

STB

FD-33388

ID-181720

9-5-97

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U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

September 4, 1997



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

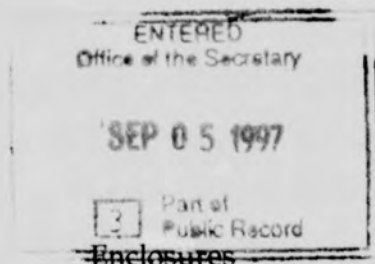
Re: CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp. and
Norfolk Southern Railway Company -- Control and Operating Leases/
Agreements -- Conrail, Inc. and Consolidated Rail Corp.,
Finance Dkt. No. 33388

Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-referenced proceeding, the United States Department of Transportation encloses herewith an original and ten copies of its Certificate of Service in this matter, attesting to the service of prior DOT pleadings herein on all Parties of Record. The absence of particular personnel within the Department from before the service date of Decision No. 21 until September 2 resulted in the filing of this Certificate three business days late; DOT regrets this short delay and trusts that no inconvenience arises therefrom.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Counsel



cc: Hon. Jacob Leventhal
Parties of Record

Before the
Surface Transportation Board
Washington, D.C.



Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

Pursuant to Decision No. 21 in the above-referenced proceeding, I hereby certify that on September 4, 1997, I caused to be served by first class mail a copy of all pleadings previously submitted in this proceeding by the United States Department of Transportation on all Parties of Record.

A handwritten signature in cursive script, reading 'Paul Samuel Smith'. The signature is written in dark ink and is positioned above a horizontal line.

Paul Samuel Smith
Senior Trial Attorney

September 4, 1997

STB

FD-33388

ID-181719

9-5-97

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181719

Distribution

FD-33388



Richard A. Allen, Esq.
Zuckert, Scoutt & 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

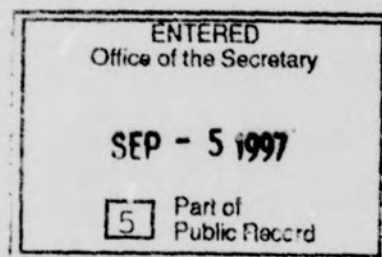
The Honorable Jacob Leventhal
Federal Energy Regulatory Commission
Suite 11F
888 First Street, N.E.
Washington, DC 20426

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

Leo J. Wasescina
Transportation Manager
Gold Medal Division, 10BT
General Mills Operations, Inc.
One General Mills Boulevard
Golden Valley, MN 55426

✓ Vernon Williams (attention Ellen Keys)
Secretary Office
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, DC 20423

D





**General Mills
General Offices**

Post Office Box 1113
Minneapolis, Minnesota 55440



Vernon Williams
Secretary Office
Surface Transportation Board
Room 700
1925 K Street NW
Washington DC 20423

Re: STB Finance Docket No. 33388 (CSX/NS acquisition of Conrail)

9/4/97

Request for inclusion to be Party of Record after deadline

Dear Ms Ellen Keys,

As we discussed on the phone, please accept this as request to be included as a party of record in the above proceeding.

I did send to your office a formal notice by overnight air the attached letter asking to be a party of record on behalf of General Mills, Inc.

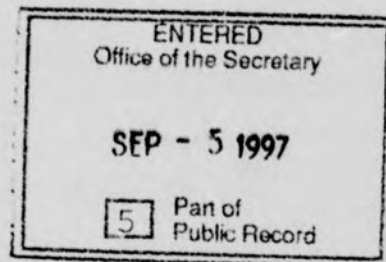
Evidently my request was discarded due to the fact that I did not serve attorneys for the applicants and include 25 copies at the time of the original request.

I feel the Board's publications regarding the final procedural schedule were misleading as the attached publication issued by the board clearly does not state that 25 copies are required simply to file a Notice of Intent. Under the Second column of the schedule under the heading entitled, "Should I be a party of record?" the second sentence states that all that is required is to file a notice of intent. Not until line three, concerning pleadings, is there mention that 25 copies are required.

As such, I humbly request that General Mills, Inc, with myself as spokesperson be included in the proceeding as a party of record.

Sincerely,

Leo J. Wasescha
Transportation Manager
Gold Medal Division
General Mills Operations, Inc.
Number One, General Mills Blvd.
Minneapolis, Mn 55426





**General Mills
General Offices**

Post Office Box 1113
Minneapolis, Minnesota 55440

Vernon Williams
Secretary Office
Surface Transportation Board
Room 700
1925 K Street NW
Washington DC 20423

Re: STB Finance Docket No. 33388 (CSX/NS acquisition of Conrail)

8/6/97

Dear Mr. Williams,

This letter is notice of intent to participate in the above proceeding by General Mills Operations, Inc. Primary area of concern and comments pertain to the Buffalo/Niagara New York Area and level of switching charges.

I understand the requirements of a Party of Record and will be submitting written comments prior to the October 21st deadline.

Sincerely,

Leo J. Wasescha
Transportation Manager
Gold Medal Division
General Mills Operations, Inc.
P.O.Box 1113
Minneapolis, Mn 55440

cc: SB



Surface Transportation Board



Office of Public Services

Director, Dan King

Staff Attorneys:

Nancy Beiter

Rudy St. Louis

Patricia Schulze

(202) 565-1592

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

FINAL PROCEDURAL SCHEDULE

- 05/16/97 Preliminary Environmental Report, including supporting documents, filed.
- 06/23/97 Primary application and related applications, petitions, and notices filed. Environmental Report, including all supporting documents, filed.
- 07/23/97 Publication in the Federal Register, by this date, of notice of acceptance of primary application and related applications, petitions, and notices; and notices of any related abandonment applications, petitions, and notices of exemption.
- 08/07/97 Notice of intent to participate in proceeding due.
- 08/22/97 Description of anticipated responsive (including inconsistent) applications due; petitions for waiver or clarification due with respect to such applications.
- 09/05/97 Preliminary Draft Environmental Assessments for the construction projects referenced in Decision No. 9 due.
- 10/01/97 Responsive Environmental Report and Environmental Verified Statements of responsive (including inconsistent) applications due.
- 10/21/97 Responsive (including inconsistent) applications due. All comments, protests, and request for conditions, any other opposition evidence and argument, due. Comments of the U.S. Secretary of Transportation and the U.S. Attorney General due. With respect to all related abandonments: opposition submissions, requests for public use conditions, and Trails Act requests due.
- 11/20/97 Notice of acceptance (if required) of responsive (including inconsistent) applications published in the Federal Register.
- 12/15/97 Response to responsive (including inconsistent) applications due. Response to comments, protests, requested conditions, and other opposition evidence and argument due. Rebuttal in support of primary application and related applications, petitions, and notices due. With respect to all related abandonments: rebuttal due; and responses to requests for public use and Trails Act conditions due.
- 01/14/98 Rebuttal in support of responsive (including inconsistent) applications due.
- 02/23/98 Briefs due, all parties.
- 04/09/98 Oral argument (close of record).
- 04/14/98 Voting conference (at Board's discretion).
- 06/08/98 Date of service of final decision. With respect to any approved or exempted abandonments: offers of financial assistance may be filed no later than 10 days after the date of service of the final decision.

Should I be a Party of Record?

Parties of Record (POR) must:

- File a Notice of Intent to participate
- File an original and 25 copies of all pleadings
- Submit pleadings and attachments as computer data on a 3.5 diskette formatted for WordPerfect 7.0, if possible
- Serve a copy on all other PORs.
- Create a depository open to all parties for evidentiary filings, containing all documents relevant to the filing (other than those privileged or otherwise protected)
- Make witnesses available for discovery depositions
- Expect service of all pleadings filed by other PORs

Can I Express My Views Without Being a POR?

Yes. You can submit written remarks to be included in the correspondence part of the docket.

- No Notice of Intent is required
- Only one copy of the letter is necessary
- Service is not required on PORs
- Correspondence is given full consideration

How do I decide?

- Are you submitting material that is subject to dispute? If yes, then POR status is advisable.
- If remarks are statements of fact and express a personal opinion, then Correspondence status is appropriate.
- If you want to receive all decisions, POR status will put you on the service list.
- Non-PORs can obtain copies of decisions from our contractor (202) 289-4357 for a fee.
- Press Releases that summarize the decisions are provided to all without charge.

STB

FD-33388

ID-181714

9-4-97

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USDA

181714

**United States
Department of
Agriculture**

Agricultural
Marketing Service

PO Box 96456
Washington, DC 20090-6456

BEFORE THE

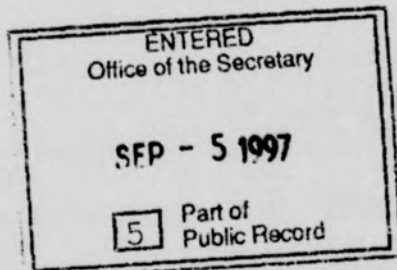
SURFACE TRANSPORTATION BOARD

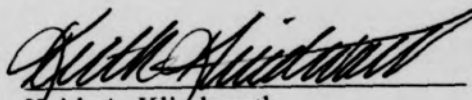
Finance Docket No. 33388

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 on this 4th day of September, 1997, I served by first-class mail, postage pre-paid, copies of the United States Department of Agriculture's "Notice of Intent to Participate" (dated August 5, 1997) in STB Finance Docket No. 33388 upon each Party of Record identified as such on the service list attached to the Surface Transportation Board's Decision No. 21, decided August 19, 1997.




Keith A. Klindworth



Be Resourceful. Recycle!



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STB

FD-33388

ID-181713

9-4-97

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181713



CITY OF DUNKIRK
DEPARTMENT OF LAW
CITY HALL, DUNKIRK, N.Y. 14048
(716) 366-0452
FAX (716) 366-2049



SHEILA MECK HYDE
CITY ATTORNEY

August 29, 1997

Hon. Vernon A. Williams, Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street NW
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

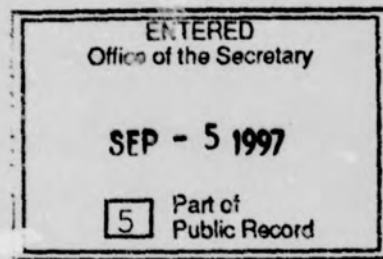
Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-entitled matter, enclosed please find the original and ten (10) copies of the Certificate of Service of Notice of Intent to Participate by the City of Dunkirk, New York showing that this filing was served by mail on the additional parties of record listed in this Decision.

Very truly yours,

Sheila Meck Hyde
Sheila Meck Hyde
City Attorney

SMH:v
Enc.



18713



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 33388

=====

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

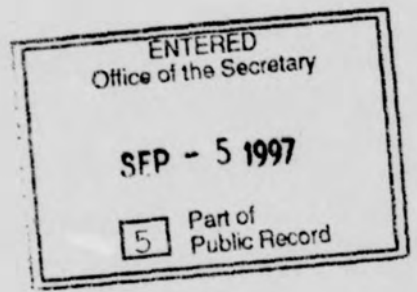
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CERTIFICATE OF SERVICE

=====

I hereby certify that, pursuant to the provisions of Decision No. 21, served August 19, 1997 in the above-captioned case, a copy of the attached **Notice of Intent to Participate** was served on all parties of record identified in Decision 21, other than those already served on the 25th day of July, 1997, via first class mail, postage prepaid, on this 29th day of August, 1997.

Respectfully submitted,



Virginia Lis
Virginia Lis, Secretary to
Sheila Meck Hyde, Esq.
Attorney for the City of Dunkirk
City Hall
342 Central Avenue
Dunkirk, New York 14048
Phone: 716-366-9866
Fax: 716-366-2049

Dated: August 29, 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**

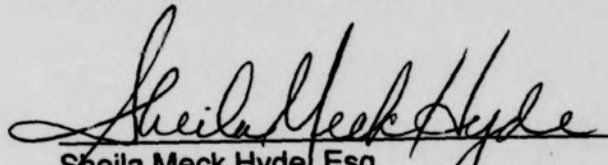
NOTICE OF INTENT TO PARTICIPATE

Please take notice that The City of Dunkirk intends to actively participate in this proceeding. The following should be added to the service list in this proceeding:

Margaret A. Wuerstle,
Mayor
City Hall
342 Central Avenue
Dunkirk, New York 14048

Sheila Meck Hyde, Esq.
City Attorney
City Hall
342 Central Avenue
Dunkirk, New York 14048

Dated: July 25, 1997.


Sheila Meck Hyde, Esq.
Attorney for the City of Dunkirk
City Hall
342 Central Avenue
Dunkirk, New York 14048
Phone: 716-366-9866
Fax: 716-366-2049

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 1997, copies of the foregoing **NOTICE OF INTENT TO PARTICIPATE** were served by first class mail, postage prepaid, in accordance with the rules of the Surface Transportation Board on the following persons specified in Decision No. 2, and upon the parties shown on the attached list:

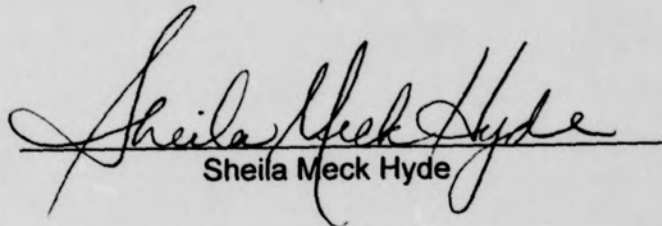
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
Suite 11 F, 888 First Street, N.E.
Washington, DC 20426

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

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

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

Dated: July 25, 1997.


Sheila Meck Hyde

David G. Abraham
Suite 631W
7315 Wisconsin Ave
Bethesda MD 20814

Nels Ackerson
The Ackerson Group
1275 Pennsylvania Ave NW
Suite 1100
Washington DC 20004-2404

Charles E. Allenbaugh Jr
East Ohio Stone Company
2000 W Besson St

William D. Ankner
R I Dept of Transportation
Two Capitol Hill
Providence, RI 02903

T Scott Bannister
T Scott Bannister and Associates
1300 Des Moines Bldg
405 Sixth Ave
Des Moines IA 50309

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

James L Belcher
Eastman Chemical Company
P O Box 431
Kingsport TN 37662

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

Thomas R Bobak
313 Riber Oaks Drive
Calumet City IL 60409

Charles D Bolam
United Transportation Union
1400-20th St
Granite City IL 62040

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

William T Bright ET Al
P O Box 149
200 Greenbrier Rd
Summersville WV 26641

Anita R Brindza
The One fifteen. Hundred Bldg
11500 Franklin Blvd Suite 104
Cleveland OH 44102

Stephen H Brown
Vorys Sater Seymour and Pease
1828 L Street NW
Washington DC 20036

Ross B Capon
Natl Assoc of Railroads Passenger
900 Second St NE Ste 308
Washington DC 20002-3557

Hamilton L Carmouche, Corp Counsel
City of Gary
401 Broadway 4th Flr
Gary IN 46402

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

Angelo J Chick Jr
Local Chairman
P O Box 48398 Old Goose Bay Rd
Redwood NY 13679

Sylvia Chinn-Levy
Intergovernmental Co-op
969 Copley Rd
Akron OH 44320-2992

Elaine R Clark
Maine Dept of Transportation
16 State House Station
August ME 04333

John F. Collins
Collins Collins & Kantor PC
267 North St
Buffalo, NY 14201

Michael Connelly
City of East Chicago
4525 Indianapolis Blvd
East Chicago IN 46312

J Doyle Corman
Main Line Mgmt Services Inc
520 Fellowship Rd Ste A-105
Mount Laurel NJ 08054-3407

John J Coscia Executive Dir
DVRPC
111 South Independence Mall East
Philadelphia PA 19106

Steve M Coulter
Exxon Co USA
P O Box 3272
Houston TX 77210-4692

Erwin I. Davis
1900 State Tower Bldg
Syracuse NY 13202

Sandra J Dearden
MDCO Consultants, Inc
407 S. Dearborn, Suite 1145
Chicago IL 60605

Jo A Deroche
Weiner, Brodsky, Et Al
1350 New York Ave NW Suite 800
Washington DC 20005-4797

Nicholas J Dimichael
Donelan, Cleary, Et Al
1100 New York Ave NW Ste 750
Washington DC 20005-3934

David W Donely
3361 Stafford St
Pittsburgh Pa 15204-1441

Daniel Duff
American Public Transit Assoc
1201 New York Ave NW
Washington DC 20005

Donald W Dunlevy
230 State St
UTU State Leg Dir
PA AFL-CIO Bldg 2nd Flr
Harrisburg PA 17101-1138

Fay D Dupus, City Solicitor
City Hall
801 Plum St Room 214
Cincinnati OH 45202

Gary A Ebert
City of Bay Village
350 Dover Center Rd
Bay Village OH 44140

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

Terrell Ellis
CAEZVV
P O Box 176
Clay WV 25043

Robert L Evans
OXYCHEM
P O Box 809050
Dallas TX 75380

Sara J Fagnilli
Director of Law
1250 Detroit Ave
Lakewood OH 44107

Carl Feller
DeKalb Agra Inc
P O Box 127
4743 County Rd 28
Waterloo IN 46793-0127

Michael P Ferro
Millennium Petrochemicals, Inc
11500 Northlake Drive
Cincinnati OH 45249

Edward J Fishman
Oppenheimer Wolff & Donnelly
1020 Nineteenth St NW Ste 400
Washington DC 20036

J D Fitzgerald
TU General Chairperson
400 E. Evergreen Blvd Ste 217
Vancouver WA 98660-3264

Stephen M Fontaine
Mass Central Railroad Corp
One Wilbraham St
Palmer MA 01069

Michael J Garrigan
BP Chemicals Inc.
4440 Warrensville Ctr Rd
Cleveland OH 44128

Richard A Gavril
16700 Gentry Lane No 104
Tinley Park IL 60477

Peter A. Gilbertson
Regional RRS of America
122 C St NW Ste 850
Washington DC 20001

Douglas S Golden
Suite 200
533 Fellowship Rd
Mt Laurel NJ 08054

Andrew P Goldstein
McCarthy, Sweeney Et Al
1750 Pennsylvania Ave NW
Washington DC 20006

John Gordon
National Lime & Stone Co
P O Box 120
Findlay OH 45840

Edward D Greenberg
Galland Kharasch Morse & Garfinkle
1054 Thirty-First St NW
Washington DC 20007-4492

Peter A Greene
Thompson Hine Flory
1920 N St NW Suite 800
Washington DC 20036

John J Grocki
GRA Inc.
115 W Ave One Jenkintown Sta
Jenkintown PA 19046

Vaughn R Groves
Pittston Coal Co
P O Box 5100
Lebanon VA 24266

David L Hall
Commonwealth Consulting Assoc
720 North Post Oak Rd Suite 330
Houston TX 77024

Nicole Harvey
The Dow Chemical Co
2020 Dow Center
Midland MI 48674

John D Heffner Esq
Rea Cross & Auchincloss
1920 N St NW Ste 420
Washington DC 20036

R J Henefield
PPG Industries Inc
One PPG Place
Pittsburgh PA 15272

Charles S Hesse President
Charles Hesse Assoc
8270 Stoney Brook Dr
Chagrin Falls OH 44023

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

James E Howard
90 Canal St
Boston MA 02114

John Hoy
P O Box 117
Glen Burnie MD 21060

Brad F Huston
Cyprus Amax Coal Sales Corp
400 Technecenter Dr Ste 320
Milford OH 45150

Ernest J Ierardi
Nixon Hargrave Devans Doyle LLP
P O Box 1051
Clinton Square
Rochester NY 14603-1051

Wm P Jackson Jr
Jackson & Jessup PC
P. O. Box 1240
3426 N Washington Blvd
Arlington VA 22210

James R Jacobs
Jacobs Industries
2 Quarry Lane
Stony Ridge Oh 43463

Terrence D Jones
Keller & Heckman
1001 G St NW Ste 500 West
Washington DC 20001

Fran N Jorgensen
The Elk River Railroad Inc
P O Box 460
Summersville WV 26651

Larry B Karnes
Transportation Bldg
P O Box 30050
425 W Ottawa
Lansing MI 48909

Richard E Kerth, Trans Mgr
Champion International Corp
101 Knightsbridge Dr
Hamilton OH 45020-0001

Mitchell M Kraus, Gen Counsel
Transportation Comm. International Union
3 Research Place
Rockville MD 20850

Paul H Lamboley
Oppenheimer Wolff & Donnelly
1020 19th St NW Ste 400
Washington DC 20036

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

John K. Leary, Gen Manager
Southeastern Pennsylvania Transp Authority
1234 Market St 5th Flr
Philadelphia PA 19107-3780

Sherri Lehman Dir of Congressional Affairs
Corn Refiners Assoc
1701 PA Ave NW
Washington DC 20006-5805

Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
180 N Stetson Ave 45th Flr
Chicago IL 60601

Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington St
Newark NJ 07102

Gordon P MacDougall
1025 Connecticut Ave NW Ste 410
Washington DC 20036

David J Matty
City of Rock River
21012 Hilliard Rd
Rocky River OH 44116-3398

Thomas F McFarland Jr
McFarland & Herman
20 N Wacker Dr Ste 1330
Chicago IL 60606-3101

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

Coletta McNamee Sr
Cudell Improvement Inc
1550 Franklin Blvd Ste 100
Cleveland OH 44102

G Paul Moates
Sidley & Austin
1722 Eye St NW
Washington DC 20006

Ian Muir
Bunge Corp
P O Box 28500
St Louis MO 63146

Wm A Mullins
Troutman Sanders LLP
1300 I Street NW Ste 500 East
Washington DC 20005-3314

John R Nadolny, Vice Pres & Gen Counsel
Boston & Maine Corp
Iron Horse Park
No Billerica MA 01862

Gerald P Norton
Harkins Cunningham
1300 19th St NW Suite 600
Washington DC 20036

Sandra L. Nunn
Frost & Jacobs LLP
201 E Fifth St
Cincinnati OH 45202

Keith G O'Brien
Rea, Cross & Auchincloss
1920 N Street NW Ste 420
Washington DC 20036

John L Oberdorfer
Patton Boggs LLP
2550 M St NW
Washington DC 20037-1301

Byron D. Olsen
Felhaber, Larson, Fenlon & Vogt PA
601 Second Ave S.
4200 First Bank Place
Minneapolis, MN 55402-4302

Wm L Osteen
Associate General Counsel TVA
400 West Summit Hill Drive
Knoxville, TN 37902

Monty L. Parker
CMC Steek Group
P O Box 911
Seguin TX 78156

Lawrence Pepper Jr
Gruccio Pepper
817 E Landis Ave
Vineland, NJ 08360

Patrick R Plummer
Guerrieri Edmond & Clayman PC
1331 F Street NW
Washington, DC 20004

Andrew Plump
Zuckert, Scutt, Rasenberger
888 17th St NW Ste 600
Washington DC 20006-3939
Joseph R. Pomponio
Federal Railroad Admin
400 7th St SW RCC-20
Washington DC 20590

