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LAW DEPARTMENT
City of HAMMOND



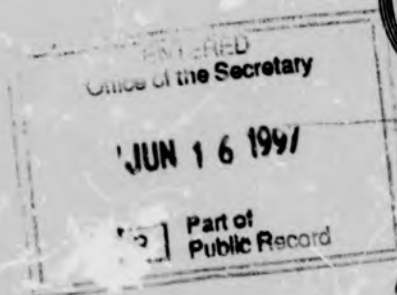
INDIANA

JOSEPH O'CONNOR
Corporation Counsel

DENISE L. SEJNA
City Attorney

JOHN H. LLOYD, IV
Assistant City Attorney

5925 Calumet Avenue
Hammond, Indiana 46320
(219) 853-6381



June 13, 1997

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

RE: Finance Docket No. 33388, CSX Corporation and CSX Transportation Company, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation Company

Dear Secretary Williams:

This document shall serve as the Notice of Intent to Participate in the above entitled proceeding filed on behalf of the City of Hammond, Indiana.

Pursuant to 49 C.F.R. §1180.4(c)(5)(v), the undersigned is requesting that the applicants serve a copy of their primary application and other pleadings on the following, as the representative of the City of Hammond, Indiana:

Denise L. Sejna, City Attorney
5925 Calumet Avenue
Hammond, IN 46320
Phone: (219) 853-6381
FAX: (219) 931-0831

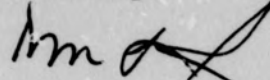
This letter is also to request the Board to place the City of Hammond and the above representative on the list of all parties of record that will be prepared and issued under the provisions of 49 C.F.R. §1180.4(a)(4). In accordance with 49 C.F.R. §1180.4(a)(2), Hammond selects the acronym "COHILD" (City of Hammond, Indiana Law Department) for identifying all documents and pleadings it submits in this proceeding.

EQUAL OPPORTUNITY EMPLOYER

Honorable Vernon A. Williams
June 13, 1997
Page Two

Enclosed you will find an original notice and twenty five copies. I have attached a certificate of service as required. Copies of this notice will be sent to all other parties of record on the service list provided to our office by Board personnel once that list has been received.

Sincerely,



Denise L. Sejna
City Attorney

DLS/mk
Enclosure

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 1997 service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record listed below by depositing the same in the United States Mail in an envelope properly addressed to each of them and with sufficient first class postage affixed.

By 

Denise L. Sejna, City Attorney

Honorable Judge Jacob Leventhal
Federal Energy Regulatory Comm'n.
888 1st Street N.E.
Suite 11F
Washington, D.C. 20426

Richard A. Allen
Attorney for CSX Corporation
Zuckert, Scott & Rosenberger
888 - 17th St., N.W.
Washington, D.C. 20006-3939

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

Donald G. Avery
Attorney for Norfolk Sou.
Stover and Loftus
1224 - 17th St., N.W.
Washington, D.C. 20036-3003

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300 Central Union Plaza

Toledo, OH 43602

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Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, Northwest
Washington, D.C. 20423-001

SUBJECT: Notice of Intent to Participate as a Party 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

Chair:

Stephen J. Pauken

Mayor

City of Maumee

Vice-Chair:

James F. Carter

Commissioner

Wood County

2nd Vice-Chair:

Kathleen M. Stringer

Trustee

Lake Township

Executive Director:

William L. Knight

Dear Secretary Williams:

Enclosed for filing is an original, twenty five copies, and a 3 1/2" computer disk with the filing in Wordperfect 6.1 format (can be read by Wordperfect for Windows 7.0) of the Toledo Metropolitan Area Council of Governments (TMACOG) Notice of Intent to Participate as a Party of Record in the above noted proceedings before the Surface Transportation Board and certification of service of same to legal counsel of the three rail companies involved and Judge Leventhal. To document our interest and concerns in this issue we have also attached Resolution Number 1997-16 approved on April 16, 1997 by the TMACOG Board of Trustees that outlines the position of TMACOG with regard to the disposition of Conrail assets and provision of service in our area by the CSX and Norfolk Southern. Representing five counties in Northwest Ohio and as the Metropolitan Planning Organization for Transportation in the Toledo area our agency has a vital interest in the outcome of this proceeding. We intend to be an active participant in this proceeding and, as necessary, we intend to file a request for conditions in the appropriate time frame.

Sincerely,

David R. Dysard, AICP
Director of Transportation Planning

DRD:dfs

Enclosure



**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 AS A PARTY OF RECORD BEFORE THE SURFACE
TRANSPORTATION BOARD**

By this document the Toledo Metropolitan Area Council of Governments (TMACOG) is notifying the Surface Transportation Board (Board) of its intent to participate actively in this proceeding (Finance Docket # 33388 as noted above) as a Party of Record (POR). TMACOG also hereby requests to be added to the official service list as a POR.

TMACOG is an association representing local governments in northwest Ohio and has been designated by the Governor and U.S. Department of Transportation as the metropolitan planning organization (MPO) for transportation in the Toledo area. Toledo is a preeminent transportation center for Ohio and this region of the United States. Good competitive rail service is a primary element of our area's transportation system.

Although the application and operations plan have not yet been submitted we have also enclosed for information a resolution of the TMACOG Board of Trustees approving a position statement for our region. Since 1984 TMACOG's Railroad Task Force has worked on issues relating to rail service and facilities in the Toledo area. The Task Force worked with local governments, shippers, economic developers and railroad representatives to develop the enclosed position.

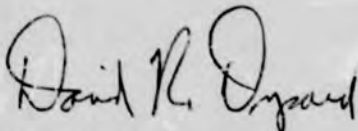
As per the May 30, 1997 Board decision this notice has been served via first class mail, postage prepaid, or by more expeditious means, on applicants' representatives and Judge Leventhal. TMACOG has also initiated discussion with the involved railroads to make it clear what we believe are essential elements of an acceptable operating plan for the integration of Conrail into the CSX and Norfolk Southern rail systems in our area.

We are very concerned with recent proposed submittals and intend to work with the applicants and the Board to secure conditions or other appropriate means of addressing these concerns, especially where rail carriers to major intermodal facilities would be reduced from 2 to 1.

Requested Action

Addition of TMACOG to official service list as a Party of Record (POR).

Respectfully submitted,



David R. Dysard,
Director of Transportation Planning
Toledo Metropolitan Area Council of Governments
300 Central Union Plaza
PO Box 9508
Toledo, OH 43697-9508

**A RESOLUTION OF THE
TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS
EXPRESSING ITS POSITION RELATIVE TO THE MERGER/SALE OF
CONRAIL**

WHEREAS, the Board of Trustees of the Toledo Metropolitan Area Council of Governments is designated as the Metropolitan Planning Organization by the Governor of Ohio in cooperation with local elected officials and is authorized to carry out the continuing, comprehensive, and coordinated transportation planning process for the Toledo area; and

WHEREAS, the CSX Corporation has announced its intent to merge with Consolidated Rail Corporation (Conrail) and sell portions of Conrail to Norfolk Southern Corporation; and

WHEREAS, specific actions that could be taken relative to consolidating Conrail into the other rail companies will have large impacts on the northwest Ohio area; and

WHEREAS, the TMACOG Railroad Task Force on March 20, and the Joint Transportation Committees on April 2, 1997 reviewed a proposed position on this sale and recommend its approval.

NOW, THEREFORE, BE IT RESOLVED THAT THE TOLEDO METROPOLITAN AREA COUNCIL OF GOVERNMENTS:

Section 1:

Endorses the attached position outlining five major points with specific actions that need to be included in merger/sale provisions for TMACOG support to be forthcoming;

Section 2:

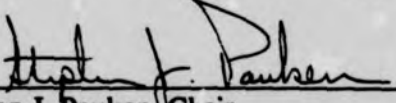
Urges the U.S. Department of Transportation Surface Transportation Board (STB) to consider the TMACOG position and the impact of the merger/sale on the Toledo and northwest Ohio area in approving the transaction and attaching conditions to its approval; and

Section 3:

The Executive Director be and is hereby authorized to send a copy of this resolution to appropriate federal, state, and local officials to elicit their support of this position.

Adopted by the Board of Trustees April 16, 1997.

Yea 27, Nay 0, Abstain 0


Stephen J. Pauken, Chair


William J. Knight, Executive Director

CERTIFICATION

I, William L. Knight, Executive Director of the Toledo Metropolitan Area Council of Governments (TMACOG), hereby certify as follows:

TMACOG as the MPO has, pursuant to 23 United States Code 134 and 49 United States Code 1602(a)(2), 1603(a), and 1604(a)(1) and (I), undertaken a transportation planning process, or Process, and prepared and adopted a Prospectus, an Annual Work Program, a Transportation Plan, and a Transportation Improvement Program; and

The Process is undertaken for a Study Area defined as the Toledo Transportation Study Area and consisting of all of Lucas and Wood Counties, Ohio, and Whiteford, Bedford, and Erie Townships and the City of Luna Pier, Monroe County, Michigan, including the incorporated municipalities therein; and

Toledo is an international and interstate transportation center with superior transportation assets including competing Class I rail carriers; and

The proposed merger/sale of Conrail has tremendous implications for the Toledo and northwest Ohio area; and

TMACOG has had an active rail planning program since 1984 and has developed recommendations for improvements to rail facilities and services in the area in cooperation with local government, shipping, economic development and rail representatives; and

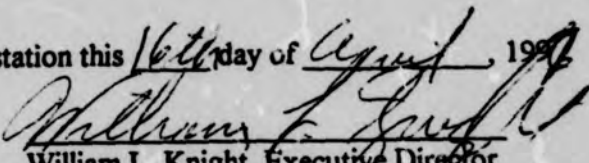
CSX Corporation has proposed merging with Conrail and selling key assets of Conrail to the Norfolk Southern Corporation; and

The U.S. Department of Transportation's Surface Transportation Board has authority to review mergers and acquisitions of rail corporations to protect the public interest; and

TMACOG, working with its rail planning partners, has developed the attached position with regard to the merger/sale and conditions that should be part of any proposal for rail realignment in our area.

I further certify that the resolution attached to this certificate is a true copy of the original thereof on file and of record in my office.

IN WITNESS WHEREOF, I sign this attestation this 16th day of August, 1999


William L. Knight, Executive Director
Toledo Metropolitan Area Council of Governments

TMACOG POSITION ON CONRAIL/CSX MERGER

Rail assets and service in the Toledo area are an essential element of the regional and national transportation network and economies. Since Conrail's creation we have had rail service from four Class I carriers and one regional carrier. The merger of Conrail with CSX Transportation (or in its place Norfolk Southern) will reduce the number of competing carriers and may have negative impacts for this area.

It seems clear, though, that some major realignment of rail services in Northwest Ohio will occur. Given this fact we need to take advantage of the opportunity the merger offers to make sure that improvements to rail services and facilities are made that are needed to increase our area's strategic resources and economic competitiveness.

In working with regional leaders to formulate this position, several important themes emerged. As a leading rail hub, we need truly competitive rail access to the area. We must maintain essential rail services and rail-related jobs. And we must be assured that pending rail projects will be completed.

To reflect these priorities, we have outlined the following five major points and specific actions that need to be included in merger provisions for TMACOG support to be forthcoming:

- I. Provisions of the merger must **ensure or create open and truly competitive freight rail access for all remaining railroads** to area intermodal facilities and shippers. This must be obtained with true direct service not reciprocal switching or unrealistic use agreements

Specific actions:

- Establish direct service agreements to allow all railroads serving the Toledo area access to all facilities at the Port of Toledo (General cargo, Coal and Ore Docks)
- Establish direct service agreements to allow all railroads serving the Toledo area access to the Airline Yard Intermodal Terminal and same charges for services at the facility.
- Provide direct service and required investments to serve the new Chrysler/Jeep facility to be located in the Toledo area.
- Cooperate in creating a neutral switching railroad with direct service agreements to all Port Facilities, the Airline Yard Intermodal Terminal, yards, and nearby shippers to gather local origin-destination traffic relieving major railroads of high cost local movements.

I. **Ensure or create open and truly competitive freight rail access for all remaining railroads (Continued)**

- Provide full access for the Wheeling and Lake Erie Railroad to the Port of Toledo, Airline Yard Intermodal Terminal, all Toledo area railroads, and the Toledo market through ownership or operating agreements that are economically feasible.
- Provide full access for the operator (currently Omni-Trax) of the Sandusky-Seneca-Tiffin Port Authority line to the Port of Toledo, Airline Yard Intermodal Terminal, all Toledo area railroads, and the Toledo market through ownership or operating agreements that are economically feasible.

II. The merger presents a threat to downgrade or eliminate rail lines and services in our area. Provisions of the merger must **ensure that certain threatened rail lines and services are maintained** through sale to another railroad or public entity or by some other means.

Specific Actions:

- Maintain and expand service and operations at major Toledo intermodal facilities - especially retaining the Port of Toledo Coal Docks and pursuing changes to expand its traffic base.
- Maintain rail service, preferably by a Class I Railroad, on both the Conrail and CSX/T lines between Toledo and Columbus serving shippers in Bowling Green and Fostoria. If one of the lines is to be sold to a regional carrier, it must include major shippers along the entire length of the line to allow for a viable rail operation.
- Establish multiple railroad access to the Oregon Industrial area through direct service agreements.

III. Rationalization of facilities as a result of the merger means certain property may be designated as excess to be sold. Provisions of the merger must **ensure that excess rail property is maintained in single ownership and prepared for future redevelopment**.

Specific Actions:

- Excess yards should be offered for sale first to the remaining rail carriers. If there is no interest the site must be maintained in single ownership and prepared for economic development. This means the site should be either: 1) cleaned up and prepared for development by the railroad and then offered for sale at net liquidation value to a public entity for development; or, 2) offered to a public entity for \$1.

III. **Ensure that excess rail property is maintained in single ownership and prepared for future redevelopment (Continued)**

- Offer abandoned or lines placed out of service to a state or regional entity for sale for \$1 to maintain their continuity for future use (or "rail bank" with rail company maintaining claim on line with a public entity managing the property for other uses)
- Convey the Lakefront Dock property to a public entity for economic development.

IV. Provisions of the merger must **ensure that the merged railroad fully cooperates in implementing and participates in funding specific facility improvements** as identified through previous planning studies.

Specific Actions involving present Conrail and CSXT facilities:

- Abandon ex-Toledo Terminal "Backside" route and reroute traffic to Conrail Maumee River Bridge route (with specific guaranteed operating windows).
- Construct Tiffin Avenue Overpass into Port of Toledo.
- Construct improvements at Vickers to reduce conflicts and sitting trains.
- Abandon the Miami Cut and Oakdale Connector lines from Wales Road north and the Rockwell line in East Toledo/Northwood, and replace with an alternate connector to the Conrail main line (at Vickers or LOF).
- Grade separate Wales and Drouillard Roads from Conrail and CSX (near Vickers)
- Construct a grade separation at Wales Road (just east of I-75) if not abandoned.
- Construct advance warning signals on Pickle Road.
- Construct a grade separation at McCord Road.
- Improve grades and alignment at Crissey Road crossing.
- Construct a joint grade separation for Conrail and CSX tracks at Oregon Road; to do so, participate in negotiations to relocate Conrail tracks.
- Construct a box culvert underpass for Wabash Trail under Conrail main line in Fulton County.

IV. **Ensure that the merged railroad fully cooperates in implementing and participates in funding specific facility improvements (Continued)**

Specific actions involving present Norfolk Southern facilities:

- Reconfigure the Cargill Maumee yard to reduce street conflicts.
- Construct a grade separation at Ford Road.
- Construct the Seaman/Lallendorf overpass.
- Tie Stadium Road into the State Route 2/Navarre Ave. overpass.

V. Provisions of the merger must ensure that **passenger rail related needs are addressed.**

Specific Actions:

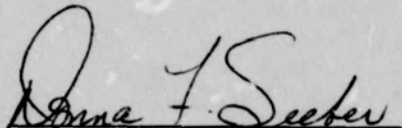
- Maintain all existing passenger route agreements.
- Fully cooperate in extension of and additional east-west service including the Pennsylvanian from Pittsburgh and Cleveland.
- Enter into agreements to allow new rail passenger service north south on the Detroit-Toledo, Toledo-Columbus, and Toledo-Cincinnati lines.
- Enter into agreement to open ex B&O route south to Cincinnati and implement an "I-75 Autotrain" service from Toledo.

In conclusion, these are our urgent concerns. We request that rail representatives meet with local government officials in jurisdictions where there will be major impacts from any changes to the rail system or services provided. We ask each of the railroads involved with the proposed merger for a specific response as to how these issues are addressed in the operations plans being filed before the U.S. Department of Transportation's Surface Transportation Board.

. . .

CERTIFICATE OF SERVICE

I, Donna F. Seeber, certify that on June 13, 1997 I have caused to be served by first class mail, postage prepaid, or by more expeditious means a true and correct copy of the foregoing Notice of Intent to Participate as a Party 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 on all parties listed in the STB Finance Docket No. 33388 decision of May 30, 1997.


Donna F. Seeber

Dated: June 13, 1997

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Richard R. Wilson, P.C.

