject only to the approval by this Board of the CSX/NS Application.

If, however, contrary to SEPTA’s expectations, these discussions prove unsuccessful, and SEPTA concludes that the implementation of the Operating Plan and the absence of a long term Trackage Rights Agreement with CSX and NS would jeopardize the safe and efficient operation of its regional rail division, SEPTA may be required to file on or before October 21, 1997,
appropriate responses, applications and pleadings with respect to the CSX/NS Application and Operating Plan.

In addition, SEPTA and Conrail are discussing how to best proceed with preliminary SEPTA plans to utilize a portion of Conrail's Harrisburg Main Line from Norristown to Reading and of Conrail's Morrisville Line from Dale to Morrisville, both of which are designated to NS under the Operating Plan. While SEPTA expects negotiations for these properties to extend beyond the control date set forth in the Operating Plan submitted to the STB, it may become necessary also on October 1, 1997 to make an appropriate filing regarding these lines.

In the interim, SEPTA will continue its discussions with Conrail, CSX and NS in good faith with the expectation that these issues will be resolved to the mutual satisfaction of the parties.

Respectfully submitted,

G. Roger Bowers
General Counsel
Eugene N. Cipriani
Assistant Deputy Counsel
Southeastern Pennsylvania Transportation Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

John J. Ehlinger, Jr.
Thomas E. Hanson, Jr.
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

Counsel for Southeastern Pennsylvania Transportation Authority
CERTIFICATE OF SERVICE

I hereby certify that the foregoing, Description of Responsive Application Of The Southeastern Pennsylvania Transportation Authority To Be Filed On or Before October 21, 1997, was served upon the following, via first-class mail, postage prepaid on the 21st day of August, 1997:

David G. Abraham
Suite 400 W
76315 Wisconsin Avenue
Bethesda, Md 20814

Nels Ackerson
The Ackerson Group
1275 Pennsylvania Ave., N.W., Suite 1100
Washington, DC 20004-2404

Honorable George Allen
Governor
Commonwealth of Virginia
State Capitol
Richmond, VA 23219

Richard A. Allen
Zuckert, Scoult, Rasenberger
888 17th Street, N.W., Suite 600
Washington, D.C. 20006-3939

Charles E. Allenbaugh, Jr.
East Ohio Stone Company
2000 W. Besson Street
Alliance, OH 44601

William D. Ankner, Ph.D.
R.I. Dept. of Transportation
Two Capital Hill
Providence, RI 02903
Donald G. Avery
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036-3003

T. Scott Bannister
T. Scott Bannister and Association
1300 Des Moines Bldg.
405 South Ave.
Des Moines, IA 50309

J.R. Barbee
General Chairperson UTU
P.O. Box 9599
Knoxville, TN 37940

Janice G. Barber
The Burlington Northern and Santa Fe Railway Company
3017 bLou Menk Drive
Ft. Worth, TX 76131

Harry C. Barbin
Barbin Lauffer & O'Connell
608 Huntingdon Pike
Rockledge, PA 19111

Honorable James A. Barcia
U.S. House of Representatives
Washington, D.C. 20515-2205

Norman H. Barthlow
Detroit Edison
2000 Second Avenue
Detroit, MI 48222

Stephen L. Bassford
L E Peabody & Associates, Inc.
1501 Duke Street, Suite 200
Alexandria, VA 22314-2401

Dinah Bear
Executive Office of the President
Council on Environmental Quality
Washington, DC 20503
Honorable David M. Beasley
Governor
P.O. Box 11369
Columbia, SC  29211

James L. Beicher
Eastman Chemical Company
P.O. Box 431
Kingsport, TN  37662

Martin W. Bercovici
Keller & Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C.  20001

David Berger
Berger and Montague, PC
1622 Locust Street
Philadelphia, PA  19103-6305

Honorable Joseph R. Biden
ATTN Rob Skomorucha
844 King Street
Wilmington, DE  19801

Honorable Joseph R. Biden
US Senate
Washington, DC  20510

Honorable Rod R. Blagovjevich
U.S. House of Representatives
Washington, DC  20515-1305

Honorable Thomas J. Bliley, Jr.
US House of Representatives
Washington, DC  20515

Thomas R. Bobak
313 River Oaks Drive
Calumet City, IL  60409

Charles D. Bolam
United Transportation Union
1+00-20th Street
Granite City, IL  62040
William A. Bon, General Counsel
Brotherhood of Maintenance of Way Employees
26555 Evergreen Road, Suite 200
Southfield, MI 48076

Anthony Bottalico
UTU
420 Lexington Avenue
Room 458-460
New York, NY 10017

Thomas C. Brady
Brady Brooks & O'Connell LLP
41 Main Street
Salamanca, NY 14779-0227

Honorable John Breaux
US House of Representatives
Washington DC 20515

Theresa M. Brennan
Two North Ninth Street
Allentown, PA 18101-1179

William T. Bright
P.O. Box 149
200 Greenbrier Road
Summerville, WV 26651

Anita R. Brindza
The One Fifteen Hundred Building
11500 Franklin Blvd.
Suite 104
Cleveland, OH 44102

Honorable Sherod Brown
US House of Representatives
Washington, DC 20515

Stephen H. Brown
Vorys Sater Seymour and Pease
1828 L Street, N.W.
Washington, DC 20036
Honorable Ed Bryant
US House of Representatives
Washington DC 20515

Christopher J. Burger
Central Properties
500 North Buckeye
Kokomo, IN 46903

Honorable Richard Burr
U.S. House of Representative
Washington, DC 20515-3305

Ross B. Capon
Nat'l Assoc. of Ruhoads Passenger
100 Second Street, NE, STE 308
Washington, DC 20002-3557

Eileen Cary
City of Chicago, City Hall, Rm. 700
Chicago, IL 60602

Hamilton C. Carmouche
Corporation Counsel
City of Gary
401 Broadway, 4th Floor
Gary, IN 46402

Richard C. Carpenter
1 Selleck Street, Suite 210
East Norwalk, CT 06855

A. Scott Cauger
Niagara Mohawk Power Corp.
300 Erie Blvd. West
Syracuse, NY 13202

Charles M. Chadwick
Maryland and Midland Railway, Inc.
P.O. Box 1000
Union Bridge, MD 21791

Honorable John H. Chafee
United States Senate
Washington, DC 20510-0001
Honorable Sachy Chamblias  
US House of Representatives  
Washington, DC 20515

Angelo J. Chick, Jr.  
Local Chairman  
P.O. Box 48398  
Old Goose Bay Road  
Redwood, WY 13679

Honorable Lawton Chiles  
Office of the Governor  
The Capitol  
Tallahassee, FL 32399-0001

Sylvia Chinn-Laiy  
Intergovernmental CO-O  
969 Copley Road  
Akron, OH 44320-2992

Nicole E. Clark  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019-6150

Ray Clark  
Executive Office of the President  
Council on Environmental Quality  
Washington, DC 20503

Nicole E. Clark  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019-6150

Paul D. Coleman  
Hoppel Mayer & Coleman  
1000 Connecticut Avenue, N.W., Suite 400  
Washington, DC 20036-5302

John F. Collins  
Collins, Collins & Kantor PC  
267 North St.  
Buffalo, NY 04201
Robert J. Cooper  
500 Water Street  
Jacksonville, FL 32202-4420

Michael Connelly  
City of East Amigo  
4525 Indianapolis Blvd.  
East Chicago, IN 46312

J. Doyle Corman  
Main Line Management Services, Inc.  
520 Fellowship Road  
STE A-105  
Mount Laurel, NJ 08054-3407

John J. Coscia  
DVRPC  
111 South Independence Mall East  
Philadelphia, PA 19106

Steve M. Coulter  
Exxon Company, USA  
P.O. Box 3272  
Houston, TX 77253-3272

Jean M. Cunningham  
Slover & Loftus  
1224 Seventh Street, N.W.  
Washington, DC 20036

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

Hon. Alfonse D’Amato  
United States Senate  
111 W. Huron Street, Room 620  
Buffalo, NY 14202

Honorable Alfonse D’Amato  
United States Senate  
Washington DC 20510
William Dickerson
US Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

Nicholas J. DiMichael
Donelan, Cleary, et al.
1100 New York Avenue, N.W., Suite 750
Washington, DC 20005-3934

Honorable John D. Dingell
U.S. House of Representatives
Washington, DC 20515

David W. Donley
3361 Stafford Street
Pittsburgh, PA 15204-1441

Paul M. Donovan
LaRoe, Winn, et al.
3506 Idaho Avenue, N.W.
Washington, DC 20016

Kelvin J. Dowd
Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036

Daniel Duff
American Public Transit Assoc.
1201 New York Avenue, N.W.
Washington, DC 20005

John K. Dunleavy
Assistant Attorney General
133 State Street, State Administration Building
Montpelier, VT 05633-5001

Donald W. DunLevy
230 State Street
PA AFL-CIO Bldg.
2nd Floor
Harrisburg, PA 17101-1138
Fay D. Duprius
City Hall
801 Plum Street, Room 214
Cincinnati, OH 45202

David Dysard
TMACOG
P.O. Box 9508
300 Central Union Plaza
Toledo, OH 43697-9508

Gary A. Ebert
City of Bay Village
350 Dover Center Road
Bay Village, OH 44140

Richard S. Edelman
Highsaw Mahoney Clarke
1050 Seventeenth Street, N.W., Suite 210
Washington, DC 20036

Robert Edwards
Eastern Transport and Logistics
1109 Lanette Drive
Cincinnati, OH 45230

Daniel R. Elliott, III
United Transportation Union 14600 Detroit Avenue
Cleveland, OH 44107

Terrell Ellis
CAEZW V
P.O. Box 176
Clay, WV 35043

Robert L. Evans
OXY CHEM
P.O. Box 809050
Dallas TX 75380

Sara J. Fagnilli
1250 Detroit Avenue
Lakewood, OH 44107
Gerald W. Fauth, III  
G.W. Fauth & Associates, Inc.  
P.O. Box 2401  
116 South Royal Street  
Alexandria, VA 22314

Carl Feller  
Dekalb Agra Inc.  
P.O. Box 127  
4743 County Road 28  
Waterloo, IN 46793-0127

Michael P. Ferro  
Millennium Pherocemicology, Inc.  
1150 North Lake Drive  
Cincinnati, OH 45249

Nathan R. Fenno  
Delaware Otsego Corporation  
1 Railroad Avenue  
Cooperstown, NY 13326

Edward J. Fishman  
Oppenheimer Wolff & Donnelly  
1020 Nineteenth St. N.W.  
STE 400  
Washington, DC 20036

J.D. Fitzgerald UTU  
400 E. Evergreen Blvd.  
STE 217  
Vancouver, WA 98660-3264

Stephen M. Fontaine  
Massachusetts Central Railroad Corp.  
One Wilbraham Street  
Palmer, MA 01069

Honorable Tillie K. Fowler  
U.S. House of Representatives  
Washington, DC 20515
Garland B. Garrett, Jr.
NC Department of Transportation
P.O. Box 25201
Raleigh, NC 27611

Michael J. Garrigan
BP Chemicals, Inc.
4440 Wanenvelopell CTR Rd.
Cleveland, OH 44128

Richard A. Gavid
16700 Gantry Lane, WO 104
Tinley Park, IL 60477

Kirk Fordice, Governor
State of Mississippi
P.O. Box 139
Jackson, MS 39205

Louis E. Gitomer
Ball Janik LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005

Honorable John Glenn
U.S. Senate
ATTN: Anisa Beil
200 N. High Street, S-600
Columbus, OH 43215-2408

Andrew P. Goldstein
McCarthy, Sweeney, et al.
1750 Pennsylvania Avenue, N.W.
Washington, DC 20006

John Gordon
National Lime & Stone Company
P.O. Box 120
Findlay, OH 45840

Honorable Bob Graham
United States Senate
Washington, DC 20510
Edward D. Grünberg  
Galland, Charasch, Morse & Garfinkle  
1054 Thirty-First Street, N.W.  
Washington, DC 20007-4492

Peter A. Greene  
Thompson Hine Flory  
1920 N. Street, N.W., Suite 800  
Washington, DC 20036

Robert E. Greenlese  
Toledo-Lucas County Port Authority  
1 Maritime Plaza, 7th Floor  
Toledo, OH 43604

Peter A. Gilbertson  
Regional RRS of America  
122 L St., N.W. STE 850  
Washington, DC 20001

Douglas S. Golden  
Suite 200  
533 Fellowship Road  
Mt. Laurel, NJ 08054

Donald F. Griffin  
Brotherhood of Maintenance of Way Employees  
400 N. Capitol Street, N.W., Suite 652  
Washington, D.C. 20001

John J. Grocki  
GRA, Inc.  
5 West Avenue, One Jenkintown Station  
Jenkintown, PA 19046

Vaughn R. Groves  
Pittston Coal Company  
P.O. Box 5100  
Lebanon, VA 24266

Joseph Guerrieri, Jr.  
Guerrieri, Edmond, et al.  
1331 F Street, N.W., 4th Floor  
Washington, DC 20004
R.E. Hermann
Atlantic City Electric Company
6801 Black Horse Pike
Egg Harbor Township, NJ 08234

Charles S. Hesse
Charles Hesse Associates
8270 Stoney Brook Drive
Chagrin Falls, OH 44023

Lynn A. Hiser
A.E. Staley Manufacturing Co.
2200 E. Eldorado Street
Decatur, IL 62525

Eric M. Hocky
Gollatz, Griffin, Ewing
213 West Miner Street
West Chester, PA 19381-0796

J.T. Holland
Eastern Shore Railroad, Inc.
P.O. Box 312
Cape Charles, VA 23310

James E. Howard
90 Canal Street
Boston, MA 02114

John Hoy
P.O. Box 117
Glen Burnie, MD 21060

Brad F. Huston
Cyprus Amax Coal Sales Corp.
400 Technecenter Drive, Suite 320
Milford, OH 45150

Sheila Meck Hyde
City Hall
342 Central Avenue
Dunkirk, NY 14048
Ernest J. Ierardi
Nixon Hargrave Devans Doyle LLP
P.O. Box 1051
Clinton Square
Rochester, NY 14603-1051

William P. Jackson, Jr.
Jackson & Jessup, P.C.
P.O. Box 1240
3426 North Washington Blvd.
Arlington, VA 22210

James R. Jacobs
Jacobs Industries
2 Quarry Lane
Stony Ridge, OH 43463

Honorable Fob James
Governor
State of Alabama
Montgomery, AL 36130

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

Erika Z. Jones
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W., Suite 6500
Washington, DC 20006

Terrence D. Jones
Keller & Heckman
1001 G. Street, N.W., Suite 500 West
Washington, DC 20001

Frank N. Jorgensen
The Elk River Railroad, Inc.
P.O. Box 460
Summersville, WV 26651
Fritz R. Kahn
1100 New York Avenue, N.W.
Suite 750 West
Washington, DC 20005-3934

Steven J. Kalish
McCarthv & Harkaway
1750 Pennsylvania Avenue, N.W.
Washington, DC 20006-4502

Honorable Marcy Kaptur
US House of Representatives
Washington, DC 20515

Larry B. Karnes
Transportation Building
P.O. Box 30050
425 West Ottawa
Lansing, MI 48909

Richard E. Kerth
Champion Intern’l Corp.
101 Knightsbridge Drive
Hamilton, OH 45020-0001

David D. King
Beaufort and Morehead RR Co.
P.O. Box 25201
Raleigh, NC 27611-5201

David D. King
Beaufort and Morehead Railroad Company
P.O. Box 25201
Raleigh, North Carolina 27611-5201

L. P. King, Jr.
General Chairperson UTU
145 Campbell Avenue, S.W., Suite 207
Roanoke, VA 24011

Mitchell M. Kraus
Transportation Communications Intern’l Union
3 Research Place
Rockville, MD 20850
Hon. Dennis J. Kucinich
United States House of Representatives
Washington, DC 20515

Paul H. Lamboley
Oppenheimer Wolff & Donnelly
1020 19th Street, N.W., Suite 400
Washington, DC 20036

Hon. Steve Latourette
United States House of Representatives
Washington, DC 20515

J. Patrick Latz
Heavy Lift Cargo System
P.O. Box 51451
Indianapolis, IN 46251-0451

Sherri Lehman
Corn Refiners Association
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006-5805

Hon. Jacob Leventhal
Office of Hearings
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, DC 20426

Hon. William O. Lipinski
United States House of Representatives
Washington, DC 20515

Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
180 N. Stetson Avenue, 45th Floor
Chicago, IL 60601

Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington Street
Newark, NJ 07102
John K. Maser, III, Esquire
Donelan, Cleary, Wood & Maser, P.C.
Suite 750
1100 New York Avenue, N.W.
Washington, DC 20005-3934

Theodore H. Matthews
NJ Dept. of Transportation
1035 Parkway Avenue, CN-600
Trenton, NJ 08625

Michael Mattia
Institute of Scrap Recycling Industries, Inc.
1325 G Street, N.W.
Washington, DC 20005

David J. Matty
City of Rocky River
21012 Hilliard Road
Rocky River, OH 44116-3398

George W. Mayo, Jr.
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, DC 20004-1161

Michael F. McBride
LeBoeuf Lamb Greene & MacRae, LLP
1875 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009

Edward C. McCarthy
Inland Steel Industries, Inc.
30 West Monroe Street
Chicago, IL 60603

Christopher C. McCracken
Ulmer & Berne LLP
1300 East Ninth Street, Suite 900
Cleveland, OH 44114
Thomas F. McFarland, Jr.
McFarland & Herman
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-3101

James F. McGrail
Commonwealth of Mass. Exec. Office of
Transp. & Const.
10 Park Plaza, Room 3170
Boston, MA 02116-3969

Francis G. McKenna
Anderson & Pendleton
1700 K Street, N.W., Suite 1107
Washington, DC 20006

Honorable Michael McNulty
US House of Representatives
Washington, DC 20515-2210

H. Douglas Midkiff
65 West Broad Street, Suite 101
Rochester, NY 14614-2210

Hon. Barbara A. Mikulski
United States Senate
Washington, DC 20510

Clinton J. Miller, III, General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

G. Paul Moates
Sidley & Austin
1722 I Street, N.W.
Washington, DC 20006

C.V. Monin
Brotherhood of Locomotive Engineers
1370 Ontario Street
Cleveland, OH 44113
Je·frey R. Moreland
The Burlington Northern and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL  60173

Karl Morell
Ball Janik & Novack
1455 F Street, N.W., Suite 225
Washington, DC  20005

Jeffrey O. Moreno
Donelan Cleary Wood Maier
1100 New York Avenue, N.W., Suite 750
Washington, DC 20005-3934

Ian Muir
Bunge Corporation
P.O. Box 28500
St. Louis, MO  63146

Andrew M. Muller, Jr.
P.O. Box 218
Port Clinton, PA  19549

William A. Mullins
Troutman Sanders LLP
1300 I Street, N.W., Suite 500 East
Washington, DC  20605-3314

Robert E. Murray
Ohio Valley Coal Company
56854 Pleasant Ridge Road
Alledonia, OH  43902

John R. Nadolny
Boston & Maine Corp.
Iron Horse Park
No. Billerica, MA  01862

S.J. Nasca
State Legislative Director, UTU
35 Fuller Road, Suite 205
Albany, NY  12205
Gerald Norton
Harkins Cunningham
1300 19th Street, N.W., Suite 500
Washington, DC 20036

Sandra L. Nunn
Frost & Jacobs LLP
201 East Fifth Street
Cincinnati, OH 45202

Peter Q. Nyce, Jr.
US Department of the Army
901 North Stuart Street
Arlington, VA 22203

Keith G. O’Brien
Rea, Cross and Auchincloss
1920 N. Street, N.W., Suite 420
Washington, DC 20036

D.J. O’Connell
General Chairperson UTU
410 Lancaster Avenue, Suite 5
Haverford, PA 19041

Christopher C. O’Hara
Brickfield Barchette & Ritts, PC
1025 Thomas Jefferson Street, N.W., 8th Floor
Washington, DC 20007

John L. Oberdorfer
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037-1301

Thomas M. O’Leary
Ohio Rail Development Commission
50 W. Broad Street, 15th Floor
Columbus, OH 43215

Byron D. Olsen
Felhaber Larson Fenlon & Vogt PA
601 Second Avenue South, 4200 First Bank Place
Minneapolis, MN 55402-4302
William L. Osteen
Associate General Counsel TVA
400 West Summit Hill Drive
Knoxville, TN 37902

L. John Osborn
Sonnenschein Nath & Rosenthal
1301 K Street, N.W. Suite 600
Washington, D.C. 20005

Monty J. Parker
CMC Steel Group
P.O. Box 911
Seguin, TX 78156

Honorable Paul E. Patton
Office of the Governor
70th Capitol Avenue, Suite 100
Frankfort, KY 40601

Lawrence Pepper, Jr.
Gruccio Pepper
817 East Landis Avenue
Vineland, NJ 08360

F.R. Pickell
General Chairperson UTU
6797 North High Street, Suite 108
Worthington, OH 43085

Patrick R. Plummer
Guerrier, Edmond & Clayman, P.C.
1331 F Street, N.W.
Washington, DC 20004

Andrew R. Plump
Zuckert, Scoult, Rasenberger
888 17th Street, N.W., Suite 600
Washington, DC 20006-3979

Joseph R. Pomponio
Federal Railroad Admin.
400 7th Street, S.W., RCC-20
Washington, DC 20590
Honorable Rob Portman  
US House of Representatives  
8044 Montgomery Road, Room 540  
Cincinnati, OH 45236  

Larry R. Pruden  
Transportation-Communications International Union  
3 Research Place  
Rockville, MD 20850  

Honorable Deborah Pryce  
US House of Representatives  
500 South Front Street, Room 1130  
Columbus, OH 43215  

Harold P. Quinn, Jr.  
Nat'l Mining Assoc.  
1130 17th Street, N.W.  
Washington, DC 20036  

J.T. Reed  
General Chairperson UTU  
7785 Baymeadows Way, Suite 109  
Jacksonville, FL 32256  

Honorable Ralph Regula  
US House of Representatives  
Washington, DC 20515  

Hon. Thomas J. Ridge  
Governor, Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120  

Arvid E. Roach, II  
Covington & Burling  
P O Box 7566  
1201 Pennsylvania Avenue, N.W.  
Washington, DC 20044-7566  

Hon. Charles Robb  
United States Senate  
Washington, DC 20510
James F. Roberts  
210 E. Lombard Street  
Baltimore, MD 21202  

John M. Robinson  
9616 Old Spring Road  
Kensington, MD 20895-3124  

J. L. Rodgers  
General Chairman UTU  
480 Osceola Avenue  
Jacksonville, FL 32250  

Edward J. Rodriguez  
P.O. Box 298  
67 Main Street  
Centerbrook, CT 06409  

David Roloff  
Goldstein & Roloff  
526 Superior Avenue East, Suite 1440  
Cleveland, OH 44114  

John J. Rosacker  
KS, Department of Transp.  
217 S.E. 4th Street, 2nd Floor  
Topeka, KS 66603  

Charles M. Rosenberger  
CSX Transportation  
500 Water Street  
Jacksonville, FL 32202  

Christine H. Rosso  
IL, Assistant Attorney General  
100 W. Randolph Street, 13th Street  
Chicago, IL 60601  

Hon. William V. Roth, Jr.  
United States Senate  
Washington, DC 20510-0001
R. E. Rowe  
General Chairperson UTU  
320 S. Main Street  
Plymouth, MI 48170

Honorable Bobby L. Rush  
US House of Representatives  
Washington DC 20515-9997

Thomas R. Rydman  
Indian Creek Railroad Company  
3905 W. 600 North  
Anderson, IN 46011

Honorable Rick Santorum  
US Senate  
Washington, DC 20510-3804

R K Sargent  
General Chairperson UTU  
1319 Chestnut St.  
Kenova, WV 25530

John L. Sarratt  
Kilpatrick, Stockton LLP  
4101 Lake Boone Trail  
Raleigh, NC 27607

Hon. Thomas Sawyer  
United States House of Representatives  
Washington, DC 20515

Hon. Thomas Sawyer  
United States House of Representatives  
P.O. Box 1463  
South Bend, IN 46624-1463

Scott M. Saylor  
North Carolina Railroad Company  
3200 Atlantic Avenue, Suite 110  
Raleigh, NC 27604
G. Craig Schelter  
Philadelphia Industrial Development Corporation  
1500 Market Street  
Philadelphia, PA 19102

Thomas E. Schick  
Chemical Manufacturers Association  
1300 Wilson Blvd.  
Arlington, VA 22209

Richard J. Schiefelbein  
Woodharbor Associates  
7801 Woodharbor Drive  
Fort Worth, TX 76179

Frederick H. Schrank  
P.O. Box 778  
Dover, DE 19903

Randolph L. Seger  
McHale Cook & Welch, PC  
320 N. Meridian St., Suite 1100  
Indianapolis, IN 46204

Diane Seitz  
Central Hudson Gas & Electric Corporation  
284 South Avenue  
Poughkeepsie, NY 12601

Denise L. Sejna  
City of Hammond  
5925 Calumet Avenue  
Hammond, IN 46320

Anthony P. Semancik  
347 Madison Avenue  
New York, NY 10017-3706

Roger A. Serpe  
Indiana Harbor Belt Railroad  
175 West Jackson Blvd., Suite 1460  
Chicago, IL 60604
James F. Shepherd
Tuscola & Saginaw Bay
P.O. Box 550
Owosso, MI 48867-0550

Kevin M. Sheys
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, DC 20036-6105

Arnold K. Shimelman
Connecticut Assistant Attorney General
P.O. Box 317546
Newington, CT 06131

Mark H. Sidman
Weiner, Brodsky, Sidman
1350 New York Avenue, N.W., Suite 800
Washington, DC 20005

Philip G. Sido
Union Camp Corporation
1600 Valley Road
Wayne, NJ 07470

Kenneth E. Siegel
American Trucking Association
2200 Mill Road
Alexandria, VA 22314-4677

Patrick B. Simmons
NC Dept. of Transportation
1 S. Wilmington St., Rm. 557
Raleigh, NC 27611

William C. Sippel
Oppenheimer Wolff & Donnelly
1800 N. Stetson Avenue
Two Prudential Plaza, 45th Floor
Chicago, IL 60601
Richard G. Slattery
Amtrak
60 Massachusetts Ave., N.E.
Washington, DC 20002

William L. Slover
Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036-3003

Carl W. Smith
Amvest Corporation
One Boar's Place
Charlottesville, VA 22905

Garret G. Smith Mobil Oil Corp.
3225 Gallows Road, Room 8A903
Fairfax, VA 22037-0001

Paul Samuel Smith
US Dept. of Transportation
400 Seventh St., S.W., Rm. 4102 C-30
Washington, DC 20590

Honorable Robert F. Smith
US House of Representatives
Washington, DC 20515

John W. Snow
701 East Byrd St.
1500 Federal Reserve Building
Richmond, VA 23219

Mike Spahis
Fina Oil & Chemical Co.
P.O. Box 2159
Dallas, TX 75221

Honorable Arlen Specter
US Senate
Washington, DC 20510-3802
Charles A. Spitulnik  
Hopkins & Sutter  
888 16th St., N.W.  
Washington, DC 20006

Mary Gabrielle Sprague  
555 Twelfth St., N.W.  
Washington, DC 20004-1202

Eileen S. Stommes  
Agricultural Marketing Service, USDA  
P.O. Box 96456  
Washington, DC 20090-6456

Scott N. Stone  
Patton Boggs LLP  
2550 M Street, N.W., 7th Floor  
Washington, DC 20037-1346

Hon. Louis Stokes  
United States House of Representatives  
Washington, DC 20515

Hon. Ted Strickland  
United States House of Representatives  
Washington, DC 20515

D. G. Strunk, Jr.  
General Chairperson UTU  
817 Kilbourne Street  
Bellevue, OH 44811

K.D. Sturgis  
NC Dept. of Justice  
P.O. Box 629  
Raleigh, NC 27602

James F. Sullivan  
CT Dept. of Transp.  
P.O. Box 317546  
Newington, CT 06131
Daniel J. Sweeney  
McCarthy, Sweeney & Harkaway, P.C.  
1750 Pennsylvania Avenue, N.W., Suite 1105  
Washington, DC  20006  

Robert G. Szabo  
V. Ness Feldman  
1050 Thomas Jefferson Street, N.W.  
Washington, DC  20007  

J.E. Thomas  
Hercules Incorporated  
1313 North Market Street  
Wilmington, DE  19894  

K. N. Thompson  
General Chairperson UTU  
11017-F Gravois Industrial Plaza  
St. Louis, MO  63128  

William R. Thompson  
City of Philadelphia Law Dept.  
1600 Arch Street, 10th Floor  
Philadelphia, PA  19103  

Honorable Strom Thurmond  
United States Senate  
Washington, DC  20515  

W. David Tidholm  
Hutcheson & Grundy  
1200 Smith St., #3300  
Houston TX  77002  

Robert G. Torricelli  
District Office  
25 Main Street  
Hackensack, NJ  07601-7015  

Hon. Robert G. Torricelli  
United States House of Representatives  
Washington, DC  20515
Hon. James Traficant  
United States House of Representatives  
Washington, DC 20515

Merrill L. Travis  
Illinois Dept. of Transp.  
2300 South Dirksen Parkway, Room 302  
Springfield, IL 62703-4555

Mayor Vincent M. Urbin  
150 Avon Belden Road  
Avon Lake, OH 44012

Stephen M. Lithoff  
Coniglio & Lithoff  
110 West Ocean Blvd., Suite C  
Long Beach, California 90802

J. William Van Dyke  
NJ Transportation Planning Authority  
One Newark Center, 17th Floor  
Newark, NJ 07102

William C. Van Slyke  
152 Washington Avenue  
Albany, NY 12210

Hon. Peter J. Vislosky  
United States House of Representatives  
Washington, DC 20515

John A. Vuono  
Vuono & Gray  
2310 Grant Building  
Pittsburgh, PA 15219

F. Ronalds Walker  
Citizens Gas & Coke Utility  
2020 N. Meridian Street  
Indianapolis, IN 46202

Jack A. Walter  
WCI Steel Inc.  
1040 Pine Avenue, E.E.  
Warren, Ohio 44483
Hon. John Warner
United States House of Representatives
Washington, DC 20515

Honorable John Warner
United States Senate
P.O. Box 8817
235 Federal Building
Abingdon, VA 24210-0887

James R. Weiss
Preston, Gates, Ellis, et al.
1735 New York Avenue, N.W., Suite 500
Washington, DC 20006

Hugh H. Welsh
Law Department, Suite 67E
One World Trade Center
New York, NY 10048-0202

Jay Westbrook
City Hall, Room 216
601 Lakeside Avenue, N.E.
Cleveland, OH 44114

Hon. Bob Weygand
United States House of Representatives
Washington, DC 20515

Charles H. White, Jr.
Galland, Kharasch & Garfinkle, P.C.
1054 Thirty-First Street, N.W.
Washington, DC 20007-4492

William W. Whitehurst, Jr.
12421 Happy Hollow Road
Cockeysville, MD 21030-1711

Henry M. Wick, Jr.
Wick, Striff, et al.
1450 Two Chatham Center
Pittsburgh, PA 15219
Robert J. Will
United Transportation Union
4134 Grave Run Road
Manchester, MD 21101

Debra L. Willen
Guerrieri, Edmond & Clayman PC
1331 15th Street, N.W., "F" Floor
Washington, DC 20004

Richard Wilson
1126 8th Avenue, Suite 403
Altoona, PA 16602

Robert A. Wimbish
Rea, Cross & Aichincloss
1920 N. Street, N.W., Suite 420
Washington, DC 20036

C.D. Winebrenner
General Chairperson UTU
27801 Euclid Avenue, Room 200
Euclid, OH 44132

John F. Wing
Citizens Advisory Committee
601 North Howard Street
Baltimore, MD 21201

David L. Winstead
P.O. Box 8755
BWl
Baltimore, MD 21240-0755

Hon. Bob Wise
United States House of Representatives
Washington, DC 20515

Sergeant W. Wise
Livonia, Avon & Lakeville Railroad Corp.
P.O. Box 190-B
5769 Sweeteners Blvd.
Lakeville, NY 14480
Timothy A. Wolfe
Wyandot Dolomite, Inc.
P.O. Box 99
1794 CO Road #99
Carey, OH 43316

Frederic L. Wood
Donelan, Cleary, Wood and Maser
1100 New York Avenue, N.W., Suite 750
Washington, DC 20005-3934

E.C. Wright
P.O. Box 2197 (PO 2007)
Surface Transportation Department
Houston, TX 77252

Edward Wytkind, Executive Director
Transportation Trades Department AFL-CIO
400 N. Capitol Street, S.W., Suite 861
Washington, DC 20001

L. Pat Wynns
Suite 210
1050 - 17th Street, N.W.
Washington, DC 20005-5503

R.L. Young
American Electric Power
P.O. Box 700
Lancaster, OH 43130

Sheldon A. Zabel
Schiff Hartin & Waite
7200 Sears Tower
Chicago, IL 60606

Scott M. Zimmerman
Zuckert Scourt & Rasenberger LLP
888 Seventeenth Street, N.W.
Washington, DC 20006
Walter E. Zulig, Jr.
Metro-North Commuter Railroad Co.
347 Madison Avenue
New York, NY 10017-3706

THOMAS F. HANSON, JR., ESQUIRE
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388

DESCRIPTION OF ANTICIPATED
RESPONSIVE APPLICATION OF
THE STATE OF NEW YORK

OF COUNSEL:
Slover & Loftus
1224 Seventeenth Street, NW.
Washington, D.C. 20036

Dated: August 22, 1997

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

By: William L. Slover
Kelvin J. Dowd
Jean M. Cunningham
Slover & Loftus
1214 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys and Practitioners
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

Finance Docket No. 33388

DESCRIPTION OF ANTICIPATED
RESPONSIVE APPLICATION OF
THE STATE OF NEW YORK

In accordance with the Board's Decision No. 12, served
in this proceeding on July 23, 1997, the State of New York,
acting by and through its Department of Transportation ("New
York") submits this summary description of the Responsive Appli­
cation that it expects to file on or before October 21, 1997.