Harold P Quinn Jr
Sr VP and Gen Counsel
Natl Mining Assoc
1130 Seventeenth St NW
Washington, DC 20036

James F. Roberts
210 E Lombard St
Baltimore MD 21202

John M Robinson
9616 Old Spring Rd
Kensington MD 20895-3124

J L Rodgers
Gen Chairman UTU
480 Osceola Ave
Jacksonville FL 32250

Edward J Rodriguez
P O Box 298
67 Main St
Centerbrook CT 06409

David Roloff
Goldstein & Roloff
526 Superior Ave E Ste 1440
Cleveland OH 44114

Christine H Rosso
IL Assistant Atty Gen
100 W Randolph St 13th Flr
Chicago IL 60601

Thomas R Rydman Pres
Indian Creek Railroad Co
3905 W 600 North
Anderson IN 46011

G Craig Schelter
PIDC
1500 Market St
Philadelphia PA 19102

Frederick A Schranck
P O Box 778
Dover DE 19903

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

Diane Seitz
Central Hudson Gas & Electric Corp
284 S Avenue
Poughkeepsie NY 12601

Anthony P Semancik
347 Madison Ave
New York NY 10017-3706

James E. Shepard
Tuscola & Saginaw Bay
P O Box 550
Owosso MI 48867-0550

Mark H. Sidman
Weiner, Brodsky, Sidman
1350 New York Ave NW Ste 800
Washington DC 20005

Wm C Sippel
Oppenheimer Wolff & Donnelly
180 N Stetson Ave Two Prudential Plaza
45th Floor
Chicago, IL 60601

Wm L: Slover
Slover & Loftus
1224 Seventeenth St NW
Washington DC 20036-3003

Garret G Smith
Mobil Oil Corporation
3225 Gallows Rd Rm 8A903
Fairfax VA 22037-0001

Mike Spahis
FINA Oil & Chemical Co
P O Box 2159
Dallas TX 75221

Eileen S Stommes, Dir
T & M Div
Agri Marketing Service, USDA
P. O. Box 96456
Washington DC 20090-6456

James F. Sullivan
CT Dept of Transportation
P O Box 317546
Newington CT 06131

Wm R Thompson
City of Philadelphia Law Dept
1600 Arch St 10th Flr
Philadelphia, PA 19103

Merrill L. Travis
Illinois Dept of Transp
2300 S Dirksen Parkway Rm 302
Springfield IL 62703-4555

Mayor Vincent M Urbin
150 Avon Belden Rd
Avon Lake OH 44012

Stephen M Uthoff
Coniglia & Uthoff
110 W Ocean Blvd Ste C
Long Beach CA 90802

J Wm Van Dyke
NJ Transportation Planning Authority
One Newark Center 17th Flr
Newark NJ 07102

Wm C. Van Slyke
152 Washington Ave
Albany, NY 12210

John A. Vuono
Vuono & Gray
2310 Grant Bldg
Pittsburgh PA 15219

F Ronalds Walker
Citizens Gas & Coke Utility
2020 N Meridian St
Indianapolis IN 46202

Jack A. Walter
WCI Steel Inc.
1040 Pine Ave SE
Warren OH 44483

Jay Westerbrook
City Hall Rm 216
601 Lakeside Ave NE
Cleveland OH 44114

Robert M. Wimbish, Esq.
Rea, Cross & Auchincloss
1920 N St NW Ste 420
Washington DC 20036

John F Wing, Chairman
Citizens Advisory Comm.
601 N Howard St
Baltimore MD 21201

Sergeant W Wise
Livonia, Avon & Lakeville Railroad Corp
P O Box 190-B
5769 Sweeteners Blvd
Lakeville NY 14480

Timothy A. Wolfe
Wyandot Dolomite, Inc.
P O Box 99, 1794 CO RD #99
Carey OH 43316

E. C. Wright
Rail Transportation Procurement Manager
1007 Market St., Dupont Bldg 3100
Wilmington DE 19898

L Pat Wynns
Suite 210
1050 - 17th St NW
Washington DC 20036-5503

Sheldon A Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago IL 60606

Walter E. Zullig Jr Sp Counsel
Metro-North Commuter Railroad Co
347 Madison Ave
New York NY 10017-3706

STB

FD-33388

ID-181712

9-4-97

D

SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

7200 Sears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876-1000 Facsimile (312) 258-5600

Sheldon A. Zabel
(312) 258-5540
Email: szabel@schiffhardin.com

181712
Chicago
Washington
New York
Peoria
Merrillville

D
August 29, 1997



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

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

Dear Secretary Williams:

Enclosed are an original and ten (10) copies of the Certificate of Service of Northern Indiana
Public Service Company for filing in the above-referenced proceeding.

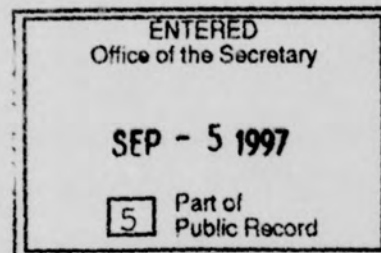
Sincerely,

Sheldon A. Zabel
Sheldon A. Zabel

SAZ/bd

Enclosure

cc: All Parties of Record



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388



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

Certificate of Service of Northern Indiana Public Service Company

Pursuant to Decision No. 21 of the Surface Transportation Board, I hereby certify that all Parties of Record listed in Decision No. 21 were served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of Northern Indiana Public Service Company previously submitted thus far in this proceeding:

Notice of Intent to Participate

Dated: August 29, 1997

A handwritten signature in cursive script, reading 'Sheldon A. Zabel', written over a horizontal line.

Sheldon A. Zabel
SCHIFF HARDIN & WAITE
7200 Sears Tower
Chicago, Illinois 60606
Telephone: (312) 258-5540

Counsel for
Northern Indiana Public Service Company

SCHIFF HARDIN WAITE

A Partnership Including Professional Corporations

7200 Sears Tower, Chicago, Illinois 60606-6473
Telephone (312) 876-1000 Facsimile (312) 258-5600

Sheldon A. Zabel
(312) 258-5540
Email: szabel@schiffhardin.com

Chicago
Washington
New York
Peoria
Merrillville

July 30, 1997

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

**Re: NOTICE OF INTENT TO PARTICIPATE: Finance Docket No. 33388,
CSX Corporation and CSX Transportation, Inc., et al.**

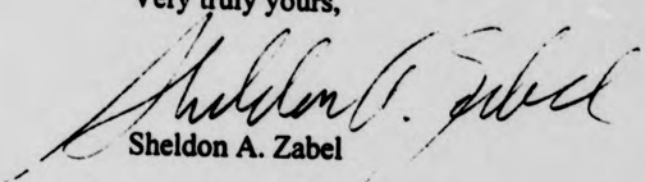
Dear Secretary Williams:

Pursuant to the Notice dated July 23, 1997 in the above-referenced proceeding, on behalf of Northern Indiana Public Service Company, I hereby file this, its Notice of Intent to Participate, in the above-referenced proceeding. Please add my name, as follows, to the service list, as counsel in this proceeding for Northern Indiana Public Service Company:

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Attached hereto is a Certificate of Service showing service as required by the July 23, 1997 Notice and, as also required, enclosed herewith are 25 copies of this Notice of Intent to Participate and Certificate of Service. I also have enclosed one additional copy and a stamped address envelope and would appreciate your marking that copy to indicate the filing and return it to me in the envelope.

Very truly yours,


Sheldon A. Zabel

SAZ/mjt
Attachment
cc: Kevin Strnatka

Certificate of Service

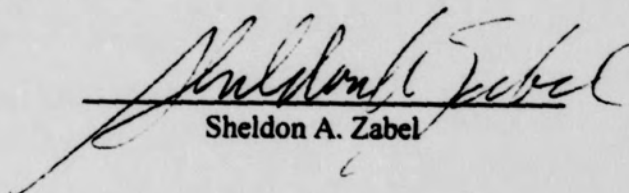
I, Sheldon A. Zabel, certify that I served a copy of the foregoing Notice of Intent to Participate on each of the following by causing a copy thereof to be mailed to each addressed as follows, first class postage prepaid, this 30th day of July, 1997.

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.
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939

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


Sheldon A. Zabel

STB

FD-33388

ID-181711

9-4-97

D

Law Offices

GRUCCIO, PEPPER
GIOVINAZZI, DESANTO & FARNOLY, P.A.



JAMES J. GRUCCIO
LAWRENCE PEPPER, JR.
COSMO A. GIOVINAZZI, III
ROBERT A. DESANTO
THOMAS P. FARNOLY*
E. EDWARD BOWMAN

817 EAST LANDIS AVENUE
CN1501
VINELAND, NEW JERSEY 08360
609 691-0100

TELECOPIER 609 692-4095
609 691-3302

RICHARD M. MILSTEAD, COUNSEL

WALTER F. GAVIGAN
GERALD R. SPALL
STEPHEN D. BARSE
JOSEPH E. RUTH*
JUDITH C. ARNOLD
JAMES J. GRUCCIO, JR.*

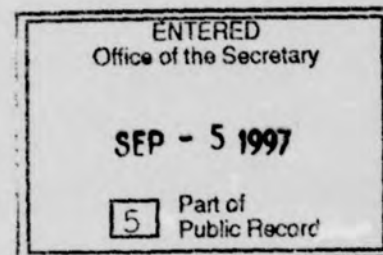
*MEMBER NJ & PA BAR

◇ CERTIFIED CIVIL TRIAL ATTORNEY

28 August 1997

Secretary Vernon A. Williams
Office of the Secretary
Case Control Branch
1925 K Street, NW
Washington, DC 20423-0001

Re: Conrail Merger Proceedings
Finance Docket No. 33388

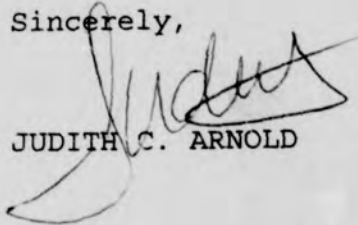


Dear Secretary Williams:

Enclosed per Decision #21, please find an original and eleven (11) copies of the Certification of Mailing of South Jersey Transportation Planning Organization which supplements the Certification of Mailing done on 28 July 1997.

Please return one copy marked filed in the enclosed self-addressed stamped envelope.

Sincerely,


JUDITH C. ARNOLD

JCA:ab
Enclosures

CC: Administrative Law Judge Jacob Leventhal (with enclosure)
South Jersey Transportation Planning Organization
Attn: Timothy G. Chelius, Executive Director (with enclosure)

181711



GRUCCIO, PEPPER, GIOVINAZZI,
DeSANTO & FARNOLY, P.A.
817 Landis Avenue
CN 1501

Vineland, New Jersey 08360

(609) 691-0100

Attorneys for South Jersey Transportation Planning
Organization

**SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

Finance Docket No. 33388

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

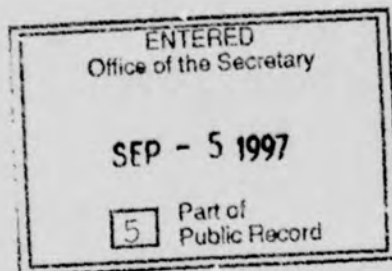
CERTIFICATION OF MAILING

1. I certify that I have this day served copies of the Notice to Participate upon the parties of record which are listed on the attached Exhibit "B" which is the only filing submitted thus far by this Party of Record. Service was done by serving each party of record by first-class, U.S. mail, postage prepaid. This service was done to supplement the previous service done on 28 July 1997 and pursuant to Decision 21.

2. I hereby certify that the foregoing statements made by me are true; I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Dated this 28th day of August 1997.

GRUCCIO, PEPPER, GIOVINAZZI,
DeSANTO & FARNOLY, P.A.



BY:

Judith C. Arnold
Judith C. Arnold

EXHIBIT "B"

David G. Abraham, Esquire
Suite 631W
7315 Wisconsin Avenue
Bethesda, MD 20814

Nels Ackerson, Esquire
The Ackerson Group
1275 Pennsylvania Avenue NW Suite 1100
Washington, DC 20004-2404

Richard A. Allen, Esquire
ZUCKERT, SCOUT, RASENBERGER
888 17th Street NW Ste. 600
Washington, DC 20006-3939

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

William D. Ankner
RI Dept. of Transportation
Tw Capitol Hill
Providence, RI 02903

T. Scott Bannister, Esquire
T. SCOTT BANNISTER & ASSOCIATES
1300 Des Moines Bldg.
405 Sixth Avenue
Des Moines, IA 50309

Harry C. Barbin, Esquire
BARBIN, LAUFFER & O'CONNELL
608 Huntingdon Pike
Rockledge, PA 19111

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

David Berger, Esquire
BERGER AND MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103-6305

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

Charles D. Bolam
United Transportation Union
1400-20th Street
Granite City, IL 62040

Thomas C. Brady, Esquire
BRADY, BROOKS & O'CONNELL, L.L.P.
41 Main Street
Salamanca, NY 14779-0227

William T. Bright, Esquire, et al.
P.O. Box 149
200 Greenbrier Road
Summersville, WV 26641

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

Stephen H. Brown, Esquire
VORYS, SATER, SEYMOUR AND PEASE
1828 L Street NW
Washington, DC 20036

Ross B. Capon
National Assoc. of Railroads Passenger
900 Second St. NE, Suite 308
Washington, DC 20002-3557

Hamilton L. Carmouche, Corporation Counsel
City of Gary
401 Broadway, Fourth Floor
Gary, IN 46402

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

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

Sylvia Chinn-Levy
Intergovernmental Co-op
969 Copley Road
Akron, OH 44320-2992

Elaine L. Clark
Maine Dept. of Transportation
16 State House Station
Augusta, ME 04333

John F. Collins, Esquire
COLLINS, COLLINS & KANTOR, P.C.
267 North Street
Buffalo, NY 14201

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

J. Doyle Corman
Main Line Mgmt. Services, Inc.
520 Fellowship Road, Ste. A-105
Mt. Laurel, NJ 08054-3407

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

Steve M. Coulter, Esquire
Exxon Company USA
P.O. Box 3272
Houston, TX 77210-4692

Irwin L. Davis, Esquire
1900 State Tower Building
Syracuse, NY 13202

Sandra J. Dearden
MDCO Consultants, Inc.
407 South Dearborn, Suite 1145
Chicago, IL 60605

Jo A. Deroche, Esquire
WEINER, BRODSKY, ET AL.
1350 New York Ave. NW, Suite 800
Washington, DC 20005-4797

Nicholas J. DiMichael, Esquire
DONELAN, CLEARY, et al.
1100 New York Avenue NW, Suite 750
Washington, DC 20005-3934

David Donely, Esquire
3361 Stafford Street
Pittsburgh, PA 15204-1441

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

Donald W. Dunlevy
230 State Street
UTU State Leg. Dir.
PA AFL-CIO Bldg., Second Floor
Harrisburg, PA 17101-1138

Fay D. Dupuis, City Solicitor
City Hall
801 Plum Street, Room 214
Cincinnati, OH 45202

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

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

Terrell Ellis
CAEZVW
P.O. Box 176
Clay, WV 25043

Robert L. Evans
OXYCHEM
P.O. Box 809050
Dallas, TX 75380

Sara J. Fagnilli, Director of Law
1250 Detroit Avenue
Lakewood, OH 44107

Carl Feller
DEKALB AGRA, INC.
P.O. Box 127
4743 Country Road 28
Waterloo, IN 46793-0127

Michael P. Ferro
Millennium Petrochemicals, Inc.
11500 Northlake Drive
Cincinnati, OH 45249

Edward J. Fishman, Esquire
OPPENHEIMER, WOLFF & DONNELLY
1020 Nineteenth St. NW, Suite 400
Washington, DC 20036

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

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

Michael J. Garrigan
BP Chemicals, Inc.
4440 Warrensville Ctr. Road
Cleveland, OH 44128

Richard A. Gavril
16700 Gentry Lane No. 104
Tinley Park, IL 60477

Peter A. Gilbertson
Regional RRS of America
122 C Street NW, Suite 850
Washington, DC 20001

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

Andrew P. Goldstein, Esquire
McCARTHY, SWEENEY, ET AL.
1750 Pennsylvania Avenue NW
Washington, DC 20006

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

Peter A. Greene, Esquire
THOMPSON, HINE, FLORY
1920 N Street NW, Suite 800
Washington, DC 20036

Robert E. Greenlese
Toledo-Lucas County Port Authority
1 Maritime Plaza, Suite 700
Toledo, OH 43604

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

David L. Hall
Commonwealth Consulting Associates
720 North Post Oak Road, Suite 330
Houston, TX 77024

Nicole Harvey
The Dow Chemical Company
2020 Dow Center
Midland, MI 48674

John D. Heffner, Esquire
REA, CROSS & AUCHINCLOSS
1920 N Street NW, Suite 420
Washington, DC 20036

R.J. Henefeld
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

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

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

James E. Howard, Esquire
90 Canal Street
Boston, MA 02114

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

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

Sheila Meck Hyde, City Attorney
City Hall
352 Central Avenue
Dunkirk, NY 14048

Ernest J. Jerardi, Esquire
NIXON, HARGRAVE, DEVANS, DOYLE, L.L.P.
P.O. Box 1051
Clinton Square
Rochester, NY 14603-1051

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

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

Terrence D. Jones, Esquire
KELLER & HECKMAN
1001 G Street NW, Suite 500 West
Washington, DC 20001

Frank N. Jorgensen
The Elk River Railroad, Inc.
P.O. Box 460
Summersville, WV 26651

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

Richard E. Kerth, Trans. Mgr.
Champion International Corp.
101 Knightsbridge Drive
Hamilton, OH 45020-0001

Mitchell M. Kraus, General Counsel
Transportation Communications International
Union
3 Research Place
Rockville, MD 20850

Hon. Dennis J. Kucinich
Unites States House Representatives
Washington, DC 20515

Paul H. Lamboley, Esquire
OPPERHEIMER, WOLFF & DONNELLY
1020 19th Street NW, Suite 400
Washington, DC 20036

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

John K. Leary, General Manager
Southeastern Pennsylvania Transportation
Authority
1234 Market Street, Fifth Floor
Philadelphia, PA 19107-3780

Sherri Lehman, Director of Congressinal
Affairs
Corn Refiners Assoc.
1701 Pennsylvania Avenue NW
Washington, DC 20006-5805

Thomas J. Litwiler, Esquire
OPPENHEIMER, WOLFF & DONNELLY
180 N. Stetson Ave., 45th Floor
Chicago, IL 60601

Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington Street
Newark, NJ 07102

Gordon P. MacDougall, Esquire
1025 Connecticut Ave. NW, Suite 410
Washington, DC 20036

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

Thomas F. McFarland, Jr., Esquire
McFarland & Herman
20 North Wacker Drive, Suite 1330
Chicago, IL 60606-3101

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

Coletta McNamee, Sr.
Cudell Improvement, Inc.
11500 Franklin Blvd., Suite 104
Cleveland, OH 44102

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

G. Paul Moates
MOATES, SIDLEY & AUSTIN
1722 Eye Street NW
Washington, DC 20006

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

William A. Mullins, Esquire
TROUTMAN SANDERS, L.L.P.
1300 I Street NW, Suite 500 East
Washington, DC 20005-3314

John R. Nadolny, Vice President
& General Counsel
Boston & Maine Corporation
Iron Horse Park
No. Billerica, MA 01862

Gerald P. Norton
Harkins Cunningham
1300 19th Street NW, Suite 600
Washington, DC 20036

Sandra L. Nunn, Esquire
FROST & JACOBS, L.L.P.
201 East Fifth Street
Cincinnati, OH 45202

Keith G. O'Brien, Esquire
REA, CROSS and AUCHINCLOSS
1920 N Street NW, Suite 420
Washington, DC 20036

John L. Oberdorfer, Esquire
PATTON, BOGGS, L.L.P.
2550 M Street NW
Washington, DC 20037-1301

Byron D. Olsen, Esquire
FELHABER, LARSON, FENLON & VOGT, P.A.
601 Second Avenue South 4200 First Bank Place
Minneapolis, MN 55402-4302

William L. Osteen
Associate General Counsel TVA
400 West Summit Hill Drive
Knoxville, TN 37902

Monty L. Parker
CMC Steel Group
P.O. Box 911
Sequin, TX 78156

Patrick R. Plummer, Esquire
GUERRIERI, EDMOND & CLAYMAN, P.C.
1331 F Street NW
Washington, DC 20004

Joseph R. Pomponio
Federal Railroad Admin.
400 Seventh Street SW, RCC-20
Washington, DC 20590

Harold P. Quinn, Jr.,
Senior VP & General Counsel
National Mining Association
1130 Seventeenth Street NW
Washington, DC 20036

James F. Roberts, Esquire
210 E. Lombard Street
Baltimore, MD 21202

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

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

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

David Roloff, Esquire
GOLDSTEIN & ROLOFF
526 Superior Avenue East, Suite 1440
Cleveland, OH 44114

John Jay Rosacker
KS Dept. of Transp.
217 SE Fourth Street, Second Floor
Topeka, KS 66603

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

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

G. Craig Schelter
Philadelphia Industrial Development Corp.
1500 Market Street
Philadelphia, PA 19102

Frederick H. Schranck, Esquire
P.O. Box 778
Dover, DE 19903

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

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

James E. Shepperd
Tuscola & Saginaw Bay
P.O. Box 550
Owosso, MI 48867-0550

Mark H. Sidman, Esquire
WEINER, BRODSKY, SIDMAN
1350 New York Avenue NW, Suite 800
Washington, DC 20005

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

William C. Sippel, Esquire
OPPENHEIMER, WOLFF & DONNELLY
180 N. Stetson Avenue
Two Prudential Plaza, 45th Floor
Chicago, IL 60601

William L. Slover, Esquire
SLOVER & LOFTUS
1224 Seventeenth Street NW
Washington, DC 20036-3003

Garrett G. SMith
Mobil Oil Corporation
3225 Gallows Road, Room 8A903
Fairfax, VA 22037-0001

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

Eileen S. Stommes, Director
T&M Division
Agriculture Marketing Service, USDA
P.O. Box 96456
Washington, DC 20090-6456

James F. Sullivan
CT Dept. of Transportation
P.O. Box 317546
Newington, CT 06131

Robert G. Szabo
V. Ness Feldman
1050 Tho. Jefferson Street, NW
Washington, DC 20007

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

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

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

Stephen M. Uthoff, Esquire
CONIGLIO & UTHOFF
110 West Ocean Blvd, Suite C
Long Beach, CA 90802

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

William C. Van Dyke, Esquire
152 Washington Avenue
Albany, NY 12210

John A. Vuono, Esquire
VUONO & GRAY
2310 Grant Building
Pittsburgh, PA 15219

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

Jack A. Walter
WCI Steel Inc.
1040 Pine Avenue, SE
Warren, OH 44483

Jay Westbrook
City Hall, Room 216
601 Lakeside Avenue NE
Cleveland, OH 44114

Robert A. Wimbish, Esquire
REA, CROSS & AUCHINCLOSS
1920 N Street NW, Suite 420
Washington, DC 20036

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

Sergeant W. Wise
Livonia, Avon & Lakeville Railroad Corp.
P.O. Box 190-B
5769 Sweeteners Blvd.
Lakeville, NY 14480

Timothy A. Wolfe
Wyandot Doliotte, Inc.
P.O. Box 99 1794 CO RD #99
Carey, OH 43316

E.C. Wright
Rail Transportation Procurement Manager
1007 Market Street, Dupont Eldg. 3100
Wilmington, DE 19898

L. Pat Wynns
Suite 210
1050 - 17th Street NW
Washington, DC 20036-5503

Sheldon A. Zabel, Esquire
SCHIFF, HARDIN & WAITE
7200 Sears Tower
Chicago, IL 60606

Walter E. Zullig, Jr., Special Counsel
Metro-North Commuter Railroad Company
347 Madison Avenue
New York, NY 10017-3706

STB

FD-33388

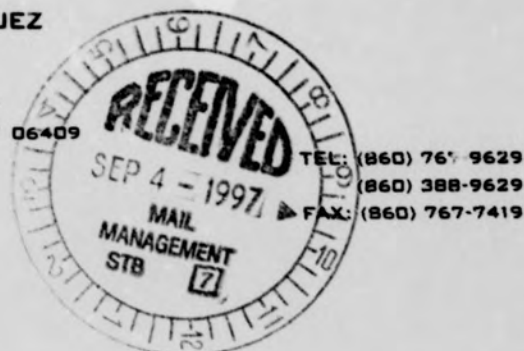
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EDWARD J. RODRIGUEZ
ATTORNEY AT LAW
67 MAIN STREET
POST OFFICE BOX 298
CENTERBROOK, CONNECTICUT 06409



August 27, 1997

Office of the Secretary
Surface Transportation Board
1925 K St., N.W.
Room 711
Washington, DC. 20423-0001

Re: Finance Docket 33388
Acquisition of Consolidated Rail Corporation by
CSX and Norfolk Southern Corporation

Housatonic Railroad's Certificate of Service

Housatonic Railroad's Computer Disk

Dear Secretary Williams:

Enclosed is an original and 10 copies of Housatonic Railroad's Certificate of Service, in accordance with Decision No. 21 in the above captioned proceeding.