**Attorney at Law
A Professional Corporation
1126 Eighth Avenue, Suite 403
Aitona, PA 16602**

(814) 944-5302
888-454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@mail.csrlink.net

June 11, 1997

Of counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1225 K Street, N.W.
Washington, D.C. 20423-0001



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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 - STB Finance Docket No. 33388

Dear Sir:

Please enter my appearance on behalf of the following parties as active participants in this proceeding

- 1) The Transportation Committee of the Pennsylvania House of Representatives;
- 2) North Shore Railroad Company and affiliated lines; and
- 3) Northwest Pennsylvania Rail Authority

Thank you for your attention to this matter.

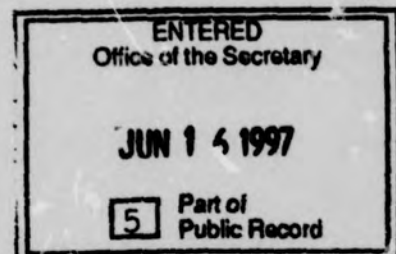
Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

RRW/klh

cc: Administrative Law Judge Jacob Leventhal
Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.
Northwest Pennsylvania Rail Authority
Pennsylvania House of Transportation
North Shore Railroad Company



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SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

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

June 12, 1997



BY HAND

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

Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc. and Norfolk Southern Railway Company--Control and Operating Leases, Agreements--Conrail Inc. and Consolidated Rail Corporation--Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc.

Dear Mr. Secretary:

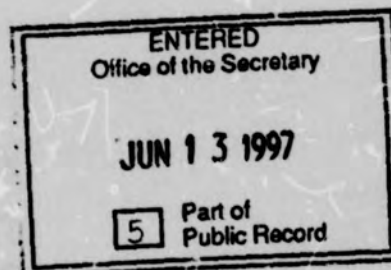
Enclosed for filing in the captioned proceeding please find an original and twenty-five (25) copies of a "Notice of Appearance" for the East Jersey Railroad Company.

Thank you for your attention to this matter.

Sincerely,

Donald G. Avery

Encl.



180172



BEFORE THE
SURFACE TRANSPORTATION BOARD



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

Finance Docket No. 33388

NOTICE OF APPEARANCE OF
THE EAST JERSEY RAILROAD COMPANY

The East Jersey Railroad Company ("EJRR") hereby gives notice that it intends to participate in this proceeding as may be necessary to protect its interests, and asks that it be placed on the official service list as a full party of record (POR) at the address shown below.

EJRR is a Class III rail common carrier that operates in Bayonne, New Jersey, serving tank farms and related industries on its lines. Although EJRR presently interchanges only with Consolidated Rail Corporation ("Conrail"), information made public thus far by CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS") indicates that both CSXT and NS will have the right to operate over, and serve points on, the Conrail rail lines connecting with EJRR, including portions of Conrail's lines over which EJRR operates for interchange purposes. This implies that EJRR and its customers will gain the

benefits of competitive rail service; how real that competition will be, however, remains to be seen.

For the foregoing reasons, EJRR intends to participate in this proceeding as its interests may dictate, and asks that it be placed on the official service list as a full party of record, with the following address and phone number:

C. Michael Loftus
Donald G. Avery
SLOVER & LOFTUS
1224 17th Street, NW
Washington, DC 20036
(202) 347-7170

Respectfully Submitted,

East Jersey Railroad Company
250 East Second Street
Bayonne, NJ 07002

Of Counsel:

SLOVER & LOFTUS
1224 17th Street, NW
Washington, DC 20036

Dated: June 12, 1997

By: C. Michael Loftus
Donald G. Avery
1224 17th Street, NW
Washington, DC 20036
(202) 347-7170

Attorneys for the East Jersey
Railroad Company

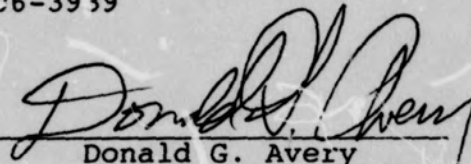
Certificate of Service

I hereby certify that I have this 12th day of June, 1997, caused copies of the foregoing document to be served by first-class mail upon counsel for Applicants, as follows:

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

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

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


Donald G. Avery

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AEP, et al. - 1

**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**

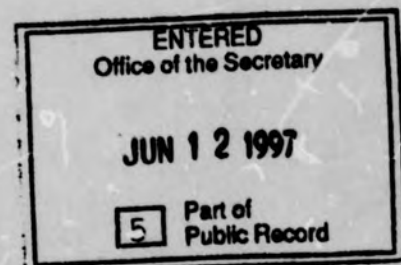


NOTICE OF INTENT TO PARTICIPATE

American Electric Power Service Corporation, Atlantic City Electric Company, Delmarva Power & Light Company, Indianapolis Power & Light Company, and The Ohio Valley Coal Company hereby notify the Board of their intent to participate in the above-referenced proceeding. Service may be made on the undersigned counsel. We also request that service be made on the following:

David B. Barnard, Esq., Counsel
Indianapolis Power & Light Company
One Monument Circle
P.O. Box 1595
Indianapolis, IN 46206-1595
Telephone: 317-261-5351
Facsimile: 317-261-8288

Mr. Robert E. Herrmann
Manager of Fuels
Atlantic City Electric Company
6801 Black Horse Pike
Egg Harbor Township, NJ 08234
Telephone: 609-645-4556
Facsimile: 609-645-7108



Mr. Robert E. Murray
President and Chief Executive Officer
The Ohio Valley Coal Company
29525 Chagrin Boulevard, Suite 111
Pepper Pike, OH 44122
Telephone: 216-765-1240
Facsimile: 216-765-2654

Mr. James L. Parks
Manager - Fuel Supply Department
Delmarva Power & Light Company
P.O. Box 6066
Newark, DE 19714-6066
Telephone: 302-452-6190
Facsimile: 302-452-6364

Mr. Ronald L. Young
Managing Director - Transportation
American Electric Power Service
Corporation
Fuel Supply Department
One Memorial Drive
P.O. Box 700
Lancaster, OH 43130-0700
Telephone: 614-687-3002
Facsimile: 614-687-3137

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Linda K. Breggin
Daniel Aronowitz
Brenda Durham
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1375 Connecticut Avenue, N.W., Suite 1200
Washington, DC 20009-5728
(202) 986-8050 (Telephone)
(202) 986-3102 (Facsimile)

June 12, 1997

Attorneys for American Electric Power
Service Corporation, Atlantic City Electric
Company, Delmarva Power & Light
Company, Indianapolis Power & Light
Company, and The Ohio Valley Coal Company

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 I have served this 12th day of June, 1997, a copy of the foregoing "Notice of Intent to Participate" by first-class mail, postage prepaid, or by more expeditious means, upon each of the following parties of record:

Office of the Secretary
Case Control Unit
ATTN: STB Finance Dkt. 33388
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

Dennis G. Lyons, Esq.
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20034-1202
VIA HAND DELIVERY

David M. Konschnik, Director
Office of Proceedings
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, DC 20423

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

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

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

Michael F. McBride
Michael F. McBride

STB

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33388

6-12-97

D

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180154



UNITED TRANSPORTATION UNION

General Committee of Adjustment 532

ANTHONY J. BOTTALICO
General Chairman

ANDREW J. STEIMLE
Secretary-General Committee

VICE CHAIRMEN

PETER J. COLEMAN
Grand Central Terminal

LEO J. FISCHBECK
Hudson Division

DANIEL T. GORMAN
New Haven Division - Stamford

KENNETH F. MACKEY
Harlem Division

RALPH SANZARI JR.
New Haven Division - New Haven

June 5, 1997

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



420 Lexington Avenue
Room 458-460
New York, NY 10017
Telephone: (212) 599-2028
FAX: (212) 599-0089

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

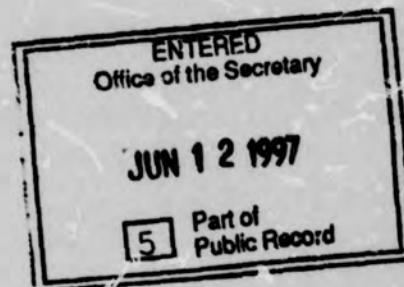
Dear Secretary Williams:

Please enter my appearance on behalf of the United Transportation Union
General Committee of Adjustment GO-532 in the above-referenced proceeding
and include me on the service list.

Thank you for your attention to this matter.

Sincerely,

Anthony Bottalico
General Chairman



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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 5th day of June, 1997 upon the following:

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

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

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

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

Richard Edelman
Highsaw, Mahoney & Clarke,
1050 17th Street NW, Suite 210
Washington, DC 20036

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

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

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

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

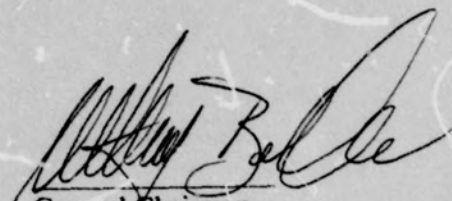
P. Michael Giflos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

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

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

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

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



General Chairman

STB

FD

33388

6-11-97

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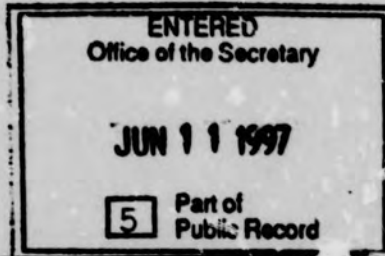
180143

Inland Steel Industries, Inc.
30 West Monroe Street
Chicago, Illinois 60603

312 899 3148
312 899 3214 FAX

Edward C. McCarthy
Assistant General Counsel

Inland Steel



ISI-1

June 6, 1997

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

Re: Finance Docket No. 33388, *CSX Corporation and CSX Transportation Company, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company — Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation Company.*

Dear Secretary Williams:

This letter is to notify the Board and the parties that, pursuant to 49 C.F.R. §1180.4(c)(5)(v), the undersigned is requesting that the applicants serve a copy of their primary application and other pleadings on the following, as the representative of Inland Steel Industries, Inc. ("Inland"):

Edward C. McCarthy, Esq.
Assistant General Counsel
Inland Steel Industries, Inc.
30 West Monroe St.
Chicago, IL 60603

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

Copies of this letter are being served on all persons presently known to be parties of record.

Sincerely yours,

Edward C. McCarthy

cc: All current parties of record

STB

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W. W. WHITEHURST & ASSOCIATES, INC.
ECONOMIC CONSULTANTS
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE, MARYLAND 21030

PHONE (410) 252-2422

June 5, 1997



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

Dear Sirs:

Please add my name and address to the service list as a party of record ("POR") for receipt of all submissions of the parties and decisions in STB Finance Docket No. 33388: CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation.

PARTY OF RECORD

William W. Whitehurst, Jr.
W. W. Whitehurst & Associates, Inc.
Economic Consultants
12421 Happy Hollow Road
Cockeysville, MD 21030-1711

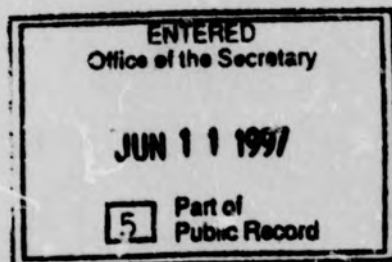
Please see Certificate of Service (attached) with the names of the parties we have notified.

Please advise if we are supposed to supply 25 copies of this letter to the STB.

Very truly yours,

William W. Whitehurst Jr.

William W. Whitehurst, Jr.



WWW:rtb

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1997, I have served a copy of the foregoing letter upon the parties on the attached list:

Richard T. Pencek, Sr.
Richard T. Pencek, Sr.

Attachment

STB Finance Docket No. 33383
Applicants' Representatives Notified

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.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 Scoutt & Rasenberger, I.L.P.
Suite 600
888 Seventeenth Street, N.W.
Washington, DC 20006-3939

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

STB

FD

33388

6-11-97

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180146

SPI-2

BEFORE THE
Surface Transportation Board
WASHINGTON, D.C. 20423



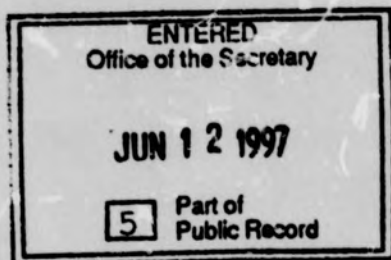
STB Finance Docket No. 33388

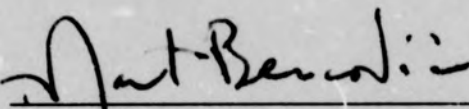
CSX Corporation and CSA Transportation, Inc.,
Norfolk Southern Corporation and
Norfolk Southern Railway Company
--Control and Operating Leases/Agreements--
Conrail, Inc. and Consolidated Rail Corporation

NOTICE OF APPEARANCE

The Society of the Plastics Industry, Inc., by its undersigned counsel, respectfully
herewith enters its appearance as a party of record in STB Finance Docket No. 33388, the
proposed acquisition of Conrail by CSX and Norfolk Southern railroads.

Respectfully submitted,





Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for
The Society of the Plastics Industry, Inc.

June 11, 1997

CERTIFICATE OF SERVICE

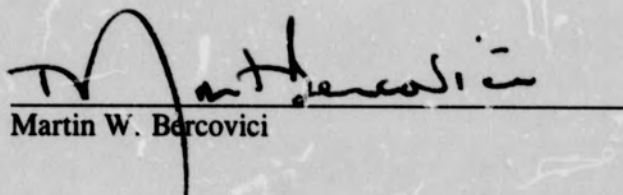
I hereby certify that a copy of the foregoing Notice of Appearance was served by first-class mail, postage prepaid, on this 11th day of June, 1997, upon:

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

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

Richard A. Allen, Esquire
Zuckert Scoutt & Rasenberger, I. L.P.
Suite 600
888 Seventeenth Street, NW
Washington, DC 20006-3939

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


Martin W. Bercovici

STB

FD

33388

6-10-97

D

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180134



D

ASHT-2

BEFORE THE
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

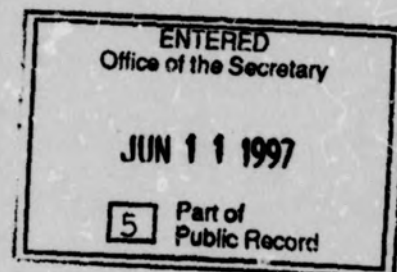
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY -- CONTROL AND
OPERATING LEASES/AGREEMENTS -- CONRAIL INC.
AND CONSOLIDATED RAIL CORPORATION

ASHTA CHEMICALS INC.
NOTICE OF INTENT TO PARTICIPATE

ASHTA CHEMICALS INC.

By: Christopher C. McCracken
Inajo Davis Chappell
Ulmer & Berne LLP
1300 East 9th Street
Suite 900
Cleveland, OH 44114-1583

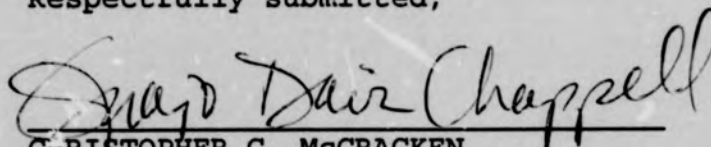
Dated: June 6, 1997



NOTICE OF INTENT TO PARTICIPATE

ASHTA CHEMICALS INC., a Delaware corporation, hereby advises the Board of its intent to participate in the proceeding as a party of record without asserting a position for or against the transaction. Please forward any notices to ASHTA CHEMICALS INC.'s attorneys at the address listed below.

Respectfully submitted,



CHRISTOPHER C. MCCrackEN
INAJO DAVIS CHAPPELL
Ulmer & Berne LLP
1300 East 9th Street, Suite 900
Cleveland, Ohio 44114

Attorneys for ASHTA CHEMICALS INC.

CERTIFICATE OF SERVICE

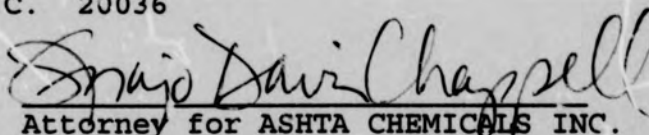
I hereby certify that the foregoing ASHTA CHEMICALS INC. NOTICE OF INTENT TO PARTICIPATE was served this 6th day of June, 1997, via first class mail, postage prepaid, upon:

The Honorable Jacob Leventhal
Administrative Law Judge
FERC
888 First Street, N.E., Ste. 11F
Washington, D.C. 20426

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

Richard A. Allen, Esq.
Zuckert, Scoutt & Rasenberger, L.L.P.
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


Attorney for ASHTA CHEMICALS INC.