IDENTITY AND INTEREST

New York's interest in the transaction described in the
Application is self-evident. With approximately 90% of its in­
state rail mileage owned or controlled by Conrail and a diversity
of transportatic constituencies that includes major ports, urban
and rural communities and freight shippers, regional railroads,
commuter and inter-city rail passengers, and electric utilities,
New York has a direct and special interest in the proposed
disposition and future operation of Conrail’s assets described in the Application.

Since the mid-1960s, New York has experienced a concentration of rail freight transportation market power that is perhaps unmatched anywhere in the country, as seven principal railroads eventually gave way to a single, dominant entity. Through their Application, Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX") offer a division (and in some limited cases, a sharing) of Conrail assets that they characterize as a "unique, pro-competitive proposal" designed to provide shippers in New York and elsewhere with "dual rail service for the first time since the creation of Conrail." Application, Vol. I at 2, 5. New York submits that the Application indeed may offer the Board an opportunity to reconfigure rail service in the Northeast to restore effective competition and its attendant benefits to a region that has suffered without it for too long. In a number of significant respects, however, the plan put forward by the Applicants themselves falls short of the mark.

Through its participation in this proceeding, and its Comments to be submitted on October 21, 1997, New York intends to highlight those aspects of the proposed transaction and its consequences that are inconsistent with governing statutory goals and the public interest, and propose effective, practical remedies that will correct these deficiencies. One in particular,
however, necessitates the submission and approval of a Responsive Application, as summarized below.

**ANTICIPATED RESPONSIVE APPLICATION**

Through the plan outlined in their Application, NS and CSX propose, inter alia, to open what heretofore have been Conrail-captive freight origins and destinations in the New York metropolitan area to dual rail service. The eastern limit of this unilateral agreeement Northern New Jersey/New York "shared assets area," however, is drawn at the Hudson River; communities and freight shippers in the five boroughs of New York City and on Long Island would be left without the service alternatives being made available to their western neighbors. To remedy this defect and assure the availability of efficient and competitive rail service to the entire metropolitan region, and subject to modification to accommodate operational considerations, New York anticipates filing a Responsive Application seeking the following conditions in favor of a rail carrier unaffiliated with the Applicants:

1. Trackage rights on reasonable terms over Conrail (NYC) lines from points of connection with the Delaware & Hudson Railway (CP Rail) at "CP-160" near Schenectady, NY and "CP-VO" near Voorheesville, NY, through Rensselaer, NY and Selkirk, NY respectively, to Poughkeepsie, NY;

2. Concurrent trackage rights (with Conrail-CSX) over lines owned by New York Metropolitan Transit Authority between Poughkeepsie, NY
and Oak Point, NY, including removal of any Conrail restriction that would limit the Authority's ability to grant such rights; and

(3) trackage rights on reasonable terms over Conrail (NYC) lines from Oak Point, NY to a point of connection with the lines of the Long Island Railroad at or near Fresh Ponds, NY.

Respectfully submitted,

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

OF COUNSEL:  

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

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

Dated: August 22, 1997  

Attorneys and Practitioners
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, I caused copies of the foregoing Description of Anticipated Responsive Application to be served by hand upon the following:

The Honorable Jacob Leventhal
Federal Energy Regulatory Commission
800 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

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

Samuel M. Sipe, Jr., Esq.
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20035

Richard A. Allen, Esq.
Zuckert, Scoultt & Rasenberger, L.L.P.
883 17th Street, N.W.
Washington, D.C. 20006-3939

and by first class U.S. mail, postage prepaid, on all other parties of record.

Kelvin J. Dowd
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION CF NYSEG

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE ELECTRIC AND GAS

August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388 (Sub No. 35)

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

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF NYSEG

Pursuant to the procedures adopted by the Surface Transportation Board ("Board") in
Decision No. 61, New York State Electric and Gas ("NYSEG") hereby submits this description of
an application for trackage rights it anticipates filing in response to the Railroad Control
Application filed in this proceeding by Applicants.2

NYSEG is New York state's largest coal rail shipper, shipping three million tons of coal to
its generating plants in 1996. Currently, NYSEG ships coal from the mines in the Ohio-
Pennsylvania-West Virginia area to its four electric generating plants. These plants are among the

1 Finance Docket 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Northern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation, Decision No. 6, (STB served May 30, 1997).

2 "Applicants" shall refer to CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC). CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as "Applicants."
six most competitive fossil fuel-fired generators in New York State and among the 16 most competitive in the northeast.

NYSEG has experienced directly the benefits of single-line service from one carrier that serves all of its coal mine origins and all of its four plant destinations, Kintigh, Milliken, Goudey, and Greenidge. Because of Conrail’s ability to serve all of NYSEG’s origins and destinations, NYSEG, Conrail, and certain coal producers have worked together to optimize the efficiencies of rail delivery to all of our stations. In leed, various coal transportation contracts and other agreements have been entered into based upon Conrail’s ability to serve all of our plants from all of our destinations.

Under the proposed transaction, the Kintigh plant will become an exclusively served CSX plant and the Milliken, Goudey, and Greenidge plants will become exclusively served by NS. NYSEG is the only utility involved in this transaction that will have its rail served plants divided between NS and CSX. As a result, not only will NYSEG lose certain single-line benefits for some of its current and future coal delivery needs, but the proposed split of NYSEG’s plants between CSX and NS threatens all of NYSEG’s delivery efficiencies without any corresponding benefit. The loss of these benefits could increase the rail delivery costs, increase the production cost for a kilowatt-hour of electricity, reduce the competitiveness of our generating stations and reduce our ability to deliver low-cost wholesale electricity to customers.

In order to preserve the efficiency gains that NYSEG has achieved and the benefits of single-line service from all of our origins to all of our destinations, NYSEG anticipates filing an application seeking one or the other, but not both, of the following conditions:

1. Trackage rights on behalf of Norfolk Southern, or a suitable third-party carrier, over the lines between Buffalo, New York and NYSEG’s Kintigh Plant, designated to be owned and
operated by CSX after the consummation of the proposed transaction. The specific track for which trackage rights will be requested are: \(^3\)

Niagara Branch MP 19.0 (CP-21) to Lockport Branch Connection track, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP-80) to connection with Somerset Railroad at Lockport Branch MP 58.8 (CP-59).

2. Trackage rights on behalf of CSX, or a suitable third-party carrier, over the lines between Buffalo, New York and NYSEG’s Goudey, Greenidge and Milliken Plants, designated to be owned and operated by Norfolk Southern after the consummation of the proposed transaction. The specific track for which trackage rights will be requested are:

Chicago Line MP 1.7 (CP-DRAW) over the Bison Running Track to Southern Tier Line MP 418.0 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to; Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to end of line at Milkiefer Station MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning Secondary from MP 74.1 to MP 0.

Respectfully Submitted, this 22nd day of August, 1997.

WILLIAM A. MULLINS
SANDRA L. BROWN
TROUTMAN SANDERS LLP
1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
202 274-2950 (PHONE)
202-274-2994 (FAX)

ATTORNEYS FOR NEW YORK STATE
ELECTRIC AND GAS

\(^3\) These trackage rights are based on the fact that NS currently has trackage rights from Buffalo, NY to suspension Bridge Yard, including the Niagara Branch.
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Description of Anticipated Responsive Application of New York State Electric and Gas" (NYSEG-6) was served this 22nd day of August, 1997, by facsimile transmission to Applicants' representatives, to all other persons on the Restricted Service List in this proceeding and to Judge Leventhal.

Sandra L. Brown
Attorney for New York State Electric & Gas
VIA HAND DELIVERY

Office of the Secretary
Case Control Branch
Attn: STB Finance Docket 33388
Surface Transportation Board
1925 K Street, N W.
Washington, DC 20423-0001

August 22, 1997

Dear Sir or Madam:

Enclosed for filing are the original and twenty-five copies of the "Description by Coalition of Northeastern Governors of Responsive Application." Also enclosed is a 3.5" diskette containing the Description formatted for WordPerfect 6.1 which can be converted to WordPerfect 7.0.

Would you please date-stamp and return the extra copy of this document to the messenger? Thank you very much for your assistance.

Very truly yours,

Anne D. Stubbs
Executive Director

Enclosures
The Coalition of Northeastern Governors ("CNEG") is an association of the Governors of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont. CNEG is served by a non-profit secretariat, the CNEG Policy Research Center, Inc. CNEG also has a Rail Task Force which has carefully reviewed the primary application filed by Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX").

CNEG is a party of record in these proceedings. In accordance with the decision of the Board dated May 23, 1997 (Decision No. 6) establishing a procedural schedule, CNEG is submitting this description of a responsive application which it proposes to file. As discussed below, the two principal areas of concern to CNEG are the potential impacts of the proposed transaction on rail competition and on rail passenger service.

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1 As the Commonwealth of Pennsylvania and Governor Thomas J. Ridge have entered their own appearance in this case and will be developing their own position, the views presented here do not necessarily represent those of the Commonwealth and Governor Ridge.

2 CNEG has, in compliance with Decision No. 6, reserved Sub-No. 40 for its responsive application. CNEG was advised by a Board staff member not to use such number until the application is filed.
General Concerns

CNEG strongly supports the continuation and improvement of a sound, competitive freight rail system in the Northeastern region. Rail service must be an integral part of an overall transportation system which enhances safety, improves mobility, and provides access to national and global markets in partnership with other modes.

CNEG recognizes that the region's economic well-being is served by an efficient and financially viable rail system. At the same time, the Northeast's increasingly diversified and global economy demands multiple rail road service to promote growth in the rail freight market, and to negotiate service agreements to maximize the contribution of both passenger and freight service within the emerging system.

CNEG believes that any transaction approved by the Surface Transportation Board must support state, regional and national transportation, environmental and development goals. Competition, choice and capacity in the resulting rail system are essential if the Northeast is to have affordable, effective service which advances the long term competitiveness of the region within the national and global economy. Therefore, the transaction approved by the Board should adhere to the following principles:

- **Ensure Competitive Access**: Direct competitive rail access for two or more Class I carriers should be assured between major service nodes which support global and domestic commerce, including seaports.

- **Accommodate Passenger Rail**: Co-development of intercity, commuter and freight services should be ensured where shared trackage is necessary.

- **Provide Access to Markets**: Effective, competitive connections to national markets should be available to short-line and regional railroads serving the Northeast.
• **Enhance Capacity**: The rail system must have the capacity to grow in order to meet the needs of its users.

• **Intermodal Effectiveness**: The rail system must offer its users efficient intermodal rail service.

**Specific Concerns and Responsive Application**

The application of CSX and NS to acquire and divide Conrail raises two specific concerns for CNEG. First, as described below, the transaction will not adequately address competition between Class I rail carriers, and may therefore result in higher rates and less efficient service, in most of the states represented by CNEG. Second, the transaction does not give due consideration to the accommodation and promotion of the interests of rail passenger service.

**Competition**

The basic premise of the NS/CSX transaction is the creation of two rail competitors of equal strength. The application is replete with assertions that balanced rail competition in the areas served by CSX and NS will be created and will constitute the public interest justification for approval of the transaction. Witness after witness contends that the transaction should be approved because it will restore rail competition in areas where Conrail had enjoyed a monopoly.

For the so-called “shared assets areas,” CNEG agrees that rail competition will be enhanced. CSX and NS have proposed that in those areas both will have direct access to all of the rail customers which are now served only by Conrail. CSX and NS will also share maintenance, capital and operating costs in such areas, and this sharing should lead to lower rates.
The remainder of the states and areas represented by CNEG is, however, a forgotten island lying off the coast of the demarcation line formed by the Hudson River. For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont and the State of New York east of the Hudson River and in many areas of New York west of the Hudson River, there is no pretense that rail competition will be enhanced. To the contrary, the Conrail monopoly has not only been preserved but has been strengthened by the parties' agreement to assign the Conrail lines to CSX.

NS has responded to this continuing monopoly by announcing an agreement with Canadian Pacific pursuant to which CP will provide haulage service for NS between Sunbury, Pennsylvania and Albany, New York. At Albany, NS proposes to work with the Guilford system in order to provide competition to CSX for rail traffic east of Albany.

It is highly doubtful that the attempt by NS to piece together a route to New England will enable NS to provide any worthy competition to CSX. Indeed, the NS/CSX application and supporting affidavits uniformly and cumulatively extol the virtues of single system service. The combination of NS operations to Sunbury, haulage provided by CP between Sunbury and Albany, and an interchange with the Guilford system at Albany will most certainly not be competitive with CSX single line service and may not even be feasible. CSX and NS acknowledge that joint line service cannot compete with single line service.

The result of the agreement by NS and CSX to carve up the Conrail lines in New England will be the replacement of Conrail with CSX, a much larger and more dominant carrier than Conrail. CSX will have the ability, should it chose to do so, to increase rates or to downgrade service. CSX will not be constrained from penalizing short-lines and shippers which might try to reach NS as an alternative to CSX.
CNEG believes that NS and CSX should be put on an equal footing in order to provide rail competition by two Class I carriers in states east of the Hudson River. If the public interest is served by NS-CSX competition in the shared assets areas, why should not the public interest be served by means of similar competition and open access throughout the Northeast?

In order to address this shortcoming in the NS/CSX plan, CNEG contemplates the filing of a responsive application which would guarantee that NS can compete on equal terms with CSX throughout the Northeast. Such a responsive application may seek the imposition of trackage rights in favor of NS or short-lines or regional carriers in order to convert Albany into a hub which would provide equal access for all rail carriers and their customers. Alternatively, the application may request other specific remedies which would have the effect of enabling NS and CSX to compete for all rail traffic in the Northeast.

**Passenger Service**

The states represented by CNEG have made substantial investments in equipment, track and operations for both commuter and intercity passenger service. In certain areas, Conrail shares lines and facilities with commuter and intercity passenger operations. Joint use of facilities poses difficult challenges, but CNEG believes that cooperative efforts can lead to enhanced services of both freight and passenger systems.

The operating plans which have been formulated by NS and CSX pay lip service to the need to accommodate passenger operations and to work cooperatively with passenger service providers. The details of any such accommodations or cooperation have not, however, been disclosed. For example, the applicants propose to adopt existing agreements, some of which are outdated and
cumbersome, giving rise to concern about their commitment to passenger service. At the same time, the projected increase in freight traffic will place added pressure on passenger service.

Matters such as dispatching, levels of maintenance and potential interference with passenger operations must be analyzed in order to determine whether the proposed transaction is likely to have an adverse impact on passenger operations. CNEG intends to review these details and, if necessary, to include in its responsive application a request for conditions or specific relief to address any harm which is identified. Such relief could include requests for trackage rights or sales of lines in order to integrate and foster both freight and passenger operations.