Also enclosed is a computer disk in WordPerfect 5.1 format containing all filings by HRRC to date as requested by Mr. Paul Markoff of your office.

Please stamp a copy of this letter to indicate receipt and return it to me in the enclosed envelope.

Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Edward J. Rodriguez". The signature is written in a cursive, flowing style.

Edward J. Rodriguez

181647



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

HOUSATONIC RAILROAD'S CERTIFICATE OF SERVICE
HRRC-4

AUGUST 27, 1997

I hereby certify that on the 27th day of August, 1997, a copy of all filings submitted to date in this proceeding by Housatonic Railroad Company, Inc. was served by U.S. mail upon each Party of Record to the extent that such filings had not previously been served upon such parties.

This certificate of service is filed in accordance with the provisions of Decision No. 21 released by the Surface Transportation Board on August 19, 1997.

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Edward J. Rodriguez
Attorney for Housatonic
Railroad Company, Inc.

STB

FD-33388

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ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1202

(202) 942-5000
FACSIMILE: (202) 942-5999

DENNIS G. LYONS
(202) 942-5858

NEW YORK
DENVER
LOS ANGELES
LONDON

September 3, 1997



BY HAND

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

Re: Finance Docket No. 33388

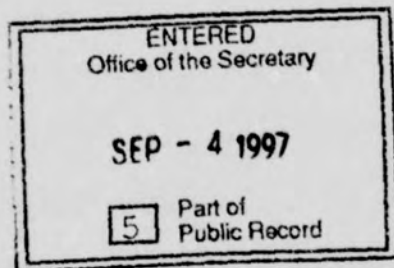
Dear Secretary Williams:

Enclosed please find CSX/NS-64, Applicants' Response to Allied Rail Unions' ("ARU") Appeal From Administrative Law Judge's Discovery Ruling.

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

Thank you for your assistance in this matter. Please contact me ((202) 942-5858) or Jodi Danis ((202-942-5773) 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



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

APPLICANTS' RESPONSE TO ALLIED RAIL UNIONS' APPEAL
FROM ADMINISTRATIVE LAW JUDGE'S DISCOVERY RULING

Applicants¹ respectfully submit this opposition to the appeal of the Allied Rail Unions ("ARU") from a discovery ruling of Administrative Law Judge Jacob Leventhal. On August 20, 1997, ARU filed a letter with the ALJ seeking to compel Applicants to respond to, among others, four of the 141 interrogatories that the ARU served as its First Set of Interrogatories to Applicants.² All four of these interrogatories seek

¹ "Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively "CSX"), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

² ARU has since served a Second Set of Interrogatories on the Applicants.

information about savings and benefits that CSX and NS realized from five prior coordinations carried out pursuant to authorization by the Board's predecessor. Similar information, ARU admits, was sought and denied its members by the Board in past proceedings.³ At a discovery hearing held on August 21, 1997, Judge Leventhal properly concluded that the amount of savings and benefits from five particular prior coordinations under New York Dock is not relevant to the validity of the savings that Applicants project will occur as a result of this proposed Transaction.

As explained below, the Board should affirm ALJ Leventhal's ruling. First, the amount of savings projected and realized in five prior coordinations, each of which involved different carriers, facts, and control authorizations, is not relevant to the validity of Applicants' savings projections in this Transaction. Second, in any event, ARU should not now be allowed to challenge whether these prior coordinations were premised on savings; such savings were either already found by the Board's predecessor in proceedings raising this issue, or were not contested by the relevant unions in those prior proceedings. Finally, it would be extremely burdensome for Applicants retrospectively to

³ Transcript of Discovery Hearing Before Administrative Law Judge Leventhal, August 21, 1997, at 90.

compute savings attributable to these coordinations, some of which were implemented nearly nine years ago, and to conduct the time consuming and expensive special studies that would be required. Accordingly, the ALJ's discovery decision should be affirmed.

I. Background

ARU's First Set of Interrogatories to the Applicants included 141 interrogatories, not counting subparts. The four interrogatories at issue in this appeal are among those interrogatories. These four interrogatories seek information relating to five coordinations under New York Dock accomplished by CSX and NS or their predecessors. They read as follows:

Interrogatory No. 48

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

- a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.
- b. Consolidation of B&O and C&O operating craft employees into the Central C&O consolidated district.
- c. Consolidation of Waycross, Georgia Carmen work to CSXT's Raceland, Kentucky shops.
- d. Consolidation of CSX dispatching work in Jacksonville.

Interrogatory No. 49

Explain how CSX believes that the public benefitted by the following consolidations (to the extent CSX believes that rates were reduced or rate increases were avoided, provide specific

explanations regarding the bases for those beliefs):

- a. Consolidation of B&O, C&O, WM and RF&P operating craft employees into the Eastern B&O consolidated district.
- b. Consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district.
- c. Consolidation of Waycross, Georgia carmen work to CSXT's Raceland, Kentucky shops.
- d. Consolidation of CSX dispatching work to Jacksonville.

Interrogatory No. 50

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

Interrogatory No. 51

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

Interrogatory Nos. 48 and 49 ask about four prior coordinations under New York Dock on CSX or its predecessors. Subpart (a) of each asks for information concerning the coordination of train operations in the Eastern B & O Consolidated District ("EBOC"), which was the subject of the O'Brien Arbitration Award.⁴ Subpart

⁴ See CSX Corp.-Control-Chessie System, Inc. and Seaboard Coast Line Industries, Finance Docket No. 28905 (Sub-No.27)(served Dec. 7, 1995), aff'd, United Transportation Union v. STB, 108 F.3d 1425 (D.C. Cir. 1997).

(b) of each asks for information concerning the coordination of train operations in the Central B & O Consolidated District ("CBOC"), a coordination which was accomplished through negotiated and arbitrated New York Dock implementing agreements.⁵ Subpart (c) of each asks for information concerning the consolidation of heavy freight car repair work at Waycross, Georgia on the former Seaboard Coast Line with CSX's heavy repair shop on the former Chesapeake & Ohio Railway at Raceland, Kentucky. This coordination also was accomplished pursuant to an ICC decision.⁶ Subpart (d) of each asks for information concerning the centralization of dispatching at Jacksonville, Florida. That coordination was accomplished pursuant to a 1988 New York Dock agreement negotiated with the American Train Dispatchers Association.

Interrogatory Nos. 50 and 51 ask for information concerning the coordination of locomotive power distribution on the former N&W and Southern. The consolidation of this work on the former Southern at Atlanta was accomplished pursuant to an arbitrated New

⁵ See Finance Docket Nos. 32056 and 32326.

⁶ See CSX Corp.-Control-Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 4 I.C.C.2d 641 (1988), rev'd, Brotherhood Railway Carmen v. ICC, 880 F.2d 562 (D.C. Cir. 1989), rev'd and remanded, Norfolk and Western Railway Co. v. American Train Dispatchers Ass'n, 499 U.S. 117 (1991).

York Dock agreement. See Norfolk Southern Corp.-Control-Norfolk & Western Ry. Co. and Southern Ry. Co., 4 I.C.C.2d 1080 (1988), rev'd, Brotherhood Railway Carmen v. ICC, 880 F.2d 562 (D.C. Cir. 1989), rev'd and remanded, Norfolk and Western Railway Co. v. American Train Dispatchers Ass'n, 499 U.S. 117 (1991).

As Applicants explained in their objections and to Judge Leventhal,⁷ these interrogatories seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and responding to these requests would be unduly burdensome. In addition, these requests improperly seek to relitigate issues that have already been decided by the Board or its predecessor.

At the discovery hearing on August 21, 1997, Judge Leventhal upheld Applicants' objections and denied ARU's motion to compel answers to Interrogatories 48 through 51. He agreed that these interrogatories sought irrelevant information because the coordinations to which they referred were "separate from the one that's before the Board at this time." Tr. at 104. The ALJ correctly recognized that even if there were no savings from these prior coordinations, these results would have no predictive value regarding the savings projected from

⁷ Tr. at 92-98.

this particular Transaction. See Tr. at 102-03. ARU's appeal of the ALJ's decision ignores long-standing Board precedent that each proposed control application is evaluated independently and on its own merits, and attempts to impose a burden on Applicants that the Board rejected as inappropriate in another recent major control proceeding.

II. Argument

A. The Requested Information Is Not Relevant

Judge Leventhal's discovery ruling is correct and should be affirmed. As the Board has already held in this proceeding, appeals from decisions of the ALJ are disfavored and will be granted only if the stringent requirements of 49 C.F.R. § 1115.1 are met.⁸ Under § 1115.1, appeals of decisions by the ALJ are granted only in "exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." 49 C.F.R. § 1115.1. Because ALJ Leventhal's decision was well-reasoned and is consistent with relevant Board precedent in analogous cases, the ARU cannot meet this stringent standard.

⁸ See CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. Co. -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp., F.D. No. 33388, Decision No. 6 (served May 30, 1997), 1997 WL 283551 at * 6; Decision No. 17 (served July 31, 1997) (denying petitioner's appeal of ALJ's ruling because stringent standard of § 1115.1(c) could not be met).

ARU claims that its "interrogatories focus heavily on Applicants' stated plans as well as their unstated plans" ARU Brief at 12. ARU argues that Applicants have claimed in the Application and their Appendices A that the transaction is in the public interest, and they therefore "should not be allowed to refuse to respond to efforts to probe the basis for their claims." ARU Brief at 13. In order to probe claims made in this proceeding, ARU wants to test retroactively whether past coordinations under New York Dock carried out by CSX and NS resulted in savings. ARU illogically contends that if prior savings cannot be substantiated, then Applicants' claims in the present control proceeding also cannot be substantiated.

This argument, however, cannot justify the request for the information that these interrogatories seek; it ignores the basic principle that each control application presented for Board approval is unique and must be judged on its own merits. This case is about the coordinations of CSX and NS operations, facilities, services and workforces with their respective allocated Conrail operations. Those coordinations will produce savings. Those savings have nothing to do with other coordinations, consummated years ago, involving CSX or NS. ARU is certainly free to challenge the projections

in the Application.⁹ However, Judge Leventhal immediately recognized the fundamental lack of nexus between Interrogatories 48-51 and ARU's justification for them. Whether or not savings from the past coordinations could be substantiated, it would have no bearing on whether the projected savings are substantiated or unsubstantiated in this case. See Tr. at 102-03. The savings and benefits from the currently proposed Transaction must stand or fall on their own merits.

Similarly, these ARU interrogatories also are not relevant to the public interest standard in 49 U.S.C. § 11324(c), which ARU admits governs the Application in this proceeding. Whether five out of hundreds of coordinations under New York Dock carried out by CSX, NS and their predecessors, pursuant to other control authorizations, actually produced cost savings is not probative of whether CSX's and NS's present joint Application to control Conrail meets the standard of Section 11324.

Accordingly, ARU's argument that information as to past savings is necessary to test Applicants' assertions in the Application must fail.

⁹ ARU's assertion that "there is no evidence in support of any of Applicants claims," ARU Brief at 14, is incorrect. The Application is replete with supporting evidence.

B. ARU Cannot Relitigate Savings and Public Benefits From Prior Coordinations

Moreover, issues regarding efficiencies, benefits and savings that resulted from the prior coordinations cannot now be contested by ARU. All of the past coordinations about which this information is sought were accomplished pursuant to either a negotiated or arbitrated New York Dock implementing agreement. ARU unions were party to those New York Dock proceedings. Thus, in each case, an ARU member either conceded (either expressly or by declining to contest) that the coordination was necessary to realize the benefits of a control authorization or challenged the necessity for the transaction and lost. These issues cannot be relitigated now.

For example, subpart (a) of Interrogatories 48 and 49 seeks, in effect, to relitigate the savings and benefits from the creation of the EBOC. The BLE, an ARU member, challenged whether this coordination would yield transportation benefits. CSX quantified the savings from that coordination. Arbitrator O'Brien found that the projected savings and efficiencies were substantiated and that the coordination would yield transportation benefits. In the Matter of Arbitration between United Transp. Union and Bhd. of Locomotive Engineers and CSX Transp. Inc. (O'Brien, Arb.)

(April 24, 1995), slip op. at 16-18. The ICC affirmed his factual findings, stating that "[t]he Arbitrator did not commit error (much less egregious error) in finding efficiency." CSX Corporation -- Control -- Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., et al. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27) (decision served December 7, 1995), slip op. at 12-13. The D.C. Circuit affirmed, holding that the projected efficiencies were "obvious." See United Transp. Union v. Surface Transp. Bd., 108 F.3d 1425, 1431 (D.C. Cir. 1997).

Labor subsequently sought an order from the Board requiring CSX to submit quarterly reports detailing the savings realized by the coordination. In CSX Corporation -- Control -- Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., et al. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27) (decided July 1, 1997), the Board denied this request. Contrary to ARU's argument that the ICC's decision was premised on "assumption" of public benefits, ARU Brief at 16, the STB found that "the efficiency benefits of the consolidation were supported and quantified in the record before the arbitrator." Id., slip. op. at 3. Indeed, at the August 21, 1997 discovery hearing, ARU's counsel conceded that ARU was not entitled to the

information regarding the EBOC coordination in light of the Board's July 1, 1997 decision. See Tr. at 98-99.

Similarly, the ICC found that CSX's coordination of heavy car repair at Raceland, Kentucky and NSR's coordination of locomotive power distribution at Atlanta would yield efficiencies and savings. CSX Corp. -- Control -- Chessie System, Inc. and Seaboard Coast Line Indus., Inc., et al., 4 I.C.C. 2d 641, 1988 ICC Lexis 199, *22 (June 8, 1988) ("The record shows that CSX/C&O is consolidating heavy car repair at Raceland because of significantly reduced work and the need commensurately to reduce its repair operations to realize cost savings and operational efficiencies."); Norfolk Southern Corp. -- Control -- Norfolk and Western Railway Company and Southern Railway Company, 4 I.C.C. 2d 1080, 1988 ICC Lexis 164, *2 (May 24, 1988) (coordination "will permit substantial cost savings because fewer locomotives will be needed and the remaining locomotives can be used more efficiently.")¹⁰

The 1993 coordination of train operations in the CBOC and 1988 coordination of dispatching on CSX were

¹⁰ As a result of subsequent litigation before the D.C. Circuit and the Supreme Court, these cases have been remanded to and are still pending before the STB. However, the subsequent litigation and the remand involve legal issues as to the standard for overriding collective bargaining agreements, not the factual question of savings.

implemented pursuant to New York Dock implementing agreements negotiated with, respectively, BLE and the American Train Dispatchers Association (now the American Train Dispatchers Division of BLE). Having agreed to these coordinations, BLE and ATDD, both members of ARU, cannot now challenge that they yielded efficiencies and transportation benefits.

Thus, ARU cannot now challenge the conclusions that the five coordinations listed in Interrogatories 48-51 resulted in savings and benefits at the time of their implementation.

C. ARU's Requests Are Not Justified By Policies And Mandates of Railway Labor Act

The ARU's interrogatories also cannot be justified by "the requirement that the STB respect the mandates and policies of the RLA." ARU Br. at 12. ARU's interrogatories have nothing to do with the mandates and policies of the RLA. In any event, it is well established that the STB's authority over railroad consolidations supersedes the requirements of the Railway Labor Act. See Norfolk and Western Railway Co. v. American Train Dispatchers Ass'n, 499 U.S. 117, 133 (1991). The ARU's invocation of the RLA provides no support for its interrogatories.¹¹

¹¹ Applicants do not view it otherwise necessary to respond to ARU's characterization of decisions
[Footnote continued on next page]

D. The Requests Are Unduly Burdensome

Finally, the Board has recognized that requiring the compilation of this type of information is unduly burdensome. In the Union Pacific/Southern Pacific merger approval proceeding, the ARU sought an order requiring the Union Pacific to file annual reports detailing how its forecast cost-savings were being used. The Board, however, denied this request, on the grounds that developing the information would be "inordinately costly, and there is no reason to saddle UP/SP with reporting obligations that have been imposed on no prior merger." Union Pacific Corp., et al. -- Control and Merger - Southern Pacific Rail Corp., et al., Finance Docket No. 32760, Decision No. 44 (decision served August 12, 1996) slip op. at 174.

[Footnote continued from previous page]
consistently upholding the authority of the ICC and STB to modify collective bargaining agreements. However, Applicants do take issue with ARU's assertion that ICC approval of railway consolidations was not thought to override the RLA prior to 1980. ARU Br. at 5. The exemption from "all other law" dates back to 1920. Moreover, the negotiation and arbitration procedures for each implementing agreements, found in Section 4 of New York Dock, were carried forward from prior ICC labor protective conditions, such as the New Orleans conditions. See generally, e.g., CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 I.C.C.2d 715, 1990 ICC Lexis 222 (May 21, 1990). As the ICC explained there, "arbitrators have had the power since 1936 to modify CBAs to the extent necessary to permit approved transactions to proceed and have used it in a manner that did not become contentious until the 1980's". Id., 1990 I.C.C. Lexis 222, at *72.

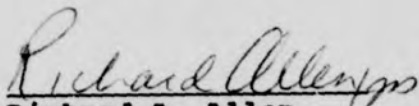
In this case, ARU is asking for an even more burdensome obligation than the UP/SP request--instead of contemporaneous calculations of savings, ARU seeks to require CSX and NS retrospectively to calculate savings going back as far as nine years into the past. Particularly in light of the fact that the amount of past savings has no relevance to whether the Application meets the public interest standard of 49 U.S.C. § 11324, CSX and NS should not be required to perform such an extraordinarily expensive and time-consuming analysis. Such analysis would require Applicants to undertake burdensome special studies analyzing data spanning several years, and would require assumptions regarding how CSX, NS and their predecessors would have operated during this time had these particular coordinations not been implemented. See CSX Transp., Inc. -- Abandonment and Discontinuance of Trackage Rights -- In Vinton and Jackson Counties, OH, Docket No. AB-55 (Sub-No. 221) (Aug. 25, 1988), 1988 WL 224617 at *2 (denying petitioner's motion to compel carrier to produce information regarding certain costs on the grounds that petitioner's request was burdensome and speculative, and "discovery does not contemplate the development of new information or studies").

CONCLUSION

For the foregoing reasons, the Board should affirm the discovery decision of Judge Leventhal refusing to compel Applicants to answer ARU Interrogatories 48 through 51.

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe, III
Robert J. Cooney
George A. Aspartore
Roger A. Peterson
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838



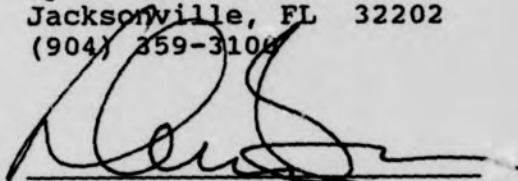
Richard A. Allen
John V. Edwards
Patricia E. Bruce
Zuckert, Scoutt &
Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Mark G. Aron
Peter J. Shudtz
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
Nicholas S. Yovanovic
CSX Transportation, Inc.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100



Dennis G. Lyons
Drew A. Harker
Jodi B. Danis
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
(202) 942-5000

Samuel M. Sipe, JR.
David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue,
N.W.
Washington, DC 20036-1795
(202) 429-3000

Ronald M. Johnson
Elizabeth Kandavy
Akin, Gump, Strauss, Hauer
& Feld LLP
1333 New Hampshire Ave., NW
Suite 400
Washington, D.C. 20036

Counsel for CSX Corporation
and CSX Transportation, Inc.

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail
Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19101
(215) 209-4000

Paul A. Cunningham

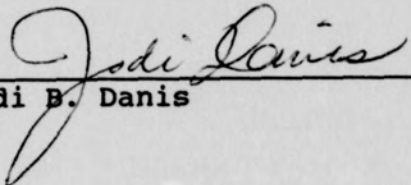
Paul A. Cunningham
Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Sept. 3, 1997

Counsel for Conrail Inc. and
Consolidated Rail
Corporation

CERTIFICATE OF SERVICE

I, Jodi B. Danis, certify that on September 3, 1997, I caused to be served by facsimile service a true and correct copy of the foregoing CSX/NS-63, Applicants' Response to Allied Rail Unions' Appeal from Administrative Law Judge's Discovery Ruling on all parties of record listed in the service list attached to the Board's Decision No. 21 in Finance Docket No. 33388.