STB

FD

33388

6-9-97

D

180094

GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

Telephone (610) 692-9116
Telecopier (610) 692-9177
E-MAIL: GGE@GGE.ATTMAIL.COM

DELAWARE COUNTY OFFICE:
205 N. MONROE STREET
PO BOX 1430
MEDIA, PA 19063
(610) 563-6040

ERIC M. HOCKY

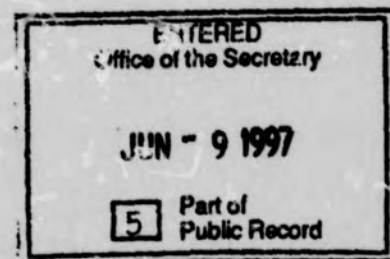
June 6, 1997

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

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

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Notice of Intent to Participate of Reading Blue Mountain & Northern Railroad Company (RBMN-1), along with a diskette containing the document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

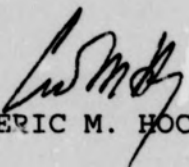


Office of the Secretary
Case Control Unit
June 6, 1997
Page 2

This is a refiling of RBMN-1, which was filed earlier in this proceeding. Because no substantive changes have been made in the document, RBMN has not changed the designation of the document.

Kindly time stamp the enclosed extra copy of this letter to indicate receipt and return it to me in the self-addressed envelope provided for your convenience.

Respectfully,



ERIC M. HOCKY

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.
Administrative Law Judge Jacob Leventhal
All other parties shown on the Certificate of Service

180094

RBMN-1

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388

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

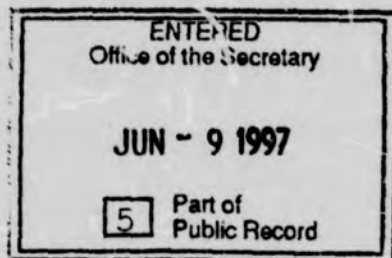


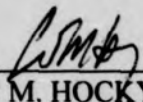
NOTICE OF INTENT TO PARTICIPATE¹

Please take notice that Reading Blue Mountain & Northern Railroad Company ("RBMN") intends to actively participate in this proceeding. The following should be added to the service list in this proceeding:

Andrew M. Muller, Jr., President
Reading Blue Mountain & Northern
Railroad Company
P.O. Box 218
Port Clinton, PA 19549

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




ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: June 6, 1997

Attorneys for Reading Blue Mountain &
Northern Railroad Company

¹ Decision No. 6 (at 5, n.5) states that any person that wishes to be a party of record must file a notice of intent after May 30, 1997, and before Day + 45. Accordingly, RBMN is refiling RBMN-1, which was filed earlier in this proceeding. Because no substantive changes have been made in the document, RBMN has not changed the designation of the document.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of Reading Blue Mountain & Northern Railroad Company was served by first class mail on the following persons specified in Decision No. 2, and on the parties shown on the attached list:

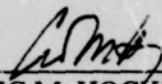
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, DC 20426

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

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

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

Dated: June 6, 1997



ERIC M. HOCKY

WILLIAM A. BON
GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26555 EVERGREEN ROAD, SUITE 200
SOUTHFIELD, MI 48076

THERESA M. BRENNAN
PENNSYLVANIA POWER & LIGHT CO.
TWO NORTH NINTH STREET
ALLENTOWN, PA 18101-1179

NICHOLAS J. DIMICHAEL
JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

GARY EDWARDS
SUPERINTENDENT RAILROAD OPERATIONS
SOMERSET RAILROAD CORPORATION
7725 LAKE ROAD
BARKER, NY 14012

DAVID L. HALL
COMMONWEALTH CONSULTING ASSOCIATES
720 NORTH POST OAK ROAD, SUITE 400
HOUSTON, TX 77024

WILLIAM G. MAHONEY
RICHARD S. EDELMAN
L. PAT WYNNS
HIGHSAW, MAHONEY & CLARKE, P.C.
1050 17TH STREET, NW, SUITE 210
WASHINGTON, DC 20036

JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C., SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005-3934

SEAN D. BRADY
MANAGER, STRATEGIC PLANNING-GENERATION
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

A. SCOTT CAUGER
SENIOR COUNSEL
NIAGARA MOHAWK POWER CORPORATION
300 FRIE BOULEVARD WEST
SYRACUSE, NY 13202

PAUL M. DONOVAN
LAROE, WINN, MOERMAN & DONOVAN
3506 IDAHO AVENUE, NW
WASHINGTON, DC 20016

DONALD F. GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
400 NORTH CAPITOL ST., NW, SUITE 852
WASHINGTON, DC 20001-1511

DORFEN C. JOHNSON
CHIEF, ANTITRUST SECTION
OHIO ATTORNEY GENERAL'S OFFICE
30 E. BROAD STREET, 16TH FLOOR
COLUMBUS, OH 43215

RON MARQUARDT, PRESIDENT
LOCAL UNION 1810 UMWA
VALLEY VIEW SUB-DIVISION
R.D. 32
RAYLAND, OH 43943

MICHAEL MATTIA
DIRECTOR, RISK MANAGEMENT
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.
1325 G STREET, N.W.
WASHINGTON, DC 20005

GEORGE W. MAYO, JR.
ERIC VON SALZEN
THOMAS B. LEARY
HOGAN & HARTSON L.L.P.
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004-1109

ROBERT E. MURRAY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
THE OHIO VALLEY COAL COMPANY
29525 CHAGRIN BOULEVARD, SUITE 111
PEPPER PIKE, OH 44122

*JEAN PIERRE OUELLET
CHIEF LEGAL OFFICER AND CORPORATE SECRETARY
CANADIAN NATIONAL RAILWAY COMPANY
935 DE LA GAUCHETIERE STREET WEST, 16TH FLOOR
MONTREAL, QUEBEC
H3B 2M9

JACK H. ROSKOZ
EXECUTIVE VICE PRESIDENT
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

DANIEL J. SWEENEY
JOHN M. CUTLER, JR.
MCCARTHY, SWEENEY & HARKAWAY, P.C.
1750 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006

*MARCELLA M. SZEL
VICE PRESIDENT-LEGAL SERVICES
CANADIAN PACIFIC RAILWAY COMPANY
GULF CANADA SQUARE, SUITE 500
401 NINTH AVENUE, S.W.
CALGARY, ALBERTA T2P 4Z4
CANADA

FREDERIC L. WOOD
NICHOLAS J. DIMICHAEL
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

MICHAEL F. MCBRIDE
LINDA K. BREGGIN
BRENDA DURHAM
LE BOEUF, LAMB, GRENE & MACRAE, L.L.P.
1875 CONNECTICUT AVENUE, NW, SUITE 1200
WASHINGTON, DC 20009-5728

L. JOHN OSBORN
DOUGLAS E. ROSENTHAL
AMBER C. HASKETT
SONNENSCHN NATH & ROSENTHAL
1301 F STREET, NW, SUITE 600, EAST TOWER
WASHINGTON, DC 20005

ARVID E. ROACH, II
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, DC 20044-7566

KENNETH E. SIEGEL
ATA LITIGATION CENTER
2200 MILL ROAD
ALEXANDRIA, VA 22314-4677

ROBERT G. SZABO
VAN NESS FELDMAN, P.C.
1050 THOMAS JEFFERSON STREET, NW, SEVENTH FL.
WASHINGTON, DC 20007

HUGH H. WELSH
DEPUTY GENERAL COUNSEL
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
ONE WORLD TRADE CENTER, 67E
NEW YORK, NY 10048

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY WILLIS
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
400 NORTH CAPITOL STREET, NW
SUITE 861
WASHINGTON, DC 20001

R. L. YOUNG
MANAGING DIRECTOR-TRANSPORTATION
AMERICAN ELECTRIC POWER
P.O. BOX 700
LANCASTER, OH 43130-0700

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6-9-97

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NORTH CAROLINA RAILROAD COMPANY

3200 Atlantic Avenue
Suite 110
Raleigh, NC 27604
(919) 954-7601
Fax (919) 954-7099

D



Scott M. Saylor
General Counsel

JUN 9, 1997

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

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

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding is a notice of appearance by North Carolina Railroad Company.

By this letter, copies of which are being provided to counsel for the Applicants, we hereby request that Applicants serve us with any filings that they make with the Board in connection with this proceeding.

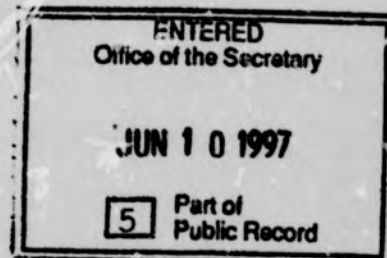
Respectfully,

North Carolina Railroad Company

By: *Scott M. Saylor*

cc: Counsel for Applicant as
noted on certificate of service

\98d.wpd



BEFORE THE
U.S. 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 APPEARANCE OF
NORTH CAROLINA RAILROAD COMPANY

Please enter the appearances in this proceeding of the below-named attorneys on behalf of North Carolina Railroad Company. North Carolina Railroad Company intends to participate in this proceeding as a party of record. Accordingly, please place the named attorneys, at the addresses provided, on the service list to receive all pleading and decisions in this proceeding.

John L. Sarratt
Kilpatrick Stockton LLP
4101 Lake Boone Trail
Raleigh, NC 27607
(919) 420-1700
Fax: (919) 420-1800

Scott M. Saylor
North Carolina Railroad Company
3200 Atlantic Avenue, Suite 110
Raleigh, NC 27604-1640
(919) 954-7601
Fax: (919) 954-7099

Attorneys for North Carolina Railroad Company

June 5, 1997

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class mail, postage prepaid, this 5th day of June, 1997, upon the following:

James C. Bishop, Jr.
William C. Woolridge
J. Gary Lane
James L. Howe, III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corp.
Three Commercial Place
Norfolk, VA 23510-2191

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

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

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

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

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

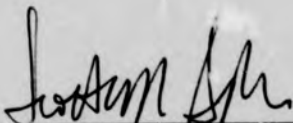
Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
Zuckert, Scoutt &
Rasenberger, L.L.P.
888 17th Street, NW
Washington, DC 20006-3939

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

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

Larry Willis, Esq.
Transportation Trades Dep't.,
AFL-CIO
400 N. Capitol Street, NW
Suite 861
Washington, DC 20001

Richard Edelman
Highsaw, Mahoney & Clarke
1050 17th Street, NW
Suite 210
Washington, DC 20036



Scott M. Saylor

STB

FD

33388

6-9-97

D

180101



180101
GENESEE TRANSPORTATION COUNCIL

June 3, 1997

Office of the Secretary,
Case Contr. Branch
Attn: STB Finance Docket No. 33388
SURFACE TRANSPORTATION BOARD
1925 K Street, N.W.
Washington, DC 20423-0001



By this letter, the Genesee Transportation Council, Rochester, New York, announces its intent to participate as a party of record (POR) in STB Finance Docket 33388, by offering comments and requests for conditions.

Legal name and Address

Genesee Transportation Council, 65 West Broad Street, Suite 101, Rochester, NY 14614-2210, telephone (716)232-6240, fax (716)262-3106. The E-mail address is gtcmpo@frontiernet.net.

Identity of Witness

My name is H. Douglas Midkiff. I am employed as a Transportation Specialist on the Central Staff of the Genesee Transportation Council (GTC), with responsibility for the planning of the movement of goods to, from, and within the GTC region. The GTC is the metropolitan planning organization for nine counties in Upstate New York. (See attached map) I have been authorized by the GTC Policy Committee to represent the Council before the STB.

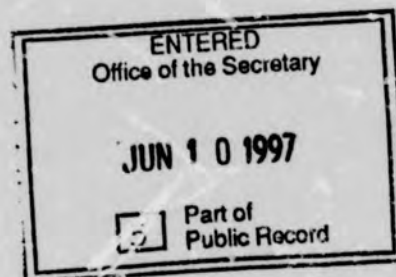
Brief Description of GTC Position

The GTC intends to participate as a POR in STB FD-33388 by offering substantive comments and requests for conditions intended to achieve and/or maintain competitive rail service to and from the GTC nine-county region.

Respectfully submitted,

H. Douglas Midkiff
Transportation Specialist

Attachment (1)



CERTIFICATE OF SERVICE

I hereby certify that I have served copies of this letter, with attachment, by first class mail, postage prepaid, on the following parties:

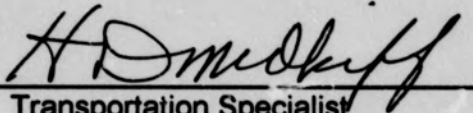
Administrative Law Judge Jacob Levanthal,
Federal Energy Regulatory Commission,
888 First Street, N.E., Suite 11F,
Washington, DC 20426

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

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

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

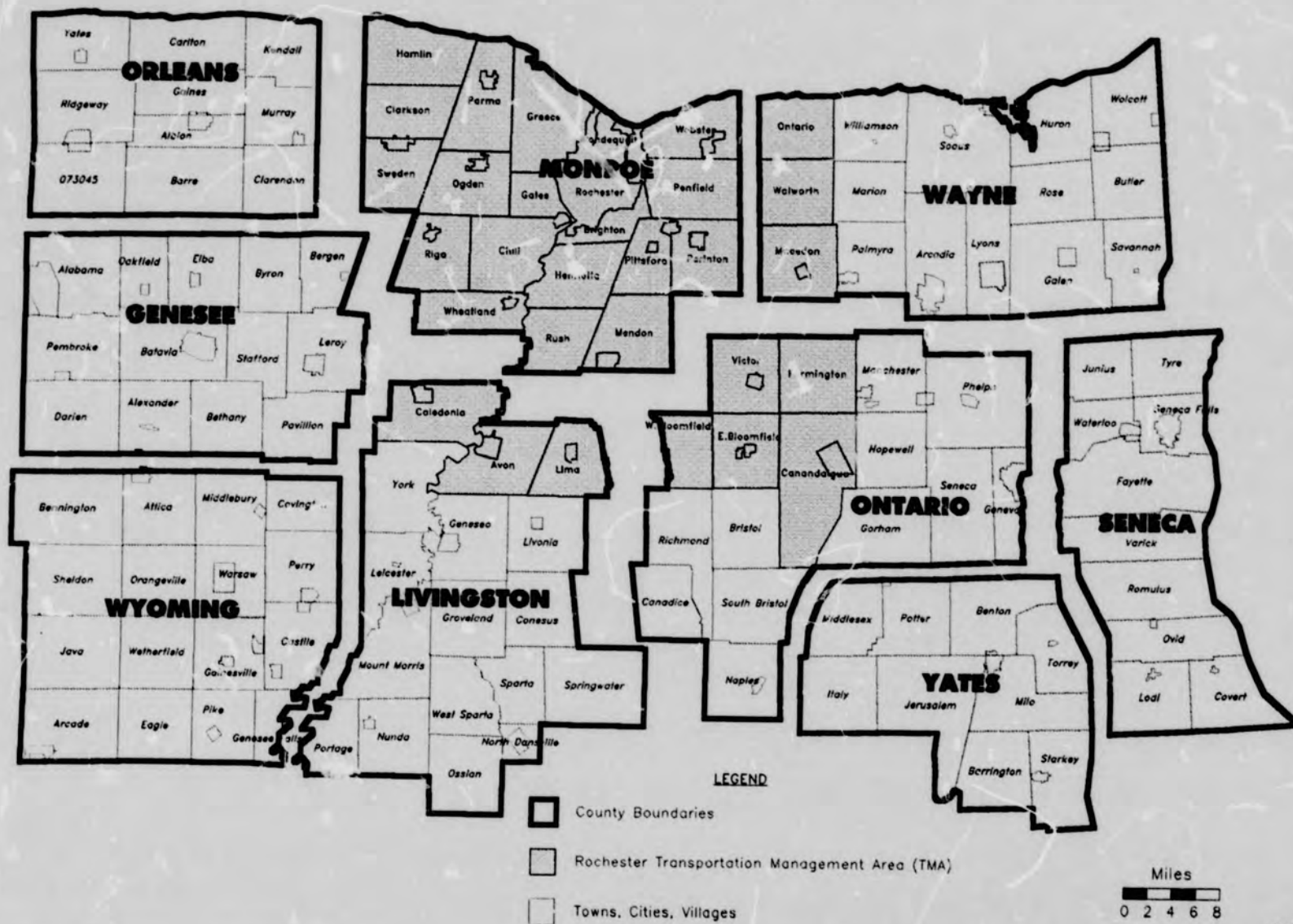
By



Transportation Specialist

GENESEE TRANSPORTATION COUNCIL

Rochester Transportation Management Area and GTC Nine County Planning Region



STB

FD

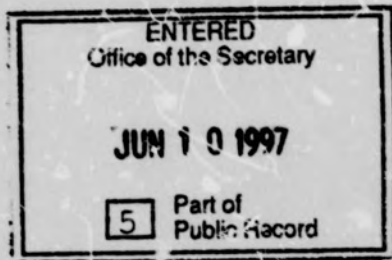
33388

6-9-97

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May 5, 1997



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

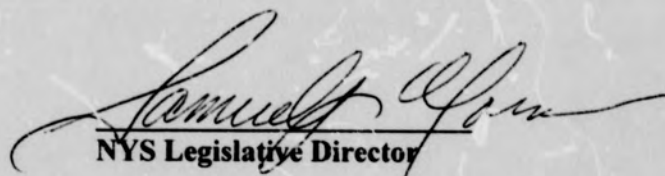
Re: Entry of Appearance, Finance Docket No. 33388
CSX Corp., et al., Norfolk Southern Corp., et al., -
Control and Operating Leases/Agreements - Conrail
Inc., et al., - Transfer of Railroad Line By Norfolk
Southern Railway Co. to CSX Transportation, Inc.