Respectfully submitted,

COALITION OF NORTHEASTERN GOVERNORS

James E. Howard LLC
90 Canal Street
Boston, MA 02114
(617) 263-1322

Attorney for Coalition of Northeastern Governors

Anne D. Stubbs
Executive Director
CNEG Policy Research Center, Inc.
400 North Capitol Street
Suite 382
Washington, DC 20001
(202) 624-8450

Dated: August 22, 1997
The undersigned hereby certifies that the “Description by Coalition of Northeastern Governors of Responsive Application” is being served by mailing copies on August 22, 1997 by first class mail, postage prepaid, to the Parties of Record listed on the service list compiled by the Board and included in Decision 21 dated August 19, 1997 and on Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.

Dated: August 22, 1997

Anne D. Stubbs
August 22, 1997

VIA HAND DELIVERY

Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
Mercury Building
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 the Description of Responsive Application of Wheeling & Lake Erie Railway Co. in the above-titled proceeding. Also enclosed please find a computer disk with the same information. Copies have been served on all parties of record in this proceeding.
Will you kindly stamp and return the enclosed copy of this service letter when the documents are filed.

Very truly yours,

Charles H. White, Jr.

Counsel for Wheeling & Lake Erie Railway Co.

Enclosure

cc: Counsel for Parties 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

DESCRIPTION OF RESPONSIVE APPLICATION
OF WHEELING & LAKE ERIE RAILWAY COMPANY

William A. Callison
WHEELING & LAKE ERIE
RAILWAY CO.
100 East First Street
Brewster, Ohio 44613
Tel:  (330) 767-3401
Fax:  (330) 767-4327

Charles H. White, Jr.
GALLAND, KHARASCH
& GARFINKLE, P.C.
1054 31st Street, N.W.
Washington, D.C. 20007
Tel:  (202) 342-5200
Fax:  (202) 342-5219

Counsel for Wheeling & Lake Erie Railway Company

August 22, 1997
Pursuant to the procedural schedule established by the Board in these proceedings, the Wheeling & Lake Erie Railway Company ("W&LE") hereby briefly describes its anticipated responsive application.

W&LE occupies a unique and highly vulnerable position in these proceedings and its extraordinary position calls for extraordinary relief.

The W&LE was created in 1990 as a Norfolk Southern spin off and provides Norfolk Southern with a low cost, joint line partner with which to compete with Conrail and CSX in Ohio, West Virginia and Pennsylvania. W&LE restructured its debt in 1994 and has recently survived a ten month strike of its largest customer, Wheeling Pittsburgh Steel Corporation, but its current financial resources are severely constrained.

W&LE believes that Norfolk Southern's assumption of Conrail's franchise in the W&LE/Conrail competitive area will -- without significant new pro-competitive shipper access for
W&LE -- lead to W&LE's bankruptcy within a year of the merger because it will be reduced to the unviable position of being a Norfolk Southern joint line competitor to Norfolk Southern single system service. The merger completely undermines the rationaie of the original NS spin off and partnership which occurred only 7 years ago.

If W&LE cannot gain access to new shippers through this merger proceeding then it must request inclusion as an alternative. W&LE recognizes that inclusion is a remedy which can have a severe impact upon shippers. If new market access conditions cannot ameliorate the merger damage and the W&LE seeks inclusion, many W&LE shippers (well in excess of 50) then will become captive to NS will need to establish new competitive access. For instance, all shippers in the Canton and Akron, Ohio area (including two large steel mills) and an integrated steel mill in Steubenville, Ohio, as well as numerous aggregate shippers fear a W&LE inclusion will make them captive or significantly damage their market positions. In addition one of the few remaining coal mines in Southeast Ohio could lose its competitive markets.

While W&LE recognizes that inclusion is an administrative remedy of last resort, it nonetheless sees no alternative if a satisfactory pro-competitive solution cannot be negotiated with NS and CSX or if competitive access is not granted by the STB. W&LE is using its best efforts and has made some progress with NS in its negotiations, but, to date, cannot report adequate relief to make it viable on a long term basis.

Thus, W&LE is approaching a critical situation which calls for the opportunity to compete for new revenues from new shippers to help offset those lost in the merger or it will ultimately go bankrupt. Any bankruptcy petition shortly after the merger and during an "oversight" period will greatly add to the procedural difficulties inherent in bringing different forums and bodies of law to
bear on the problems created by Norfolk Southern's assuming Conrail's role as W&LE's competitor. Unless W&LE and Norfolk Southern (as well as CSX) can find competitive solutions to this basic problem, W&LE may be forced into reorganization.

Finally, we would note that W&LE's plight does not stand in a vacuum in the Norfolk Southern/CSX acquisitions of Conrail. A state-of-the-art, ISTEA funded intermodal facility prototype, the Neomodal facility, was created on W&LF's line in Stark County, Ohio. Significant federal funding and federal, state and local planning are invested in the creation of this facility which has been called by U.S. DOT a model of public/private partnership. If ways cannot be found to keep W&LE viable, this extensive federal/state/local experiment may well be destroyed. Inclusion may, as a last resort remedy, save this federally-backed facility. We understand that Neomodal will separately comment in these proceedings.
To summarize, W&LE is currently making its best efforts to negotiate with both Norfolk Southern and CSX, but as yet has not reached an accommodation which will make W&LE a viable carrier post merger. If these negotiations ultimately fail, W&LE may well be forced to seek STB mandated conditions for market access or, in the alternative, inclusion as an alternative to bankruptcy, because of the merger's destruction of W&LE's competitive markets. While extreme (and not preferable to new market access), inclusion would be preferable to bankruptcy.

Respectfully submitted,

[Signature]

William A. Callison
WHEELING & LAKE ERIE RAILWAY CO.
100 East First Street
Brewster, Ohio 44613
Tel: (330) 767-3401
Fax: (330) 767-4327

Charles H. White, Jr.
GALLAND, KHRASCH & GARFINKLE, P.C.
& GARFINKLE, P.C.
1054 31st Street, N.W.
Washington, D.C. 20007
Tel: (202) 342-5200
Fax: (202) 342-5219

Counsel for Wheeling & Lake Erie Railway Company

August 22, 1997
CERTIFICATE OF SERVICE

I, Charles H. White, Jr., certify that on the 22nd day of August, 1997 I served true copies of the foregoing Description of Responsive Application filed on behalf of Wheeling & Lake Erie Railway Co. on counsel of record by first class mail postage prepaid.

Charles H. White, Jr.

Counsel for Wheeling & Lake Erie Railway Co.
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

Finance Docket No. 33388 (Sub No. 37)

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION -- OPERATING RIGHTS -- LINES OF CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION

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DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

Stephen A. MacIsaac
Deputy County Attorney
Prince William County
One County Complex Court
Prince William, VA 22192
(703) 792-6620

Kevin M. Sheys
Thomas Lawrence III
Thomas J. Litwiler
Edward J. Fishman
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 293-6300

Counsel for Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission

Dated: August 22, 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

Finance Docket No. 33388 (Sub-No. 37)

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION
-- OPERATING RIGHTS --
LINES OF CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (the "Commissions"), hereby submit this description of the responsive application which they intend to file in this proceeding on or before October 21, 1997.

The Commissions are political subdivisions of the Commonwealth of Virginia and are co-owners of Virginia Railway Express ("VRE"). VRE is a commuter railroad which operates 20 passenger trains per weekday between Washington, DC and Fredericksburg and Manassas, Virginia over approximately 90 route miles of rail line owned by CSX Transportation, Inc.
("CSXT"), Norfolk Southern Railway Company ("NSR") and Consolidated Rail Corporation ("Conrail"), all Primary Applicants herein. VRE's right to utilize these rail lines is established by Operating Access Agreements entered into by the Commissions and CSXT, NSR and Conrail, respectively. The National Railroad Passenger Corporation ("Amtrak") conducts and manages VRE's commuter rail operations pursuant to a Purchase of Services Agreement between the Commissions and Amtrak. VRE has weekday ridership of approximately 7,000 trips and annual ridership of approximately 1.9 million. VRE commenced operations in 1992.

The Commissions believe that the proposed control of Conrail by the parents of CSXT and NSR, the division of Conrail's assets between CSXT and NSR and the associated operational changes will have serious adverse impacts on existing and future commuter rail operations in the Washington, DC and northern Virginia area, will diminish the adequacy of transportation to the public and, absent appropriate conditions to ameliorate these harms, would not be in the public interest. In particular, as is relevant here, the Commissions are concerned about VRE's continued access on reasonable terms to the rail lines over which it operates. The Commissions anticipate filing herein a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4) for the following transactions to be sought as conditions on any Board approval of the Primary Application:1

1. Acquisition of operating rights over CSXT's line of railroad between XR Interlocking in Spotsylvania, Virginia and RO Interlocking in Arlington, Virginia, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

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1 The Commissions are filing concurrently herewith a Petition for Clarification or Waiver (VRE-5) that seeks, in part, a determination that these proposed transactions do not require the filing of a responsive application.
2. Acquisition of operating rights over NSR's line of railroad between the South Manassas turnout and NSR's connection with CSXT at CSXT's AF Interlocking in Alexandria, Virginia, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

3. Acquisition of operating rights over Conrail's line of railroad between RO Interlocking in Arlington, Virginia (via the Virginia Avenue Interlocking) and Union Station, in Washington, DC, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

The Commissions also may seek additional conditions, not requiring the filing of a responsive application, in their comments scheduled to be filed on or before October 21, 1997.
WHEREFORE, the Commissions respectfully submit this description of their anticipated responsive application in this proceeding.

Respectfully submitted,

Stephen A. MacIsaac  
Deputy County Attorney  
Prince William County  
One County Complex Court  
Prince William, VA 22192  
(703) 792-6620

Kevin M. Sheys  
Thomas Lawrence III  
Thomas J. Litwiler  
Edward J. Fishman  
Oppenheimer Wolff & Donnelly  
1020 Nineteenth Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 293-6300

Counsel for Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (VRE-4) was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

Kevin M. Sheys
August 12, 1997  

Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
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

ESHR-2: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC  
EASTERN SHORE RAILROAD, INC. -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

ESHR-3: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC  
EASTERN SHORE RAILROAD, INC. -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

MSRR-2: Finance Docket No 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC  
WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MSRR-3: Finance Docket No 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC  
WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION
Dear Secretary Williams:

This letter is sent in connection with the above-captioned proceedings. Specifically, you will find enclosed an original and 25 copies of four (4) separate filings as follows:

1. Eastern Shore Railroad, Inc. -- Description of Responsive Application (ESHR - 2);
2. Eastern Shore Railroad, Inc. -- Rebuttal of Presumption of "Significant" Transaction in Connection with Anticipated Responsive Application (ESHR - 3);
3. Wabash & Western Railway Co. d/b/a Michigan Southern Railroad -- Description of Responsive Application (MSRR - 2);

Pursuant to the Board's instructions in this proceeding, we are enclosing two 3.5" floppy disks formatted to be compatible with the Board's WordPerfect programs. Each disk contains the above-identified documents as follows:

1. ESHR-2 is labeled as "ESHR.2"
2. ESHR-3 is labeled as "ESHR.3"
3. MSRR-2 is labeled as "MSRR.2"
4. MSRR-3 is labeled as "MSRR.3"

Thank you for your attention in this matter. Please let me know if I can be of further assistance.
Sincerely,

[Signature]

Robert A. Wimbish

Counsel for the Eastern Shore Railroad, Inc., and Wabash & Western Railway Co. d/b/a Michigan Southern Railroad

Enclosures
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No 33388

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

ESHR-3

Finance Docket No 33388 (Sub-No. 57)

EASTERN SHORE RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

EASTERN SHORE RAILROAD, INC.

REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION
IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOOS
Suite 420
1920 "N" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for the Eastern Shore Railroad, Inc.

DATED: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

ESHR-3

Finance Docket No 33388 (Sub-No. 57)

EASTERN SHORE RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

EASTERN SHORE RAILROAD, INC.

REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION
IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

SUMMARY

COMES NOW the Eastern Shore Railroad, Inc. ("ESHR"), by
its counsel, and, concerning the Responsive Application it
proposes to file in connection with the above-captioned
proceeding, requests relief from certain provisions of 49 CFR
Part 1180 as specified below. ESHR requests that the Board --
(1) accept as rebutted the presumption (set forth at 49 CFR
1180.4(d)(4)(ii)) that ESHR's proposed Responsive Application
involves a "significant" transaction, as that term is defined in
49 CFR §1180.2(b), and (2) by virtue of such rebuttal relieve
ESHRI from certain regulatory provisions of 49 CFR Part 1180 which are pertinent only to "major" or "significant" transactions.

ESHRI'S RESPONSIVE APPLICATION CONSTITUTES NEITHER A "MAJOR" NOR A "SIGNIFICANT" TRANSACTION: 
REBUTTAL OF PRESUMPTION OF A "SIGNIFICANT" TRANSACTION

According to 49 CFR § 1180.2(a), a "major" transaction involves the "control or merger [of] two or more class I railroads." ESHRI is a class III rail carrier, and for this reason alone, the Responsive Application it proposes to submit in the subject proceeding cannot be considered a "major" transaction. Although ESHRI's Responsive Application clearly does not constitute a "major" transaction, it is presumed to entail a "significant" transaction under current regulations. Specifically, 49 CFR §1180.4(d)(4) states that, "Responsive applications which are not 'major' are presumed to be 'significant' transactions." However, 49 CFR §1180.4(d)(4)(iv) establishes that this presumption is rebuttable.

ESHRI offers several facts to rebut the presumption that its proposed Responsive Application will involve a "significant" transaction. As stated above, ESHRI is a class III rail carrier. Its proposed Responsive Application seeks conditions, which, in

49 CFR 1180.2(b) states, in part, "A 'significant' transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. §11325(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:
(1) That the transaction clearly will not have any anticompetitive effects..."
the event that the Board approves the Primary Application, will involve one class I rail carrier (Norfolk Southern, over the so-called "Penn Lines System" it is to acquire and operate as a result of the proposed transaction) acting together with ESHR (a class III rail carrier). Furthermore, the conditions ESHR seeks -- including approximately 44 miles of local trackage rights -- would not constitute a major market extension warranting submission and review as a "significant" transaction. Finally, the relatively limited trackage rights relief that ESHR may request in its anticipated Responsive Application would open additional routing options to shippers along the affected lines, and thus promises pro-competitive consequences if granted.

Outside of the context of the present NS-CSX-CR acquisition and control proceeding, ESHR's proposed trackage rights could be obtained pursuant to the class exemption provisions of 49 CFR §1180.2(d)(7). Due to the limited scope of the trackage rights relief it may seek in its Responsive Application, and based on the facts and circumstances provided above, ESHR should be found to have adequately rebutted the presumption in favor of a "significant" transaction as found at 49 CFR §1180.4(d)(4)(ii). Having rebutted the presumption of a "significant" transaction, ESHR should be relieved from the requirements of 49 CFR §§ 1180.6(a)(8), 1180.6(b), 1180.7, 1180.8(a), and 1180.9.

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2 For further discussion of 49 CFR §1180.6(a)(8), please refer to the section below.
Pursuant to 49 CFR §1180.6(a)(8), Responsive Applicants must submit certain environmental data in connection with their responsive applications. In the case of "major" and "significant" transactions, §1180.6(a)(8) indicates that Environmental and Historic Reports may be expected of Responsive Applicants. However, the Board has directed on page 20 of its Decision No. 12 (Served July 23, 1997) that Responsive Applicants may avoid filing environmental and/or historic reports where they can supply a "verified statement that the responsive... application will have no significant environmental impact."

In this case, ESHR's requested trackage rights relief will have no significant environmental impact. Accordingly, ESHR has included as Exhibit A the requested verified statement on this subject. If so directed by the Board, ESHR will consult with the Section of Environmental Analysis ("SEA") to determine what environmental or historic information (if any) may be required. Any additional historic or environmental findings, certifications, and documentation that may be required will be submitted by or before the October 1, 1997 deadline established by the Board.

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3 If ESHR is granted the proposed trackage rights relief, it plans to operate one train in each direction per day over the subject rail lines.
CONCLUSION

For the reasons provided above, ESHR respectfully requests that the Board accept as rebutted the presumption that its Responsive Application entails a "significant" transaction, and that ESHR be permitted to pursue its requested Responsive Application relief under the guidelines for "minor" transactions as described in 49 CFR §1180.2(c). Furthermore, ESHR requests that the Board (through its Section of Environmental Analysis) determine on the basis of the evidence and attached verified statement whether an environmental and/or historic report (or any other such information) will be required in connection with ESHR's proposed Responsive Application.