Jodi B. Danis

Dated: September 3, 1997

STB

FD-33388

ID-181689

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

ORIGINAL

STB Finance Docket No. 33388

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

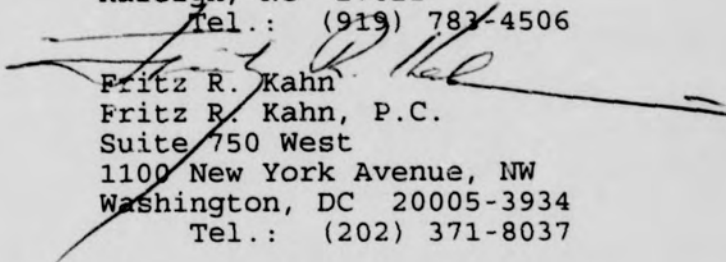


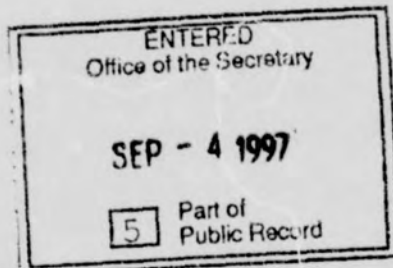
CERTIFICATE OF SERVICE
OF
MARTIN MARIETTA MATERIALS, INC.

This is to certify that Martin Marietta Materials, Inc., has served its Notice of Intent to Participate, MMM-1, on all parties of record, as required by the Board's decision of August 19, 1997, Decision No. 21.

Dated at Washington, DC, this 28th day of August 1997.

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


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



Attorneys for
MARTIN MARIETTA MATERIALS, INC.

STB

FD-33388

ID-181688

9-3-97

D

181688

LAW OFFICES

BERGER & MONTAGUE, P.C.

1622 LOCUST STREET

PHILADELPHIA, PA 19103-6365

TELEPHONE (215) 875-3000

FAX (215) 875-4604

DAVID BERGER*§
HAROLD BERGER
H. LADDIE MONTAGUE, JR. §
STANLEY R. WOLFE
MERRILL G. DAVIDOFF*
SHERRIE R. SAVETT
DANIEL BERGER
JAY ROBERT STIEFEL
GARY E. CANTOR
HOWARD I. LANGER
STEPHEN A. WHINSTON
MARTIN I. TWERSKY
TODD S. COLLINS†
CAROLE A. BRODERICK
RUSSELL D. HENKIN**
PETER R. KAHANA
RUTHANNE GORDON
ALAN M. SANDALS§
STEPHEN D. RAMOS
KAREN SCHAFFEL ORMAN
JEANNE A. MARKEY††
KENNETH L. FOX*§††
PATRICIA D. GUGIN†
JONATHAN D. BERGER
PETER B. NORDBERG
LAWRENCE DEUTSCH††
JOHN R. TAYLOR

SHERYL SATZBERG LEVY
LAWRENCE J. LEDERER§
JEROME M. MARCUS
THOMAS F. HUGHES††
CATHERINE S. McLAUGHLIN
JEFFREY M. KRULIK*†§
BART D. COHEN
MICHAEL T. FANTINI§
DAVID F. SORENSEN
STUART J. GUBER
ARTHUR STOCK
MICHAEL L. BLOCK†
JONATHAN AUERBACH††
BRET P. FLAHERTY
GENNA D. KIDD
CHARLES P. GOODWIN††
JANE L. ISTVAN
KENDALL S. ZYLSTRA
JOEL M. SWEET††
ERIC L. CRAMER*
LEAH R. STOLKER††
DANIEL M. COHEN††
SCOTT M. LEMPERT††
NICHOLAS J. GUILLIANO
LAURA S. STEIN††
PHYLLIS M. PARKER††
JILL E. STERBAKOV

*ALSO ADMITTED IN NY
**ALSO ADMITTED IN FL
† ALSO ADMITTED IN DE
†† ALSO ADMITTED IN NJ
†† ALSO ADMITTED IN GA
§ ALSO ADMITTED IN MD
§ ALSO ADMITTED IN DC



WRITER'S DIRECT DIAL NUMBER:

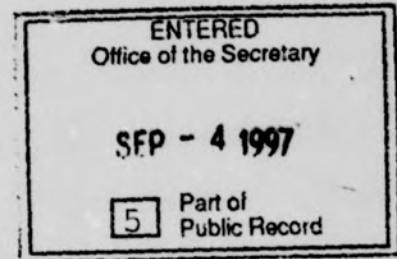
WRITER'S DIRECT FAX NUMBER:

215-875-4627

215-875-5707

August 28, 1997

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



RE: STB Finance Docket No. 33388

Dear Sir/Madam:

Enclosed please find an original and ten (10) copies of a Certificate of Service regarding the above matter.

Sincerely,

Patricia D. Gugin/cs

Patricia D. Gugin
For Berger & Montague, P.C.

PDG:cs
Enclosures

181688

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

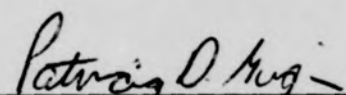


CSX Corporation and CSX Transportation Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail, Inc. and Consolidated Rail Corporation --
Transfer of Line By Norfolk Southern Railway Company
To CSX Transportation Inc.

CERTIFICATE OF SERVICE

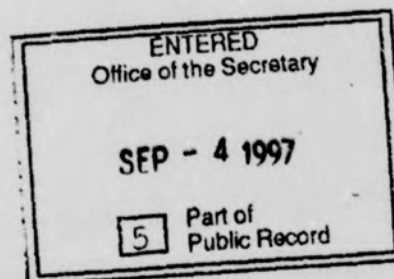
I hereby certify that, pursuant to the provisions of Decision No. 21 served August 19, 1997 in the above captioned case, a copy of the attached Notice of Intent to Participate was served on all parties of record identified in Decision 21, via first class mail, postage prepaid on this 28th day of August, 1997.

Respectfully submitted,



Patricia D. Gugin
For Berger & Montague, P.C.

Dated: August 28, 1997



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388



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

NOTICE OF INTENT TO PARTICIPATE

Please enter the appearance of the undersigned counsel on behalf of A. Herb Kerekesch and George Donahue, who intend to participate and become parties of record in this proceeding. Pursuant to 49 C.F.R. § 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated: 7/30/97

Respectfully submitted,

David Berger

David Berger

Harold Berger

Patricia D. Gugin

Charles P. Goodwin

BERGER & MONTAGUE, P.C.

1622 Locust Street

Philadelphia, PA 19103

(215) 375-3000

Louis Tarasi

Louis Tarasi

The Tarasi Law Firm, P.C.

510 Third Avenue

Pittsburgh, PA 15219-2191

(412) 391-7135

Attorneys for A. Herb Kerekesch
and George Donahue

CERTIFICATE OF SERVICE

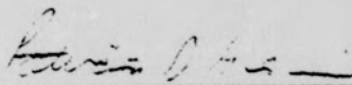
I hereby certify that on July 30, 1997, a copy of the foregoing Notice Of Intent To Participate was served by first class, U.S. mail, postage prepaid upon the following:

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

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

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

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



One Of The Attorneys For
A. Herb Kerekasch and
George Donahue

STB

FD-33388

ID-181687

9-3-97

D



181687
GENESEE TRANSPORTATION COUNCIL

WP 6.1 FILE GTCSTB1

August 28, 1997



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

Dear Secretary Williams:

Enclosed please find an original and ten copies of certificate of service showing that, on August 28, 1997, I mailed, by first class mail, copies of the Notice of Intent of the Genesee Transportation Council to participate in the above referenced proceeding. This is the only filing we have made to date.

Also enclosed is a 3 1/2 computer disc containing this filing, shown as files GTCSTB1 and GTCSTB1A, in WordPerfect 6.1 format, which can be read by WordPerfect 7.0.

Respectfully submitted,

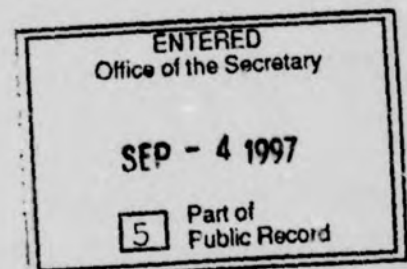
GENESEE TRANSPORTATION COUNCIL

By: 

H. Douglas Midkiff
Transportation Specialist

Enclosures

copies: Service List





GENESEE TRANSPORTATION COUNCIL

WP 6.1 FILE GTCSTB1A

August 28, 1997

CERTIFICATE OF SERVICE

I, H. Douglas Midkiff, hereby certify that on August 28, 1997, I have mailed by first class mail, postage prepaid, to all parties of record listed on the Service List in Decision 21, dated August 19, 1997, copies of the NOTICE OF INTENT of the GENESEE TRANSPORTATION COUNCIL, to participate in STB Finance Docket 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.

H. Douglas Midkiff
GENESEE TRANSPORTATION COUNCIL



STB

FD-33388

ID-181686

9-3-97

D

181686



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS



Jim Ryan

ATTORNEY GENERAL

August 29, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Attn: Case Control Branch, Finance Docket No. 33388

Dear Mr. Williams:

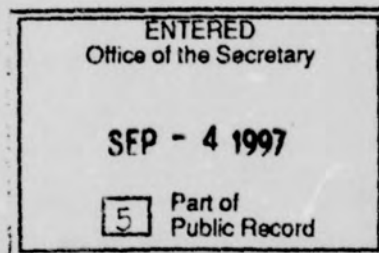
Enclosed for filing in Finance Docket No. 33388 on behalf of the Illinois Department of Transportation are an original and ten copies of IDOT-2, the Certificate of Service required by Decision No. 21.

Sincerely,

William F. Cottrell
William F. Cottrell

Assistant Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601

cc: All Parties of Record



Before The
SURFACE TRANSPORTATION BOARD

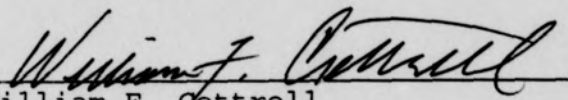


Finance Docket No. 33388

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

Certificate of Service

I hereby certify that copies of the Initial Comments on
Behalf of the Illinois Department of Transportation (IDOT-1) were
served upon all parties of record listed in Decision No. 21 on
August 29, 1997 by U.S. Mail, postage prepaid from Chicago,
Illinois 60601.


William F. Cottrell
Assistant Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601



Illinois Department of Transportation

Office of Planning and Programming
2300 South Dirksen Parkway / Springfield, Illinois / 62764

August 6, 1997

Office of the Secretary
Case Control Unit
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Attn: Case Control Branch, STB Finance Docket No. 33388

Dear Secretary:

Enclosed for filing are an original and twenty copies of the "Initial Comments of the Illinois Department of Transportation" (IDOT-1) with an accompanying Certificate of Service. The initial comments and this letter are a Notice of Intent to Participate in Finance Docket No. 33388.

It is requested that the following be added to the service list:

William F. Cottrell
Assistant Attorney General
100 W. Randolph St. - 12th Floor
Chicago, IL 60601
(312) 814-4323

Merrill L. Travis
Chief, Bureau of Railroads
Illinois Department of Transportation
2300 S. Dirksen Parkway - Room 302
Springfield, IL 62764
217-782-2835

Sincerely,

Merrill L. Travis
Chief, Bureau of Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

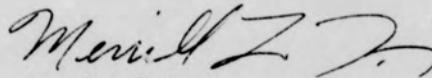
CSX CORPORATION AND CSX TRANSPORTATION INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-CONTROL AND OPERATING LEASES/AGREEMENTS-
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

INITIAL COMMENTS ON BEHALF OF THE
ILLINOIS DEPARTMENT OF TRANSPORTATION

The Department of Transportation, having received the above-referenced control application and Commission's notices, intends to participate formally in this proceeding, and become a party of record to the entire CSX and Norfolk Southern joint application to acquire the Conrail System.

The department has no other comments at this time. The determination of a position will depend upon a review of comments and evidence submitted by other parties in response to the application. The Department of Transportation will indicate its position and submit evidence by the particular due dates established for subsequent filings.

Respectfully Submitted,

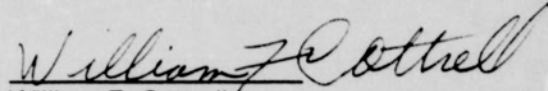


Merrill L Travis,
Chief, Bureau of Railroads

August 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of August, 1997, I served the foregoing "Initial Comments on Behalf of the Illinois Department of Transportation" by first class mail, postage prepaid, upon all parties as listed on the attached sheet.

A handwritten signature in cursive script, reading "William F. Cottrell". The signature is written in dark ink and is positioned above the printed name.

William F. Cottrell
Assistant Attorney General
100 W. Randolph St. - 12th Fl.
Chicago, IL 60601

Service List

Finance Docket No. 33388

Jacob Leventhal,
Administrative Law Judge,
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, L.L.P.
888 Seventeenth Street, N.W.
Suite 600
Washington, DC 20006-3939

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

STB

FD-33388

ID-181685

9-3-97

D

181685



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

August 29, 1997

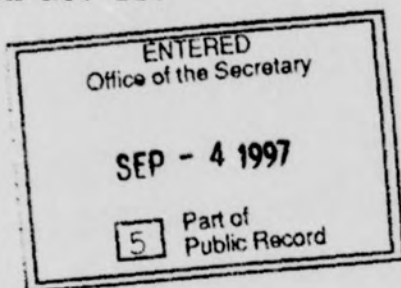
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Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Attn: Case Control Branch, Finance Docket No. 33388

Dear Mr. Williams:

Enclosed for filing in Finance Docket No. 33388 on behalf of the People of the State of Illinois are an original and ten copies of IL AG-2, the Certificate of Service required by Decision No. 21.



Sincerely,

Christine H. Rosso

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

cc: All Parties of Record

IL AG-2

Before The
SURFACE TRANSPORTATION BOARD

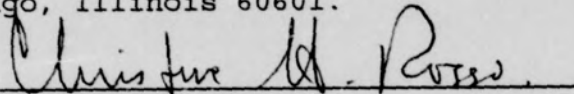


Finance Docket No. 33388

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 copies of the Notice of Intent to Participate and Preliminary Comments of the People of the State of Illinois (IL AG-1) were served upon all parties of record listed in Decision No. 21 on August 29, 1997 by U.S. Mail, postage prepaid from Chicago, Illinois 60601.



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



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan

ATTORNEY GENERAL

August 6, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, DC 20423

Attn: Case Control Branch, Finance Docket No. 33388

Dear Mr. Williams:

Enclosed for filing in Finance Docket No. 33388 are an original and twenty copies of the Notice of Intent to Participate and Preliminary Comments of the People of the State of Illinois ex rel. James E. Ryan, Attorney General of Illinois (IL AG-1).

It is requested that the undersigned be added to the service list representing the People of the State of Illinois:

Christine H. Rosso
Assistant Attorney General
100 W. Randolph St. - 13th Floor
Chicago, IL 60601
(312) 814-5610

Sincerely,

A handwritten signature in cursive script that reads "Christine H. Rosso".

Christine H. Rosso

cc: Service List

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 AND
PRELIMINARY COMMENTS OF THE
PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois, ex rel. James E. Ryan,
Attorney General of the State of Illinois, ("Illinois Attorney
General" or "IL AG"), submit this Notice of Intent to Participate
and the following Preliminary Comments in Finance Docket No.
33388.

The Illinois Attorney General represents the public interest
on behalf of the People of the State of Illinois in federal and
state regulatory proceedings. Additionally, the Illinois
Attorney General represents the interests of the state and its
citizens *parens patriae* in federal and state antitrust
proceedings and in regulatory proceedings involving the
application of antitrust principles and standards.

The authorities sought in the instant proceeding involve significant questions concerning the resulting state of competition among applicant railroads in providing service to and from and within Illinois and other territories and the impact of such competition on rates and prices charged to shippers and ultimately on costs to the public.

At this preliminary stage of the proceeding, the Illinois Attorney General does not take a position on whether the proposed transactions are consistent with the public interest within the meaning of Section 11344 of the Interstate Commerce Act.

The Illinois Attorney General intends to be an active participant in the proceeding on behalf of the People of the State of Illinois.

Respectfully submitted,

People of the State of Illinois

James E. Ryan
Attorney General of Illinois

by Christine H. Rosso
Christine H. Rosso
Chief, Antitrust Bureau

100 W. Randolph St. - 13th Fl.
Chicago, IL 60601
(312) 814-5610

Dated: August 6, 1937

Certificate of Service

I hereby certify that copies of the Notice of Intent to Participate and Preliminary Comments of the People of the State of Illinois (IL AG-1) were served upon parties on the attached service list on August 6, 1997 by U.S. Mail, postage prepaid from Chicago, Illinois 60601.

Christine H. Rosso

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

STB

FD-33388

ID-181684

9-3-97

D

BEFORE THE
SURFACE TRANSPORTATION BOARD

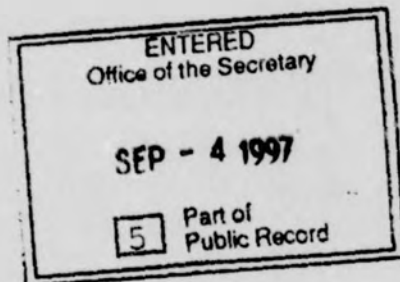


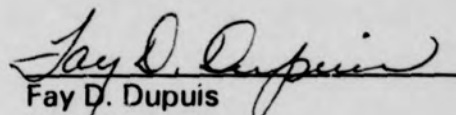
Finance Docket No. 33388

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.

**CERTIFICATE OF SERVICE OF THE
NOTICE OF INTENT OF
THE CITY OF CINCINNATI TO
PARTICIPATE IN PROCEEDING**

I hereby certify that on this 28th day of August, 1997, a copy of the Notice of Intent of the City of Cincinnati to Participate in Proceedings was served by first class mail, postage prepaid upon each Party of Record designated on the service list and Judge Leventhal.




Fay D. Dupuis
City Solicitor
City of Cincinnati
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
513-352-3334

Dated: August 28, 1997

STB

FD-33388

ID-181683

9-3-97

D

181683



August 29, 1997



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

Dear Secretary Williams:

In accordance with Decision No. 21, in Finance Docket No. 33388, enclosed are the original and ten (10) copies of a certificate of service indicating that the requirements of the decision have been accomplished.

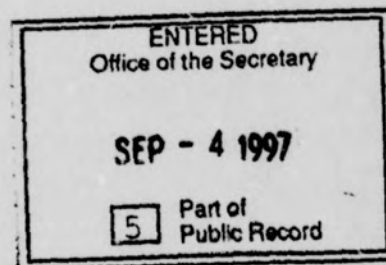
Sincerely,

TOLEDO-LUCAS COUNTY PORT AUTHORITY

Robert E. Greenlese
Director of Surface Transportation and Logistics

Enclosures

cc: Parties of Record (Not Otherwise Served)



181683

TLCPA-2



Finance Docket No. 33388

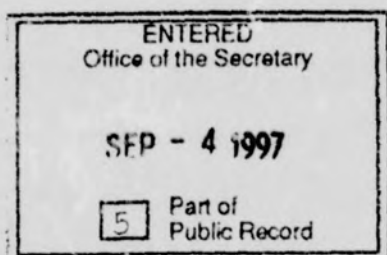
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
- CONTROL AND OPERATING LEASES/AGREEMENT -
CONRAIL, INC., AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the provisions of Decision No. 21 served August 19, 1997, in the above-captioned case, a copy of the Notice of Intent to Participate (TLCPA-1) was served on all parties of record identified in Decision No. 21, and not otherwise served, via first-class mail, postage prepaid on this 29th day of August, 1997.

Respectfully submitted,

TOLEDO-LUCAS COUNTY PORT AUTHORITY



Robert E. Greenlese
Director of Surface Transportation and Logistics
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 Maritime Plaza, Suite 700
Toledo, Ohio 43604-1866

August 29, 1997

STB

FD-33388

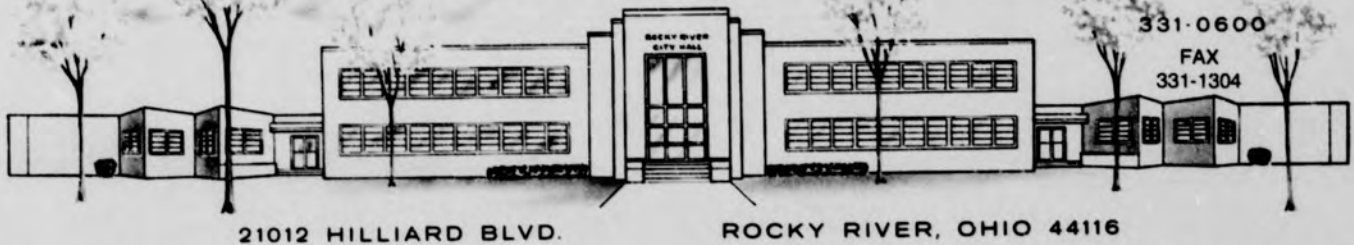
ID-181682

9-3-97

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181682

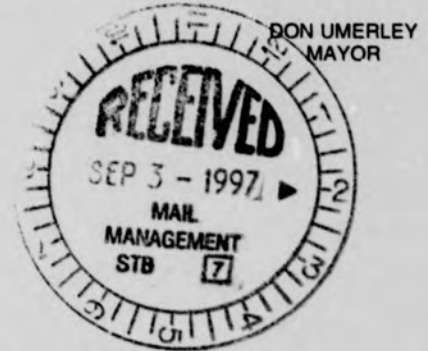
CITY OF ROCKY RIVER



DIRECTOR OF LAW
DAVID J. MATTY

August 28, 1997

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



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

Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of the City of Rocky River, Ohio.

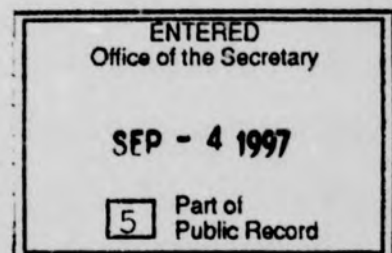
Please contact the undersigned if you have any questions regarding this matter.

Respectfully Submitted,

David J. Matty
David J. Matty

DJM:tai
Encls.

cc: All Parties of Record on Service List



181682

Before The
SURFACE TRANSPORTATION BOARD
Washington, D. C.

Finance Docket No. 33388



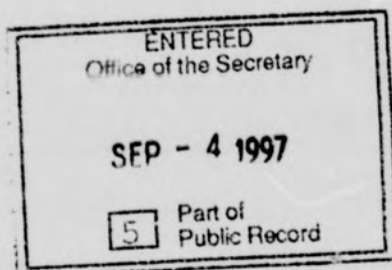
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Company
Control and Operating Leases/Agreement
Conrail, Inc. and Consolidated Rail Corporation
to CSX Transportation, Inc.

CERTIFICATE OF SERVICE

Please be advised that the City of Rocky River, Ohio, a party of record, has served a copy of all filings submitted thus far upon all parties of record in the above proceeding in compliance with Decision No. 21 dated August 19, 1997.