Dear Secretary Williams:

Please enter my appearance on behalf of the United Transportation NYS
Legislative Board in the above-referenced proceeding and include me on the
service list.

Thank you for your attention to this matter.

Sincerely,


NYS Legislative Director

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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Entry of Appearance were served by first-class, postage pre-paid mail, this 2nd day of June, 1997 upon the following:

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

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

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

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

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

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

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

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

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

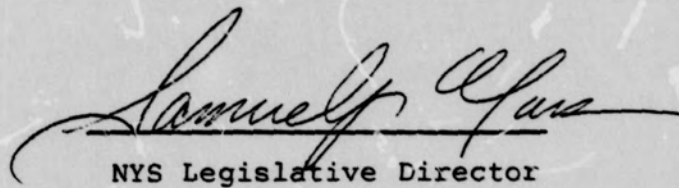
P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

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

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

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

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



NYS Legislative Director

STB

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



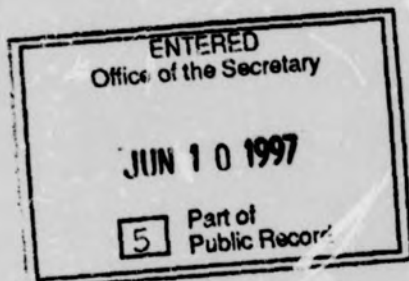
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

NOTICE OF INTENT TO PARTICIPATE

In accordance with the Procedural Schedule issued by the Surface Transportation Board on May 30, 1997, the Ohio Attorney General's Office hereby notifies the Board of its intent to participate in this proceeding. This party respectfully requests that its representative, as listed below, be included in the service list maintained by the Board in this proceeding.

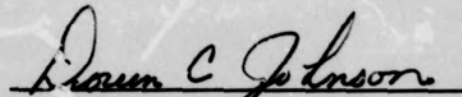
Respectfully submitted,

Doreen C. Johnson
Chief, Antitrust Section
Ohio Attorney General's Office
30 E. Broad Street
16th Floor
Columbus, OH 43215
(614) 466-4328



CERTIFICATE OF SERVICE

I hereby certify that on this fifth day of June, 1997, copies of the foregoing NOTICE OF INTENT TO PARTICIPATE were served upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, Suite 11F, 888 First Street, N.E., Washington, DC 20426; Dennis G. Lyons, Esquire, Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; Richard A. Allen, Esquire, Zuckert, Scout & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and Paul A. Cunningham, Esquire, Harkins Cunningham, Suite 600, 1300 19th Street, N.W., Washington, DC 20036, by first-class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board.

A handwritten signature in cursive script, reading "Doreen C. Johnson", written over a horizontal line.

DOREEN C. JOHNSON

STB

FD

33388

6-9-97

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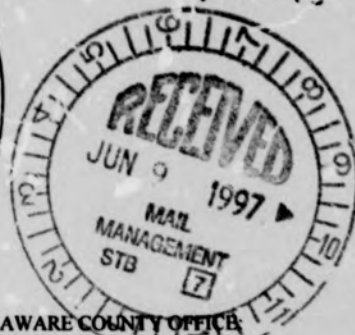
GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

Telephone (610) 692-9116
Telecopier (610) 692-9177
E-MAIL: GGE@GGE.ATTMAIL.COM

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

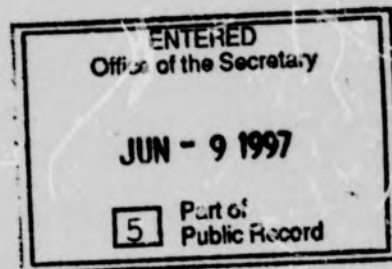
DELAWARE COUNTY OFFICE
205 NORTH MONROE STREET
POST OFFICE BOX 1430
MIDDLETOWN, PA 19063
(610) 565-6040



ERIC M. HOCKY

June 6, 1997

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



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

Dear Sir or Madam:

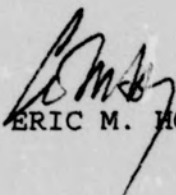
Enclosed for filing in the above referenced proceeding are an original and 25 copies of Notice of Intent to Participate of The New York, Susquehanna and Western Railway Corporation (NYSW-1), along with a diskette containing the document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

Office of the Secretary
Case Control Unit
June 6, 1997
Page 2

This is a refiling of NYSW-1, which was filed earlier in this proceeding. Because no substantive changes have been made in the document, NYSW has not changed the designation of the document.

Kindly time stamp the enclosed extra copy of this letter to indicate receipt and return it to me in the self-addressed envelope provided for your convenience.

Respectfully,


ERIC M. HOCKY

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.
Administrative Law Judge Jacob Leventhal
All other parties shown on the Certificate of Service

180095

ORIGINAL

NYSW-1

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388

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

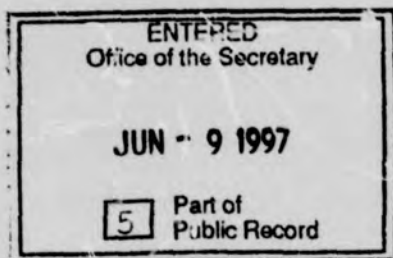


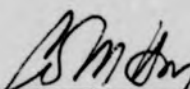
NOTICE OF INTENT TO PARTICIPATE¹

Please take notice that The New York, Susquehanna and Western Railway Corporation ("NYSW") intends to actively participate in this proceeding. The following should be added to the service list in this proceeding:

Nathan R. Fenno, Esq.
Vice President & General Counsel
Delaware Otsego Corporation
One Railroad Avenue
Cooperstown, NY 13326

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




WILLIAM P. QUINN
ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: June 6, 1997

Attorneys for The New York,
Susquehanna and Western Railway Corporation

Decision No. 6 (at 5, n.5) states that any person that wishes to be a party of record must file a notice of intent after May 30, 1997, and before Day + 45. Accordingly, NYSW is refiling NYSW-1, which was filed earlier in this proceeding. Because no substantive changes have been made in the document, NYSW has not changed the designation of the document.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of The New York, Susquehanna and Western Railway Corporation was served by first class mail on the following persons specified in Decision No. 2, and on the parties shown on the attached list:

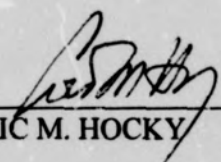
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, DC 20426

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

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

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

Dated: June 6, 1997



ERIC M. HOCKY

WILLIAM A. BON
GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26555 EVERGREEN ROAD, SUITE 200
SOUTHFIELD, MI 48076

THERESA M. BRENNAN
PENNSYLVANIA POWER & LIGHT CO.
TWO NORTH NINTH STREET
ALLENTOWN, PA 18101-1179

NICHOLAS J. DIMICHAEL
JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

GARY EDWARDS
SUPERINTENDENT RAILROAD OPERATIONS
SOMERSET RAILROAD CORPORATION
7725 LAKE ROAD
BARKER, NY 14012

DAVID L. HALL
COMMONWEALTH CONSULTING ASSOCIATES
720 NORTH POST OAK ROAD, SUITE 400
HOUSTON, TX 77024

WILLIAM G. MAHONEY
RICHARD S. EDELMAN
L. PAT WYNNS
HIGSAW, MAHONEY & CLARKE, P.C.
1050 17TH STREET, NW, SUITE 210
WASHINGTON, DC 20036

JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C., SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005-3934

SEAN D. BRADY
MANAGER, STRATEGIC PLANNING-GENERATION
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

A. SCOTT CAUGER
SENIOR COUNSEL
NIAGARA MOHAWK POWER CORPORATION
300 ERIE BOULEVARD WEST
SYRACUSE, NY 13202

PAUL M. DONOVAN
LAROE, WINN, MOERMAN & DONOVAN
3506 IDAHO AVENUE, NW
WASHINGTON, DC 20016

DONALD F. GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
400 NORTH CAPITOL ST., NW, SUITE 852
WASHINGTON, DC 20001-1511

DOREEN C. JOHNSON
CHIEF, ANTITRUST SECTION
OHIO ATTORNEY GENERAL'S OFFICE
30 E. BROAD STREET, 16TH FLOOR
COLUMBUS, OH 43215

RON MARQUARDT, PRESIDENT
LOCAL UNION 1810 UMWA
VALLEY VIEW SUB-DIVISION
R.D. 32
RAYLAND, OH 43943

MICHAEL MATTIA
DIRECTOR, RISK MANAGEMENT
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.
1325 G STREET, N.W.
WASHINGTON, DC 20005

GEORGE W. MAYO, JR.
ERIC VON SALZEN
THOMAS B. LEARY
HOGAN & HARTSON L.L.P.
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004-1109

ROBERT E. MURRAY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
THE OHIO VALLEY COAL COMPANY
29525 CHAGRIN BOULEVARD, SUITE 111
PEPPER PIKE, OH 44122

*JEAN PIERRE OUELLET
CHIEF LEGAL OFFICER AND CORPORATE SECRETARY
CANADIAN NATIONAL RAILWAY COMPANY
955 DE LA GAUCHETIERE STREET WEST, 16TH FLOOR
MONTREAL, QUEBEC
H3B 2M9
CANADA

JACK H. ROSKOZ
EXECUTIVE VICE PRESIDENT
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

DANIEL J. SWEENEY
JOHN M. CUTLER, JR.
MCCARTHY, SWEENEY & HARKAWAY, P.C.
1750 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006

*MARCELLA M. SZEL
VICE PRESIDENT-LEGAL SERVICES
CANADIAN PACIFIC RAILWAY COMPANY
GULF CANADA SQUARE, SUITE 500
401 NINTH AVENUE, S.W.
CALGARY, ALBERTA 52P 424
CANADA

FREDERIC L. WOOD
NICHOLAS J. DIMICHAEL
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

MICHAEL F. MCBRIDE
LINDA K. BREGGIN
BRENDA DURHAM
LE BOEUF, LAMB, GREENE & MACRAE, L.L.P.
1875 CONNECTICUT AVENUE, NW, SUITE 1200
WASHINGTON, DC 20009-5728

L. JOHN OSBORN
DOUGLAS E. ROSENTHAL
AMBER C. HASKETT
SONNENSCHN NATH & ROSENTHAL
1301 K STREET, NW, SUITE 600, EAST TOWER
WASHINGTON, DC 20005

ARVID E. ROACH, II
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, DC 20044-7566

KENNETH E. SIEGEL
ATA LITIGATION CENTER
2200 MILL ROAD
ALEXANDRIA, VA 22314-4677

ROBERT G. SZABO
VAN NESS FELDMAN, P.C.
1050 THOMAS JEFFERSON STREET, NW, SEVENTH FL.
WASHINGTON, DC 20007

HUGH H. WELSH
DEPUTY GENERAL COUNSEL
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
ONE WORLD TRADE CENTER, 67E
NEW YORK, NY 10048

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY WILLIS
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
400 NORTH CAPITOL STREET, NW
SUITE 861
WASHINGTON, DC 20001

R. L. YOUNG
MANAGING DIRECTOR-TRANSPORTATION
AMERICAN ELECTRIC POWER
P.O. BOX 700
LANCASTER, OH 43130-0700

STB

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33388

6-9-97

D

180119

**VanNess
Feldman**
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION
1050 Thomas Jefferson Street N.W.
Washington, D.C. 20007-3877
(202) 298-1300 Telephone
(202) 338-2413 Facsimile

Seattle, Washington
(206) 623-9372

180119

June 9, 1997

VIA HAND DELIVERY

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

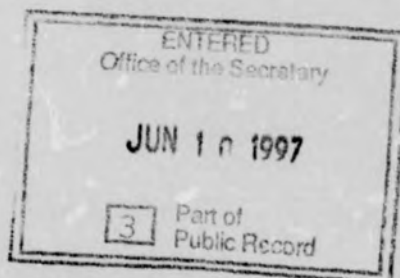
Enclosed are the original and 25 copies of the Notice of Intent to Participate of the Consumers United for Rail Equity for filing in the above referenced proceeding. Also enclosed is a 3.5" diskette containing the filing in WordPerfect 6.1 format.

Please date stamp and return the enclosed five additional copies via our messenger. Please contact me if you have any questions regarding this matter.

Respectfully submitted,

Robert G. Szabo
Robert G. Szabo

Executive Director and Counsel
Consumers United for Rail Equity



Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD



18019

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.**

NOTICE OF INTENT TO PARTICIPATE

Mr. Robert G. Szabo
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1920

Executive Director and Counsel
Consumers United for Rail Equity

June 9, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

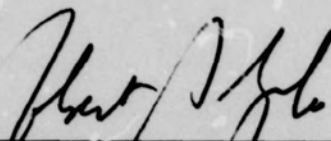
**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.**

NOTICE OF INTENT TO PARTICIPATE

Please take notice that the below-named attorney, on behalf of the Consumers United for Rail Equity (C.U.R.E.), intends to participate in this proceeding. C.U.R.E. is an organization of captive rail shippers that transport coal for use in electricity generation.

The members of C.U.R.E. are public power generators, rural electric cooperatives, investor-owned utilities and their national trade associations. C.U.R.E. intends to participate in this proceeding as parties of record. Accordingly, please place the named attorney, at the address provided, on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,



Mr. Robert G. Szabo
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1920

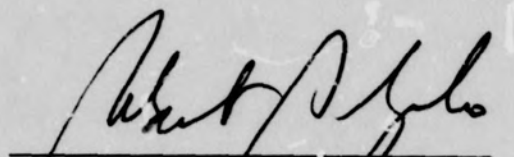
Executive Director and Counsel
Consumers United for Rail Equity

Dated: June 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 1997 a copy of the foregoing Notice of Intent to Participate has been mailed, postage prepaid, to all parties that have appeared in STB Finance Docket No. 33388 and:

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



Mr. Robert G. Szabo
Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, D.C. 20007
(202) 298-1920

Executive Director and Counsel
Consumers United for Rail Equity

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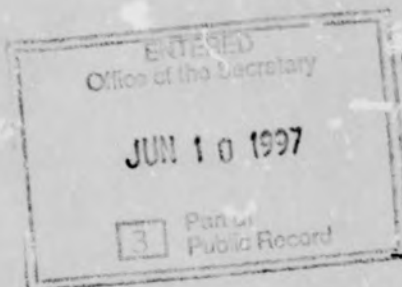
EFM-1

BEFORE THE
Surface Transportation Board

WASHINGTON, D.C. 20423

STB Finance Docket No. 33388

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



NOTICE OF APPEARANCE

Eighty-Four Mining Company, by its undersigned counsel, respectfully herewith enters its appearance as a party of record in STB Finance Docket No. 33388, the proposed acquisition of Conrail by CSX and Norfolk Southern railroads.

Eighty-Four Mining Company adopts the acronym "EFM" for identification of its pleadings in this proceeding.

Respectfully submitted,

Martin W. Bercovici
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for Eighty-Four Mining Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was served by first-class mail, postage prepaid, on this 9th day of June, 1997, upon:

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

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

Richard A. Allen, Esquire
Zuckert Scoutt & Rasenberger, L.L.P.
Suite 600
883 Seventeenth Street, NW
Washington, DC 20006-3939

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



Martin W. Bercovici

STB

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6-9-97

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180097

180097
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

PPC-1
PRPA-1
DRPA-1
SJPC-1

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.

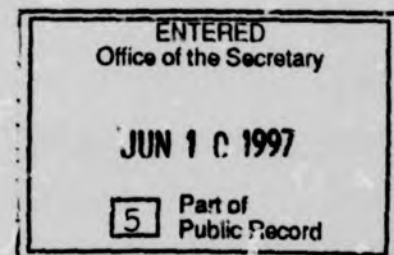
THE PORT OF PHILADELPHIA AND CAMDEN, INC.
PHILADELPHIA REGIONAL PORT AUTHORITY
DELAWARE RIVER PORT AUTHORITY
SOUTH JERSEY PORT CORPORATION
NOTICE OF INTENT TO PARTICIPATE

On behalf of The Port of Philadelphia and Camden, Inc., ("PPC"), the Philadelphia Regional Port Authority ("PRPA"), the Delaware River Port Authority ("DRPA"), and the South Jersey Port Corporation, ("SJPC"), please enter the appearances in this proceeding of the below-named persons. PPC, PRPA, DRPA and SPC intend to participate fully in this proceeding as a parties of record, and will use as acronyms for their filings PPC, PRPA, DRPA and SJPC, respectively. Accordingly, please place the named persons, at the addresses provided, on the service list to receive all pleadings and decisions in these proceedings.