Respectfully submitted,

[Signature]

Robert A. Wambish
John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W.
Suite 420
Washington, D.C. 20036
(202) 785-3700

Counsel for the Eastern Shore Railroad, Inc.

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of August, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or more expeditious delivery.

[Signature]
Robert A. Wimbish
VERIFIED STATEMENT AND CERTIFICATION OF
ROBERT A. WIMBISH

My name is Robert A. Wimbish, and I serve as counsel to
the Eastern Shore Railroad, Inc. ("ESHR") in the above-captioned
proceeding. I am submitting this verified statement and
certification pursuant to the directions contained at page 20 of
the Board's Decision No. 12 in the above-captioned proceeding.
This document is intended to address environmental issues
relating to ESHR's Responsive Application.

In light of the limited trackage rights relief that may
be requested in ESHR's proposed Responsive Application
(approximately 44 miles of local trackage rights connecting to
ESHR's existing rail system), I expect that ESHR's Responsive
Application, if submitted, will be accepted as a "minor"
transaction as described at 49 CFR §1180.2(c). Further, I have
considered the limited operational changes that would result from
ESHR's exercise of such trackage rights. Therefore, on behalf of
ESHR I provide the following certification:

1. ESHR may seek, in connection to the above captioned
proceeding, to obtain as much as approximately 44 miles of local
trackage rights over certain lines proposed to be controlled and
operated by Norfolk Southern Corporation and the Norfolk Southern
Railway. In utilizing the subject trackage rights, ESHR
anticipates that it would, at most, operate one train in each
direction per day.
2. I understand that neither a Preliminary Draft Environmental Assessment ("PDEA") nor an Environmental or Historic Report will be required in connection with this proceeding where a party’s Responsive Application does not involve -- (1) significant operational changes [49 CFR 1105.6(b)] or (2) any action such as a rail line abandonment or construction.

3. Based upon my own review of the operating changes anticipated in ESHR’s proposed Responsive Application and the applicable regulations contained at 49 CFR 1105.7, I hereby certify, pursuant to the provisions of 49 CFR 1105 5(c)(2), that the trackage rights operations proposed by ESHR will not exceed the thresholds established in 49 CFR 1105.6(b) and 1105.7(e)(4) or (5). Further, ESHR’s proposed Responsive Application does not entail any rail line abandonments or construction.

4. The trackage rights proposed to be acquired by ESHR would be the type of transaction normally excused from the Board’s Environmental Report regulations. See, 49 CFR § 1105.6 (c)(4).

5. For the foregoing reasons, ESHR has concluded that it is not required by regulation to submit either a PDEA or an environmental/historic report.
Robert A. Wimbish, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein, and that, to the best of his knowledge, the same are true as stated.

Subscribed to and sworn before me on this 22nd day of August, 1997.

My commission expires: 7-1-01
August 22, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 F Street, NW
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

ERSR-2: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
EASTERN SHORE RAILROAD, INC. -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

ERSR-3: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
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MSER-2: Finance Docket No 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MSER-3: Finance Docket No 33388 (Sub No 58), WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION
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2. Eastern Shore Railroad, Inc. -- Rebuttal of Presumption of "Significant" Transaction in Connection with Anticipated Responsive Application (ESHR - 3);
3. Wabash & Western Railway Co. d/b/a Michigan Southern Railroad -- Description of Responsive Application (MSRR - 2);

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3. MSRR-2 is labeled as "MSRR.2"
4. MSRR-3 is labeled as "MSRR.3"

Thank you for your attention in this matter. Please let me know if I can be of further assistance.
Sincerely,

Robert A. Wimbish

Counsel for the Eastern Shore Railroad, Inc., and Wabash & Western Railway Co. d/b/a Michigan Southern Railroad

Enclosures
BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

MORR-2

Finance Docket No 33388 (Sub-No. 58)

WABASH & WESTERN RAILWAY CO.
D/B/A MICHIGAN SOUTHERN RAILROAD
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

DESCRIPTION OF INTENDED RESPONSIVE APPLICATION

Respectfully submitted,

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Attorneys for the Wabash & Western Railway Co. d/b/a Michigan Southern Railroad, Inc.

Dated: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

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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

MSRR-2

Finance Docket No 33388 (Sub-No. 58)

WABASH & WESTERN RAILWAY CO.
D/B/A MICHIGAN SOUTHERN RAILROAD
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

Introduction

In a Decision served July 23, 1997, the Surface Transportation Board accepted for consideration the primary application and related filings submitted by CSX Corporation ("CSXC") CSX Transportation, Inc. ("CSXT"),¹ Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"),² Conrail Inc. ("CR"),³ and Consolidated Rail Corporation ("Conrail" or "CRC") (collectively "Applicants") for Board

¹ CSXC and CSXT hereinafter referred to as "CSX."
² NSC and NSR hereinafter referred to as "NS."
³ CRR and CRC hereinafter referred to as "CR" or "Conrail."
approval and authorization under 49 U.S.C. 11321-25 for, as is relevant here: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of assets of Conrail by and between CSX and NS.

In its Decision served on July 23rd, the Board confirmed the procedural deadlines for this proceeding. As pertinent here, the Board set August 22, 1997, as the deadline for parties adversely affected by the subject merger transaction to file descriptions of anticipated Responsive Applications. Consistent with that deadline, the Wabash & Western Railway Co. d/b/a Michigan Southern Railroad ("MSRR"), a class III shortline railroad headquartered in Peoria, IL, files this Description of its Anticipated Responsive Application to -- (1) preserve competitive rail service to shippers located on its line in southwestern Michigan and (2) ensure for shippers on all of its lines a continuation of the efficient and economical single class I railroad line haul service they enjoy from Conrail today.

MSRR intends to file a Responsive Application because it believes that, unless (1) the Applicants and MSRR are able to conclude suitable and binding ameliorative arrangements, or (2) appropriate protective conditions are imposed upon the proposed transaction, both the MSRR and the shippers who depend upon it will suffer substantial and irreparable harm.

**Background**

Based in White Pigeon, MI, Wabash & Western Railroad Co. today provides rail common carrier service as the Michigan
Southern Railroad ("MSRR") on approximately 49.6 miles of main line track between (1) milepost 382.5 at or near Coldwater, MI, on the east, and milepost 421.2 at or near White Pigeon, MI, on the west, (2) between milepost 119.0 and milepost 120.1 at or near Kendallville, IN, and (3) between milepost 0.0 and milepost 9.8 at or near Elkhart, IN.

Originally established in 1990 by its corporate parent Pioneer Railcorp. and subsequently renamed in 1994, the Wabash & Western Railway Co. assumed operation of the subject rail trackage in 1996.

Historically, the subject rail line was a part of a secondary mainline of the former New York Central System between Detroit on the east and White Pigeon on the west. During the past one hundred years, this route was severed in several places with some segments abandoned. Pursuant to the U.S. Railway's Final System Plan, CR acquired and operated the western portion of the line between Sturgis and White Pigeon. In 1994, CR

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4 Coldwater is the eastern most service point on MSRR's railroad; however, the physical interchange between MSRR and the Indiana Northeast Railroad takes place east of that point at Quincy, MI. From now on the names Coldwater and Quincy may be used interchangeably.

5 Originally named the Wabash & Grand Fiver Railway Co., the company was a rail carrier subject to the Interstate Commerce Commission's jurisdiction operating a rail line in Missouri. The company had ceased to be a rail carrier by the time of the Michigan Southern transaction inasmuch as it had terminated operations over that line.

6 FD No. 33306, Wabash & Western Railway Co. -- Lease and Operation Exemption -- Morris Leasing Co., Ltd. and Michigan Southern Railroad, Inc. (served December 24 1996).
subsequently sold that segment to Morris Leasing Co., Ltd., which operated it as the MSRR. The middle segment between Coldwater and Sturgis remained out of service for many years until reactivated by MSRR in the 1980’s. The eastern most segment in between Coldwater (Quincy) and Hillsdale, MI, and into Indiana is presently owned and operated by another class III railroad, the Indiana Northeastern RR Co., Inc. ("IN"). MSRR’s sole physical connections are with Conrail on the west at White Pigeon and with IN on the east at Quincy. While MSRR currently utilizes IN as its "handling line carrier" to reach the physical interchange with NS at Montpelier, OH, IN is not included in the route or rate on MSRR traffic interlined with NS. Rather NS is MSRR’s economic partner on that traffic as shown in the applicable tariffs.

Comments

The transaction outlined in the Applicants’ Primary Application, if approved by the STB, promises to re-draw the rail service map of the eastern and midwestern United States. While the proposed acquisition and partition of CR’s assets between CSX and NS will generally be pro-competitive and in the public interest, there are a few areas where the merger may eliminate or reduce competition. The rail corridor between White Pigeon,

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7 FD No. 32428, Morris Leasing Co., Ltd. -- Acquisition and Operation Exemption -- Lines of Co. solidated Rail Corp. (served January 19, 1994).

8 Indiana Northeastern acquired the assets and operations of the former Hillsdale County Railway sometime in 1992.
Sturgis, and Quincy, MI, represents one of those few anti-competitive situations. As the Primary Applicants have stated on many an occasion, "[i]n essentially all of the circumstances where the transaction would otherwise result in such a reduction to one carrier, CSX and NS have agreed to provide one another with trackage and/or haulage rights that will permit the continuation of two-carrier service." Application at p. 18.

If implemented, as initially conceived, the proposed transaction will adversely affect MSRR in three respects. MSRR will determine through its own research and through discovery the extent of that affect. First, just as to the White Pigeon-Quincy line, MSRR and its shippers currently enjoy competitive rail service from both Conrail and NS. This healthy competition has resulted in lower shipping rates, more aggressive marketing, and better car supply for MSRR's customers. If NS acquires the Michigan rail properties of CRC as contemplated in the Application, MSRR will no longer have two class I railroad connections. It will be captive to NS from both the east and the west. The competitive alternative which NS today provides to CR will be lost.

Second, as to all three of MSRR's lines, there are a significant number of freight movements today between MSRR and points on CR's lines. These movements are efficient and economical because they involve just one class I railroad,

9 In actuality, NS has established Pennsylvania Lines LLC to acquire its portion of the Conrail lines and will conduct operations over Pennsylvania Lines LLC.
Conrail. If CR’s east-west mainline is divided at Cleveland as proposed by Applicants, MSRR fears that many of these former single carrier movements will cease to be efficient or economical. Dividing CR’s traffic between the Midwest and East Coast among CSX and NS at Cleveland will introduce new interchanges, with opportunities for delay, damage, and loss. Moreover, adding a second trunk line carrier could increase operating expenses and revenue needs thereby increasing rates for customers. As a result, rail transportation may no longer be time sensitive or cost effective. If so, rail traffic may be lost to truck, a merger impact clearly not in this country’s best interest. Conceivably, rail customers who are unable to use truck transportation could even be forced out of business.

Third, Conrail presently plays a unique role in rail transportation in its service territory. For freight moving outside its service territory -- to the South and Southeast and to the West -- it functions as one big neutral switching carrier. Presently, CR is indifferent as to the carriers to whom or from whom it interchanges traffic. If Conrail’s acquisition and partition is approved as proposed here and without mitigating conditions, the railroad system connecting with MSRR will cease to be neutral. On hauls to or from the South or Southeast and parts of the Midwest, NS will tend to favor its routings, origins and destinations, and traffic sources to the exclusion of its competitors.
Relief Sought

In order to preserve the current level of competition for shippers on the White Pigeon-Quincy line, MSRR requires competitive access to CSX. Similarly, in order to ensure that shippers on all of its lines can continue to enjoy efficient single line service to or from eastern points on CR, MSRR again requires direct access to CSX. MSRR has carefully considered its options in the event of a joint NS and CSX acquisition of Conrail, and it has determined that it may, at the appropriate filing date, submit a Responsive Application in this proceeding. If it must pursue a Responsive Application, MSRR will request that it be granted overhead trackage rights over a line of railroad now owned by CR and slated to become part of the NS "Penn Lines" -- from White River, MI, westward to a connection with the Indiana Harbor Belt Railroad in northwest Indiana, a distance of approximately 80 miles, with the right to interchange with CSX at any intermediate interchanges served by CSX. MSRR will provide further details consistent with the requirements of 49 CFR Part 1180, pertaining to Responsive Applications at such time as the formal submission of its Responsive Application is due.

Consistent with the Board's directions, MSRR has reserved, and has listed as captioned above, an appropriate Finance Docket designation for its anticipated trackage rights transaction.
Conclusion

MSRR respectfully requests that the Board accept for consideration its Description of Anticipated Responsive Application. Through this submission, MSRR has put forward the circumstances that have led it to contemplate the filing of a Responsive Application in connection with this proceeding. Further, it has endeavored to provide a brief but complete description of the relief MSRR may request in its Responsive Application.

Simultaneous with this request, MSRR is offering (under a separate filing) evidence to rebut the presumption established at 49 CFR 1180.2(d)(4)(ii) that the trackage rights transaction described above is a "significant" transaction.

Respectfully submitted,

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Attorneys for the Wabash & Western Railway Co. d/b/a Michigan Southern Railroad, Inc.

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of August, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.

Robert A. Wimbish

Robert A. Wimbish
August 22, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
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

MSRR-2: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
EASTERN SHORE RAILROAD, INC. -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MSRR-3: Finance Docket No 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
EASTERN SHORE RAILROAD, INC. -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

MSRR-2: Finance Docket No 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MSRR-3: Finance Docket No 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION
Dear Secretary Williams:

This letter is sent in connection with the above-captioned proceedings. Specifically, you will find enclosed an original and 25 copies of four (4) separate filings as follows:

1. Eastern Shore Railroad, Inc. -- Description of Responsive Application (ESHR - 2);

2. Eastern Shore Railroad, Inc. -- Rebuttal of Presumption of "Significant" Transaction in Connection with Anticipated Responsive Application (ESHR - 3);

3. Wabash & Western Railway Co. d/b/a Michigan Southern Railroad -- Description of Responsive Application (MSRR - 2);


Pursuant to the Board’s instructions in this proceeding, we are enclosing two 3.5" floppy disks formatted to be compatible with the Board’s WordPerfect programs. Each disk contains the above-identified documents as follows:

1. ESHR-2 is labeled as "ESHR.2"

2. ESHR-3 is labeled as "ESHR.3"

3. MSRR-2 is labeled as "MSRR.2"

4. MSRR-3 is labeled as "MSRR.3"

Thank you for your attention in this matter. Please let me know if I can be of further assistance.
Sincerely,

Robert A. Wimbish

Counsel for the Eastern Shore Railroad, Inc., and Wabash & Western Railway Co. d/b/a Michigan Southern Railroad

Enclosures
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

MSRR-3

Finance Docket No 33388 (Sub-No. 58)

WABASH & WESTERN RAILWAY CO.
D/B/A MICHIGAN SOUTHERN RAILROAD
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

WABASH & WESTERN RAILWAY CO.
D/B/A/ MICHIGAN SOUTHERN RAILROAD

REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION
IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 420
1920 "N" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for the Wabash & Western Railway Co., d/b/a Michigan Southern Railroad

DATED: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

MSRR-3

Finance Docket No 33388 (Sub-No. 58)

WABASH & WESTERN RAILWAY CO.
D/B/A MICHIGAN SOUTHERN RAILROAD
-- TRUCKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

WABASH & WESTERN RAILWAY CO.
D/B/A/ MICHIGAN SOUTHERN RAILROAD

REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION
IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

SUMMARY

COMES NOW the Wabash & Western Railway Co., d/b/a
Michigan Southern Railroad ("MSRR"), by its counsel, and,
concerning the Responsive Application it proposes to file in
connection with the above-captioned proceeding, requests relief
from certain provisions of 49 CFR Part 1180 as specified below.
MSRR requests that the Board -- (1) accept as rebutted the
presumption (set forth at 49 CFR 1180.4(d)(4)(ii)) that MSRR's
proposed Responsive Application involves a "significant"
transaction, as that term is defined in 49 CFR §1180.2(b), and
(2) by virtue of such rebuttal relieve MSRR from certain
regulatory provisions of 49 CFR Part 1180 which are pertinent
only to "major" or "significant" transactions.

MSRR'S RESPONSIVE APPLICATION CONSTITUTES NEITHER A "MAJOR" NOR A "SIGNIFICANT" TRANSACTION:
REBUTTAL OF PRESUMPTION OF A "SIGNIFICANT" TRANSACTION

According to 49 CFR § 1180.2(a), a "major" transaction
involves the "control or merger [of] two or more class I
railroads."