Respectfully Submitted,

DAVID J. MATTY (0012335)
Law Director, City of Rocky River
21012 Hilliard Road
Rocky River, OH 44116-3398



STB

FD-33388

ID-181681

9-3-97

D

181681



**McHALE
COOK &
WELCH**

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

ESTABLISHED 1933

CHAMBER OF COMMERCE
BUILDING

SUITE 1100

320 NORTH MERIDIAN STREET

INDIANAPOLIS, INDIANA

46204-1781

317-634-7588

FACSIMILE 317-634-7598

E-MAIL: mcw@mchalelaw.com

WILLIAM E. WELCH

DONALD W. BUTTREY

DANIEL P. BYRON

RANDOLPH L. SEGER

MICHAEL K. GUEST

MICHAEL L. ECKERLE

BRIAN W. WELCH

S. ANDREW BOWMAN

J. PETER MILLER

ROBERT L. TAGGART

THOMAS E. SCHNELLENBERGER

SCOTT R. LEISZ

ROBERT B. SCOTT

JEFFREY T. BENNETT

WILLIAM J. KAISER, JR.

JAMES J. MCGRATH

DONALD W. RUPPRECHT

LESLIE VAN NATA REX

STEPHAN L. HODGE

WILLIAM M. BRAMAN

JAN KEPLY KEEFER

THOMAS A. JENSEN

STEVEN D. HARDIN

SHARON L. BOHNENKEMPER

MATTHEW M. PRICE

JENNIFER E. PERRY

STACY L. DIMITRI

DAVID L. HAICHETT

FRANK D. OTTE

MICHAEL P. MAXWELL, JR.

OF COUNSEL

JOHN I. BRADSHAW, JR.

E. ANDREW STEFFEN

PHILLIP A. TERRY

PAUL R. BLACK*

JOHN S. CHAPPELL

STEVEN G. CROFT

SUE A. BENTLEY

* ALSO ADMITTED IN FLORIDA & CALIFORNIA

OFFICES IN
INDIANAPOLIS AND JASPER

August 28, 1997

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

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, STD Finance Docket No. 33388
Service of Filings Pursuant to Decision No. 21

Dear Secretary Williams:

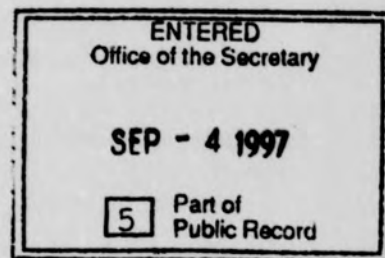
Pursuant to Decision No. 21 of the Surface Transportation Board in Finance
Docket No. 33388, enclosed is an original and ten (10) copies of a Certificate
of Service indicating that the service required by said Order has been
accomplished.

Sincerely,

Michael P. Maxwell, Jr.

Counsel for City of Indianapolis, Indiana

MPM/csg
Enclosures



Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

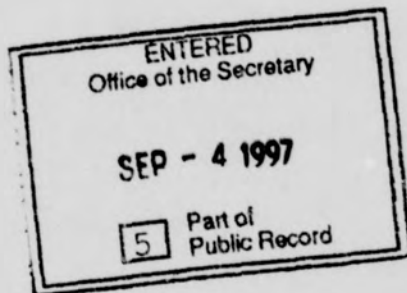


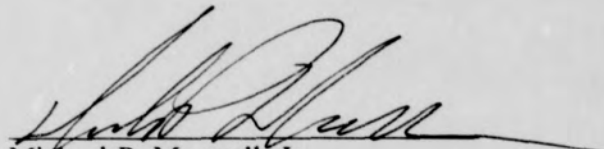
Finance Docket No. 33388

CSX Corportion 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 Line By Norfolk Southern Railway Company
To CSX Transportation Inc.

CERTIFICATE OF SERVICE

Pursuant to Decision No. 21, STB Finance Docket No. 33388, the undersigned certifies that a copy of all filings submitted so far in the proceeding by the City of Indianapolis have been served on the following, via first class mail, postage prepaid this 21st day of August, 1997.




Michael P. Maxwell, Jr.

David G. Abraham
Suite 631
7315 Wisconsin Ave.
Bethesda, MD 20814

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

Charles E. Allenbaugh, Jr.
East Ohio Stone Co.
2000 W. Besson St.
Alliance, OH 44601

William D. Ankner
RI Dept. of Transportation
Two Capitol Hill
Providence, RI 02903

T. Scott Bannister
T. Scott Bannister & Assocs.
1300 Des Moines Bldg.
405 Sixth Avenue
Des Moines, IA 50309

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

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

Norman H. Barthlow
Detroit Edison
2000 Second Avenue
Detroit, MI 48226

Dinah Bear
Executive Office of the President

Council on Environmental Quality
Washington, DC 20503

James L. Belcher
Eastman Chemical Co.
P.O. Box 431
Kingsport, TN 37662

David Berger
Berger and Montague, P.C.
1622 Locust St.
Philadelphia, PA 19103-6305

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

Charles D. Bolam
United Transportation Union
1400 20th St.
Granite City, IL 62040

William A. Bon, General Counsel
Brotherhood of Maintenance of Way
Employees
26555 Evergreen Road, Suite 200
Southfield, MI 48076

Anthony Bottalico
UTU
420 Lexington Ave., Rm. 458-460
New York, NY 10017

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

William T. Bright, et al.
P.O. Box 149
200 Greenbrier Road
Summersville, WV 26641

Anita R. Brindza
The One Fifteen Hundred Bldg.
11500 Franklin Blvd., Suite 104

Cleveland, OH 44102

Stephen H. Brown
Vorys Sater Seymour & Pease
1828 L Street N.W.
Washington, DC 20036

Ross B. Capon
Nat'l Assoc. of Railroads Passenger
900 Second St., N.E., Suite 308
Washington, DC 20002-3557

Hamilton L. Carmouche
Corporation County
City of Cary
401 Broadway, 4th floor
Gary, IN 46402

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

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

Angelo J. Chick, Jr.
Local chairman
P.O. Box 48398 Old Goose Bay Rd.
Redwood, NY 13679

Sylvia Chinn-Levy
Intergovernmental Co-op
969 Copley Rd.
Akron, OH 44320-2992

Elaine L. Clark
Maine Dept. of Transportation
16 State House Station
Augusta, ME 04333

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

John F. Collins
Collins, Collins & Kantor, PC
267 North Street
Buffalo, NY 14201

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

Robert J. Cooper
General Chairperson
500 Water St.
Jacksonville, FL 32202-4420

J. Doyle Corman
Main Line Mgmnt Services, Inc.
520 Fellowship Rd., Suite A-105
Mt. Laurel, NJ 08054-3407

John J. Coscia
Executive Director
DVRPC
111 S. Independence Mall East
Philadelphia, PA 19106

Steve M. Coulter
Exxon Co., USA
P.O. Box 3272
Houston, TX 77210-4692

Irwin L. Davis
1900 State Tower Bldg.
Syracuse, NY 13202

Sandra J. Dearden
MDCO Consultants, Inc.
407 S. Dearborn, Suite 1145
Chicago, IL 60605

Jo A. Deroche
Weiner, Brodsky, et al.
1350 New York Ave., N.W.
Suite 800
Washington, DC 20005-4797

David W. Donely
3361 Stafford St.
Pittsburgh, PA 15204-1441

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

John K. Dunleavy
Asst. Attorney General
133 State Street
State Adm. Bldg.
Montpelier, VT 05633-5001

Donald W. Dunlevy
230 State St.
UTU State Leg. Dir.
PA AFL-CIO Bldg. 2nd floor
Harrisburg, PA 17101-1138

Fay D. Dupuis, City Solicitor
City Hall
801 Plum St., Rm. 214
Cincinnati, OH 45202

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

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

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

Terrell Ellis
CAEZ WV
P.O. Box 176
Clay, WV 25043

Robert L. Evans
Oxychem
P.O. Box 809050
Dallas, TX 75380

Sara J. Fagnilli
Director of Law
1250 Detroit Ave.
Lakewood, OH 44107

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

Michael P. Ferro
Millennium Petrochemicals, Inc.
11500 Northlake Dr.
Cincinnati, OH 45249

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

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

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

Garland B. Garrett, Jr.
NC Dept. of Transportation
P.O. Box 25201
Raleigh, NC 27611

Michael J. Garrigan
BP Chemicals, Inc.
4440 Warrensville Ctr Rd.
Cleveland, OH 44128

Richard A. Gavril
16700 Gentry Lane No. 104
Tinley Park, IL 60477

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

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

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

John Gordon
Nat'l Lime & Stone Co.
P.O. Box 120
Findlay, OH 45840

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

Robert E. Greenlese
Toledo-Lucas County Port Authority
1 Maritime Plaza, Suite 700
Toledo, OH 43604

Donald F. Griffin
Brotherhood of Maintenance of Way Employees
400 N. Capitol St., N.W.
Suite 852
Washington, DC 20001

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

David L. Hall

Commonwealth Consulting Assocs.
720 N. Post Oak Rd., Suite 330
Houston, TX 77024

James W. Harris
The Metropolitan Planning Organization
1 World Trade Center Suite 82 East
New York, NY 10048-0043

Nicole Harvey
The Dow Chemical Co.
2020 Dow Center
Midland, MI 48674

R. J. Henefeld
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

William P. Hernan, Jr.
General Chairman
P.O. Box 180
Hilliard, OH 43026

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

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

James E. Howard
90 Canal St.
Boston, MA 02114

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

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

Sheila Mech Hyde
City Attorney
City Hall
342 Central Ave.
Dunkirk, NY 14048

Ernest J. Ierardi
Nixon Hargrave Devans Doyle, LLP
P.O. Box 1051
Clinton Square
Rochester, NY 14603-1051

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

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

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

Frank N. Jorgensen
The Elk River Railroad, Inc.
P.O. Box 460
Summersville, WV 26651

Steven J. Kalish
McCarthy, Sweeney & Harkaway
1750 Pennsylvania Ave., N.W.
Washington, DC 20006-4502

Larry B. Karnes
Transportation Bldg.
P.O. Box 30050
425 W. Ottawa
Lansing, MI 48909

Richard E. Kerth, Trans. Mgr.

Champion Int'l Corp.
101 Knightsbridge Dr.
Hamilton, OH 45020-0001

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

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

Honorable Dennis J. Kucinich
U.S. House of Representatives
Washington, DC 20515

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

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

John K. Leary, General Manager
Southeastern Pennsylvania Trans.
Authority
1234 Market St., 5th floor
Philadelphia, PA 19107-3780

Sherri Lehman
Director of Congressional Affairs
Corn Refiners Assoc.
1701 PA Ave., N.W.
Washington, DC 20006-5805

Judge Jacob Leventhal
Office of Hearings
Federal Energy Regulatory Comm.
888 First St., N.E.
Suite 11F
Washington, DC 20426

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

Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington St.
Newark, NJ 07102

Gordon P. MacDougall
1025 Connecticut Ave., N.W.
Suite 410
Washington, DC 20036

Ron Marquardt
Local Union 1810 UMWA
R. D. #2
Rayland, OH 43943

Robert E. Martinez
VA Secretary of Trans.
P.O. Box 1475
Richmond, VA 23218

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

Edward C. McCarthy
Inland Steel Industries, Inc.
30 W. Monroe St
Chicago, IL 60603

Christopher C. McCracken
Ulmer & Berne, LLP
1300 East Ninth St., Suite 900
Cleveland, OH 44114

Thomas F. McFarland, Jr.
McFarland & Herman
20 N. Wacker Dr., Suite 1330
Chicago, IL 60606-3101

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

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

Coletta McNamee, Sr.
Cudell Improvement, Inc.
11500 Franklin Blvd., Suite 104
Cleveland, OH 44102

H. Douglas Midkiff
65 W. Broad St., Suite 101
Rochester, NY 14614-2210

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

G. Paul Moates
Sidley & Austin
1722 Eye St., N.W.
Washington, DC 20006

C. V. Monin
Brotherhood of Locomotive Engineers
1370 Ontario St.
Cleveland, OH 44113

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

John R. Nadolney
Vice President & General Counsel
Boston & Maine Corp.
Iron Horse Park
No Billerica, MA 01862

S. J. Nasca
State Legislative Director UTU
35 Fuller Rd., Suite 205
Albany, NY 12205

Peter Q. Nyce, Jr.
U.S. Dept. of the Army
901 N. Stuart St.
Arlington, VA 22203

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

Christopher C. O'Hara
Brickfield Burchette & Ritts, PC
1025 Thomas Jefferson St., N.W.
8th floor
Washington, DC 20007

Byron D. Olsen
Felhaber Larson Fenlon & Vogt, PA
601 Second Ave., South
4200 First Bank Place
Minneapolis, MN 55402-4302

William L. Osteen
Assoc. General Counsel TVA
400 West Summit Hill Dr.
Knoxville, TN 37902

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

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

F. R. Pickell
General Chairperson UTU
6797 N. High St., Suite 108
Worthington, OH 43085

Harold P. Quinn, Jr.
Sr. VP and General Counsel
1130 Seventeenth St., N.W.
Washington, DC 20036

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

James F. Roberts
210 E. Lombard St.
Baltimore, MD 21202

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

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

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

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

John Jay Rosacker
KS Dept. of Trans.
217 SE 4th St., 2nd floor
Topeka, KS 66603

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

Christine H. Rosso
IL Asst. Attorney General

100 W. Randolph St., 13th floor
Chicago, IL 60601

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

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

G. Craig Schelter
PIDC
1500 Market St.
Philadelphia, PA 19102

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

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

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

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

Roger A. Serpe
Indiana Harbor Belt RR
175 W. Jackson Blvd., Suite 1460
Chicago, IL 60604

James E. Shepherd
Tuscola & Saginaw Bay
P.O. Box 550
Owosso, MI 48867-0550

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

Philip G. Sido
Union Camp Corp.
1600 Valley Rd.
Wayne, NJ 07470

Richard G. Slattery
Amtrak
60 Massachusetts Ave., N.E.
Washington, DC 20002

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

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

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

Eileen S. Stommes, Director
T & M Division
Agricultural Marketing Service USDA
P.O. Box 96456
Washington, DC 20090-6456

Honorable Ted Strickland
U.S. House of Representatives
Washington, DC 20515

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

James F. Sullivan

CT Dept. of Transportation
P.O. Box 317546
Newington, CT 06131

Daniel J. Sweeney
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Ave, N.W.
Suite 1105
Washington, DC 20006

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

J. E. Thomas
Hercules, Inc.
1313 N. Market St.
Wilmington, DE 19894

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

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

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

James A. Traficant, Jr.
U.S. House of Representatives
Washington, DC 20515-3517

Merrill L. Travis
IL Dept. of Trans.
2300 S. Dirksen Parkway
Room 302
Springfield, IL 62703-4555

Mayor Vincent M. Urbin

150 Avon Belden Rd.
Avon Lake, OH 44012

Stephen M. Uthoff
Coniglio & Uthoff
110 W. Ocean Boulevard
Suite C
Long Beach, CA 90802

J. William Van Dyke
NJ Trans. Planning Authority
One Newark Center, 17th floor
Newark, NJ 07102

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

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

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

Jack A. Walter
WCI Steel, Inc.
1040 Pine Ave., S.E.
Warren, OH 44483

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

Jay Westbrook
City Hall, Rm. 216
601 Lakeside Ave., N.E.
Cleveland, OH 44114

Robert J. Will
United Transportation Union

4134 Grave Run Rd.
Manchester, MD 21102

Richard R. Wilson
1125 Eight Ave., Suite 403
Altoona, PA 16602

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

C. D. Winebrenner
General Chairperson, UTU
27801 Euclid Ave., Rm. 200
Euclid, OH 44132

John F. Wing, Chairman
Citizens Advisory Committee
601 N. Howard St.
Baltimore, MD 21201

Sgt. W. Wise
Livonia, Avon & Lakeville Railroad Corp.
P.O. Box 190-B
5769 Sweeteners Blvd.
Lakeville, NY 14480

Timothy A. Wolfe
Wyandot Dolioite, Inc.
P.O. Box 99
1794 Co. Rd. 99
Carey, OH 43316

E. C. Wright
Rail Transportation Procurement Mgr.
1007 Market St., Dupont Bldg. 3100
Wilmington, DE 19898

Edward Wytkind
Executive Director
Trans. Trade Dept. AFLCIO
400 N. Capitol St., S.W., Suite 861
Washington, DC 20001

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

Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth St. N.W.
Washington, DC 20006

Walter E. Zullig, Jr.
Special Counsel
Metro-North Commuter Railroad Co.
347 Madison Ave.
New York, NY 10017-3706

STB

FD-33388

ID-181680

9-3-97

D



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546
Phone: (860) 594-2800

181680



August 28, 1997



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

Dear Mr. Williams:

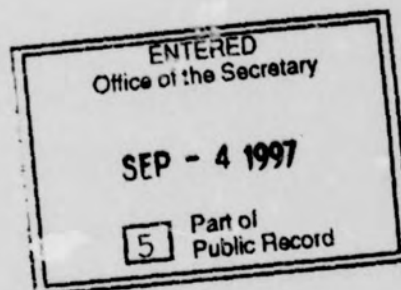
Subject: Finance Docket Number 33388

In accordance with Decision Number 21 dated August 19, 1997 for the captioned proceeding, enclosed is an original and ten copies of a certificate of service concerning all related filings made thus far by the Connecticut Department of Transportation.

Very truly yours,

Harry P. Harris
Bureau Chief
Bureau of Public Transportation

Enclosures



181680



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:



CERTIFICATE OF SERVICE

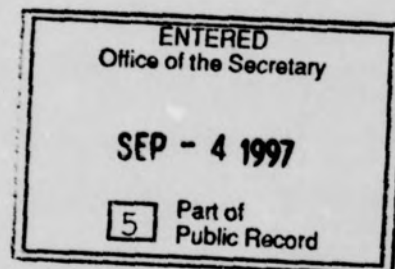
I hereby certify that a copy of all Connecticut Department of Transportation filings made thus far in STB Finance Docket 33388 has been served by first class US mail, postage prepaid, upon each Party of Record as designated by the Secretary of the Board on August 19, 1997.

Dated at Newington, Connecticut, August 28, 1997.

State of Connecticut
Department of Transportation

A handwritten signature of Harry P. Harris in cursive script.

Harry P. Harris
Bureau Chief



STB

FD-33388

ID-181675

9-3-97

D

181675

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1206

(202) 942-5000
FACSIMILE: (202) 942-5999

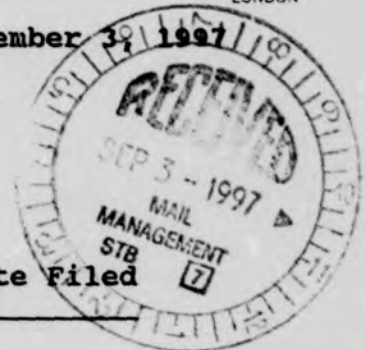
PAUL T. DENIS
(202) 942-5035

NEW YORK
DENVER
LOS ANGELES
LONDON

BY HAND

September 3, 1997

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



Re: Motion for Leave to Accept Late Filed
Reply -- Finance Docket 33388

Dear Secretary Williams:

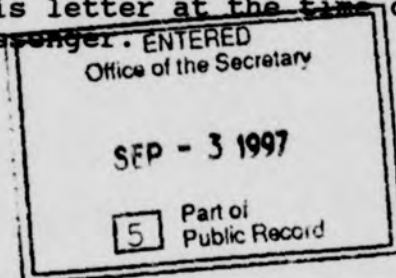
Enclosed please find CSX/NS-59, Applicants' Reply in Opposition to Canadian Pacific Parties' Request That Their Anticipated Responsive Application Be Deemed a Minor Transaction, in the above referenced docket.

Inadvertent production problems caused Applicants to narrowly miss the five o'clock filing deadline on September 2, 1997. Though Applicants were not able to file the Reply on September 2, all persons on the Official Service list were served with the Reply, as well as a copy of this Motion by mail or facsimile transmission last night.

Applicants thus request leave to file the Reply today, September 3, 1997.

Thank you for your assistance in this matter. Please contact myself at (202) 942-5035 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.

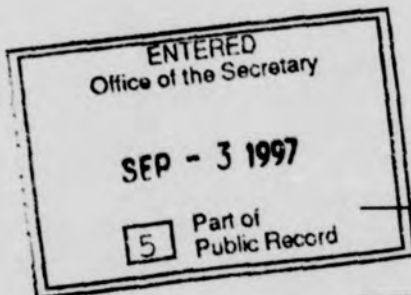


Very truly yours,

Paul T. Denis

Paul T. Denis
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

APPLICANTS' MOTION TO ACCEPT LATE FILED REPLY

Applicants¹ submit this Motion to Accept Late Filed Reply of Applicants' Reply in Opposition to Canadian Pacific Parties' Request That Their Anticipated Responsive Application Be Deemed a Minor Transaction ("Reply").

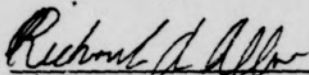
Inadvertent production problems caused Applicants to narrowly miss the five o'clock filing deadline on September 2, 1997. Though Applicants were not able to file the Reply on September 2, all persons on the Official Service list were served with the Reply, as well as a copy of this Motion by mail or facsimile transmission last night.

Applicants respectfully move for leave to file the Reply today, September 3, 1997.

¹ "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

Respectfully submitted,

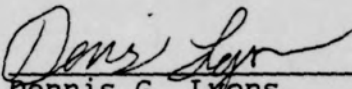
James C. Bishop, Jr.
William C. Woolridge
James L. Howe, III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corp.
Three Commercial Place
(757) 629-2838


Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
Zuckert, Scout &
Rasenberger LLP
888 Seventeenth St., N.W.
Washington, D.C. 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7400

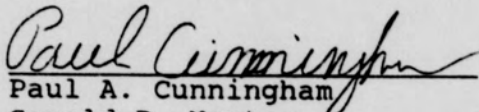
Mark G. Aron
Peter J. Schudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100


Dennis G. Lyons
Drew A. Harker
Sharon L. Taylor
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corp.
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000


Paul A. Cunningham
Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Dated: September 2, 1997

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1202

(202) 942-5000
FACSIMILE: (202) 942-5999

DENNIS G. LYONS
(202) 942-5858

NEW YORK
DENVER
LOS ANGELES
LONDON

September 2, 1997

BY HAND

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

Re: Applicants' Reply in Opposition to
Canadian Pacific Parties' Request That
Their Anticipated Responsive Application
Be Deemed a Minor Transaction

Dear Secretary Williams:

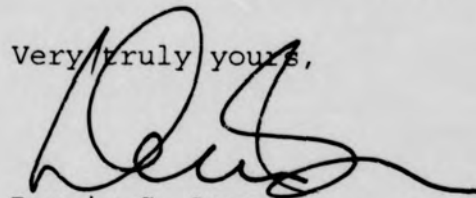
Enclosed please find CSX/NS-59, Applicants' Reply
in Opposition to Canadian Pacific Parties' Request That
Their Anticipated Responsive Application Be Deemed a
Minor Transaction, in the above referenced docket.