Paul D. DeMariano
President and Chief Executive Officer
The Port of Philadelphia & Camden, Inc.
3460 North Delaware, Suite 200
Philadelphia, PA 19134
(215) 426-2441

James T. McDermott, Jr., Esq.
Executive Director
Philadelphia Regional Port Authority
210 West Washington Square
Philadelphia, PA 19106

Manuel N. Stamatakis
Chairman
Delaware River Port Authority
1111 West DeKalb Pike
Wayne, PA 19087



Richard L. Brown
General Counsel
Delaware River Port Authority
One Port Center
2 Riverside Drive
PO Box 1949
Camden, NJ 08101-1949

John Maier
South Jersey Port Corporation
P.O. Box 129
Second & Beckett
Camden, NJ 08103

Neal M. Mayer
Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, NW, Suite 400
Washington, DC 20036

Respectfully submitted,

Paul D. Coleman

Neal M. Mayer
Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, NW, S. 400
Washington, DC 20036
(202) 296-5460
Fax: 202-296-5463

Attorneys for:
THE PORT OF PHILADELPHIA & CAMDEN, INC.
PHILADELPHIA REGIONAL PORT AUTHORITY
DELAWARE RIVER PORT AUTHORITY
SOUTH JERSEY PORT CORPORATION

June 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Intent to Participate, this 9th day of June, 1997, by first-class mail, on Applicants' representatives, Dennis G. Lyons, Esq., Richard A. Allen, Esq. And Paul A. Cunningham, Esq., and on Administrative Law Judge Jacob Leventhal. Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.

Paul D. Coleman

Paul D. Coleman

STB

FD

33388

6-6-97

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180111

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

180111



FINANCE DOCKET NO. 33388
CSX CORPORATION AND CSX TRANSPORTATION INC
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONTRAIL INC. AND CONSOLIDATED PAID CORPORATION

NOTICE OF INTENT TO PARTICIPATE

Pursuant to the Final Procedural Schedule adopted in
Decision No. 6, served May 30, 1997, The Town of Haymarket, a
body corporate and politic of the Commonwealth of Virginia,
("Haymarket") gives notice of its intent to participate in the
above-entitled proceeding.

Haymarket requests that the below-named persons be added to
the Board's service list as parties of record:

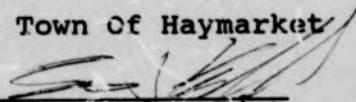
Steven J. Kalish
McCarthy, Sweeney
& Harkaway, P.C.
Suite 1105
1750 Pennsylvania Ave., N.W.
Washington, D.C. 20006
phone 202-393-5710
fax 202-393-5721

Mayor John R. Kapp
P.O. Box 87
Haymarket, Virginia 20168
phone 703-753-2600
fax 703-753-2800

Joseph J. Contrucci, Esq.
P.O. Box 400
Gainesville, Virginia 22065
phone 703-847-1700
fax 703-754-2408

Respectfully submitted,

The Town Of Haymarket

By: 
Steven J. Kalish

Its Attorney

CERTIFICATE OF SERVICE

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

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. Allen, Esq.
Zuckert Scoutt & 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.

Dated at Washington, D.C., this 6th day of June, 1997.


Steven J. Kalish

STB

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6-6-97

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G. W. FAUTH & ASSOCIATES, INC.

116 South Royal Street
Alexandria, Virginia 22314

Office - (703) 549-6161 • Fax - (703) 549-6162

June 4, 1997



Office of the Secretary - Case Control Branch
SURFACE TRANSPORTATION BOARD
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

To Whom It May Concern:

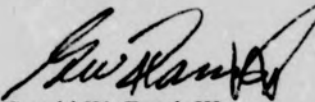
This letter serves as a formal notice of intent to participate in the above referenced Surface Transportation Board (STB) proceeding as a party of record (POR). Accordingly, please place my name and address, which follows, on the formal pleading list as a POR:

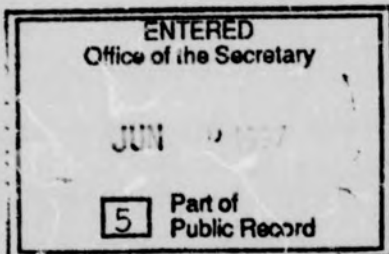
Gerald W. Fauth III
G. W. FAUTH & ASSOCIATES, INC.
Post Office Box 2401
Alexandria, Virginia 22301

Per the instructions set forth in the STB's Decision No. 6 in this proceeding served May 30, 1997, I have attached 25 copies of this letter. I have also enclosed a 3.5-inch diskette, which contains this letter formatted for Word Perfect 7.0. In addition, I have sent copies of this letter to the individuals listed on the following page.

Please give me a call if you have any questions concerning this formal request.

Very truly yours,


Gerald W. Fauth III



cc: Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, D.C. 20423

Dennis G. Lyons, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206

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

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



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GOLLATZ, GRIFFIN & EWING, P.C.
ATTORNEYS AT LAW

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

Telephone (610) 692-2116
Telecopier (610) 692-9177
E-MAIL: GGE@GGE.ATTMAIL.COM

DELAWARE COUNTY OFFICE:
205 NORTH MONROE STREET
POST OFFICE BOX 1430
MEDIA, PA 19061
(610) 565-6040

ERIC M. HOCKY

June 3, 1997

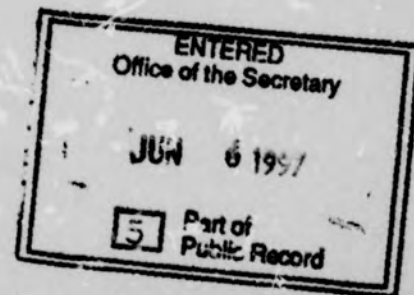


Office of the Secretary
Case Control Unit
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Sir or Madam:

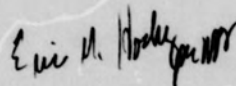
Enclosed for filing in the above referenced proceeding are an original and 25 copies of Notice of Intent to Participate of Buffalo & Pittsburgh Railroad, Inc. (BPRR-1), along with a diskette containing the document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.



Office of the Secretary
Case Control Unit
June 3, 1997
Page 2

Kindly time stamp the enclosed extra copy of this letter to indicate receipt and return it to me in the self-addressed envelope provided for your convenience.

Respectfully,



ERIC M. HOCKY

Enclosures

cc: Dennis G. Lyons, Esq.
Richard A. Allen, Esq.
Paul A. Cunningham, Esq.
Administrative Law Judge Jacob Leventhal
All other parties shown on the Certificate of Service

180055

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388



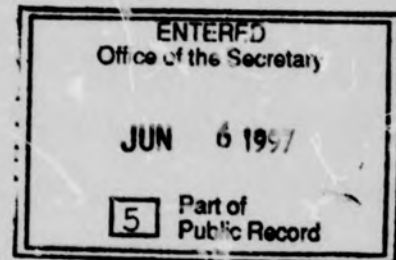
**CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

NOTICE OF INTENT TO PARTICIPATE

Please take notice that Buffalo & Pittsburgh Railroad, Inc. ("BPRR") intends to actively participate in this proceeding. The following should be added to the service list in this proceeding:

Charles W. Chabot, President
Buffalo & Pittsburgh Railroad, Inc.
201 North Penn Street
P.O. Box 477
Punxsutawney, PA 15767

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



The undersigned counsel is already on the service list in this proceeding. Please note the additional representation.

WILLIAM P. QUINN
ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: June 3, 1997

Attorneys for Buffalo & Pittsburgh Railroad, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Intent to Participate of Buffalo & Pittsburgh Railroad, Inc. was served by first class mail on the following persons specified in Decision No. 2, and on the parties shown on the attached list:

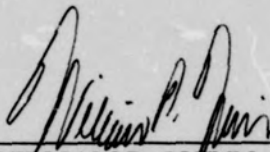
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, DC 20426

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

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

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

Dated: June 3, 1997



WILLIAM P. QUINN

WILLIAM A. BON
GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26555 EVERGREEN ROAD, SUITE 200
SOUTHFIELD, MI 48076

THERESA M. BRENNAN
PENNSYLVANIA POWER & LIGHT CO.
TWO NORTH NINTH STREET
ALLENTOWN, PA 18101-1179

NICHOLAS J. DIMICHAEL
JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

GARY EDWARDS
SUPERINTENDENT RAILROAD OPERATIONS
SOMERSET RAILROAD CORPORATION
7725 LAKE ROAD
BARKER, NY 14012

DAVID L. HALL
COMMONWEALTH CONSULTING ASSOCIATES
720 NORTH POST OAK ROAD, SUITE 400
HOUSTON, TX 77024

WILLIAM G. MAHONEY
RICHARD S. EDELMAN
L. PAT WYNNS
HIGHSAW, MAHONEY & CLARKE, P.C.
1050 17TH STREET, NW, SUITE 210
WASHINGTON, DC 20036

JOHN K. MASER, III
JEFFREY O. MORENO
DONELAN, CLEARY, WOOD & MASER, P.C., SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005-3934

SEAN D. BRADY
MANAGER, STRATEGIC PLANNING-GENERATION
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

A. SCOTT CAUGER
SENIOR COUNSEL
NIAGARA MOHAWK POWER CORPORATION
300 ERIE BOULEVARD WEST
SYRACUSE, NY 13202

PAUL M. DONOVAN
LAROE, WINN, MOERMAN & DONOVAN
3506 IDAHO AVENUE, NW
WASHINGTON, DC 20016

DONALD F. GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
400 NORTH CAPITOL ST., NW, SUITE 852
WASHINGTON, DC 20001-1511

DOREEN C. JOHNSON
CHIEF, ANTITRUST SECTION
OHIO ATTORNEY GENERAL'S OFFICE
30 E. BROAD STREET, 16TH FLOOR
COLUMBUS, OH 43215

RON MARQUARDT, PRESIDENT
LOCAL UNION 1810 UMWA
VALLEY VIEW SUB-DIVISION
R.D. 32
RAYLAND, OH 43943

MICHAEL MATTIA
DIRECTOR, RISK MANAGEMENT
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.
1325 G STREET, N.W.
WASHINGTON, DC 20005

GEORGE W. MAYO, JR.
ERIC VON SALZEN
THOMAS B. LEARY
HOGAN & HARTSON L.L.P.
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004-1109

ROBERT E. MURRAY
PRESIDENT AND CHIEF EXECUTIVE OFFICER
THE OHIO VALLEY COAL COMPANY
29525 CHAGRIN BOULEVARD, SUITE 111
PEPPER PIKE, OH 44122

*JEAN PIERRE OUELLET
CHIEF LEGAL OFFICER AND CORPORATE SECRETARY
CANADIAN NATIONAL RAILWAY COMPANY
935 DE LA GAUCHETIERE STREET WEST, 16TH FLOOR
MONTREAL, QUEBEC
H3B 2M9

JACK H. ROSKOZ
EXECUTIVE VICE PRESIDENT
NEW YORK STATE ELECTRIC & GAS CORPORATION
CORPORATE DRIVE, KIRKWOOD INDUSTRIAL PARK
P.O. BOX 5224
BINGHAMTON, NY 13902-5224

DANIEL J. SWEENEY
JOHN M. CUTLER, JR.
MCCARTHY, SWEENEY & HARKAWAY, P.C.
1750 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20006

*MARCELLA M. SZEL
VICE PRESIDENT-LEGAL SERVICES
CANADIAN PACIFIC RAILWAY COMPANY
GULF CANADA SQUARE, SUITE 500
401 NINTH AVENUE, S.W.
CALGARY, ALBERTA 52P 424
CANADA

FREDERIC L. WOOD
NICHOLAS J. DIMICHAEL
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 NEW YORK AVENUE, NW, SUITE 750
WASHINGTON, DC 20005-3934

MICHAEL F. MCBRIDE
LINDA K. BREGGIN
BRENDA DURHAM
LE BOEUF, LAMB, GREENE & MACRAE, L.L.P.
1875 CONNECTICUT AVENUE, NW, SUITE 1200
WASHINGTON, DC 20009-5728

L. JOHN OSBORN
DOUGLAS E. ROSENTHAL
AMBER C. HASKETT
SONNENSCHN NATH & ROSENTHAL
1301 K STREET NW, SUITE 600, EAST TOWER
WASHINGTON DC 20005

ARVID E. ROACH, II
COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
P.O. BOX 7566
WASHINGTON, DC 20044-7566

KENNETH E. SIEGEL
ATA LITIGATION CENTER
2200 MILL ROAD
ALEXANDRIA, VA 22314-4677

ROBERT G. SZABO
VAN NESS FELDMAN, P.C.
1050 THOMAS JEFFERSON STREET, NW, SEVENTH FL.
WASHINGTON, DC 20007

HUGH H. WELSH
DEPUTY GENERAL COUNSEL
THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
ONE WORLD TRADE CENTER, 67E
NEW YORK, NY 10048

EDWARD WYTKIND, EXECUTIVE DIRECTOR
LARRY WILLIS
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
400 NORTH CAPITOL STREET, NW
SUITE 861
WASHINGTON, DC 20001

R. L. YOUNG
MANAGING DIRECTOR-TRANSPORTATION
AMERICAN ELECTRIC POWER
P.O. BOX 700
LANCASTER, OH 43130-0700

STB

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33388

6-6-97

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180092

LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE: (202) 298-8660
FACSIMILES: (202) 342-0663
(202) 342-1316

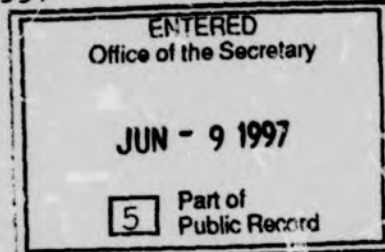


June 6, 1997

CSX/NS-17

Via Hand Delivery

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



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

Dear Secretary Williams:

With respect to pleading CSX/NS-16, the Joint Reply of Applicants to Comments Filed by the Council on Environmental Quality in Response to Petitions for Waiver of 49 C.F.R. § 1180.4(c)(2)(vi), it has come to our attention that the third page of Attachment A to that pleading inadvertently may have been omitted from the pleading as filed with the Board.

Attached is a complete and correct copy of Attachment A to CSX/NS-16. All persons required to be served with CSX/NS-16 were so served today. Additionally, a copy of this letter, along with the corrected Attachment A, is being served today as well on all parties served with CSX/NS-16.

Should you have any questions regarding this, please call.

Sincerely,

Scott M. Zimmerman

Enclosures

**Attachment A
To CSX-NS-16**

Jackie White
Champaign County
1776 East Washington
Urbana, IL 61802

Gary Kobylski
Department of Agriculture
Natural Resources Conservation
Service
1902 Fox Drive
Champaign, IL 61820

Tom Donnelley
Nature Preserves Commission
Lincoln Tower Plaza
524 S. Second Street
Springfield, IL 62701-1787

Virginia Bova
State Single Point of Contact
Department of Commerce and
Community Affairs
100 W. Randolph, Suite 3-400
Chicago, IL 60601

Gerry Bade
U.S. Fish and Wildlife
Service
Ecological Service Field
Office
4469 48th Avenue Court
Rock Island, IL 61201

Mary A. Gade
Illinois Environmental
Protection Agency
1340 N. 9th Street
Springfield, IL 62702

Susan Mogerman
Historic Preservation Agency
500 E. Madison Street
Springfield, IL 62701

Mike McMullen
EPA - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3507

Brent Manning
Department of Conservation
Lincoln Tower Plaza
524 S. 2nd Street
Springfield, IL 62701-1787

Steven J. Vander Horn
U.S. Army Corps of Engineers
Rock Island District
Clock Tower Building
Rodman Avenue
Rock Island, IL 61204-2004

Jay Semmler
U.S. Army Corps of Engineers
Chicago District
111 N. Canal Street
Suite 600
Chicago, IL 60606-7206

Benjamin Tuggle
U.S. Fish and Wildlife Service
Ecological Service Field
Office
1000 Hart Road
Suite 180
Barrington, IL 60010

Kirk Brown
Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

Rich Funderburk
Department of Commerce and
Community Affairs
620 E. Adams
Springfield, IL 62701

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June 6, 1997

BY HAND

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



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

Dear Secretary Williams:

Enclosed please find CSX/NS-16, Joint Reply of Applicants to Comments Filed by the Council on Environmental Quality in response to Petitions For Waiver of 49 C.F.R. § 1180.4(c)(2)(vi).

Accompanying this letter are twenty-five copies of the Reply, as well as a formatted diskette in WordPerfect 5.1.

Thank you for your assistance in this matter. Please contact myself ((202) 942-5858), Mary Gabrielle Sprague ((202) 942-5773) or Susan Cassidy ((202) 942-5966) if you have any questions.

Kindly date stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.

Very truly yours,

Dennis G. Lyons
ARNOLD & PORTER
Counsel for CSX Corporation
and CSX Transportation, Inc.

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

JOINT REPLY OF APPLICANTS TO COMMENTS FILED BY THE COUNCIL ON
ENVIRONMENTAL QUALITY IN RESPONSE TO PETITIONS FOR WAIVER OF
49 C.F.R. § 1180.4(C)(2)(vi)

Applicants CSX Corporation ("CSXC") and CSX
Transportation, Inc. ("CSXT"),^{1/} Norfolk Southern Corporation
("NSC") and Norfolk Southern Railway Company ("NSRC"),^{2/} and
Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC")^{3/}
(collectively, "Applicants"), hereby reply to the comments of the
Council on Environmental Quality ("CEQ" or "the Council") filed
with the Board on June 4, 1997, regarding the petitions of

^{1/} CSXC and CSXT are referred to collectively as "CXS."

^{2/} NCS and NSRC are referred to collectively as "NS."

^{3/} CRI and CRC are referred to collectively as "Conrail."