MSRR is a class III rail carrier, and for this
reason alone, the Responsive Application it proposes to submit in
the subject proceeding cannot be considered a "major"
transaction. Although MSRR's Responsive Application clearly does
not constitute a "major" transaction, it is presumed to entail a
"significant" transaction under current regulations.

Specifically, 49 CFR §1180.4(d)(4)(ii) states that, "[r]esponsive
applications which are not 'major' are presumed to be
'significant' transactions." However, 49 CFR §1180.4(d)(4)(iv)
establishes that this presumption is rebuttable.

MSRR offers several facts to rebut the presumption that
its proposed Responsive Application will involve a "significant"

---

1 49 CFR 1180.2(b) states, in part, "A 'significant'
transaction is a transaction not involving the control or merger
of two or more class I railroads that is of regional or national
transportation significance as that phrase is used in 49 U.S.C.
§11325(a)(2) and (c). A transaction not involving the control or
merger of two or more class I railroads is not significant if a
determination can be made either:
(1) That the transaction clearly will not have any
anticompetitive effects..."
transaction. As stated above, MSRR is a class III rail carrier. Its proposed Responsive Application seeks conditions, which, in the event that the Board approves the Primary Application, will involve one class I rail carrier (Norfolk Southern, over the so-called "Pen Lines System" it is to acquire and operate as a result of the proposed transaction) acting together with MSRR (a class III rail carrier). Furthermore, the conditions MSRR seeks -- including approximately 80 miles of overhead trackage rights -- would not constitute a major market extension warranting submission and review as a "significant" transaction. Finally, the relatively limited trackage rights relief that MSRR may request in its anticipated Responsive Application would preserve competitive service options currently available to MSRR's shippers (which would otherwise be lost as a result of the proposed NS-CSX-CR transaction), and thus promises pro-competitive consequences if granted.

Outside of the context of the present NS-CSX-CR acquisition and control proceeding, MSRR's proposed trackage rights could be obtained pursuant to the class exemption provisions of 49 CFR §1180.2(d)(7). Due to the limited scope of the trackage rights relief it may seek in its Responsive Application, and based on the facts and circumstances provided above, MSRR should be found to have adequately rebutted the presumption in favor of a "significant" transaction as found at 49 CFR §1180.4(d)(4)(ii). Having rebutted the presumption of a "significant" transaction, MSRR should be relieved from the
requirements of 49 CFR §§ 1180.6(a)(8), 1180.6(b), 1180.7, 1180.8(a), and 1180.9.

**MSRR WILL SEEK RELIEF FROM THE HISTORIC AND ENVIRONMENTAL REPORT REQUIREMENTS OF 49 CFR §1180.6(a)(8)**

Pursuant to 49 CFR §1180.6(a)(8), Responsive Applicants must submit certain environmental data in connection with their Responsive Applications. In the case of "major" and "significant" transactions, §1180.6(a)(8) indicates that Environmental and Historic Reports may be expected of Responsive Applicants. However, the Board has directed on page 20 of its Decision No. 12 (Served July 23, 1997) that Responsive Applicants may avoid filing environmental and/or historic reports where they can supply a "verified statement that the responsive... application will have no significant environmental impact."

In this case, MSRR's requested trackage rights relief will have no significant environmental impact. Accordingly, MSRR has included as Exhibit A the requested verified statement on this subject. If so directed by the Board, MSRR will consult with the Section of Environmental Analysis ("SEA") to determine what environmental or historic information (if any) may be required. Any additional historic or environmental findings, certifications, and documentation that may be required will be

---

2 For further discussion of 49 CFR §1180.6(a)(8), please refer to the section below.

3 If MSRR is granted the proposed trackage rights relief, it plans to operate no more than one train in each direction per day over the subject rail lines.
submitted by or before the October 1, 1997 deadline established by the Board.

CONCLUSION

For the reasons provided above, MSRR respectfully requests that the Board accept as rebutted the presumption that its Responsive Application entails a "significant" transaction, and that MSRR be permitted to pursue its requested Responsive Application relief under the guidelines for "minor" transactions as described in 49 CFR §1180.2(c). Furthermore, MSRR requests that the Board (through its Section of Environmental Analysis) determine on the basis of the evidence supplied and attached verified statement whether an environmental and/or historic report (or any other such information) will be required in connection with MSRR's proposed Responsive Application.

Respectfully submitted,

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W.
Suite 420
Washington, D.C. 20036
(202) 785-3700

Counsel for the Wabash & Western Railway Co. d/b/a Michigan Southern Railroad

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of August, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or more expeditious delivery.

Robert A. Wimbish

Robert A. Wimbish
VERIFIED STATEMENT AND CERTIFICATION OF

JOHN D. HEFFNER

My name is John D. Heffner, and I serve as counsel to the Wabash & Western Railway Co. d/d/a Michigan Southern Railroad ("MSRR") in the above-captioned proceeding. I am submitting this verified statement and certification pursuant to the directions contained at page 20 of the Board’s Decision No. 12 in the above-captioned proceeding. This document is intended to address environmental issues relating to MSRR’s proposed Responsive Application.

In light of the limited overhead trackage rights relief that may be requested in MSRR’s proposed Responsive Application (approximately 80 miles of overhead trackage rights connecting to MSRR’s existing rail system), I expect that MSRR’s Responsive Application, if submitted, will be accepted as a "minor" transaction as described at 49 CFR §1180.2(c). Further, I have considered the limited operational changes that would result from MSRR’s exercise of such trackage rights. Therefore, on behalf of MSRR I provide the following certification:

1. MSRR may seek, in connection with the above captioned proceeding, to obtain as much as approximately 80 miles of overhead trackage rights over certain lines proposed to be controlled and operated by Norfolk Southern Corporation and the Norfolk Southern Railway. In utilizing the subject trackage rights, MSRR anticipates that it would, at most, operate one
train in each direction per day.

2. I understand that neither a Preliminary Draft Environmental Assessment ("PDEA") nor an Environmental or Historic Report will be required in connection with this proceeding where a party's Responsive Application does not involve -- (1) significant operational changes [49 CFR 1105.6(b)] or (2) an action such as a rail line abandonment or construction.

3. Based upon my own review of the operating changes anticipated in MSRR's proposed Responsive Application and the applicable regulations contained at 49 CFR 1105.7, I hereby certify, pursuant to the provisions of 49 CFR 105.6(c)(2), that the trackage rights operations proposed by MSRR will not exceed the thresholds established in 49 CFR 1105.6(b) and 1105.7(e)(4) or (5). Further, MSRR's proposed Responsive Application does not entail any rail line abandonments or construction.

4. The trackage rights proposed to be acquired by MSRR would be the type of transaction normally excused from the Board's Environmental Report regulations. See, 49 CFR § 1105.6 (c)(4).

5. For the foregoing reasons, MSRR has concluded that it is not required by regulation to submit either a PDEA or an environmental/historic report.
John D. Heffner, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein, and that, to the best of his knowledge, the same are true as stated.

John D. Heffner
REASONABLE CROSSES & AUHCINCOSS

Subscribed to and sworn before me on this 22nd day of August, 1997.

[Signature]
Notary Public

My commission expires: 7-1-01
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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

UNION PACIFIC'S CERTIFICATE OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, Union Pacific Corporation and Union Pacific Railroad Company hereby certify that they have served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,

ARVID E. ROATH II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
(202) 662-5388

Attorney for Union Pacific Corporation and Union Pacific Railroad Company

August 26, 1997
August 21, 1997

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

Re: Ohio Attorney General's Office, Ohio Rail Development Commission, Public Utilities Commission of Ohio Notice of Reservation of Right to File, STB Finance Docket No. 33388

Dear Secretary:

Enclosed are the original and 26 copies of the above-captioned pleading for filing in this docket. Please date stamp and return the extra copy in the enclosed postage prepaid envelope. Also enclosed is a diskette upon which the above-captioned pleading is stored.

Thank you for your attention to this matter.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

DANIEL A. MALKOFF
Chief, Transportation Section
Telephone: (614) 466-3036
Telecopier: (614) 466-1756

kb
Enclosures
cc: All parties 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

NOTICE OF RESERVATION OF RIGHT TO FILE
DESCRIPTION OF RESPONSIVE APPLICATION BY THE
OHIO ATTORNEY GENERAL,
PUBLIC UTILITIES COMMISSION OF OHIO, AND THE
OHIO RAIL DEVELOPMENT COMMISSION

At this time, pursuant to the Procedural Schedule established by the Surface
Transportation Board regarding Finance Docket No. 33388, the State of Ohio is not required to
file a description or outline of its position as such a filing is required only of parties who
presently intend to file inconsistent or responsive applications. However, the Ohio Attorney
General, Public Utilities Commission of Ohio and Ohio Rail Development Commission herein
reserve the right to file a description of Ohio's proposed affirmative relief, which, if filed, will be
responsive and limited to matters raised in filings made by parties of record on August 22, 1997.
The reason for this reservation of rights, is that the determination of whether the State of Ohio
will file a description of proposed affirmative relief, will necessarily depend upon an analysis of
the substance of filings that this Board will receive on August 22, 1997.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General
State of Ohio

AUG 27 1997
[Stamp: Entered Office of the Secretary]
DOREEN C. JOHNSON  
Chief, Antitrust Section  
Ohio Attorney General's Office  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-4328  
Telex: (614) 466-8226  
Attorney for Ohio Attorney General

DUANE W. LUCKEY  
Chief, Public Utilities Section  
180 East Broad Street, 7th Floor  
Columbus, Ohio 43215-3793  
Telephone: (614) 466-4396  
Telex: (614) 644-8764  
Attorney for Public Utilities Commission of Ohio

DANIEL A. MALKOFF  
Chief, Transportation Section  
37 West Broad Street, 3rd Floor  
P.O. Box 899  
Columbus, Ohio 43216-0899  
Telephone: (614) 466-4656  
Telex: (614) 466-1756  
Attorney for Ohio Rail Development Commission
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Reservation of Right to
File was served by regular U.S. mail, postage prepaid, and/or facsimile transmission
upon the parties of record listed in the attached service list, on this 21st day of
August, 1997:

Served by fax transmission:

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
<th>Fax #</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Zincardi</td>
<td>Conrail Inc.</td>
<td>(215) 209-4817</td>
</tr>
<tr>
<td>Doreen Johnson</td>
<td>Ohio Attorney General, Antitrust</td>
<td>(614) 466-8226</td>
</tr>
<tr>
<td>c/o Mitch Gentile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duane W. Luckey</td>
<td>Ohio Attorney General, Public Utilities</td>
<td>(614) 644-8764</td>
</tr>
<tr>
<td>c/o Bill Wright</td>
<td></td>
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</tbody>
</table>
Surface Transportation Board
Office of the Secretary, Case Control Unit
ATTN: STB Finance Docket No. 33388
1925 K. Street, N.W.
Washington, D.C. 20423-0001

Mark G. Aaron
CSX Corporation, One James Ctr.
902 East Cary Street
Richmond, VA 23129

Richard A. Allen
Zuckert, Scoult & Rasenberger
Suite 600
888 17th Street, N.W.
Washington, D.C. 20006-3939

George R. Arnold, Member
Madison County Conservation Alliance, Inc.
1306 St. Louis
Edwardsville, IL 62025

Edward G. Banks, Jr.
Maryland & Delaware Railroad
106 Railroad Avenue
Federalburg, MD 21632

Janice G. Barber
Burlington N. Santa Fe Corp.
3017 Lou Menk Drive
Fort Worth, TX 76131-2830

David Barnard
Indianapolis Power & Light Co.
25 Monument Circle
P.O. Box 1595
Indianapolis, IN 46206-1595

Michael J. Bennane
House of Representatives
P.O. Box 30014
Lansing, MI 48909

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001

James C. Bishop, Jr.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
William A. Bon  
General Counsel  
26555 Evergreen Road  
Suite 200  
Southfield, MI 48076

Sean D. Brady  
Manager, Strategic Planning-Generation  
Corp. Drive  
Kirkwood Industrial Park  
P.O. Box 5224  
Binghamton, NY 13902-5224

Theresa M. Brennan  
Pennsylvania Power & Light Co.  
Two North Ninth Street  
Allentown, PA 18101-1179

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

Gabriel Calvo  
The Ackerson Group  
1275 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Stephen M. Carpman  
General Attorney  
The Detroit Edison Company  
2000 Second Street  
Detroit, MI 48226

Donald J. Casey  
Director, Regulatory Programs  
The Fertilizer Institute  
501 Second Street, N.E.  
Washington, D.C. 20002

Missy Cassidy  
Maryland Dept. of Trans.  
P.O. Box 8755  
Baltimore-Washington Intl. Airport 21240-0755

Susan Cassidy  
Arnold & Porter  
555 12th Street, N.W.  
Washington, D.C. 20004-1202

A. Scott Cauger, Sr. Counsel  
Niagara Mohawk Power Corp.  
300 Erie Blvd. West  
Syracuse, NY 13202
Charles W. Chabor  
President  
Buffalo & Pittsburgh Railroad, Inc.  
201 North Penn Street  
P.O. Box 477  
Punxsutawney, PA 15767

Charles M. Chadwick  
Chairman and CE  
Maryland Midland Railway, Inc  
P.O. Box 1000  
Union Bridge, MD 21771-0568

Nicole E. Clark  
Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019-6150

David A. Coburn  
1330 Connecticut Ave., N.W.  
Washington, D.C. 20036

Charles H. Cochran  
1200 New Hampshire Ave., N.W.  
Washington, D.C. 20030-6802

Thomas D. Crowley  
L.E. Peabody & Assoc., Inc.  
1501 Duke St., Suite 200  
Alexandria, VA 22314

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

John Cutler  
McCarthy, Sweeney & Harkaway, P.C.  
1750 Pennsylvania Ave, N.W.  
Suite 1105  
Washington, D.C. 20006

Honorable Alfonse D'Amato  
Attn: Peter Fhipps  
United States Senate  
Washington, D.C. 20510

Delmar A. Davis  
Bethlehem Steel Corp.  
Rm 460, Martin Tower  
1170 Eighth Ave.  
Bethlehem, PA 18016-7699
Nathan R. Fенко
Vice President & Gen. Counsel
Delaware Otsego Corp
One Railroad Ave
Cooperstown, NY 13326

Roger W. Fones, Chief
Trans Energy & Agri Section
US Dept of Justice
325 Seventh St, NW, Suite 500
Washington, D.C. 20530

Mortimer B. Fuller, III, Chairman
Buffalo & Pittsburgh Railroad, Inc.
71 Lewis Street
Greenwich, CT 06830

John Gallagher
Fieldston Publications, Inc.
1800 Massachusetts Avenue, NW
Suite 500
Washington, D.C. 20036

P. Michael Giftos
CSX Transportation, Inc.
500 Water Center
Speed Code J-120
Jacksonville, FL 32202

Edward D. Greenberg
Gallard, Kharch & Garfinkle, P.C.
1054 31st St., N.W.
Washington, D.C. 20007

Donald F. Griffin
Asst. General Counsel
400 N. Capitol St., N.W.
Suite 852
Washington, D.C. 20001-1511

John J. Grocki
GRA, Inc.
One Jenkintown Station
115 West Avenue
Jenkintown, PA 19046

Joseph Guerrieri, Jr.
Guerrieri, Edmond & Clayman, P.C.
1331 F Street, N.W.
Suite 400
Washington, D.C. 20004

64th House District
Ohio House of Representatives
562 Madera Avenue
Youngstown, OH 44504
David L. Hall  
Commonwealth Consulting Associates  
720 N. Post Oak Rd., Suite 400  
Houston, TX 77024

Michael P. Harmonis  
U.S. Dept. Of Justice  
Antitrust Division  
325 7th St., N.W. Suite 500  
Washington, D.C. 20530

Maureen Healey, Director  
Fed. Environmental & Trans. Issues  
Society of the Plastics Industry, Inc.  
1275 K Street, N.W., Suite 400  
Washington, D.C. 20005

Patrick C. Hendricks  
Iowa State Legislative Dir.  
United Transportation Union  
317 East 5th Street, Suite 11  
Des Moines, IA 50309

G.W. Herkner, Jr.  
Dir., Rail Contract Adm.  
NJ Transit Rail Operations  
One Penn Plaza East  
Newark, NJ 07105-2246

Robert Herrmann  
Manager of Fuels  
Atlantic City Electric Co.  
6801 Black Horse Pike  
Egg Harbor, NJ 08234