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

Thank you for your assistance in this matter.
Please contact myself ((202) 942-5858), or Paul Denis
((202) 942-5035) 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

APPLICANTS' REPLY IN OPPOSITION TO CANADIAN
PACIFIC PARTIES' REQUEST THAT THEIR ANTICIPATED
RESPONSIVE APPLICATION BE DEEMED A MINOR TRANSACTION

Pursuant to 49 C.F.R. 1180.4(f)(3), Applicants' hereby reply in opposition to the request made by the Canadian Pacific parties ("CP") in their August 22, 1997 petition for waiver or clarification that the Board provide "clarification" that the responsive application contemplated by CP constitutes a "minor transaction" within the meaning of the Board's rules. The broad-ranging (and entirely unwarranted) relief that CP says it will seek in its responsive application would plainly result in a "significant transaction," both in the colloquial sense and in the technical sense of those words as used in section 1180.2(c). The Board and the other parties to this proceeding must have the information called for in section 1180.7 (market analyses) and

"Applicants" refers to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

section 1180.8 (operational data) in order to assess adequately the impact of the conditions sought by CP.

BACKGROUND

On August 22, 1997, CP filed a description of its anticipated responsive application.² The proposed application described by CP contemplates extremely expansive conditions. These include access for D&H through reciprocal switching to the North Jersey Shared Assets Area, the South Jersey/Philadelphia Shared Assets Areas, the Buffalo-Niagra Frontier terminal area, and the Baltimore terminal area. In addition, CP anticipates seeking extensive new trackage rights for D&H in Eastern New York state and the New York City metropolitan area, including the right to serve directly Port of New York and New Jersey facilities.

CP's description of its anticipated responsive application was accompanied by a petition for waiver or clarification. That petition seeks, inter alia, "clarification that D&H's responsive application constitutes a minor transaction." Petition at 6. CP contends that its anticipated application "does not constitute a significant (Section 1180.2(b)) transaction because it does not seek relief "that is of regional or national transportation significance as that phrase is used in 49 U.S.C.

²CP states that its responsive application will be filed by one of its operating subsidiaries, Delaware and Hudson Railway Company, Inc. ("D&H"). As discussed more fully below, Applicants believe that the application contemplated by CP should be filed by the CP parties collectively.

11325(a)(2) and (c)."

ARGUMENT

I. CP HAS NOT SHOWN THAT ITS PROPOSED APPLICATION WOULD CONSTITUTE A "MINOR" TRANSACTION

Under 49 C.F.R. 1180.2(c), "[a] *minor* transaction is one which involves more than one railroad and which is not a *major*, *significant* or *exempt* transaction." Applicants agree that CP's anticipated application does not constitute a major or exempt transaction within the meaning of the Board's rules. But CP's unsubstantiated contention that its proposed application would not constitute a significant transaction cannot withstand scrutiny.

Section 1180.2(b) defines a "significant" transaction as follows:

A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11325(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can

clearly be made. [Emphasis added.]

As the evidence already before the Board demonstrates, CP's proposed transaction meets the definition of a significant transaction.

A. Regional Transportation Significance

CP asserts that its proposed transaction "does not seek relief 'that is of regional or national transportation importance. . . .'" CP Waiver Pet. at 7. CP offers no support for this assertion but its rationale seems to be that the reciprocal switching rights and trackage rights that will be sought "relate to areas already generally served by D&H. Id. CP's rationale begs the question of whether the relief it will seek would be of "regional . . . transportation significance.'" The answer to that question is clearly affirmative. CP will be seeking unrestricted access via reciprocal switching to four major commercial areas in the eastern United States - North Jersey, South Jersey/Philadelphia, Buffalo-Niagra Frontier, and Baltimore. It will seek trackage rights that would create new rail routes between New York City and Albany and which would provide CP with direct access to the Ports of New York and New Jersey. The significance of these areas is set forth in detail in Applicants' primary application. When evaluated on the basis of the factual record before the Board rather than advocate's unsupported assertions, CP's proposed relief is certainly "regional" rather than merely

local in scope.³ The proposed relief sought is also undeniably significant in that it would drastically undermine the benefits of the primary control transaction proposed by Applicants, altering the basic terms of the agreed upon division of Conrail and conferring a substantial windfall on CP at the expense of CSX and NS.

B. Effect on Competition

CP offers no rationale whatever regarding the more specific tests set forth in section 1180.2(b)(1) and (2) for showing that a transaction is not significant. CP merely asserts, without analysis or factual support, that "the relief being sought 'clearly will not have any anticompetitive effects,' and even if there were any anticompetitive effects (there would not be), they would 'clearly outweighed by the transactions' anticipated contribution to the public interest in meeting significant transportation needs.'"

CP's bare assertion that there will be no anticompetitive effective or that there will be public benefits outweighing such anticompetitive effects, cannot realistically be accepted. CSX and NS have proposed a restructuring of the rail network in the eastern United States that will significantly enhance competition between

³ In addition, the description of responsive and inconsistent application to be filed by the Belvidere of Delaware River Railway, and the Black River & Western Railroad (BDVR-2) as well, The East Penn Railway and the Lancaster Northern Railway (EPRY-2) explicitly contemplate conditions involving D&H. Conditions sought by other parties may also be relevant to assessing the impact of the conditions sought by D&H.

rail carriers and between rail carriers and trucks. Substantial evidence in the application supports this assertion. CP proposes "relief" that would substantially modify the transaction proposed by the primary Applicants, quite possibly reducing the pro-competitive benefits that CSX and NS have proposed. In any event, the competitive consequences of the broad-ranging relief sought by CP cannot be assessed in a vacuum. They can only be understood through a thorough consideration of the evidence that CP will submit in its responsive application.

CP's claims for relief are overreaching and CSX and NS are confident that the Board will find no grounds for ordering the conditions that CP says it will seek. But the far-fetched nature of CP's claims is hardly a basis for treating CP's anticipated application as a minor transaction. On the contrary, given the broad scope and uncertain consequences of CP's proposed relief, it is particularly important that the Board and the parties to the case be provided with the information identified in sections 1180.7 and 1180.8 that is required for significant transactions. The Board will not be able fully to assess the competitive implications of CP's proposed relief or the impact of that proposed relief on the public interest in the absence of detailed market impact analyses and operating information. If CP is serious about seeking the relief it has described, it is incumbent upon CP to come forward with the information necessary to evaluate CP's proposed relief. CP's responsive application will necessarily place substantial demands on the Board's staff (as well as on CSX, NS and

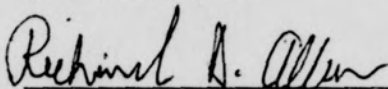
other parties responding to CP's responsive application); it is particularly important that complete information regarding CP's responsive application be presented at the time that application is filed.

In addition, the information called for under the Board's regulations -- particularly that called for in sections 1180.7 and 1180.8 -- should not be limited to D&H as CP requests. CP holds D&H out to the public as part of the seamless rail transportation services offered throughout its network. While D&H may be the only CP affiliate in whose name the CP conditions will be sought, the impact of the requested conditions will affect markets and operations elsewhere on the CP system. The conditions that CP seeks at Buffalo, to cite just one example, would affect east-west traffic moving over portions of the CP system other than D&H lines. The operation of other parts of the CP system is also relevant to the impact of the requested conditions.

For the foregoing reasons, Applicants respectfully request that the Board deny CP's request for clarification and order (1) that CP's anticipated responsive application will be treated as proposing a significant transaction, and (2) that CP furnish all information called for under the Board's rules for significant transactions, without limitation to the lines or operations of D&H.

Respectfully submitted,

James C. Bishop, Jr.
William C. Woolridge
James L. Howe, III
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corp.
Three Commercial Place
(757) 629-2838

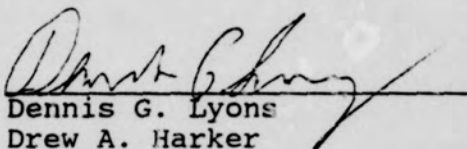


Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
Zuckert, Scout &
Rasenberger LLP
888 Seventeenth St., N.W.
Washington, D.C. 20006-3939
(202) 298-8660

John M. Nannes
Scot B. Hutchins
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7400

Mark G. Aron
Peter J. Schudtz
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129
(804) 782-1400

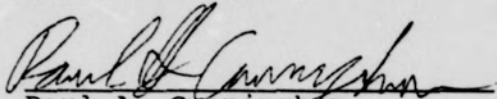
P. Michael Giftos
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100



Dennis G. Lyons
Drew A. Harker
Sharon L. Taylor
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Timothy T. O'Toole
Constance L. Abrams
Consolidated Rail Corp.
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
(215) 209-4000



Paul A. Cunningham
Gerald P. Norton
Harkins Cunningham
1300 Nineteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 973-7600

Counsel for Conrail Inc. and
Consolidated Rail Corporation

Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue
Washington, D.C. 20036
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

Dated: September 2, 1997

CERTIFICATE OF SERVICE

I, Amanda Paracuellos, certify that September 2, 1997, I have caused to be served a true and correct copy of the foregoing on all parties, by first class mail, postage prepaid, as listed on the attached Service List.


Amanda Paracuellos

STB

FD-33388

ID-181674

9-3-97

D



CITY OF PHILADELPHIA

181674

LAW DEPARTMENT
1600 Arch Street
Philadelphia, PA 19103-2081

STEPHANIE L. FRANKLIN-SUBER
CITY SOLICITOR

WILLIAM R. THOMPSON
(215) 686-0923

FAX: (215) 686-0929



August 28, 1997

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Office of the Secretary
Case Control Branch
Attn: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W., Room 714
Washington, DC 20423-0001

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

Dear Secretary Williams:

Pursuant to the Board's Decision No. 21 dated August 19, 1997, enclosed please find the original and ten copies of the City of Philadelphia's Certificate of Service indicating service on all Parties of Record, in accordance with Decision No. 21, of the City of Philadelphia's Notice of Intent to Participate. The Notice constitutes the only filing submitted so far in this proceeding by the City.

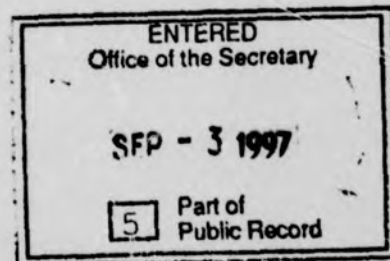
If you have any questions, please feel free to call me at (215) 686-0923.

Sincerely,

WILLIAM R. THOMPSON
Chief Deputy City Solicitor

WRT/ab
enclosures

cc: All Parties of Record



Before The
SURFACE TRANSPORTATION BOARD
Washington, DC



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 CSX Transportation, Inc.

CITY OF PHILADELPHIA'S
CERTIFICATE OF SERVICE

I certify that I have served a copy of the attached City of Philadelphia's Notice of Intent To Participate upon all Parties of Record in this proceeding by causing same to be sent by first-class, U.S. mail, postage prepaid to all Parties of Record identified in the Board's Decision No. 21 of August 19, 1997.

Date: August 28, 1997

A handwritten signature in black ink, appearing to be 'W. R. Thompson', written over a horizontal line.

WILLIAM R. THOMPSON
Chief Deputy City Solicitor
City of Philadelphia

Before The
SURFACE TRANSPORTATION BOARD
Washington, DC

PHIL-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
to CSX Transportation, Inc.

CITY OF PHILADELPHIA'S
NOTICE OF INTENT TO PARTICIPATE

The City of Philadelphia hereby notifies the Surface Transportation Board and all parties of record of its intent to participate actively and become a party of record in this proceeding. Please enter the appearance of the undersigned on behalf of the City of Philadelphia. Service of all documents filed in this proceeding should be made upon the undersigned pursuant to 49 C.F.R. § 1104.12.

Dated: August 6, 1997

Respectfully submitted,

William R. Thompson
Chief Deputy City Solicitor
City of Philadelphia Law Department
1600 Arch Street, 10th Floor
Philadelphia, PA 19103-2081
Telephone - (215) 686-0923
FAX - (215) 686-0929

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing City of Philadelphia's Notice of Intent To Participate upon all parties of record in this proceeding by causing same to be sent by first-class, U.S. mail, postage prepaid to the following:

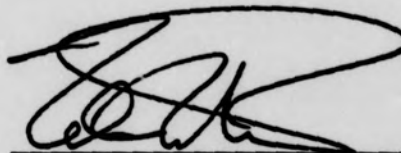
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, N.E.
Suite 11F
Washington, D.C. 20426

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

Richard A. Allen, Esquire
Zuckert, Scoutt & Rasenberger, L.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

Date: August 6, 1997



**William R. Thompson
Chief Deputy City Solicitor
City of Philadelphia**

STB

FD-33388

ID-181583

8-28-97

D

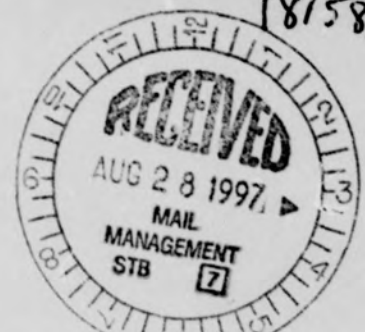
BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

IRENE RINGWOOD



iringwood@bjllp.com

August 28, 1997

D

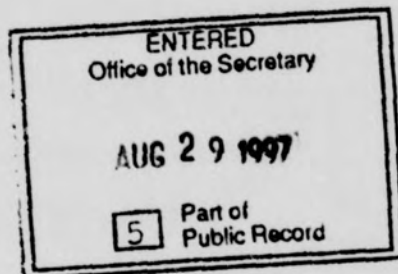
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Seventh Floor
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of APL Limited.

Please contact the undersigned if you have any questions regarding this matter.



Sincerely,

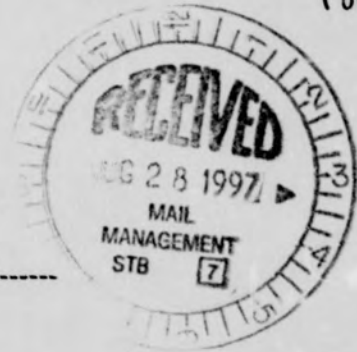
Irene Ringwood

Irene Ringwood

Enclosures

cc: All Parties of Record on Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD



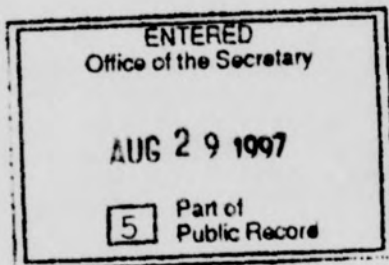
STB Docket No. 33388

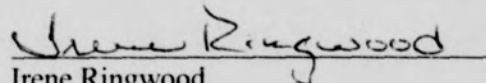
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

APL LIMITED'S CERTIFICATE OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, APL Limited hereby certifies that on August, 28, 1997, they have served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,




Irene Ringwood
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
202-638-3307

Attorney for APL Limited

August 28, 1997

STB

FD-33388

ID-181582

8-28-97

D

181582

BALL JANIK LLP
ATTORNEYS

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

IRENE RINGWOOD



August 28, 1997

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

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

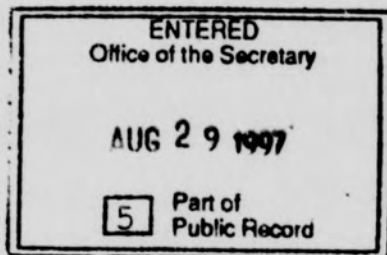
Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of Delaware Valley Railway Company, Inc., Huron and Eastern Railway Company, Inc., Saginaw Valley Railway Company, Inc., and RailAmerica, Inc.

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,

Irene Ringwood



Enclosures

cc: All Parties of Record on Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD

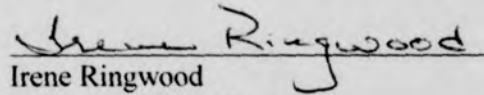
STB Docket No. 33388

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

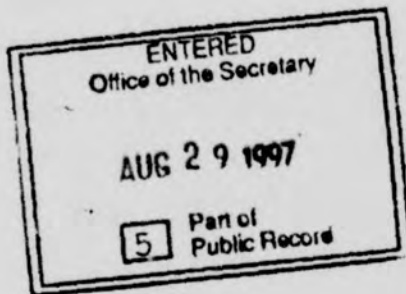
DELAWARE VALLEY RAILWAY COMPANY, INC.
HURON AND EASTERN RAILWAY COMPANY, INC.
SAGINAW VALLEY RAILWAY COMPANY, INC.
RAILAMERICA, INC.
CERTIFICATE OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, Delaware Valley Railway Company, Inc., Huron and Eastern Railway Company, Inc., Saginaw Valley Railway Company, Inc., and RailAmerica, Inc. hereby certify that on August 28, 1997, they have served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,


Irene Ringwood
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
202-638-3307

Attorney for Delaware Valley Railway
Company, Inc., Huron and Eastern Railway
Company, Inc., Saginaw Valley Railway
Company, Inc., and RailAmerica, Inc.



August 28, 1997



STB

FD-33388

ID-181581

8-28-97

D

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL



August 28, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 600
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 Secretary Williams:

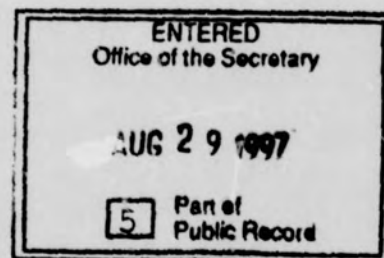
Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of Northern Ohio & Western Railway, L.L.C., Newburgh & South Shore Railroad, LTD., Manufacturers' Junction Railway, L.L.C., Georgia Woodlands Railroad, L.L.C., and Chicago Rail Link, L.L.C.

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,

Karl Morell

Enclosures (1)





BEFORE THE
SURFACE TRANSPORTATION BOARD

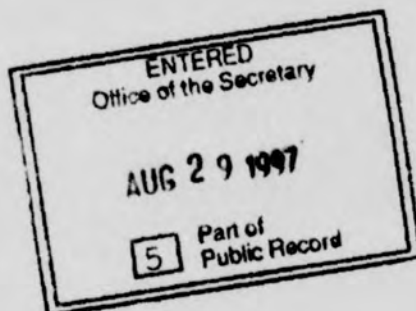
STB Docket No. 33388

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

NORTHERN OHIO & WESTERN RAILWAY, L.L.C., NEWBURGH & SOUTH SHORE
RAILROAD, LTD., MANUFACTURERS' JUNCTION RAILWAY, L.L.C., GEORGIA
WOODLANDS RAILROAD, L.L.C., AND CHICAGO RAIL LINK, L.L.C., CERTIFICATE
OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, Northern Ohio & Western Railway, L.L.C., Newburgh & South Shore Railroad, LTD., Manufacturers' Junction Railway, L.L.C., Georgia Woodlands Railroad, L.L.C., and Chicago Rail Link, L.L.C., hereby certify that on August 28, 1997, they served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,



Karl Morell
Karl Morell
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
202-638-3307

STB

FD-33388

ID-181580

8-28-97

D

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL



kmorell@bjllp.com

August 28, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 600
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 Secretary Williams:

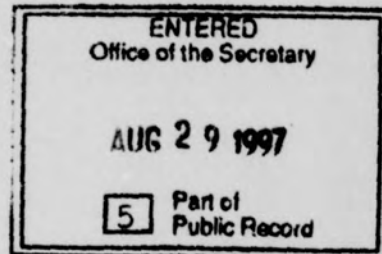
Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of Ann Arbor Railroad.

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,

Karl Morell

Enclosures (1)



191580



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 33388

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

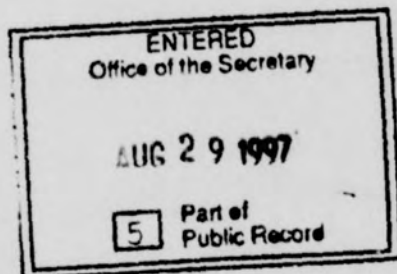
ANN ARBOR RAILROAD'S CERTIFICATE OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, Ann Arbor Railroad hereby certifies that on August 28, 1997, they served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,

Karl Morell
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
202-638-3307

Attorney for Ann Arbor Railroad



STB

FD-33388

ID-181579

8-28-97

D

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783 6947

KARL MORELL



August 28, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 600
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 Secretary Williams:

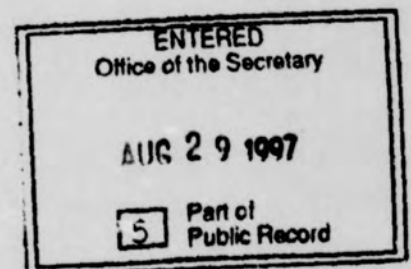
Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find an original and 10 copies of the Certificate of Service of Pittsburgh Industrial Railroad, Inc., New England Central Railroad, Inc., Indiana and Ohio Railroad, Inc., Indiana Southern Railroad, Inc., Indiana & Ohio Railway Company, and Connecticut Southern Railroad, Inc..

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,

Karl Morell

Enclosures (1)



181579



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 33388

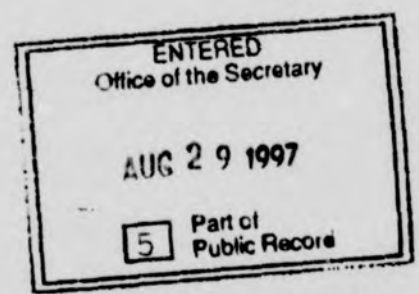
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

PITTSBURGH INDUSTRIAL RAILROAD, INC., NEW ENGLAND CENTRAL RAILROAD,
INC., INDIANA AND OHIO RAILROAD, INC., INDIANA SOUTHERN RAILROAD, INC.,
INDIANA & OHIO RAILWAY COMPANY, AND CONNECTICUT SOUTHERN
RAILROAD, INC.'S CERTIFICATE OF SERVICE

In accordance with the Decision No. 21, served August 19, 1997, in the above-captioned matter, Pittsburgh Industrial Railroad, Inc., New England Central Railroad, Inc., Indiana and Ohio Railroad, Inc., Indiana Southern Railroad, Inc., Indiana & Ohio Railway Company, and Connecticut Southern Railroad, Inc. hereby certify that on August 28, 1997, they served on each Party of Record copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid.