CSX/Conrail (CSX-1) and NS (NS-1) for waiver of 49 C.F.R. § 1180.4(c)(2)(vi) with respect to certain construction projects discussed in those petitions.^{4/} Although CSX/Conrail and NS filed separate petitions and separate replies to comments regarding those petitions submitted by other parties, see CSX-3 and NS-3 (both filed June 4, 1997), Applicants believe that a joint reply is appropriate, as CEQ raises only issues common to both petitions.

Applicants recognize the importance of ensuring that the environmental impacts of the proposed construction projects, and of the control transaction as a whole, are thoroughly analyzed. They take seriously the concerns raised by the Council, and stand ready to consult with the Council and the Board's Section of Environmental Analysis to ensure that their concerns are addressed. Applicants continue to believe, however, that the procedure they propose is fully consistent with the goal of thorough environmental review reflected in the National Environmental Protection Act ("NEPA") and that the Board should grant their respective petitions.

^{4/} See Letter dated June 4, 1997, from CEQ General Counsel Dinah Bear to the Office of the Secretary of the Surface Transportation Board ("CEQ Comments").

I. THE PROCEDURE APPLICANTS PROPOSE ENSURES THAT THE THOROUGH ENVIRONMENTAL REVIEW MANDATED BY NEPA, AND THE FULL OPERATIONAL REVIEW SOUGHT BY THE COUNCIL, WOULD BE ACCOMPLISHED

CEQ's NEPA regulations provide that "[t]he NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences" 40 C.F.R. § 1500.1(c). In its comments on the waivers, CEQ does not assert that assessing the environmental impacts of the construction waivers separately from the primary application would hinder the Board's ability to understand the environmental consequences of either action. Instead, CEQ believes that the proposed constructions should be considered together with the control transaction as a whole "so that the environmental impacts of operating these rail lines, augmented by the new connections, can be properly evaluated." CEQ Comments at 1 (emphasis added).

However, the proposed procedure addresses that very concern: Applicants have in fact requested separate environmental review of the operations over the connections and the Board has made clear that environmental impacts of operating over the new connections would in fact be considered together with, and as a part of, the analysis of the environmental impacts of the primary application. See Board Decision No. 5 at 2-3.

The operational aspect of the proposed connections would thus be fully reviewed from an environmental perspective during the Board's consideration of the primary application. Therefore, the full operational review sought by the Council will be accomplished under the current proposal.

II. APPROVAL OF THE WAIVERS WILL NOT RAISE THE CONCERNS OUTLINED IN CEQ S COMMENTS

CEQ states that the regulations and cases cited in their comments are aimed at two principal concerns, namely that

'[c]onnected actions should be evaluated together in order to avoid segmented or piecemeal environmental analysis, and actions that prejudice ultimate decisions are prohibited in order to avoid reducing EIS analysis to mere 'formal tasks.'

CEQ Comments at 3. Neither of these concerns is implicated by the waiver applications before the Board. First, evaluating the construction waivers separately from the primary application will not lead to piecemeal environmental analysis, because the environmental impacts of constructing the connections are completely separate from those of the operation of the entire rail system at issue in the primary application. Both will be considered. Second, there is no risk that approval of the waiver requests will unduly influence the Board's decision on the

primary application. The Board has already acknowledged that the construction projects are undertaken with the knowledge that the primary application could be denied, and the scope of the construction projects at issue is simply too insignificant in relation to the scope of the overall transaction involved in the primary application to have any influence on the Board's decision on that application.

A. Evaluating The Construction Waivers Separately From The Primary Application Will Not Lead To Piecemeal Environmental Analysis of the Issues Raised by the Primary Application

As discussed above, the waivers involve petitions or notices of exemption for construction only -- the impacts of operation of the connections will be assessed in connection with the operations-related and other environmental impacts of the primary application. See Board Decision No. 5 at 2-3. Although the construction waivers are clearly related to the primary application (because they are designed to allow the applicants to more expeditiously offer competitive rail services if the application were granted), the potential environmental impacts of construction activities are completely separate from and dissimilar to the potential environmental impacts of rail operations over the connection. Therefore, a separate

environmental review is appropriate. Any potential environmental impacts of constructing these connections will be discrete and localized. The issues that will be addressed are impacts on land use on or adjacent to the construction sites, e.g., loss of prime farmland, loss of significant vegetation or wildlife habitat, impacts on wetlands on or adjacent to the project areas, temporary impacts resulting from the construction work and similar site-specific issues. In contrast, the potential impacts of the railroad operations at issue in the primary application relate primarily to air emissions, noise, and safety issues. Thus, the only aspect of the connections that would be closely connected with the primary application -- their operation -- will be reviewed in conjunction with the primary application.

This situation therefore is very different from that at issue in Swain v. Brinegar, 542 F.2d 364 (7th Cir. 1976), the case principally relied upon by CEQ. In Swain, the court held that an environmental impact statement (EIS) was insufficient under NEPA because it evaluated only a 15-mile segment of a 42-mile highway project. Swain thus involved a classic "piecemeal evaluation," with an agency attempting to analyze one piece of a project where the environmental impacts raised by the piece would be substantially similar and connected to those involved with the whole. Here, however, as discussed above, the

environmental impacts of construction of the connections will be separate and distinct from those raised by the primary application. Thus, a separate environmental analysis is appropriate in the instant case although it was not in Swain.

B. Evaluating The Construction Exemption Petitions And Notices Separately From The Primary Application Will Not Prejudice The Board's Decision On The Primary Application

These waivers will in no way compromise the Board's ability to consider independently the merits of the primary application, CEQ's concerns to the contrary notwithstanding. The Applicants and the Board have explicitly acknowledged that if these connections are approved and built, their construction will not impact the Board's decision on the primary application, and that the primary application might still be denied. See Board Decision No. 5 at 3,5. Such an acknowledgment eliminates any pressure the Board might feel to approve the primary application due to any investment already made in the connections. See, e.g., North Carolina v. Virginia Beach, 951 F.2d 596, 601-02 (4th Cir. 1991) (preliminary work allowed where agency acknowledged in administrative record that prior construction expenditures would not affect final decision under NEPA).

Moreover, the Board is unlikely to feel any such pressure in this case given the very insignificant cost of these construction projects relative to the overall cost of the control transaction. Indeed, CEQ appears to misunderstand the limited nature of the connections and their relative role in the overall transaction. The construction projects will involve only about 15 acres of land, whereas the transaction as a whole will involve Applicants systems throughout the East.⁵⁴ This tail is simply not big enough to wag the dog.

This is in sharp contrast to the situation in Swain, where the approval and construction of a 15-mile segment of a highway project was seen as highly likely to impact the decision on whether the remaining 27 miles of highway should be built, as the segment represented over a third of the total project. 542 F.2d at 368-69. Therefore, these construction waivers are unlikely to influence the Board's decision on whether to grant the primary application.

The other concern raised in Swain -- that the decision to approve the 15-mile segment would foreclose siting options for the remaining 27 miles of highway -- is not present here for the

⁵⁴ Applicants do not mean to suggest that there will be adverse environmental impacts from the primary application throughout broad regions. To the contrary, granting the application will result in significant environmental benefits.

simple reason that there are no feasible alternative sites. Connections can be constructed between existing rail lines at points where they are proximate and engineering considerations permit. They are designed to be as short as possible, consistent with operational needs and any physical site constraints, and to require as little acquisition of new right-of-way as possible. Therefore, granting the petition for waiver would not foreclose the consideration of alternative sites for the connections, as there are none.^{6/}

C. **Granting the Petitions for Waiver Would Not Result in the Unnecessary Loss of Significant Environmental Resources**

CEQ suggests, citing Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985), that it would be unreasonable for the Board to permit the construction of connections which have no independent utility if the primary application were denied. There are three important distinctions, however, between the Applicants' position and the Forest Service's position in Thomas. First, the Forest Service proposed to expend public funds to build a logging road (which would have no use if timber sales were not subsequently approved), whereas Applicants are expending private funds to

^{6/} Applicants' environmental documentation will of course discuss the absence of viable alternative sites in greater detail.

build the connections, a matter which should not concern the general public. Second, the potential environmental impacts of constructing a stretch of road through a largely pristine natural setting for the purpose of logging a sensitive forest dwarf any possible environmental effects of the proposed connections. As the Petitions indicate, the connections could have independent utility if the primary application were denied. Third, these garden-variety connections, like connections that the Board considers and railroads build on a regular basis, would be built almost entirely on land in developed settings already dedicated to rail use. There would be no unnecessary sacrifice of any significant environmental resources.

In any event, the requested waivers would merely provide the opportunity for expedited review. Granting the waivers would not authorize a connection to be constructed until appropriate environmental review of it was completed.

III. CONCLUSION

As the Board recognized, and CEQ does not dispute, there will be a full environmental review of these connections even if the waivers are granted. See Board Decision No. 5 at 3. NEPA's purpose is to protect and enhance environmental quality by ensuring that environmental impacts of major federal actions are

adequately addressed, and CEQ has presented no compelling reason why the environmental impacts of the construction of the rail connections cannot be adequately addressed separately from the impacts of operation over the resulting systems. Moreover, providing a separate environmental review for the construction of the connections is entirely appropriate because it does not have a "direct and substantial probability of influencing [the Board's] decision" on the primary application. South Carolina v. U.S. Dept. of Energy, 64 F.3d 892, 898-99 (4th Cir. 1995). The Applicants therefore urge the Board to grant the May 2 Petitions and waive the related applications rule so that the Board may consider, prior to final action on the primary application, the petitions and notices of exemption to allow construction of the seven connections.

Respectfully submitted,

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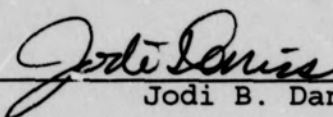
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June 6, 1997

CERTIFICATE OF SERVICE

I, Jodi B. Danis, certify that on June 6, 1997, I have caused to be served a true and correct copy of the foregoing Joint Reply of Applicants to Comments Filed by the Council on Environmental Quality in Response to Petitions for Waiver of 49 C.F.R. § 1180.4(c)(2)(vi), CSX/NS-16, on all parties that have appeared in Finance Docket No. 33388 and on the environmental entities listed on Attachments A and B, by first-class mail, postage prepaid, or by more expeditious means.



Jodi B. Danis

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To CSX/NS-16**

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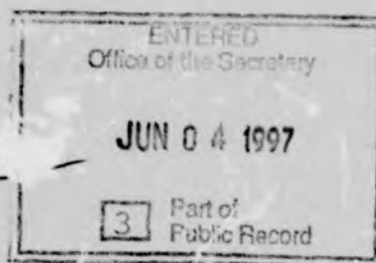


Norman H. Barthlow
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May 30, 1997

The Honorable Vernon A. Williams
Office of the Secretary
Case Control Branch
Surface Transportation Board
Attention: STB Finance Docket #3338
12th & Constitution Ave. N.W.
Washington, D.C. 20423



**Verified Statement of Norman H. Barthlow
on behalf of
The Detroit Edison Company**

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Dear Mr. Williams:

My name is Norman H. Barthlow and I am Manager of Fuel Supply for The Detroit Edison Company. I have held this position since 1991.

Detroit Edison is an investor-owned utility serving the electricity needs of about two million people, in 7,600 square miles of Southeastern Michigan, including the Detroit metropolitan area. It owns and operates eight coal-fired electric generation stations (combined consumption exceeding 20 million tons) which represents its primary baseload generating capacity. All eight are served by Great Lakes vessels and six are also served by rail. The six rail-served power plants consume in excess of 10 million tons of rail-delivered coal annually. Most of the rail-delivered coal is delivered by Conrail, CSX or C/N and most of this coal originates on the Conrail, CSX or NS railroads.

As a large customer of Conrail, CSX and NS, Detroit Edison has a direct and significant interest in this proceeding before the STB. The decision by the three railroads to divide Conrail between CSX and NS is a marked improvement to either CSX or NS obtaining sole control. Both CSX and NS must be commended for their efforts.

Detroit Edison, after an extensive review of the acquisition results, conditionally supports the proposed division of Conrail. Our reluctance to unconditionally support focuses on the following key issues relative to competition.

1. Allow joint CSX and NS access to all former Conrail coal producers south of Shire Oaks yard. The current proposal will reduce the competition between coal producers in the region.
 - Include Eight-four Mining Company's mine 84 of Washington County, PA in the joint-access plan.

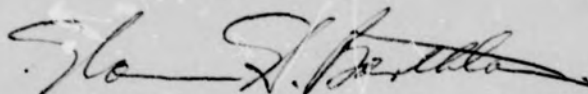
Honorable Vernon A. Williams
May 30, 1997
Page Two

2. Ensure that the Canadian National Railway (CN) remains a viable rail competitor in Southeastern Michigan. CN has played a major role in maintaining competitiveness and performance standards in the area. The final acquisition plan must maintain the catalytic effect of CN's presence.
 - Grant the CN access to the Joint Line south of Detroit. Although the proposal by CSX and NS allows for joint access to Trenton, MI, the route afforded CSX is circuitous adding inefficient time and distance.
 - Maintain a competitive interchange with CN in Toledo, Ohio for final delivery of products into Southeastern Michigan.
 - Maintain commercial neutrality in the Monroe, MI Rail Relocation Project. This project involves the combining of current Conrail and CN tracks in the City of Monroe, MI as a means of reducing highway traffic congestion and disruption.

These concerns are in keeping with the intent of the proposal submitted to establish, enhance and ensure equitable competition in the designated joint line areas.

Therefore, knowing that the management of CSX and NS will apply the same previously demonstrated high levels of integrity and commitment to ensure that the fulfillment of the intent of their proposal, Detroit Edison conditionally supports the acquisition of Conrail by CSX and Norfolk Southern.

Sincerely,



NHB/nh

CERTIFICATE OF SERVICE



I, Norman H. Barthlow, certify that on June 2, 1997, I have caused to be served a copy of the foregoing "*Verified Statement of Norman H. Barthlow*" on Finance Docket 33388 to all parties by first-class mail, postage prepaid, as listed below:

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Washington, D.C. 20004-1202

Honorable Jacob Leventhal
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Norman H. Barthlow, Mgr.
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June 4, 1997

BY HAND

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



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

Dear Secretary Williams:

Enclosed please find CSX-3, the Reply of Petitioners to Comments Filed in Response to Petition For Waiver of 49 C.F.R. § 1180.4(c)(2)(vi).

Accompanying this letter are twenty-five copies of the Reply, as well as a formatted diskette in WordPerfect 5.1.

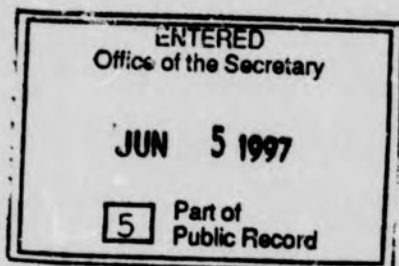
Thank you for your assistance in this matter. Please contact myself ((202) 942-5858), Mary Gabrielle Sprague ((202) 942-5773) or Susan Cassidy ((202) 942-5966) if you have any questions.

Kindly date stamp the enclosed additional copy of this letter at the time of filing and return it to our messenger.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Dennis G. Lyons'.

Dennis G. Lyons
ARNOLD & PORTER
Counsel for CSX Corporation
and CSX Transportation, Inc.



Enclosures

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CSX-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



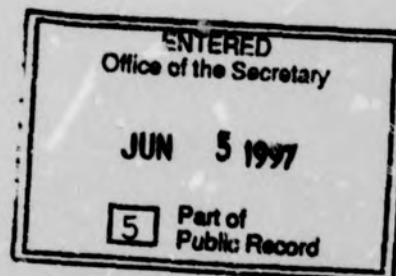
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY --
CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

REPLY OF PETITIONERS
CSX CORPORATION, CSX TRANSPORTATION, INC., CONRAIL INC. AND
CONSOLIDATED RAIL CORPORATION
TO COMMENTS FILED IN RESPONSE TO PETITION FOR
WAIVER OF 49 C.F.R. § 1180.4(c)(2)(vi)

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),¹ Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC"),² hereby respond to comments on their Petition for Waiver of certain requirements of 49 C.F.R. § 1180.4(c)(2)(vi) filed on May 2, 1997 (CSX-1) ("May 2 Petition").

¹ CSXC and CSXT are referred to collectively as "CSX."

² CRI and CRC are referred to collectively as "Conrail."



I. BACKGROUND

The Board's regulations governing rail acquisition transactions provide that applicants should file concurrently with their primary application all directly related applications, such as those seeking authority to construct or abandon lines. 49 C.F.R.

§ 1180.4(c)(2)(vi). The Board's regulations also provide, however, that this regulation can be waived for good cause shown. 49 C.F.R. § 1180.4(f)(1).