William P. Hernan, Jr.  
United Railway Supervisor Assoc.  
P.O. Box 180  
Hilliard, OH 43206-0180

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

Eric M. Hocky  
Gollatz, Griffin & Ewing, P.C.  
213 W. Miner St  
P.O. Box 796  
West Chester, PA 19381-0796

Erika Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Ave., N.W.  
Washington, D.C. 20006
Jeffrey R. Moreland  
Burlington N. Sante Fe Corp.  
1700 East Golf Road  
Schaumburg, IL 60173

Honorable Linda Morgan  
Surface Transportation Board  
Mercury Building  
1925 K Street, N.W.  
Washington, D.C. 20423

Andrew W. Muller, Jr., Pres.  
Reading Blud Mt. & N. Railroad Co.  
P.O. Box 218  
Port Clinton, PA 19549

William A. Mullins  
Troutman Sanders, LLP  
1300 I Street, NW, Suite 500 E  
Washington, D.C. 20005

Robert E. Murray  
President & Chief Executive Officer  
The Ohio Valley Coal Company  
29525 Chagrin Blvd., Suite 111  
Pepper Pike, OH 44122

John M. Nannes  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Ave, NW  
Washington, D.C. 20005-2111

Gerald P. Norton  
1300 19th St., N.W. St. 600  
Washington, D.C. 20036

Christopher C. O'Hara  
Ohio Rail Development Commission  
50 W. Broad Street, 15th Floor  
Columbus, OH 43215

Christopher C. O'Hara  
Ohio Rail Development Commission  
50 W. Broad Street, 15th Floor  
Columbus, OH 43215

Brian D. O'Neill  
LeBoeuf, Lamb, Greene & MacRae, LLP  
1875 Connecticut Ave., NW  
Washington, D.C. 20009-5728
John Osborn
Sonnenschein Nath & Rosenthal
1301 K Street, N.W.
Suite 600 East Tower
Washington, D.C. 20005

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

Honorable Gus Owen
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423

James L. Parks
Manager, Fuel Supply
Delmarva Power & Light Co.
P.O. Box 6066
Newark, DE 19714-6066

David L. Petri
Distribution Services of America, Inc.
208 North Street
Foxboro, MA 02035

Honorable Vincent "Joe" Porreca
State Representative
P.O. Box 30014
Capitol Building Room B-76
Lansing, MI 48909-7514

Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Sixth & Pennsylvania Ave, NW,
Room 303
Washington, D.C. 20530

Jean Pierre Ouellet
Chief Legal Officer and Corp Sec.
Canadian Nat'l Railway Co.
935 de La Gauchetiere St.W 16th Fl
Montreal, Quebec H3B 2M9
CANADA

William P. Quinn
Gollatz, Griffin & Ewing, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796

Arvid Roach, II
Covington & Burling
1201 Pennsylvania, NW
P.O. Box 7566
Washington, D.C. 20044
Michael Roper
Burlington Northern Santa Fe Corp.
3017 Lou Menk Drive
Fort Worth, TX 76131-2830

Ron Marquardt, President
Local Union 1810 UMWA
Valley View Sub-Division
R.D. 32
Rayland, OH 43943

Thomas Schick
Assistant General Counsel
Chemical Manufacturers Assn
1300 Wilson Boulevard
Arlington, VA 22209

Richard J. Schiefelbein
Woodharbor Associates
7801 Woodharbor Drive
Fort Worth, TX 76179

Thomas Schmitz
The Fieldston Co., Inc
1800 Massachusetts Ave, NW
Suite 500
Washington, D.C. 20036-1613

Jon Scholl
Director of Public Policy
Illinois Agricultural Assn
1701 N. Towanda Ave.
P.O. Box 2901
Bloomington, IL 61702-2901

Randolph L. Seger
McHale, Cook & Welch
1100 Chamber of Commerce Bldg.
Indianapolis, IN 46204

Denise L. Sejna, City Attorney
5925 Calumet Avenue
Hammond, IN 46320

Edward M. Selfe
Eradley Arant Rosa & White
P.O. Box 830709
2001 Park Place, Suite 1400
Birmingham, AL 35283-0709

Kevin M. Sheys
Oppenheimer Wolff & Donnelly
1020 Nineteenth St., NW,
Suite 400
Washington, D.C. 20036
Alison Shipman  
National Corn Growers Assoc.  
122 C Street, N.W.  
Washington, D.C. 20001

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

Patrick B. Simmons  
Dir. Of the Rail Division  
NC Dept. Of Transportation  
1 S. Wilmington St., Rm. 557  
Raleigh, NC 27611

William C. Sippel  
Two Prudential Plaza, 45th Floor  
180 North Stetson Avenue  
Chicago, IL 60601-6710

Sameul M. Sipe, Jr.  
Steptoe & Johnson LLP  
1330 Connecticut Avenue  
Washington, D.C. 20036-1795

Richard G. Slattery  
National Railroad Passenger Corp  
60 Massachusetts Ave. NE  
Washington, D.C. 20002

Charles A. Spitulnik  
Hopkins & Sutter  
888 Sixteenth St., NW  
Washington, D.C. 20006

Adrian L. Steel, Jr.  
Mayer, Brown & Platt  
2000 Pennsylvania Ave. N.W.  
Washington, D.C. 20006 1882

Scott N. Stone  
Patton Boggs, LLP  
2550 M Street, N.W.  
Washington, D.C. 20037

Sidney L. Strickland, Jr.  
Burlington Northern Santa Fe Corp  
1700 East Golf Road  
Schaumburg, IL 60173
Henry M. Wick, Jr.
Wick, Streiff, et al.
1450 Two Chatham Center
Pittsburgh, PA 15219

Debra Wilen
Guerrieri Edmond & Clayman, P.C.
1331 F Street NW, Suite 400
Washington, D.C. 20004

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

Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Ave., N.W., Suite 750
Washington, D.C. 2005-3934

Secretary David L. Winstead
Maryland Dept. of Transportation
P.O. Box 8755
BWI Airport, MD 21240

Edward Wytkind
Executive Director
Trans. Trades Dept, AFL-CIO
400 N Capitol St, NW, Suite 661
Washington, D.C. 20002

R. L. Young
Managing Director-Transportation
American Electric Power
P.O. Box 700
Lancaster, OH 43130-0700

Robert C. Ross
McGuire Woods
50 N. Laura Street Suite 2750
Jacksonville, FL 32202

Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue
Washington, D.C. 2005

Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Ave. N.W.
Suite 400
Washington, D.C. 20036
John L. Sarratt  
Kilpatrick, Stockton  
4101 Lakeboone Trail  
Room 400  
Raleigh, NC 27607

Francis Mardula  
U S. Dept. Of Transportation  
400 7th Street N.W.  
Room 7221  
Washington, D.C. 20590

Joseph Pomponio  
U.S. Dept. Of Transportation  
Room 4102  
400 7th Street S.W.  
Washington, D.C. 20590

Louis E. Gitomer  
Ball, Janik LLP  
1455 F Street N.W., Suite 225  
Washington, D.C. 2005

Inajo Davis Chappell  
Ulmer & Berne, LLP  
Bond Court Bldg.  
1300 E. 9 th, Suite 900  
Cleveland, OH 44114-1583

Robert A. Wimbash  
Rea, Cross & Auchincloss  
1920 N. Street, N.W.  
Suite 420  
Washington, D.C. 20036

Edward J. Rodriguez  
Housatonic Railroad Co., Inc.  
P O. Box 298  
Centerbrook, CT 06409

Terence J. Foley  
Port of Philadelphia & Camden, Inc.  
3460 N. Delaware, Suite 200  
Philadelphia, PA 19134

Scott M. Saylor  
North Carolina Railroad Co.  
3200 Atlantic Avenue  
Suite 110  
Raleigh, NC 27604-1640

Bruce A. Deerson  
Martin Marietta Materials, Inc.  
2710 Wycliff Road  
Raleigh, NC 27607
Anne Fingarette Hasse
APL Limited
1111 Broadway
Oakland, CA 94607-550

8/21/97
stb.cos
August 22, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
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

ESHR-2: Finance Docket No. 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
EASTERN SHORE RAILROAD, INC. -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

ESHR-3: Finance Docket No. 33388 (Sub-No. 57), EASTERN SHORE RAILROAD, INC. -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
EASTERN SHORE RAILROAD, INC. -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION

MSRR-2: Finance Docket No. 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MSRR-3: Finance Docket No. 33388 (Sub-No. 58), WABASH & WESTERN RAILWAY CO. D/B/A MICHIGAN SOUTHERN RAILROAD -- TRACKAGE RIGHTS EXEMPTION -- LINES OF PENNSYLVANIA LINES LLC
WABASH & WESTERN RAILWAY CO. D/B/A/ MICHIGAN SOUTHERN RAILROAD -- REBUTTAL OF PRESUMPTION OF "SIGNIFICANT" TRANSACTION IN CONNECTION WITH ANTICIPATED RESPONSIVE APPLICATION
Dear Secretary Williams:

This letter is sent in connection with the above-captioned proceedings. Specifically, you will find enclosed an original and 25 copies of four (4) separate filings as follows:

1. Eastern Shore Railroad, Inc. -- Description of Responsive Application (ESHR - 2);

2. Eastern Shore Railroad, Inc. -- Rebuttal of Presumption of "Significant" Transaction in Connection with Anticipated Responsive Application (ESHR - 3);

3. Wabash & Western Railway Co. d/b/a Michigan Southern Railroad -- Description of Responsive Application (MSRR - 2);


Pursuant to the Board's instructions in this proceeding, we are enclosing two 3.5" floppy disks formatted to be compatible with the Board's WordPerfect programs. Each disk contains the above-identified documents as follows:

1. ESHR-2 is labeled as "ESHR.2"

2. ESHR-3 is labeled as "ESHR.3"

3. MSRR-2 is labeled as "MSRR.2"

4. MSRR-3 is labeled as "MSRR.3"

Thank you for your attention in this matter. Please let me know if I can be of further assistance.
Sincerely,

Robert A. Wimbish

Counsel for the Eastern Shore Railroad, Inc., and Wabash & Western Railway Co. d/b/a Michigan Southern Railroad

Enclosures
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

ESHR-2

Finance Docket No 33388 (Sub-No. 57)

EASTERN SHORE RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
LINESS OF PENNSYLVANIA LINES LLC

EASTERN SHORE RAILROAD, INC.
DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 420
1920 "N" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for the Eastern Shore Railroad, Inc.

DATED: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

------------------------
Finance Docket No. 3338

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

ESHR-2

Finance Docket No 33388 (Sub-No. 57)

EASTERN SHORE RAILROAD, INC.
-- TRACKAGE RIGHTS EXEMPTION --
LINES OF PENNSYLVANIA LINES LLC

EASTERN SHORE RAILROAD, INC.
DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

Introduction

In a Decision served July 23, 1997, the Surface Transportation Board accepted for consideration the primary application and related filings submitted by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),1 Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"),2 Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")3

1 CSXC and CSXT will be referred to collectively as "CSX."
2 NSC and NSR will be referred to collectively as "NS."
3 CRR and CRC are referred to collectively as either "CR" or "Conrail."
(collectively "Applicants") for Board approval and authorization under 49 U.S.C. §§ 11321-25 for, as is relevant here -- (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of assets of Conrail by and between CSX and NS.

In its Decision served on July 23rd, the Board confirmed the procedural deadlines for this proceeding. As pertinent here, the Board set August 22, 1997, as the deadline for parties adversely affected by the subject merger transaction to file descriptions of anticipated Responsive Applications. Consistent with that deadline, the Eastern Shore Railroad, Inc. ("ESHR"), a class III shortline railroad headquartered in Cape Charles, VA, files this Description of Anticipated Responsive Application to -- (1) preserve competitive rail service to shippers located along the southern end of the Delmarva Peninsula, and (2) ensure for mid-Atlantic shippers a competitive corridor between the northeastern U.S. and the greater Norfolk, Virginia vicinity.

ESHR intends to file a Responsive Application because it believes that, unless (1) the Applicants and ESHR are able to conclude suitable and binding ameliorative arrangements, or (2) appropriate protective conditions are imposed upon the proposed transaction, both the ESHR and the shippers who depend upon it will suffer substantial and irreparable harm.
Background

Based in Cape Charles, VA, ESHR provides rail common carrier service over approximately 63 miles of main line track between Pocomoke City, MD, on the north and Cape Charles, VA, to the south. ESHR operates approximately 30 miles of secondary and yard tracks, including two major yard facilities at Cape Charles and Little Creek, VA. Central to ESHR’s operations are its car float operations which extend 26 miles across the Chesapeake Bay from Cape Charles to Little Creek and Norfolk, VA. ESHR was established in 1981, and is a quasi-public entity (chartered as a public service corporation by the Commonwealth of Virginia), which is owned by the Canonie Atlantic Co. ("CAC"). In turn, CAC is owned by the Accomack/Northampton Transportation District Commission ("ANTLC"), which is a political subdivision of the Commonwealth of Virginia, created pursuant to the authority set forth in the "Transportation District Act of 1964."

Historically, the lines operated by ESHR formed a part of the Pennsylvania Railroad system, and later were a part of the Penn Central. The ESHR rail lines and car float operations were not included in the United States Railroad Association’s ("USRA") Final System Plan, but since the beginning of Conrail, rail service has been preserved due to state and local support. Post Penn Central, ESHR’s lines briefly were operated by Conrail (by way of subsidized service), then by the Virginia & Maryland Railroad, and ultimately (beginning on October 1, 1981) by ESHR. To this day, ESHR survives in large part because of the
supervision and assistance of the Commonwealth of Virginia, through ANTDC.

Comments

The transaction outlined in the Applicants' Primary Application, if approved by the STB, promises to re-draw the rail service map of the eastern and midwestern United States. If implemented, the proposed transaction will result in the diversion of freight traffic to and from various eastern and midwestern rail routes. The result of such freight diversions in and around the Delmarva Peninsula will prove critical to the very existence ESHR and the services ESHR currently provides in that region.

In their respective portions of the Primary Application, witnesses for both NS and CSX acknowledge that ESHR will suffer economic losses (due to freight traffic diversion) upon implementation of the proposed NS-CSX-CR transaction. NS estimates that ESHR will incur annual losses due to NS traffic diversions in the amount of $200,000.00. See, Verified Statement of John H. Williams, Railroad Control Application, Vol. 2B, Attachment JHW-4, p. 88. For its part, CSXT calculates that traffic diversions occasioned by its proposed post-transaction operations and traffic re-routings will result in additional ESHR revenue losses of approximately $275,000.00 per year. See, Verified Statement of Howard A. Rosen, Railroad Control Application, Vol. 2A, Table 5, p. 176. Taken together, and
assuming it is otherwise afforded no protection against the adverse affects of the proposed NS-CSX-CR transaction, ESHR will suffer (assuming NS and CSXT's own calculations are correct) approximately $475,000.00 in annual lost revenue. Such revenue loss is dramatic and precipitous, as it would be for any class III rail operator, and it will bring into question ESHR's future viability.

Relief Sought

In order to ensure its survival, and to provide to its existing shippers the essential rail services on which they have come to depend, ESHR must secure revenue sources to replace those expected to be lost as a result of the proposed NS-CSX-CR transaction. ESHR has carefully considered its options in the event of a joint NS and CSX acquisition of Conrail, and it has determined that it may, at the appropriate filing date, submit a Responsive Application in this proceeding. If it must pursue a Responsive Application, ESHR will request that it be granted local trackage rights (with full rights of access to all on-line customers) over a line of railroad now owned by Conrail and slated to become part of the NS-controlled "Pennsylvania Lines LLC" -- from Pocomoke City, MD, northward to Seaford, DE, a distance of approximately 44 miles. ESHR will provide additional details consistent with the requirements of 49 CFR Part 1180, pertaining to Responsive Applications at such time as the formal submission of its Responsive Application is due.
Consistent with the Board's directions, ESHR has reserved, and has listed as captioned above, an appropriate Finance Docket designation for its anticipated trackage rights transaction.

Conclusion

ESHR respectfully requests that the Board accept for consideration its Description of Anticipated Responsive Application. Through this submission, ESHR has put forward the circumstances that have led it to contemplate the filing of a Responsive Application in connection with this proceeding. Further, it has endeavored to provide a brief but sufficiently complete description of the relief ESHR may request in its Responsive Application.