Respectfully submitted,

Karl Morell
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
202-638-3307



STB

FD-33388

ID-181578

8-28-97

D

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



August 28, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Acme Steel Company, which has been designated as ACME-2. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

John K. Maser III
Attorney for Acme Steel Company

ENCLOSURES

2900-020

cc: Honorable Jacob Leventhal
All Parties of Record

ENTERED	
Office of the Secretary	
AUG 29 1997	
5	Part of Public Record

181578

BEFORE THE
SURFACE TRANSPORTATION BOARD

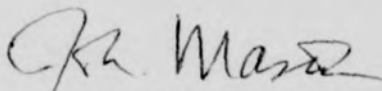
STB Finance Docket No. 33388

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

**CERTIFICATE OF SERVICE OF
ACME STEEL COMPANY**

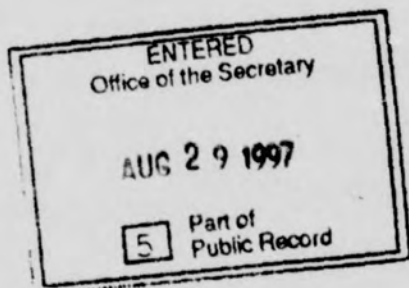
In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Acme Steel Company hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,



John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorney for
Acme Steel Company*



August 28, 1997



STB

FD-33388

ID-181577

8-28-97

D

181577

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



August 28, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Niagara Mohawk Power Corporation, which has been designated as NIMO-3. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

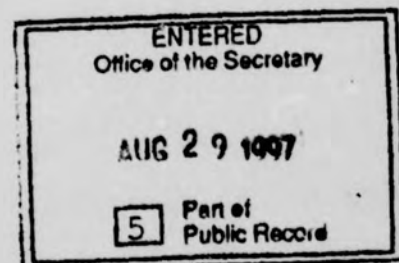
John K. Maser III

Attorney for Niagara Mohawk Power Corporation

ENCLOSURES

3315-020

cc: Honorable Jacob Leventhal
All Parties of Record



181577

BEFORE THE
SURFACE TRANSPORTATION BOARD

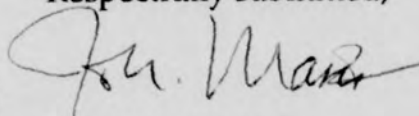
STB Finance Docket No. 33388

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

**CERTIFICATE OF SERVICE OF
NIAGARA MOHAWK POWER CORPORATION**

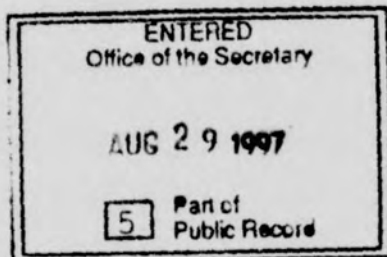
In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Niagara Mohawk Power Corporation hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,



John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorney for
Niagara Mohawk Power Corporation*



August 28, 1997



STB

FD-33388

ID-181576

8-28-97

D

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



August 28, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Joseph Smith & Sons, Inc., which has been designated as JSSI-2. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

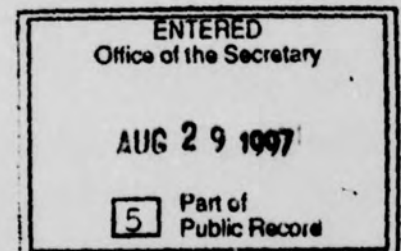
Respectfully submitted,

John K. Maser III
Attorney for Joseph Smith & Sons, Inc.

ENCLOSURES

4899-020

cc: Honorable Jacob Leventhal
All Parties of Record



181576

BEFORE THE
SURFACE TRANSPORTATION BOARD

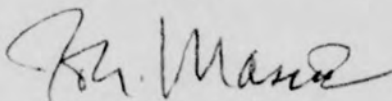
STB Finance Docket No. 33388

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

**CERTIFICATE OF SERVICE OF
JOSEPH SMITH & SONS, INC.**

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Joseph Smith & Sons, Inc. hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

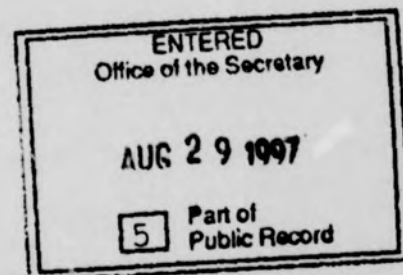
Respectfully submitted,



John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorney for
Joseph Smith & Sons, Inc.*

August 28, 1997



STB

FD-33388

ID-181575

8-28-97

D

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



TELECOPIER: (202) 371-0900

August 28, 1997

Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Institute of Scrap Recycling Industries, Inc., which has been designated as ISRI-3. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

John K. Maser III

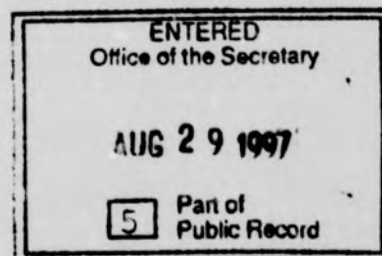
Attorney for

Institute of Scrap Recycling Industries, Inc.

ENCLOSURES

3310-070

cc: Honorable Jacob Leventhal
All Parties of Record



181575



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

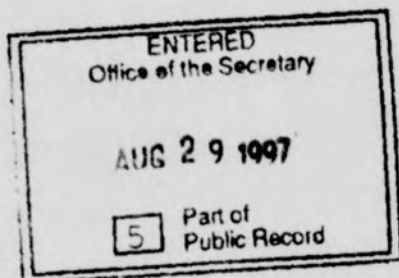
**CERTIFICATE OF SERVICE OF
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Institute of Scrap Recycling Industries, Inc. hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

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



August 28, 1997

STB

FD-33388

ID-181574

8-28-97

D

181574

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

August 28, 1997

D



Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Cargill, Incorporated, which has been designated as CARG-2. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

John K. Maser III
Attorney for Cargill, Incorporated

ENCLOSURES
1200-191

cc: Honorable Jacob Leventhal
All Parties of Record

ENTERED Office of the Secretary	
AUG 29 1997	
5	Part of Public Record

CARG-2

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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



CERTIFICATE OF SERVICE OF
CARGILL, INCORPORATED

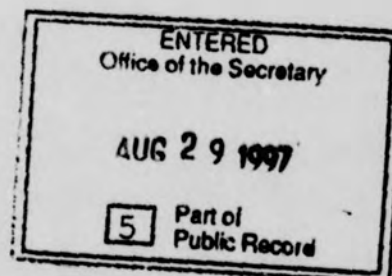
In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Cargill, Incorporated hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorney for
Cargill, Incorporated*

August 28, 1997



STB

FD-33388

ID-181573

8-28-97

D

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500



August 28, 1997

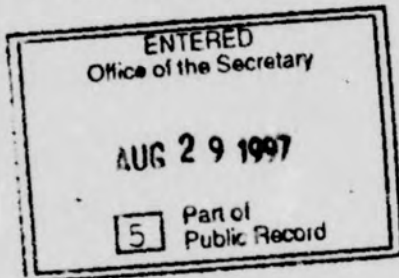
Via Hand Delivery

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Erie-Niagara Rail Steering Committee, which has been designated as ENRS-3. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.



Respectfully submitted,

John K. Maser III
Attorney for Erie-Niagara Rail Steering Committee

ENCLOSURES
4898-020

cc: Honorable Jacob Leventhal
All Parties of Record

181573



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

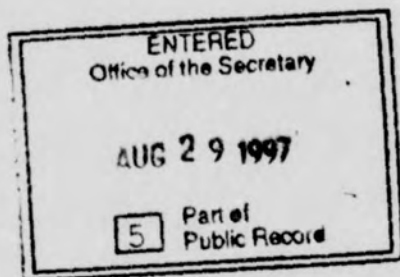
CERTIFICATE OF SERVICE OF
ERIE-NIAGARA RAIL STEERING COMMITTEE

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Erie-Niagara Rail Steering Committee hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

John K. Maser III
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorney for
Erie-Niagara Rail Steering Committee



August 28, 1997

STB

FD-33388

ID-181572

8-28-97

D

181572

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

August 28, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of Anker Energy Corporation, et al., which has been designated as ANK-4. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

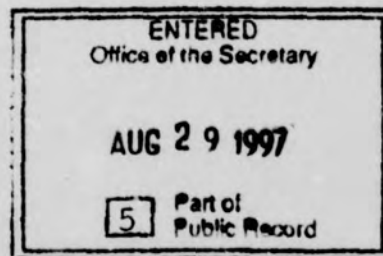
Respectfully submitted,

Nicholas J. DiMichael
Attorney for Anker Energy Corporation, et al.

ENCLOSURES

4805-020

cc: Honorable Jacob Leventhal
All Parties of Record



181572

ANK-4

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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



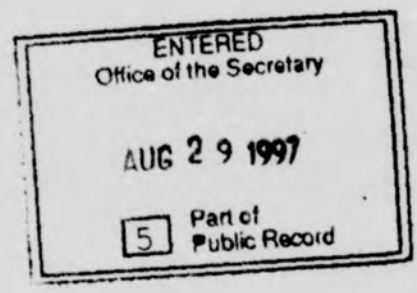
CERTIFICATE OF SERVICE OF
ANKER ENERGY CORPORATION, ET AL.

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, Anker Energy Corporation, et al. hereby certify that they have served on each Party of Record as listed in Decision No. 21 copies of all filings they have submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

Nicholas J. DiMichael
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

*Attorney for
Anker Energy Corporation, et al.*



August 28, 1997

STB

FD-33388

ID-181571

8-28-97

D

181571

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

D

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

August 28, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of AK Steel Corporation, which has been designated as AKSC-3. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
Attorney for AK Steel Corporation

ENCLOSURES

0400-020

cc: Honorable Jacob Leventhal
All Parties of Record

ENTERED	
Office of the Secretary	
AUG 29 1997	
5	Part of Public Record

181571

AKSC-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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



CERTIFICATE OF SERVICE OF
AK STEEL CORPORATION

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, AK Steel Corporation hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood

John K. Maser III

Donelan, Cleary, Wood & Maser, P.C.

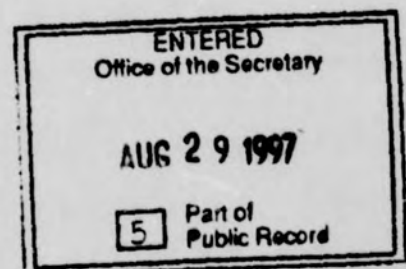
1100 New York Avenue, N.W., Suite 750

Washington, D.C. 20005-3934

(202) 371-9500

*Attorney for
AK Steel Corporation*

August 28, 1997



STB

FD-33388

ID-181570

8-28-97

D

181570

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

August 28, 1997

Via Hand Delivery

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



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

Dear Secretary Williams:

Please find enclosed for filing in the above-reference proceeding an original and ten (10) copies of the Certificate of Service of The National Industrial Transportation League, which has been designated as NITL-4. A copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 7.0 format.

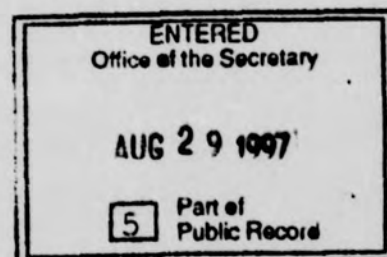
Respectfully submitted,

Frederic L. Wood
Attorney for
The National Industrial Transportation League

ENCLOSURES

0124 5:2

cc: Honorable Jacob Leventhal
All Parties of Record



181570

NITL-4

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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



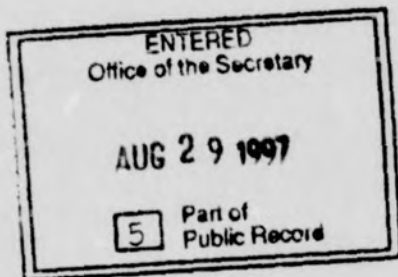
CERTIFICATE OF SERVICE OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

In accordance with Decision No. 21, served August 19, 1997, in the above-captioned matter, The National Industrial Transportation League hereby certifies that it has served on each Party of Record as listed in Decision No. 21 copies of all filings it has submitted so far in this proceeding by first-class mail, postage prepaid, this 28th day of August, 1997.

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, N.W., Suite 750
Washington, D.C. 20005-3934
(202) 371-9500



*Attorney for
The National Industrial Transportation League*

August 28, 1997

STB

FD-33438

ID-181514

8-26-97

D

181514

LAW OFFICES
FRITZ R. KAHN, P.C.
SUITE 750 WEST
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934
(202) 371-3037
FAX (202) 371-0900



August 26, 1997

VIA HAND DELIVERY

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

Dear Secretary Williams:

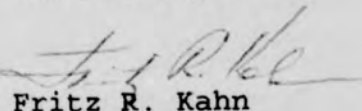
Enclosed for filing in STB Finance Docket No. 33438, Alabama & Gulf Coast Railway LLC--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, are the original and ten copies of the Reply of Alabama & Gulf Coast Railway LLC.

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

By copy of this letter, service is being effected upon counsel for each of the parties.

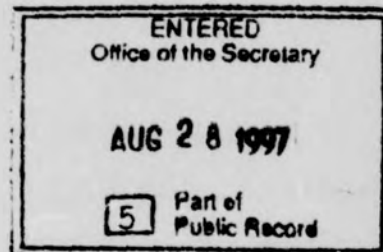
If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

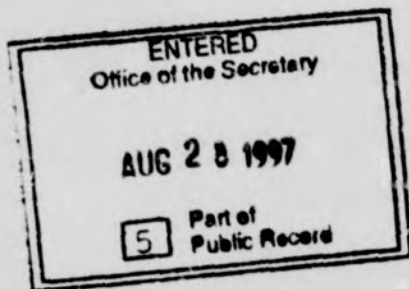

Fritz R. Kahn

enc.

cc: Daniel R. Elliott, III, Esq.
Dennis W. Wilson, Esq.
Karl Morell, Esq.
Mr. J. Peter Kleifgen



181514



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



STB Finance Docket No. 33438

ALABAMA & GULF COAST RAILWAY LLC
-- ACQUISITION AND OPERATION EXEMPTION --
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

REPLY
OF
ALABAMA & GULF COAST RAILWAY LLC

Alabama & Gulf Coast Railway LLC of Dallas, Texas ("ALA"), pursuant to 49 C.F.R. 1104.13, replies to the Petition to Revoke of the United Transportation Union ("UTU"), filed August 6, 1997, as follows:

A.

UTU has failed to meet the
standards for the exemption's revocation.

The statute is explicit; 49 U.S.C. 10502(d) permits the Board to revoke an exemption upon a showing "that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title." Rail Exemption Misc. Agricultural Commodities, 8 I.C.C.2d 674, 677 (1992), rev'd on other grounds, Mr. Sprout, Inc. v. U.S., 8 F.3d 118 (2d Cir. 1993) ("A petition to revoke must demonstrate conduct that frustrates the NRTP, and it

must show that Commission regulation can and will be effective in carrying out the NRTP."); Finance Docket No. 31897, The Central Railroad Company of Indiana---Acquisition and Operation Exemption--Lines of Consolidated Rail Corporation, served December 10, 1991; Docket No. AB-167 (Sub-No. 108X), Consolidated Rail Corporation--Exemption--Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH, served June 14, 1989.

UTU has failed to make the requisite showing; indeed, its Petition to Revoke does not even cite to the Rail Transportation Policy, 49 U.S.C. 10101, much less discuss how regulation of the line's acquisition and operation would advance its policy objectives.

UTU does cite to 49 C.F.R. 1150.32(c), which provides for revocations ab initio whenever the notices of exemption contain false or misleading information; however, UTU's Petition to Revoke fails to specify what assertions in ALA's Verified Notice of Exemption, filed July 23, 1997, were so false or misleading as to warrant the exemption's revocation ab initio.

In effect, UTU argues that ALA's trackage rights over BNSF from Kimbrough to Magnolia are not incidental to ALA's acquisition of the line from Kimbrough to Pensacola but, rather, should have been the subject of yet a second section-10902 filing by ALA. Even if true -- and we dispute it -- whether the trackage rights are obtained under one section-10902 filing rather than two really is immaterial for the purpose of the exemption's revocation. As ICC said in Finance Docket No. 31058, Mendocino Coast Railway, Inc.--

Acquisition Exemption--Assets of California Western Railroad,
served July 14, 1988:

[Our regulation] does not require the rejection of a notice of exemption where the allegedly false or misleading information is immaterial.

* * *

RLEA's petition to revoke will be denied, since the statement in controversy has not been shown to be false or misleading. Even if the statement were false, it would not be a material misstatement that would justify revocation.

A similar conclusion is warranted herein. UTU's Petition to Revoke should be denied for the reason that it fails to set forth good grounds for the exemption's revocation.

B.

UTU has failed to establish that
the trackage rights aren't incidental.

UTU's Petition for Revocation is singularly devoid of any evidence supporting its allegation that the Kimbrough-to-Magnolia trackage rights are not incidental to the acquisition and operation by ALA of BNSF's Kimbrough-to-Pensacola line; the assertion is conclusory and altogether self-serving on the UTU's part.

In contrast, in this proceeding BNSF, by its separate filing, will offer a verified statement that the interchange at Magnolia is more efficient than the interchange at Kimbrough and more effectively will serve the needs of most of the affected shippers.

The length of the trackage rights grant is less than ten percent of the length of the line ALA is buying from BNSF -- 13.6 miles of the one contrasted with 140.58 miles of the other. Such a grant of incidental trackage rights is altogether consistent with

prior decision of the ICC. See, Finance Docket No. 32507, Cen-Tex Rail Link, Ltd.--Acquisition and Operation Exemption--Certain Lines of the Atchison, Topeka and Santa Fe Railway Company, served June 10, 1994; Finance Docket No. 32500, Lone Star Railroad, Inc., and Southern Switching Company--Acquisition and Operation Exemption--Line of Burlington Northern Railroad Company, served May 27, 1994.

UTU, in urging the revocation of the exemption, attempts to relitigate a case which it only recently lost before the Board. In STB Finance Docket No. 33180, Indiana & Ohio Railway Company--Acquisition Exemption--Lines of The Grand Trunk Western Railroad Inc., served February 3, 1997,¹ UTU sought unsuccessfully to have a notice of exemption revoked on the ground that the 107.6 miles of trackage rights could not be incidental to the 146.1-mile railroad line being acquired under the class exemption of 49 C.F.R. 1150.41. The Board rejected UTU's claim that the trackage rights should have been obtained separately, under the class exemption of 49 U.S.C. 1180.2(d)(7), saying:

[R]equiring or even permitting the segmentation of the transfer into separate proceedings requiring separate evaluation under different statutory standards appears to be inconsistent with the exercise of our authority under the statute to provide a vehicle for a comprehensive review of the impact of what is a single overall transaction on the public interest.

UTU offers nothing probative in support of its contention that the Kimbrough-to-Magnolia grant of trackage rights is not incidental to ALA's acquisition and operation of BNSF's Kimbrough-to-Pensacola

¹ Review pending in No. 97-3304, U.T.U. v. S.T.B., before the 6th Circuit Court of Appeals.

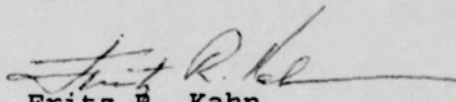
line. In the circumstances, UTU's Petition for Revocation should be denied.

WHEREFORE, Alabama & Gulf Coast Railway LLC asks that the United Transportation Union's Petition to Revoke should be denied.

Respectfully submitted,

ALABAMA & GULF COAST RAILWAY LLC

By its attorney,

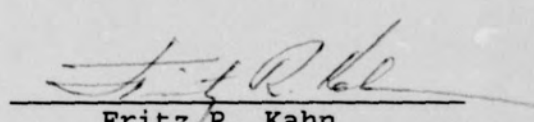

Fritz R. Kahn
Fritz R. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel.: (202) 371-8037

Dated: August 26, 1997

CERTIFICATE OF SERVICE

Copies of the foregoing Reply this day were served by me by mailing copies thereof, with first-class postage prepaid, to counsel for each of the parties.

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


Fritz R. Kahn

STB

FD-33438

ID-181509

8-26-97

D

181509

BALL JANIK LLP
ATTORNEYS

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

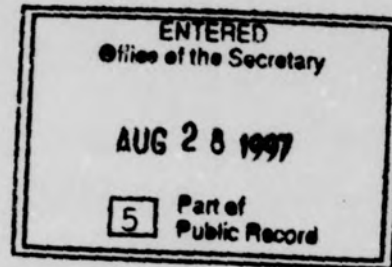
KARL MORELL



August 26, 1997

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 600
Washington, DC 20423-0001



Re: STB Finance Docket No. 33438, ALABAMA & GULF COAST
RAILWAY, LLC --ACQUISITION AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find the original and ten (10) copies of the Verified Reply to the Petition to Revoke of the Burlington Northern and Santa Fe Railway Company.

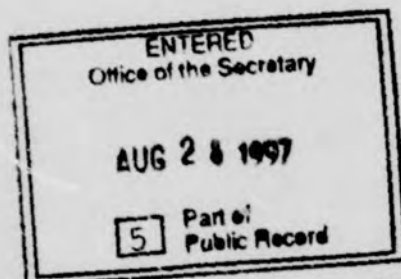
Please time and date stamp the extra copy of the Reply and return it with our messenger.

If you have any questions, please contact me.

Sincerely,

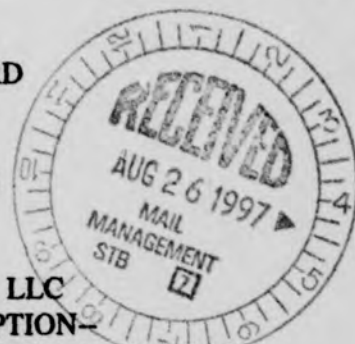
Karl Morell

ORIGINAL



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33438



ALABAMA & GULF COAST RAILWAY, LLC
--ACQUISITION AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED REPLY TO PETITION TO REVOKE
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits this reply to the Petition to Revoke filed in this proceeding by the United Transportation Union ("UTU"). As is demonstrated below, UTU has failed to show any basis to revoke the exemption by which the Surface Transportation Board ("STB") authorized Alabama & Gulf Coast Railway, LLC ("ALA") to acquire BNSF's rail line and rail business between Kimbrough, Alabama and Pensacola, Florida, together with incidental overhead trackage rights to operate over BNSF's connecting rail line between Kimbrough and Mangolia, Alabama.

UTU seeks to have the STB revoke, in whole or in part, ALA's Notice of Exemption on the grounds that the overhead trackage rights acquired by ALA as part of this transaction are not incidental to the sale of the rail line. UTU argues that the Kimbrough - Magnolia trackage rights fail to meet the two-pronged test purportedly established by the STB in Finance Docket No. 33180, Indiana & Ohio Railway Company -- Acquisition Exemption -- Lines of

Grand Trunk Western Railroad, Inc. (not printed), served February 3, 1997 ("Indiana & Ohio").