In their May 2 Petition, CSX and Conrail asked the Board to consider petitions for exemption or notices of exemption that they propose to file in separate sub dockets with respect to the construction of four connections prior to final action by the Board on the Primary Application for control of Conrail. CSX and Conrail stated that their waiver request was limited to construction of the connections; operations would not commence over these connections unless and until the Board approved the Primary Application and related applications seeking exemptions to allow operations to be conducted over the connections. The Petition recited that waiver was requested with respect to these connections so that CSX would be able, as soon as possible following any Board approval of the primary application, to link its system with the Conrail lines and compete with Norfolk Southern ("NS") in key markets (e.g., New York - Chicago) in which NS' infrastructure already will be in place at the time that any Board approval might be forthcoming. NS filed a request seeking similar relief with respect to three connections proposed to be constructed prior to final action on the Primary Application so that NS will be positioned to compete with CSX if the Application is granted.³

³ CSX, Conrail and NS are jointly referred to here as "Applicants."

On May 13, 1997, the Board issued Decision No. 5 in this proceeding seeking comments on the CSX and NS Petitions. The Board stated in that decision that in view of the willingness of CSX and NS to assume the risks that the connections might be built and the Primary Application subsequently denied, "we are not inclined to prevent Applicants from pursuing this approach simply to protect them from attendant risks." The Board further observed that granting the waiver petitions would not limit the public's opportunity to comment on the proposed connections or to raise environmental concerns. In fact, were the Board to grant the May 2 Petition, that action would not in any way reduce the level of environmental analysis that would normally attend any construction project within the Board's jurisdiction; CSX intends to submit a full environmental report to the Board's Section of Environmental Analysis for each connection. By Decision No. 5, the Board also required Applicants to serve their waiver petitions and a copy of Decision No. 5 on all persons upon whom they would be required to serve any petitions or notices of exemption relating to each connection so as to enable those persons to comment on the waiver requests. Both CSX and NS have certified to the Board that they have done so, and that they have also served the Council on Environmental Quality, the Federal Railroad Administration and the Environmental Protection Agency consistent with Decision No. 5.

II. REPLY TO COMMENTS

Virtually all of the comments submitted in response to Decision No. 5 support the May 2 Petition. These supporting comments, filed by twelve shippers whose traffic would utilize the relevant lines, underscore that favorable action by the Board would enable CSX to

provide competitive service to/from points that will benefit from these connections as soon as possible following any final Board approval of the Acquisition.⁴

Only two parties have submitted timely comments opposing the May 2 Petition -- the American Trucking Associations ("ATA") and the Allied Rail Unions ("ARU"). On June 4, 1997, the Council on Environmental Quality filed comments on the Petition. The Board has granted Petitioners' until Friday, June 6, 1997, to respond. This Reply addresses ARU's and ATA's comments. Both submissions seem intent on serving their interests in opposing or delaying the overall transaction rather than addressing the narrow question raised by this Petition.

A. American Trucking Associations

ATA has publicly professed to be interested in this proceeding out of a concern that truckers may be competitively disadvantaged by the CSX and NS acquisition of Conrail.⁵ The claim of competitive concern offers no reason why the Board should accord any deference to ATA's views. The days of regulatory protection of one mode from another are long over -- if (as ATA believes) this transaction and the construction of the connections will foster rail competition with motor carriage, that is all the more reason why the transaction as a whole, and the May 2 Petition specifically, should be approved.

⁴ Supportive comments were filed by McGeary Grain, Inc.; Agcom, Inc.; General Electric Corporation; Nissan North America, Inc.; American Honda Motor Co., Inc.; Cross Con Terminals, Inc.; Mulch Manufacturing, Inc.; RAM Nationwide, Inc.; International Tool Boxes; Alliance Shippers Inc.; GST Corporation; and Lafarge Corporation.

⁵ ATA's attorney has been quoted as stating that, "Right now we have three railroads talking about how they will take traffic away from motor carriers. The shocking thing would be for ATA not to participate [in this proceeding]." Traffic World, "Truckers Keep Heat on CSX-NS," May 26, 1997 at 39.

Further, while it is certainly true that many motor carriers will in fact face stiffer competition from CSX as a result of the Acquisition, many others will benefit from the Acquisition because they will be able to work in partnership with CSX to take advantage of enhanced intermodal service. Motor carriers, including ATA's members, are major users of rail intermodal services. The connections that are the subject of the May 2 Petition are designed in large measure to ensure that CSX can quickly offer efficient and reliable intermodal services linking points on its current lines to points on Conrail's current lines if the Acquisition is approved -- all to the benefit of motor carrier users. ATA's comments are thus out of synch with a large segment of the very constituency that it purports to represent.⁶

ATA's comments not only deserve little weight for the above reason; they also fail to raise any persuasive arguments against the May 2 Petition. ATA's major argument seems to be that approval of that Petition could be interpreted by some as pre-judging the Primary Application, which might stifle public debate on the merits of the overall transaction. In making this argument, ATA gives too little credit to the Board, which emphasized in Decision No. 5 that a grant of the Petition "would not in any way constitute approval of, or even indicate any consideration on our part respecting approval of, the primary application." Decision No. 5 at 3. ATA also gives too little credit to the public, which should have no difficulty recognizing that, although waivers of various Board regulations are routinely granted in proceedings of this

⁶ In fact, ATA's attorney is quoted in the May 26, 1997 edition of *Traffic World* as stating that ATA "might well support" the Acquisition. "Truckers Keep Heat on CSX-NS," *Traffic World*, May 26, 1997 at p. 39.

nature, such waivers do not prejudice the outcome of the proceeding.⁷ It is hard to conceive of any party with a significant interest in this proceeding choosing not to participate simply because CSX and NS would be assuming the risk of building connections over which they could not operate absent final Board action approving the transaction.

ATA asserts that a waiver would impose on motor carriers and others "an unreasonable burden of time and expense that would be altogether unnecessary if the primary application is denied." ATA's contention wrongly assumes (contrary to the related applications rule) that if the May 2 Petition were denied, review of the construction-related exemption petitions or notices would begin only after any approval of the Primary Application. The fact is that the level of participatory effort before the Board for those with a genuine interest in these connections will not change in any significant way were the Board to grant the May 2 Petition and proceed to consider the construction projects prior to final Board action on the Primary Application.

ATA argues that if the Board denies the Primary Application, there will have been no consideration of how the new connections could affect the competitive balance in the East. The complete answer to this contention is that CSX could not use the connections without the Board authorization to be sought in the Primary Application, which will address competitive issues. Were that Application denied, there will be no impact on competition and CSX simply may have wasted its funds on constructing these connections, a risk it is prepared to accept.

⁷ For example, on May 30, 1997, the Board issued a variety of waivers to Applicants. See Decision No. 7. Moreover, in other transactions, the Board has granted a variety of waivers without prejudging the merits of a primary application.

ATA argues that by allowing expedited consideration of the construction of these connections, the Board would somehow create an "uneven playing field," injuring "carriers who do not have the benefit of making early competitive investments based upon proprietary information now available only to the applicants." The short answer to this claim is that no rail carriers -- the ones who might make such investments -- have opposed the May 2 Petition. In fact, the shape of the expanded CSX system that will be subject of the Primary Application is no secret today and will be fully described in the Application that will be filed shortly. Other rail carriers are at no disadvantage in choosing to make whatever investments they may deem appropriate and, to the extent required, seeking regulatory exemption or approval to build whatever connections they deem appropriate now or at a later date.

ATA cryptically asserts that approval of the Petition would "foreclose development of additional line concessions and other options for rail competition that would serve the public interest." ATA does not explain how expedited consideration of construction projects that are essential to efficient operation of the CSX system would foreclose other options or do other than serve the public interest in effective rail competition. These projects will increase options, not foreclose them.

B. Allied Rail Unions

ARU argues that the connections are too closely related to the Primary Application to be evaluated apart from the Application. However, the mere construction of these connections raises none of the competition and financial issues that will be explored in the course of the proceeding on the Primary Application. In fact, the construction of rail line connections raises sufficiently few regulatory issues that such connections are routinely exempted from

regulatory approval requirements pursuant to a class exemption or petitions for exemption, and CSX believes that the conditions for exemption will be satisfied here. The potential issues associated with construction of connections are primarily environmental in nature, and granting the May 2 Petition will not foreclose full environmental review of any construction impacts.

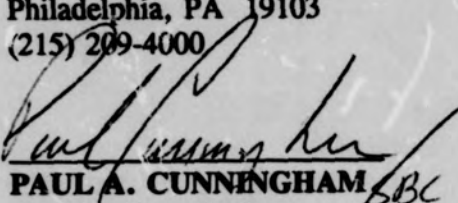
ARU asserts that CSX is already advantaged by the related applications rule because, absent that rule,⁸ transaction-related connections could be considered only after the Board grants a Primary Application. However, the purpose of the related applications rule is not to benefit railroads, but to allow the Board to consider any related issues in one proceeding. Here, waiver is sought only to allow construction; operations over the line would be considered together with any related issues raised by the Primary Application. Delaying construction simply would delay the significant competitive benefits that this transaction would offer the public, while serving no viable regulatory interest.

ARU also argues that if neither CSX's nor NS's Petition is granted, then neither would face unanswered competition from the other. However, CSX and NS have requested permission to construct connections that largely address different markets. Three of CSX's connections are intended to allow it to provide competitive services on routes linking Chicago and New York and the fourth on Northeast-Southeast routes served via Cincinnati. These are routes that NS will be able to serve immediately upon any Board approval of the Acquisition. NS's proposed connections, on the other hand, are focused on allowing it to compete with CSX in serving southwestern markets and to make use of an important Chicago-area yard used for interchanging

⁸ That is, of course, not so; in the ordinary course they are considered simultaneously.

Respectfully submitted,

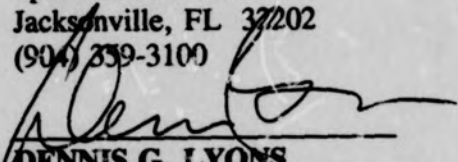
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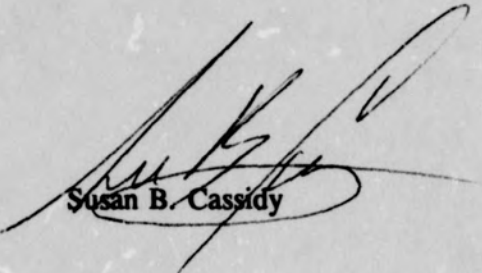
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Counsel for CSX Corporation and
CSX Transportation, Inc.

June 4, 1997

CERTIFICATE OF SERVICE

I, Susan B. Cassidy, certify that on June 4, 1997, I have caused to be served a true and correct copy of the foregoing CSX-3, Reply of Petitioners to Comments Filed in Response to Petition for Waiver of 49 C.F.R. § 1180.4(c)(2)(vi), on all parties that have appeared in Finance Docket No. 33388, and those environmental entities specified by the Board for this filing by first-class mail, postage prepaid, or by more expeditious means.



Susan B. Cassidy

STB

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6-4-97

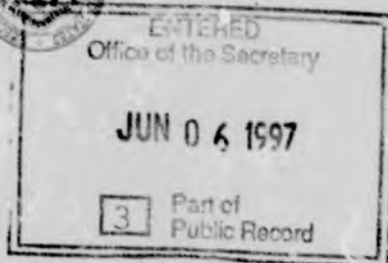
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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503



June 4, 1997



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

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~~JUN 4 1997~~

~~SURFACE~~
TRANSPORTATION BOARD

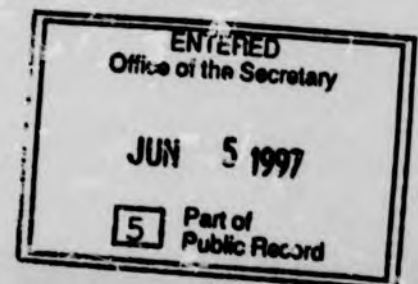
Dear Office of the Secretary,

The following comments are in response to the Surface Transportation Board's request for comments regarding the CSX-1 and NS-1 waiver petitions filed in connection with the proposed merger between CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company.

CSX and Norfolk (Applicants) requested waivers of the requirements of 49 C.F.R. 1180.4(c)(2)(vi) for seven connections so that construction of these connections could be begin immediately and be completed by the time the Surface Transportation Board (Board) issued a decision on the "primary application," the decision to approve the proposed merger and allow operation. In its Notice of Proposed Rulemaking (NPR), the Board indicated that it would be inclined to allow these waivers, given the Applicants' understanding that the Board's decision on the waivers in no way affected its decision on the primary application. In other words, the Board suggested it would be willing to allow construction of these connections, at the Applicants' own risk, reserving judgment on the primary application until a later time. If, at that time, the Board decides not to approve the primary application, all construction completed will have been in vain, and any costs associated with that construction would be born entirely by the Applicants.

The Council on Environmental Quality (CEQ) advises the Board against bifurcating the decisions in this way. It appears that the decision to grant the proposed waivers (waiver decision) and the decision on the primary application (operation decision) are "connected actions," two phases of a single overall action - the approval of a merger. Therefore, these two decisions should be assessed at the same time so that the environmental impacts of operating these rail lines, augmented by the new connections, can be properly evaluated. In reaching this conclusion, CEQ relies on its own regulations implementing the National Environmental Policy Act and on relevant case law, as discussed below.

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CEQ Regulations

CEQ regulations at 40 C.F.R. sec. 1508.25(a)(1) state that when actions are "closely related," they "should be discussed in the same impact statement." "Connected actions" are further defined as those that "(i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. sec. 1508.25(a)(1)(i)-(iii). According to the Board's NPR, if the Board granted the proposed waivers, the Board would still conduct an "environmental review" before allowing construction. Further, the Board would also conduct a separate "environmental review process" with regard to the operation decision. While the construction decision does not actually "trigger" the operation decision, the latter necessarily follows the former and both will require environmental analysis eventually. Because the Applicants have requested the waivers so that they can complete the proposed construction by the time the operation decision is made, it seems implicit that if the Board grants the proposed waivers, it will not take action on the operation decision until that construction is complete, or at least not until it is approved. If this is the case, the operation decision will not proceed until the construction decision has been made. Further, there is nothing in the NPR to indicate that the Applicant's have any other use for the connections. Therefore, the Applicants are necessarily dependent on the final operation decision to justify the construction of the connections. As the above analysis demonstrates, the Board's proposed construction and operation decisions fall within CEQ's definition of "connected actions" and thus, should be discussed in the same environmental impact statement in accordance with 49 C.F.R. sec. 1508.25(a)(1).

In addition, bifurcation of these related decisions appears to conflict with 40 C.F.R. sec. 1506.1(c)(3) which prohibits agencies from taking actions that will "prejudice the ultimate decision" in a programmatic EIS. The regulation defines an action that prejudices the ultimate decision as one that "tends to determine subsequent development or limit alternatives." 40 C.F.R. sec. 1506.1(c)(3). Although the proposed merger does not involve a programmatic EIS, the bifurcation of the proposed waiver and operation decisions compromises the spirit of sec. 1506(c)(3). If the Board grants the proposed waiver and subsequently approves the construction, the likelihood that the Board will deny the merger application tends to decrease, thereby possibly foreclosing that alternative when the operation decision is made. Further, given that the construction of the connections seems to be of paramount importance to the Applicants, the decision to grant the waiver may prejudice the decision to approve the construction long before the Board resolves the operation decision. In this light, it seems that the proposed waiver may in fact tend to determine subsequent development by prejudicing the decision to approve construction. These potential results are exactly the type that section 1506.1(c)(3) attempts to avoid.

Case Law

Courts have recognized the need to prepare a comprehensive EIS when actions are functionally or economically related in order to prevent projects from being improperly segmented. In Swain v. Brinegar, 542 F. 2d 364 (7th Cir. 1976), the Seventh Circuit Court of

Appeals noted two distinct problems associated with segmentation of highway projects. As the court put it, "First, the project can be divided into small segments; although the individual environmental impact might be slight, the cumulative consequences could be devastating. Second, the location of the first segment may determine where the continuation of that roadway is to be built." 542 F. 2d at 368. In the latter case, the EIS on the continuation would be nothing more than a "formal task" because the placement decision would have been made. *Id.* at 368-369. These are the same concerns addressed by the CEQ regulations, discussed above. "Connected actions" should be evaluated together in order to avoid segmented or piecemeal environmental analysis, and actions that prejudice ultimate decisions are prohibited in order to avoid reducing EIS analysis to mere "formal tasks."

In Swain, petitioners argued that an EIS which focused only on a fifteen mile segment of a forty-two mile highway project was inadequate and that a proper EIS should address impacts of the entire forty-two mile highway. The court applied three factors for determining the proper scope of related projects: "1) Does the proposed segment have a substantial utility independent of future expansion? 2) Would its construction foreclose significant alternative routes or locations for an extension from the segment? 3) If, as here, the proposed segment is part of a larger plan, has that plan become concrete enough to make it highly probable that the entire plan will be carried out in the near future?" 542 F. 2d at 369. The court concluded that 1) the fifteen mile segment had no independent utility because it was part of a larger highway, 2) once complete, the fifteen mile segment would effectively limit the choices for building any further expansion, and 3) the larger highway project was an ongoing one which would eventually connect to other similar projects that were also currently underway. *Id.* at 370. In the eyes of the court, the fifteen and forty-two segments were really just two components of one enterprise. *Id.* The three-part test established by Swain established the so-called "independent utility" test and provided the basis for decisions in later highway segmentation cases.¹ The Fifth Circuit Court of Appeals has stated this "independent utility" test quite succinctly, saying, "If proceeding with one project will, because of functional or economic dependence, foreclose options or irretrievably commit resources to future projects, the environmental consequences of the project should be evaluated together." Fritiofson v. Alexander, 772 F. 2d 1225, 1241, n. 10 (5th Cir. 1985).