Simultaneous with this request, ESHR is offering (under a separate filing) evidence to rebut the presumption established at 49 CFR 1180.2(d)(4)(ii) that the trackage rights transaction described above is a "significant" transaction.
Respectfully submitted,

Robert A. Wimbish
John D. Heffner
REA, CROSS & AUCHINCLOSS
Suite 420
1920 N Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Attorneys for the Eastern Shore Railroad, Inc.

Dated: August 22, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of August, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.

Robert A. Wimbish
August 22, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
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 are an original and ten (10) copies of the Certificate of Service of the Commuter Rail Division of the Regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra (METR-2) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Jamie Palter Rennert

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record
Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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

Certificate of Service of the Commuter Rail Division of the
Regional Transportation Authority and the Northeast Illinois
Regional Commuter Railroad Corporation, d/b/a/ Metra

Pursuant to Decision No. 21 of the Surface Transportation Board, I hereby
certify that on August 22, 1997, all Parties of Record listed in Decision No. 21 were
served (to the extent not previously served), by first-class U.S. mail, postage prepaid,
with the following filings of the Commuter Rail Division of the Regional Transportation
Authority and the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a/
Metra submitted thus far in this proceeding:

Notice of Intent to Participate (METR-1)

Dated: August 22, 1997

Jamie Palter Rennert
HOPKINS & SUTTER
388 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Commuter Rail Division of the Regional Transportation Authority
and the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a/
Metra
August 22, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STR Finance Docket No. 33388
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 are an original and ten (10) copies of the Certificate of Service of the New York City Economic Development Corporation (NYC-4) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

[Signature]
Jamie Palmer Rennert

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record
Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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

Certificate of Service of
the New York City Economic Development Corporation

Pursuant to Decision No. 21 of the Surface Transportation Board, I hereby
certify that on August 22, 1997, all Parties of Record listed in Decision No. 21 were
served (to the extent not previously served), by first-class U.S. mail, postage prepaid,
with the following filings of the New York City Economic Development Corporation
submitted thus far in this proceeding:

Notice of Intent to Participate (NYC-1) (dated April 16, 1997)

Notice of Intent to Participate (NYC-1) (dated June 2, 1997)

Dated: August 22, 1997

Jamie Palter Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for New York City Economic Development Corporation, acting on behalf of
the City of New York, New York
August 22, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No 33388
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 are an original and ten (10) copies of the Certificate of Service of the Florida Power & Light Company (FPL-2) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Jamie Palter Rennert

Enclosure

cc: The Honorable Jacob Leventhal
    All Parties of Record
Certificate of Service of the Florida Power & Light Company

Pursuant to Decision No. 21 of the Surface Transportation Board, I hereby certify that on August 22, 1997, all Parties of Record listed in Decision No. 21 were served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of the Florida Power & Light Company submitted thus far in this proceeding:

Notice of Intent to Participate (FPL-1)

Dated: August 22, 1997

Jamie Palter Remnert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Florida Power & Light Company
August 22, 1997

Vernor A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
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 are an original and twenty-five (25) copies each of (1) the Description Of Responsive Application To Be Filed By The New York City Economic Development Corporation (NYC 2), and (2) the Petition For Waiver And Clarification Of Railroad Consolidation Procedures Submitted By The New York City Economic Development Corporation (NYC-3) for filing in the above-referenced proceeding. An additional copy of each of the filings are enclosed for file stamp and return with our messenger. Please note that a copy of each of these pleadings are also enclosed on one 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Alicia M. Serfaty

Enclosures

cc: All Parties Of Record
Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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

DESCRIPTION OF RESPONSIVE APPLICATION TO BE FILED BY
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

In accordance with Decision No. 12, served on July 23, 1997, the New York City Economic Development Corporation ("NYCEDC"), on behalf of the City of New York hereby submits this description of the responsive application for trackage rights or other appropriate relief that it expects to file in this proceeding on or before October 21, 1997. NYCEDC filed a notice of intent to participate in this proceeding (NYC-1) on June 2, 1997.

NYCEDC is a private non-profit corporation created by the City of New York. Its mission is to serve as a catalyst for public and private investment to promote the long term viability of New York City, and to attract and provide opportunities to its businesses and citizens. As part of that mission, NYCEDC is responsible for securing transportation access to the region’s markets and overseeing the City’s freight...
transportation and distribution facilities. NYCEDC's role in this proceeding, therefore, is to ensure, consistent with public policy, that the proposed acquisition of Consolidated Rail Corp. ("Conrail") by Norfolk Southern Railway Company ("NS") and CSX Transportation ("CSX") allows for adequate, competitive service for all shippers moving traffic to and from New York City (the "City") and Long Island. A careful review of the application reveals that these shippers will indeed be adversely affected in that they, unlike the other shippers in the New York/New Jersey shared access area, will be deprived of the increased competition and benefits so heavily touted by Applicants in their application.

As Applicants are well aware, this transaction provides the opportunity to remedy the competitive access issues that have been present since the creation of Conrail. Although competition was a necessary component to the creation of Conrail, competitive access was simply nonexistent in New York. While Applicants have made some effort to increase competitive options and better service for shippers in the New York/New Jersey shared access area, that effort completely ignores the needs of shippers operating to and from the City and Long Island. Since 1976, when it was created, Conrail has been the sole operator of rail lines on both sides of the Hudson River. It has chosen to promote traffic along the west side only, transloading traffic to and from the City where necessary. Shippers seeking to move traffic to or from the City and Long Island were not offered direct, efficient and competitive service to and from points north of the City and beyond. With CSX succeeding to the rights of Conrail on both sides of the river, shippers seeking to move traffic to and from the City and Long Island will be relegated to the same fate as previously, unless the Board takes some
action to remedy the problem. A solution for the east side of the river would not be overly burdensome or intrusive upon Applicant's since their Application emphasizes only the development and use of the rail line west of the Hudson River, and make little or no reference to the line east of the river. The implication is that CSX will not actively promote business along that line and provide competitive service to shippers who would desire to use that route. This, in turn, would create problems for the City, whose interest is in encouraging and supporting the use of rail for freight transportation as a means of reducing road and highway congestion, mitigating environmental concerns associated with such congestion and finding appropriate solutions for the transportation originating in the City and on Long Island.

NYCEDC will thus seek appropriate relief to ensure competitive access to the City and Long Island, and is considering a number of options, among them:

(1) a responsive application seeking the divestiture of Conrail’s current ownership and/or operating rights to a neutral third party administrator who will then allow for competitive access over the line extending from Fresh Pond, in the borough of Queens, N.Y. up the east side of the Hudson River through Selkirk, NY to points north therefrom where the Delaware & Hudson ("D&H") currently interchanges with Conrail; or

(2) a responsive application for trackage rights along the line on the east side of the Hudson on behalf of a neutral third party operator with a vested interest in the economic well-being of the downstate area. Specifically, NYCEDC would seek, subject to modification to accommodate operational considerations: (i) trackage rights at reasonable rates over the line from Fresh Pond, in the borough of Queens, N.Y. to Oak Point, NY over which the newly created New York Central Lines LLC ("NYC") will have trackage rights; (ii) concurrent trackage rights (with Conrail-CSX) over the line owned by the New York Metropolitan Transit Authority from Oak Point, NY to Poughkeepsie, NY; and (iii) trackage rights from Poughkeepsie, NY up through Selkirk, NY to points north therefrom where the Delaware & Hudson ("D&H") currently interchanges with Conrail.
NYCEDC’s efforts to seek trackage rights, divestiture or the imposition of some other appropriate condition will allow shippers from Long Island and New York City to have maximum competitive access to all carriers serving the Albany area.

Dated: August 22, 1997

Respectfully submitted,

[Signature]

Charles A. Spitalnik
Alicia M. Serfaty
Jamie P. Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the New York City Economic Development Corporation, acting on behalf of the City of New York.
CERTIFICATE OF SERVICE

I hereby certify that on August 22, 1997, a copy of the foregoing Description Of Responsive Application To Be Filed By The New York City Economic Development Corporation (NYC 2) was served by hand delivery upon the following:

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

Richard A. Allen
John V. Edwards
Zuckert, Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3930

John M. Nannes
Skadden, Arps, Slate, Meagher
& Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

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

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

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

and by first class mail, postage pre-paid upon all other Parties of Record in this proceeding.

Jamie Falter Rennert
August 22, 1997

Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
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 are an original and ten (10) copies of the Certificate of Service of the Philadelphia Belt Line Railroad Company (PBL-4) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Jamie Palter Rennert

Enclosure

cc: The Honorable Jacob Leventhal
    All Parties of Record
Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 53)

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

Certificate of Service of
the Philadelphia Belt Line Railroad Company

Pursuant to Decision No. 21 of the Surface Transportation Board, I hereby certify that on August 22, 1997, all Parties of Record listed in Decision No. 21 were served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of the Philadelphia Belt Line Railroad Company submitted thus far in this proceeding:

Notice of Intent to Participate (PBL-1) (dated April 16, 1997)
Notice of Intent to Participate (PBL-1) (dated June 2, 1997)

Dated: August 22, 1997

Jamie Palter Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Philadelphia Belt Line Railroad Company
In accordance with Decision No. 12, served on July 23, 1997, the Philadelphia Belt Line Railroad Company ("PBL") hereby submits this description of the responsive application for trackage rights or other appropriate relief that it expects to file in this proceeding on or before October 21, 1997. PBL filed a notice of intent to participate in this proceeding (PBL-1) on June 2, 1997.

PBL's concerns in this proceeding relate to adherence and respect for a principle known as the "Belt Line Principle," which was articulated by city ordinance in the late 1800s when PBL was created and which requires nondiscriminatory access to the lines of PBL by all carriers serving the City of Philadelphia. The Applicants' efforts in this proceeding to share access in Philadelphia goes part of the way to satisfying this principle, but does not provide complete, neutral and nondiscriminatory access to PBL for all carriers serving the City of Philadelphia. PBL's role in this proceeding is to ensure complete competitive access to its Belt Line North property, which is currently being served by Conrail via lease arrangement. The arrangement with Conrail allows for access to other carriers through reciprocal switching, however
the current rates for such switching have effectively precluded commercial access to these carriers.

PBL will thus seek appropriate relief to ensure adherence to the "Belt Line Principle", and is considering a number of options, one of which is trackage rights for itself or an assignee over Conrail's Richmond Industrial Track from MP 10.4 at the site of the former Port Richmond Yard (where it connects with Belt Line North), in the Port Richmond section of Philadelphia, to MP 2.7 at Falls Interlocking, thence over Conrail's Trenton Line from MP 5.4\(^1\) at Falls to MP 2.4 at the CSXT/Conrail interchange at Park Junction and over CSXT's Philadelphia-Washington mainline from CSXT MP -1.4 at Park Junction to CSXT MP 1.7 at the throat of its East Side Yard, and tracks and facilities connecting East Side Yard with PBL in South Philadelphia in the vicinity of 26th and Penrose Streets, a total distance of approximately 10 miles. These rights are necessary for PBL (or its assignee) to maintain neutral access to its lines for all carriers serving Philadelphia in accordance with the Belt Line Principle.

Dated: August 22, 1997

Respectfully submitted,

Charles A. Spitulnik
Alicia M. Sefaty
Jamie P. Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the Philadelphia Belt Line Railroad Company

\(^1\) The milepost on Conrail's "Trenton Line."
CERTIFICATE OF SERVICE

I hereby certify that on August 22, 1997, a copy of the foregoing Description Of Responsive Application To Be Filed By The Philadelphia Belt Line Railroad Company (PBL-L) was served by hand delivery upon the following:

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

John M. Nannes
Skadden, Arps, Slate, Meagher & Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

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

Richard A. Allen
John V. Edwards
Zuckert, Scoult & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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

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

and by first class mail, postage pre-paid upon all other Parties of Record in this proceeding.

Jamie Palter Rennert
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

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the provisions of Decision No. 21 served August 19, 1997 in the above-captioned case, a copy of the attached Notice of Intent to Participate was served on all parties of record identified in Decision No. 21, via first class mail, postage prepaid on this 22nd day of August, 1997.

Respectfully submitted,

BAY STATE MILLING COMPANY

By: ________________________________
    Peter A. Greene
    David H. Baker
    Thompson Hine & Flory LLP
    1920 N Street, N.W., Suite 800
    Washington, D.C.  20036

Dated: August 22, 1997

Its Attorneys
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

NOTICE OF INTENT TO PARTICIPATE
ON BEHALF OF
BAY STATE MILLING COMPANY

Please enter the appearances in this proceeding of the undersigned counsel on behalf of:

Bay State Milling Company
100 Congress Street
Quincy, Massachusetts 02169

As required by the Board's Decision No. 12 and as evidenced by the attached Certificate of Service, copies of this Notice of Intent to Participate have been served on Judge Jacob Levenson and on counsel for Applicants.

BAY STATE MILLING COMPANY

By:
Peter A. Greene
David H. Baker
Thompson Hine & Flory LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036

Dated: July 29, 1997

Its Attorneys
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 1997 a copy of the foregoing Notice of Intent to Participate on Behalf of Bay State Milling Company was served via first class mail, postage prepaid on the following:

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

James C. Bishop, Jr., Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

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

John M. Nannes, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Mark G. Aron, Esq.
CSX Corporation
One James Center
901 East Cary Street
Richmond, Virginia 23129

P. Michael Giftos, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
In accordance with the provisions of Decision No. 12 served July 23, 1997, the East Penn Railway ("EPRY") and the Lancaster Northern Railway ("LANO") submit this joint description of anticipated responsive applications.

EPRY and LANO are separately owned but commonly managed shortline railroads operating in Eastern Pennsylvania.

EPRY began operations in 1995 on 29 miles of track consisting of three separate and noncontiguous branches owned by the Commonwealth of Pennsylvania, all connecting with Consolidated Rail Corporation ("CR"). EPRY serves six customers that transport paper.
minerals, food products, lumber and railroad car parts. This fall EPRY will begin operations on a 22 mile line between Telford, Pennsylvania and Hellertown, Pennsylvania owned by the Southeastern Pennsylvania Transportation Authority, and now operated by CR.

LANO began operations in 1996 on 12 miles of track between Sinking Springs and Ephrata, Pennsylvania. LANO interchanges with CR at Reading, Pennsylvania via trackage rights on CR's Harrisburg Mainline. LANO serves five customers that transport lumber, feed grain, food products, steel and propane.

EPRY and LANO intend to file applications requesting that the Surface Transportation Board ("STB") impose specific conditions on the proposed acquisition of CR by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Corporation ("NS") in order to protect EPRY and LANO from adverse impacts of the acquisition.

The specific conditions to be requested by EPRY and LANO are:

1. removal of the restriction on the Canadian Pacific Railway's ("CP") Delaware and Hudson Railway ("D&H") that prevents interchange between EPRY and D&H at Emmaus Junction, Hellertown, Topton, and Pottstown, Pennsylvania and between LANO and D&H at Reading, Pennsylvania. D&H operates over CR on trackage rights at all of these locations.

2. require that LANO be permitted to retain trackage rights on the CR Harrisburg Mainline under the same terms as are currently in effect with CR.

3. require that CSXT and NS maintain existing deregulated rates issued by CR, or in which CR participates, to and from stations on EPRY and LANO, for a period of 6 months, or until the scheduled expiration date of the rate, whichever is later.
EPRY and LANO will request these conditions in order to: (1) maintain their competitive positions vis-a-vis adjacent railroads, who will acquire access to two line haul carriers as a consequence of the proposed acquisition; (2) correct competitive imbalances that will be exacerbated by the acquisition of CR; and (3) insure an orderly transition of rates and service subsequent to the acquisition.

Respectfully submitted,

EAST PENN RAILWAY, INC. AND LANCASTER NORTHERN RAILWAY

By:  
Peter A. Greene
David H. Baker
Thompson Hine & Flory LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036

Dated: August 22, 1997

Its Attorneys
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 1997 a copy of the foregoing Joint Description of Anticipated Responsive Applications of the East Penn Railway, Inc. and Lancaster Northern Railway was served via first class mail, postage prepaid on the following and all other persons identified in Decision No. 21 as Parties of Record:

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

James C. Bishop, Jr., Esq.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

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

John M. Nannes, Esq
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Mark G. Aron, Esq.
CSX Corporation
One James Center
901 East Cary Street
Richmond, Virginia 23129

P. Michael Giftos, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
Samuel M. Sipe, Jr., Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Timothy T. O’Toole, Esq.
Consolidated Rail Corporation
Two Commerce Square:
2001 Market Street
Philadelphia, Pennsylvania 19101

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

Peter A. Greene