Although this "independent utility" test has been applied primarily to highway cases, which have their own unique characteristics, much of the language used by the courts is analogous to the proposed merger. These applications involve actions that are functionally and economically interdependent because 1) the Applicants appear to view the construction of the connections as critical to the success of the merger and 2) if approved, the connections will become part of the overall railroad merger that is to be evaluated in the operation decision. Viewing the operation and waiver decisions as related decisions, the question becomes 1) whether the waiver (and subsequent proposed construction) has substantial utility independent of the ability to operate the

¹ See e.g., Piedmont Heights Civic Club, Inc. v. Moreland, 637 F. 2d 430 (5th Cir. 1981); Coalition on Sensible Transportation, Inc. v. Dole, 826 F. 2d 60 (D.C. Cir. 1987).

railway; 2) whether granting the waiver (along with approving the construction) would foreclose significant alternatives to allowing operation when the operation decision is ultimately made; 3) whether the proposed merger has become concrete enough to make it highly probable that the merger will be carried out.

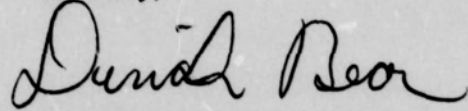
First, as to independent utility, the NPR does not indicate whether the Applicants will have any use for the connections outside the context of the proposed merger. Second, although the Board states that its decision to grant the waivers would not in any way constitute approval of, or even consideration of, the operation decision, the addition of seven new facilities changes the dynamic of the operation decision because the addition of the completed connections changes the information on which the Board will rely in making the operation decision. In short, the addition of the new connections, which the Board must take into account when making its operation decision, seems to make it more highly probable that the proposed operation and merger (the larger action) will be carried out.

Following Swain, other courts have focused primarily on the independent utility prong of the three-part test used in Swain. In Thomas v. Peterson, 753 F. 2d 754 (9th Cir. 1985), the Ninth Circuit Court of Appeals held that a Forest Service EIS on a logging road was required to include analysis of the timber sales that would follow from the construction of that road. As the court stated, "it is clear that the timber sales cannot proceed without the road, and the road would not be built but for the contemplated timber sales." 753 F. 2d at 758. Therefore, the road and timber sales were "connected actions," inextricably intertwined. *Id.* As the court stated, "an EIS must cover subsequent stages when 'the dependency' is such that it would be irrational, or at least unwise, to undertake the first phase if subsequent phases were not also undertaken." *id.*, quoting Trout Unlimited v. Morton, 509 F. 2d 1276 (9th Cir. 1974). Finally, formally acknowledging the "independent utility" test, the court said that "the phrase 'independent utility' means utility such that the agency might reasonably consider constructing only the segment in question." *Id.* at 760. In Thomas, the court did not think it would be reasonable for the Forest Service to build a logging road and then not use it for logging.

It appears as though the same reasoning set forth in Thomas is applicable here. It could certainly be seen to be equally inefficient for the Board to grant the waiver, approve the construction, and then deny the primary operation application, conducting separate and cumulative environmental analyses along the way. Consequently, the Board's decision to grant the waiver (and subsequent approval of construction) has the potential to make the approval of the merger more probable. That the Applicants are willing to risk the Board's eventual disapproval of the merger does not remove the interdependence of these individual decisions.

In summary, CEQ believes that the Surface Transportation Board would be well advised, for purposes of compliance with NEPA, to consider analysis of the proposed construction and operation together. We would be happy to discuss this matter further if it would be helpful.

Sincerely,

A handwritten signature in cursive script, reading "Dinah Bear". The signature is written in dark ink on a light-colored, textured paper.

Dinah Bear
General Counsel

STB

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6-4-97

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June 4, 1997

Via Hand Delivery

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

D

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty-five copies of
NS-3, Reply of Petitioners Norfolk Southern Corporation and
Norfolk Southern Railway Company to Comments on Petition for
Waiver of 49 C.F.R. § 1180.4(c)(vi).

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

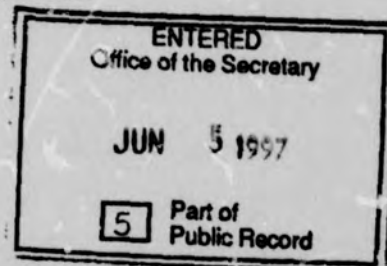
Should you have any questions regarding this, please call.

Sincerely

Richard A. Allen / *smz*

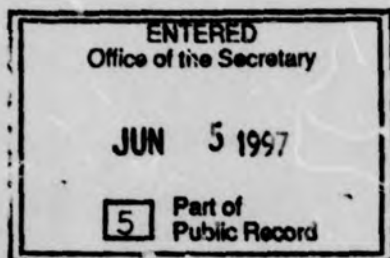
Richard A. Allen

Enclosures



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NS-3



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

REPLY OF PETITIONERS NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY
TO COMMENTS ON PETITION FOR WAIVER OF
49 C.F.R. § 1180.4(c)(vi)

Pursuant to the Board's Decision No. 5 in this docket, Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSRC")^{1/} hereby reply to the comments submitted with respect to NS-1, NS's petition for waiver of 49 C.F.R. § 1180.4(c)(vi).

In that petition, NS asked the Board to waive those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS, with respect to its proposed construction of connections at Alexandria, Indiana, Colsan/Bucyrus, Ohio, and Sidney, Illinois, to file petitions for exemption concurrently with the filing of the Applicants' primary application for control in this docket.^{2/} NS wishes to apply to the Board for authority to construct those

^{1/} NSC and NSRC are referred to collectively as "NS."

^{2/} "Applicant" refers to NS, CSX Corporation ("CSXC") and CSX Transportation, Inc. ("CSXT"). CSXC and CSXT together are referred to as "CSX".

connections separately from the primary control application, in order to construct the connections (if approved by the Board) during the pendency of the primary control application and thus be in a position to begin operating over the connections immediately if and when the Board approves the Applicants' primary application.^{3/}

NS is aware of only three parties who commented in opposition to NS's petition as of the Board's June 2 deadline:^{4/} the American Trucking Associations ("ATA"),^{5/} Steel Dynamics, Inc. ("SDI"),^{6/} and the Allied Rail Unions ("ARU").^{7/}

American Trucking Associations. ATA raises a number of objections to the petition for waiver, none of which are persuasive:

First, ATA claims that granting the petition would somehow signal the Board's "tacit support" for the primary control application. ATA Letter at 2. The Board itself, however, already has addressed and rejected this claim. In Decision No. 5, the Board said: "We emphasize that, if we were to grant the waivers sought in the CSX-1 and NS-1 petitions, our grant of these waivers would not in any way constitute approval of, or even indicate any

^{3/} CSX filed a similar petition with respect to four construction projects it proposes. See CSX-1, filed May 2, 1997.

^{4/} NS today received comments from the Council on Environmental Quality (CEQ), which the CEQ filed with the Board today. NS has been advised by the Board's staff that the Applicants may reply to the CEQ's comments by no later than noon on Friday, June 6, 1997. Accordingly, NS will not respond herein to the CEQ's comments, but intends to do so by that deadline.

^{5/} See Letter from ATA Deputy General Counsel Kenneth E. Siegel to the Surface Transportation Board, Office of the Secretary, dated May 16, 1997 ("ATA Letter").

^{6/} See SDI-3.

^{7/} See ARU-3.

consideration on our part respecting approval of, the primary application." Further, NS explicitly acknowledged in its petition, and reaffirms here, that it is willing to assume the financial risk of constructing rail connections from which NS might in the end obtain no benefit should the Board deny the primary application or approve it subject to conditions unacceptable to the Applicants.

Next, ATA argues that approving the petition would impose on other parties "an unreasonable burden of time and expense that would be altogether unnecessary if the primary application is denied." ATA Letter at 2. That, however, is not true. ATA's argument assumes that, if NS's petition is denied, review of the proposed constructions would be required only if, and after, the primary application is approved. In the absence of the waiver NS seeks, however, the construction applications that NS seeks to file separately from the primary application would in any event be filed as related applications to the primary application. Parties interested in those projects would still have to analyze and respond to those proposals during the pendency of the primary application.

ATA then claims that granting the petition would force interested parties to "deal with key issues in incremental installments, thus imposing further, unreasonable expense". ATA Letter at 3. ATA, however, fails to identify any "unreasonable expense" to which it refers. Further, it is eminently reasonable to consider issues related to construction of the connections before considering issues relating to operation over them.

ATA also questions the extent to which granting the waiver would affect the competitive balance among various railroads if the primary application is not approved. Id.

The answer, very simply, is not necessarily at all, because the waiver NS seeks pertains only to the construction of the connections, not operation over them.

Additionally, ATA asks whether granting the waiver would create an "uneven playing field" and "would adversely effect [sic] carriers who do not have the benefit of making early competitive investments based upon proprietary information now available only to the applicants." Id. Again, the simple answer is no. Details about the Applicants' proposed transaction have been public for weeks, and information about the construction projects at issue here have been available since NS filed its petition for waiver more than a month ago. Permitting NS's applications for construction of these three connections to be separate from the primary application will work no disadvantage to other carriers that might wish to invest in new connections of their own. They are free to pursue such options at any time. Indeed, a process that would permit the Board to act on the proposed constructions before it decides the primary application similarly would permit competitors, if anything, to act in response to the constructions earlier than if the construction applications were part of the primary application.

ATA also claims that granting the waiver could "foreclose development of additional line concessions and other options for rail competition that would serve the public interest." Id. To the contrary; granting the waiver would foreclose nothing. Again, the waiver relates only to construction of the proposed connections. Granting the waiver would do nothing more than permit NS to proceed with separate applications for construction. It would not necessarily result in the Board actually granting permission for the constructions, nor would it guarantee that the Board ultimately would authorize NS to operate over those connections

even if they were constructed. What is more, granting the waiver would have no impact on the Board's authority to impose other conditions on the primary control transaction it deems necessary to serve the public interest.

Finally, ATA argues that, combined with the Applicants' request for a 255-day procedural schedule, NS's waiver request invites "a rush to judgment." Id. The Board's recent approval of a procedural schedule 95 days longer than the Applicants requested not only drains any force from this argument, but indeed makes even more urgent the Board's granting of the requested waiver, so that NS will be prepared as soon as possible upon conclusion of that process to compete vigorously with CSX should the primary application be approved.

Steel Dynamics, Inc. SDI argues that "the proposed interconnections are intimately intertwined with significant issue involved in Docket No. 33388 and in the newly-created sub-docket addressing the transfer of the Fort Wayne Line." SDI-3 at 1. According to SDI, granting the requested waiver "will not allow for an in depth examination of the complex issues involved in the midwest region," id., and the Board "should resist NS's attempt to force premature resolution of complex issues and to compromise the Board's authority to review the proposed interconnections in the context of the primary control application." Id. at 2.

As did ATA, SDI overstates the effect of the requested waiver. Granting the waiver and permitting NS to apply in separate dockets for permission to construct the proposed connections would not foreclose the Board or anyone else from considering those connections in light of the overall control transaction in Docket No. 33388, nor "force premature

resolution" of anything, for the reason already discussed: the waiver pertains to construction only, and not operation. Permission to operate over the proposed connections still will be an element of the primary control application. Thus, even if the waiver is granted, SDI and other parties still will have a full opportunity "in the context of the primary control application" to conduct as "in depth" an examination of the "complex issues involved in the midwest region" as they desire.

Allied Rail Unions. ARU offers a number of arguments opposing the petition for waiver. Shorn of hyperbole, ARU claims that NS has "offered no competent evidence" in support of its petition; that the Applicants already benefit from the "related applications rule" and need no further benefit; that the Applicants' arguments on competitive disadvantage are "inherently inconsistent" and a reasonable competitive balance will be maintained if both petitions are denied; and that the Applicants' petitions "presume that the transaction will be authorized" and are intended merely to "ratchet up pressure" for approval of the primary control application. None of these positions has any merit.

First, ARU's argument that NS has offered "no competent evidence" is specious. NS in its petition described each of the three proposed construction projects and discussed the reasons why it is important to ensure that, if the Board ultimately approves the primary control application (and, concurrently, operations over the proposed connections), those operations begin as soon as possible following that approval. See NS-1 at 3-7. That is precisely the showing the Board requires. See 49 C.F.R. 49 § 1180.4(f)(5) (petitions for waiver "must specify the sections for which waiver . . . is sought and give the specific reasons why each waiver . . . is necessary"). ARU cites no authority for its claim that some

sort of additional "competent evidence" is required by the rules or necessary for the Board to act on NS's petition here; indeed, the Board recently decided in this case a substantial petition for waiver or clarification by the Applicants that did not include any extraneous matter. See CSX/NS-10; F.D. 33388, Decision No. 7 (served May 30, 1997). Tellingly, ARU did not even attempt to challenge the substance of NS's discussion, but chose merely to attempt to impugn the good faith of NS's representations.

ARU's claim that the Applicants already benefit from the "related applications" rule misses the point. The rule is intended for the benefit of the Board, not the Applicants, so that the Board can review all issues related to the primary application in one proceeding. The Board, however, also has the authority, if it chooses, to waive that requirement (and others) if it believes a waiver is appropriate under the circumstances. For the reasons stated in its petition, NS believes a waiver is appropriate in this case; further, granting the waiver will still permit the goal of the "related application" rule largely to be met, as the issue of operation over the proposed connections will still be subject to the Board's scrutiny as part of the Applicants' primary control application.

ARU's argument that the Applicants' claims of competitive disadvantage are mutually inconsistent and that a "reasonable competitive balance" would be maintained if both petitions are denied, also misses the point. ARU presumes, wrongly, that the reasons why NS seeks expedited construction of the connections it proposes, as discussed in NS's petition, are necessarily premised on the expedited construction of the connections CSX seeks. That is not true. For the reasons stated in its petition, NS believes that prompt construction of the three connections it seeks is needed in any event, in order to assure that NS, if the primary

application is approved, would be able to compete vigorously and effectively with CSX immediately upon that approval. Moreover, to argue in effect, as ARU does, that no harm will result if both petitions are denied because both carriers thus will be equally disadvantaged, ignores the fact that the competition that will be advanced by granting the petitions ultimately works to the benefit of the public. Postponing the day on which NS, if the control application is approved, would be able to compete vigorously with CSX in certain critical respects would postpone the day on which the public benefits from that competition would be realized.

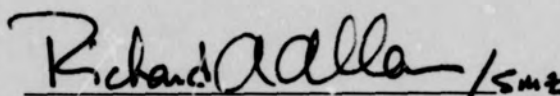
Finally, ARU claims that the Applicants' petitions "presume that the transaction will be authorized" and are intended merely to "ratchet up pressure" for approval of the primary control application. Both NS's petition and the Board's Decision No. 5 lay these claims to rest. NS makes clear in its petition that it recognizes that even if the waiver is granted and construction of the connections later approved, the Board ultimately could decline to authorize operation over the connections, see NS-1 at 7-8, and that NS "neither requests nor expects the Board to prejudge the primary control application," NS-1 at 8. And, as already noted, NS assumes the full financial risk of constructing the proposed connections without assurance that operations over them will later be approved. NS-1 at 3. For its part, the Board already has made plain that granting the waiver would have no effect on its review of the primary application, and that NS would not be permitted to argue that because the Board granted the waiver it should approve the primary transaction. Decision No. 5, slip op. at 3. NS understands and accepts the Board's view and is content to take the Board at its word.

Conclusion

For the foregoing reasons and the reasons stated in its petition for waiver, NS again respectfully requests that the Board waive those provisions of 49 C.F.R. § 1180.4(c)(vi) which might otherwise require NS to file with the primary application in Docket No. 33388 petitions for exemption for the construction of the connections described in the petition.

Respectfully submitted,

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June 4, 1997

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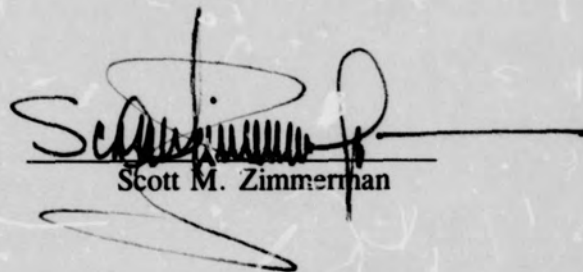
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CERTIFICATE OF SERVICE

I, Scott M. Zimmerman, certify that on June 4, 1997 I caused to be served by first class mail, postage prepaid, or by more expeditious means, a true and correct copy of the foregoing NS-3, Reply of Petitioners Norfolk Southern Corporation and Norfolk Southern Railway Company to Comments on Petition for Waiver of 49 C.F.R. § 1180.4(c)(vi), on all parties that have appeared in STB Finance Docket No. 33388 and all parties listed in Attachment A hereto, and by hand delivery on the following:

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Administrative Law Judge
Federal Energy Commission
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Scott M. Zimmerman

Dated: June 4, 1997