**The Kimbrough - Magnolia Trackage Rights
Are Incidental To The Rail Line Sale**

The Kimbrough - Magnolia trackage rights are clearly incidental to the Kimbrough - Pensacola rail line sale. The trackage rights extend by 13.6 miles the north end of ALA's post-sale rail operations in order to provide an efficient, economic rail interchange between ALA and BNSF. This 13.6-mile extension is less than ten (10) percent of the length of the rail line acquired by ALA. The number of trackage rights miles acquired by ALA does not even come close to approaching those approved by the STB or its predecessor agency, the Interstate Commerce Commission ("ICC"), in either actual number or in proportion to the miles of rail line acquired. See e.g., Indiana & Ohio; Finance Docket No. 32055, Three Rivers Ry. -- Acquisition and Operation Exemption -- Pittsburgh & Lake Erie R.R. (not printed), served September 29, 1992.

In any event, in determining whether trackage rights are incidental to a line acquisition, the proper focus is on whether the trackage rights are related to, or part of, the line acquisition and not on the length of the trackage rights, either in absolute or relative terms. Black's Law Dictionary defines incidental as:

Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose.

BLACK'S LAW DICTIONARY, 904-05 (4th ed. 1968). Here, the principal component of the transaction is the line sale and the trackage rights depend upon or appertain to that sale.

The preponderance of the rail freight traffic to be interchanged between ALA and BNSF moves over BNSF's rail system routes north and west of Magnolia, Alabama. BNSF's planned train operations are geared to an interchange at Magnolia, where certain traffic moving from or to Mobile, Alabama will be separated, or combined, with traffic moving from or to stations south of Kimbrough, Alabama. The interchange at Magnolia, instead of at Kimbrough as argued by UTU, actually result in faster, more efficient train handling for most BNSF - ALA interline rail freight traffic to and from stations along the rail line to be sold.

Indeed, at Kimbrough, there is not sufficient rail yard capacity to accommodate an efficient interchange of rail traffic between BNSF and ALA. At Kimbrough, there are only two yard tracks, one on each side of the main line. Often at least one of these tracks is filled with interchange traffic to or from Norfolk Southern. It would be difficult to use these tracks for a new interchange operation. Magnolia, on the other hand, has the current capacity and future track expansion capability to accommodate current, and what we hope will be growing, rail freight traffic volumes to be interchanged between BNSF and ALA. There are three existing interchange tracks at Magnolia, all of which are located on the west side of the main line, and as many as three more tracks could be added there with no further grading. Accordingly, Magnolia offers the greater flexibility for current and future interchange and classification operations. UTU is wrong in its unsupported claim that the ALA-BNSF interchange could just as easily have been at Kimbrough, instead of Magnolia. The Magnolia

- Kimbrough overhead trackage rights provide for an efficient rail traffic interchange between BNSF and the new shortline railroad.

The STB, the ICC and the courts have repeatedly held that Section 10901 encompasses the acquisition of trackage rights by noncarriers. See e.g., Railway Labor Executives' Ass'n v. United States, 791 F. 2d 994, 1004-05 (2d Cir. 1986); Alabama Southern R. Co. Inc., Et Al -- Exemption, 1 I.C.C. 2d 298 (1984). Moreover, the Magnolia - Kimbrough trackage rights fall squarely within the definition of "incidental". The ICC defined incidental trackage rights for Section 10901 transactions as including "a grant of trackage rights by the seller, or the assignment of trackage rights to operate over the line of a third party, that occurs at the time of the acquisition or operation." Class Exemption - Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, I.C.C. 2d 810, 816 (1985). Here, ALA will acquire the trackage rights from BNSF, the seller, and the grant of the trackage rights and line sale will be consummated at the same time.

Furthermore, BNSF's grant to ALA of the Magnolia - Kimbrough overhead trackage rights is a typical grant of trackage rights between seller and purchaser -- to permit a more efficient interchange of traffic at a convenient location -- that is ancillary to the line sale transaction. See 49 C.F.R. § 1150.31(a)(4); Finance Docket No. 33003, Louisiana & Delta R.R. -- Lease and Operation Exemption --Southern Pac. Transp. Co. (not printed), served October 3, 1996; Finance Docket No. 32187, Missouri & N. Arkansas R.R. -- Lease, Acquisition and Operation Exemption -- Missouri Pac. R.R. & Burlington N.R.R. (not printed), served May 4, 1993.

UTU misconstrues the STB's decision in Indiana & Ohio in arguing that the Kimbrough - Magnolia trackage rights fail to meet the two-pronged test established in that decision to determine whether trackage rights are incidental to a line sale transaction. The STB established no such test. In that proceeding, the STB was confronted with various arguments by rail labor that the granting of trackage rights by the seller to the purchaser for more efficient interchange and the assignment of trackage rights by the seller to the purchaser over three segments of track owned by three other carriers were not incidental to the line sale transaction. The STB easily -- and correctly -- found that the trackage rights granted by the seller for more efficient interchange were "incidental" rights within the meaning of the class exemption. It was only in addressing the trackage rights that were assigned over third-party rail lines that the STB focused on the independent economic utility of the lines being acquired and the trackage rights being assigned. In refuting rail labor's arguments that the assigned trackage rights were too long and that they were not necessary to the transaction, the STB simply explained that operations over the line sections being acquired were not possible without the assigned trackage rights, since the trackage rights were an integral part of the seller's operations for more than 20 years.

The Kimbrough -Magnolia trackage rights are similar to the trackage rights granted (as distinguished from those assigned) by the seller in Indiana & Ohio. Neither of the trackage rights are absolutely necessary to the line sale transaction but both permit a more efficient and economical interchange between the seller and the purchaser. In order for trackage rights to be properly included within a single filing under the Section 10901 Class Exemption, those

trackage rights need not necessarily be indispensable to the overall transaction, but rather can merely be part of or "incidental" to the overall transaction.

Finally, the issue of whether trackage rights are incidental to an acquisition of a rail line is relevant only as to whether the trackage rights and line acquisition may properly be sought in the same filing under the STB's Class Exemption. A noncarrier is not precluded from filing a Verified Notice under the Section 10901 Class Exemption for the rail line acquisition and contemporaneously filing one or more Verified Notices under the Section 10902 Class Exemption for unrelated transactions. Accordingly, even if the STB were to conclude, contrary to the evidence in this proceeding, that the Kimbrough - Magnolia trackage rights were not incidental to the line acquisition, ALA simply would be required to file a separate Notice of Exemption under the Section 10902 Class Exemption for the trackage rights. Such a result would be of no benefit to anyone. The STB would still be precluded from imposing labor protection on the granting of the trackage rights, ALA would unnecessarily incur the additional expenses of a second filing and the STB would be burdened with processing an additional proceeding.

CONCLUSION

WHEREFORE, BNSF hereby asks the Surface Transportation Board to deny the
Petition to Revoke filed by UTU.

Respectfully submitted,

Dennis W. Wilson ^{KM}

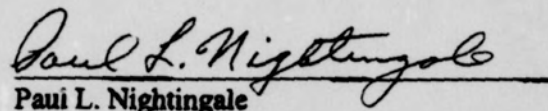
Dennis W. Wilson
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY

1700 E. Golf Road
Schaumburg, Illinois 60173
Tel: (847) 995-6883

Dated: August 26, 1997

VERIFICATION

I, Paul L. Nightingale, Director, Asset Rationalization of The Burlington Northern and Santa Fe Railway Company, being duly sworn, depose and state that I have read the foregoing Verified Reply of The Burlington Northern and Santa Fe Railway Company; that I know the facts as stated therein; and that the same are true and correct as stated.


Paul L. Nightingale

8/26/97

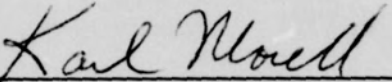
agreement\verifrep.wpd

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Reply was served this 26th day of August 1997, via first-class postage pre-paid mail, upon each of the following parties:

Alabama & Gulf Coast Railway LLC
Fritz R. Kuhn
Suite 750 West
1100 New York Avenue, N.W.
Washington, D.C. 20003

United Transportation Union
Daniel R. Elliott III
Assistant General Counsel
14600 Detroit Avenue
Cleveland, Ohio 44107



Karl Morell
Attorney for
The Burlington Northern
And Santa Fe Railway Company

STB

FD-33388

ID-181508

8-26-97

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181528
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

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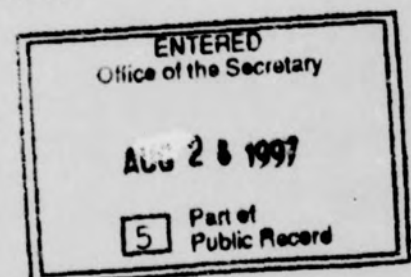
CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the provisions of Decision No. 21 served August 19, 1997 in the above captioned case, a copy of the attached Notice of Intent to Participate was served on all parties of record identified in Decision 21, via first class mail, postage prepaid on this 26th day of August, 1997.

Respectfully submitted,

G. Paul Moates
G. Paul Moates

Dated: August 26, 1997



TO BE DATE STAMPED AND RETURNED

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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



NOTICE OF INTENT TO PARTICIPATE

Pursuant to Decision No. 12, served in these proceedings on July 23, 1997, the undersigned hereby gives notice that he intends to participate as a Party Of Record ("POR") in the captioned proceedings, and he accordingly requests that his name and address be included on the official service list to be compiled by the Office of the Secretary. This POR is: G. Paul Moates, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006. Mr. Moates can be reached at (202) 736-8175, and his telecopy number is (202) 736-8711.

Respectfully submitted,

G. Paul Moates

G. Paul Moates
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8175

DATED: August 7, 1997



CERTIFICATE OF SERVICE

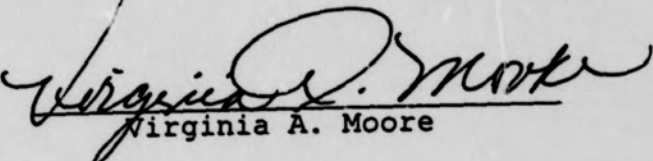
I, Virginia A. Moore, hereby certify that a copy of the foregoing Notice of Intent To Participate of G. Paul Moates was served on this date, first-class mail with postage prepaid, on the following:

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

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

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


Virginia A. Moore

DATED: August 7, 1997

STB

FD-33388

ID-181507

8-26-97

D

181507

WEINER, BRODSKY, SIDMAN & KIDER
ATTORNEYS AT LAW

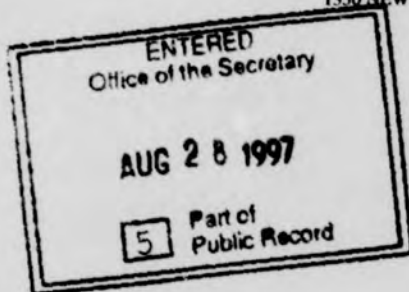
PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628-2011



August 26, 1997



H. GERRY ANDERSON*
RICHARD J. ANDREANO, JR.
JAMES A. BRODSKY
JENNIFER A. COHN
JO A. DeROCHE
CYNTHIA L. GILMAN
DON J. HALPERN
CHRISTOPHER G. KACZMAREK
MITCHEL H. KIDER
SUSAN L. KORYTKOWSKI
SHERRI L. LEDNER
PAUL C. OAKLEY
MARK H. SIDMAN
BERGENIA SILVER
HARVEY E. WEINER
ROSE-MICHELE WEINRYB*
JOSEPH F. YENOUSKAS

*NOT ADMITTED IN D.C.

BY HAND

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

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

Dear Secretary Williams:

Decision No. 21, dated August 19, 1997, in the above-captioned proceeding, required that filings made with the Surface Transportation Board (the "Board") prior to the service date of that decision, be served on all Parties of Record, as identified in the service list published on August 19, 1997. Accordingly, enclosed are the original and 10 copies of the Certificate of Service showing that the request by Central Railroad Company of Indianapolis ("CERA") to be named a Party of Record in the above-captioned proceeding (the "Request"), which was filed at the Board August 7, 1997, has now been served on all Parties of Record as of today's date. For ease of reference, we have attached the Certificate of Service to a copy of CERA's original Request.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

Rose-Michele Weinryb

Enclosures

WEINER, BRODSKY, SIDMAN & KIDER
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800
WASHINGTON, D.C. 20005-4797
(202) 628-2000
TELECOPIER (202) 628-2011

H. GERRY ANDERSON*
RICHARD J. ANDREANO, JR.
JAMES A. BRODSKY
JENNIFER A. COHN
JO A. DeROCHE
CYNTHIA L. GILMAN
DON J. HALPERN
CHRISTOPHER E. KACZMAREK
MITCHEL H. KIDER
SUSAN L. KORYTKOWSKI
SHERRI L. LEDNER
PAUL C. OAKLEY
MARK H. SIDMAN
RUGENIA SILVER
HARVEY E. WEINER
ROSE-MICHELE WEINRYB*
JOSEPH E. YENOUSKAS

*NOT ADMITTED IN D.C.

August 7, 1997



CERA No. 1

BY HAND

Hon. Vernon A. Williams
Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

On May 16, 1997, we filed on behalf of our client, Central Railroad Company of Indianapolis ("CERA"), a request that Christopher J. Burger, president of CERA, be placed on the service list of the above-referenced proceeding as a party of record ("Request"). In accordance with Decision No. 6 by the Surface Transportation Board ("Board"), dated May 30, 1997, regarding the submission of formal filings to the Board, enclosed are 25 copies of this Request and a certificate of service. Also enclosed is a 3.5 inch disk containing this Request formatted in Word Perfect. This pleading and the accompanying disk are designated as CERA No. 1, in accordance with 49 C.F.R. § 1180.4(a)(2).

Material should be sent to the following addresses:

Mr. Christopher J. Burger, President
Central Railroad Company of Indianapolis
500 North Buckeye
Kokomo, Indiana 46903-0554
(765) 459-3196 (telephone)
(765) 457-4107 (facsimile).

WEINER, BRODSKY, SIDMAN & KIDER, P.C.

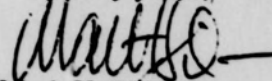
Hon. Vernon A. Williams

2

August 7, 1997

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,



Mark H. Sidman

Enclosure

cc: Christopher J. Burger, Central Railroad Company of Indianapolis

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 1997, a copy of the foregoing Request was served by first-class mail, postage pre-paid, on the following addressees:

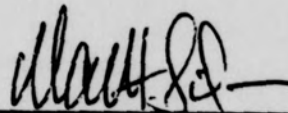
Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE., Suite 11F
Washington, D.C. 20426

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., NW.
Washington, DC 20006-3939

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





Mark H. Sidman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 1997, a copy of the foregoing Request by Central Railroad Company of Indianapolis was served by first-class mail, postage pre-paid, on the following addressees:

David G. Abraham
Suite 631W
7315 Wisconsin Avenue
Bethesda, MD 20814

Richard A. Allen
Zuckert, Scoutt, Rasenberger
888 17th Street, NW
Ste. 600
Washington, D.C. 20006-3939

William D. Ankner
Rhode Island Dept. of Transportation
Two Capitol Hill
Providence, RI 02903

T. Scott Bannister
T. Scott Bannister and Associates
1300 Des Moines Bldg.
405 Sixth Avenue
Des Moines, IA 50309

Janice G. Barber
Burlington Northern Santa Fe Corporation
3017 Lou Menk Drive
Fort Worth, TX 76131

Nels Ackerson
The Ackerson Group
1275 Pennsylvania Avenue NW
Ste. 1100
Washington, D.C. 20004-2404

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

Donald G. Avery
Slover & Loftus
1224 Seventeenth Street, NW
Washington, D.C. 20036-3003

J.R. Barbee
General Chairperson
United Transportation Union
Knoxville, TN 37940

Harry C. Barbin
Barbin Lauffer & O'Connell
608 Huntingdon Pike
Rockledge, PA 19046

Norman H. Barthlow
Detroit Edison
2000 Second Avenue
Detroit, MI 48226

Dinah Bear
Executive Office of the President
Council on Environmental Quality
Washington, D.C. 20503

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

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

David Berger
1622 Locust Street
Philadelphia, PA 19103-6305

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

Charles D. Bolam
United Transportation Union
1400-20th Street
Granite City, IL 62040

William A. Bon, General Counsel
Brotherhood of Maintenance of Way Emp
26555 Evergreen Road, Ste. 200
Southfield, MI 48076

Anthony Bottalico
United Transportation Union
420 Lexington Avenue
Room 458-460
New York, NY 10017

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

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

William T. Bright et al
P.O. Box 149
200 Greenbrier Road
Summersville, WV 26641

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

Stephen H. Brown
Vorys, Sater, Seymour and Pease
1828 L Street, NW
Washington, D.C. 20036

Ross B. Capon
National Association of Railroads Passenger
900 Second Street, NE
Ste. 308
Washington, D.C. 20002-3557

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

Hamilton L. Carmouche
401 Broadway 4th Floor
Gary, IN 46402

Richard C. Carpenter
1 Selleck Street
Suite 10
East Norwalk, CT 06855

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

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

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

Sylvia Chinn-Levy
Intergovernmental Co-op.
969 Copley Road
Akron, OH 44320-2992

John K. Leary, General Manager
Southeastern Pennsylvania Transportation
Authority
1234 Market Street, 5th Floor
Philadelphia, PA 19107-3780

Elaine L. Clark
Main Dept. of Transportation
16 State House Station
Augusta, ME 04333

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

Paul D. Coleman
Hoppel, Mayer & Coleman
1000 Connecticut Avenue, NW
Suite 400
Washington, D.C. 20036-5302

John F. Collins
Collins, Collins, & Kantor, P.C.
267 North Street
Buffalo, NY 14201

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

Robert J. Cooper
500 Water Street
Jacksonville, FL 32202-4420

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

John J. Coscia
Delaware Valley Regional Planning Comm.
111 South Independence Mall East
Philadelphia, PA 19106

Steve M. Coulter
Exxon Company USA
P.O. Box 4692
Houston, TX 77210-4692

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

Irwin L. Davis
1900 State Tower Bldg.
Syracuse, NY 13202

Sandra J. Dearden
One North Western Center
Chicago, IL 60612-2200

Nicholas J. DiMichael
Donelan, Cleary, et al
1100 New York Avenue, NW Ste. 750
Washington, D.C. 20005-3934

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

Paul M. Donovan
Laroe, Winn, et al
3506 Idaho Avenue, NW
Washington, D.C. 20016

Kelvin J. Dowd
Slover & Loftus
1224 17th Street, NW
Washington, D.C. 20036

Daniel Duff
American Public Transit Association
1201 New York Avenue, NW
Washington, D.C. 20005

John K. Dunlevy
Assistant Attorney General
133 State Street State Admin. Bldg.
Montpelier, VT 05633-5001

Donald W. Dunlevy
230 State Street
UTU State Leg. Director
PA AFL-CIO Bldg. 2nd Floor
Harrisburg, PA 17101-1138

James F. McGrail
Commonwealth of Mass. Executive Office of
Transportation and Construction
10 Park Plaza, Room 3170
Boston, MA 02116-3969

Fay D. Dufuis
City Hall
801 Plum Street
Room 214
Cincinnati, OH 45202

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

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

Richard S. Edelman
Highsaw, Mahoney Clarke
1050 Seventeenth Street, NW
Ste. 210
Washington, D.C. 20036

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

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

Terrell Ellis
P.O. Box 176
Clay, WV 25043

Robert L. Evans
Oxychem
P.O. Box 809050
Dallas, TX 75380

Sara J. Fagnilli
1250 Detroit Avenue
Lakewood, OH 44107

Gerald W. Fauth, III
G.W. Fauth & Associates, Inc.
P.O. Box 2401
116 South Royal Street
Alexandria, VA 22314

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

Joseph R. Pomponio
Federal Railroad Administration
400 7th Street, SW
RCC-20
Washington, D.C. 20590

Michael P. Ferro
Millennium Petrochemicals, Inc.
11500 Northlake Drive
Cincinnati, OH 45249

Edward J. Fishman
Oppenheimer, Wolff & Donnelly
1020 Nineteenth Street, NW
Ste. 400
Washington, D.C. 20036

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

Garland B. Garrett, Jr.
NC Department of Transit
P.O. Box 25201
Raleigh, NC 27611

Michael J. Garrigan
BP Chemicals, Inc.
4440 Warrensville Ctr. Road
Cleveland, OH 44128

Richard A. Gavril
16700 Gentry Lane No. 104
Tinley Park, IL 60477

Peter A. Gilbertson
Regional Railroads of America
122 C Street, NW, Ste. 850
Washington, D.C. 20001

Louis E. Gitomer
Ball, Janik LLP
1455 F Street, NW
Ste. 225
Washington, D.C. 20005

Andrew P. Goldstein
McCarthy, Sweeney et al
1750 Pennsylvania Avenue, NW
Washington, D.C. 20006

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

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

Edward D. Greenberg
Galland, Kharasch, Morse & Garfinkle
1054 Thirty-first Street, NW
Washington, D.C. 20007-4492

Peter A. Greene
Thompson, Hine, Flory
1920 N Street, NW
Ste. 800
Washington, D.C. 20036

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

Donald F. Griffin
Brotherhood of Maintenance of Way Emp
400 North Capitol Street, NW
Ste. 852
Washington, D.C. 20001

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

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

Joseph Guerrieri, Jr.
Guerrieri, Edmond, et al
1331 F Street, NW 4th Floor
Washington, D.C. 20004

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

James W. Harris
The Metropolitan Planning Organization
1 World Trade Center, Ste. 82 East
New York, NY 10048-0043

John D. Heffner, Esq.
Rea, Cross & Auchincloss
1920 N Street, NW
Ste. 420
Washington, D.C. 20036

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

James E. Howard
90 Canal Street
Boston, MA 02114

David L. Hall
Commonwealth Consulting Associates
720 North Post Oak Road
Ste. 330
Houston, TX 77024

Michael P. Harmonis
U.S. Department of Justice
325 7th Street
Ste. 500
Washington, D.C. 20530

Nicole Harvey
The Dow Chemical Company
2020 Dow Center
Midland, MI 48674

R.J. Henefeld
PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

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

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

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

Sheila Meck Hyde
City Hall
342 Central Avenue
Dunkirk, NY 14048

Ernest J. Ierardi
Nixon, Hargrave, Devans, Doyl LLP
P.O. Box 1051
Clinton Square
Rochester, NY 14603-1051

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

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

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

Erika Z. Jones
Mayer, Brown. & Platt
2000 Pennsylvania Avenue, NW
Ste. 6500
Washington, D.C. 20006

Terrence D. Jones
Keller & Heckman
1001 G Street, NW
Ste. 500 West
Washington, D.C. 20001

Frank N. Jorgensen
The Elk River Railroad, Inc.
P.O. Box 460
Summersville, WV 26651

Fritz R. Kahn
1100 New York Avenue, NW
Ste. 750 West
Washington, D.C. 20005-3934

Steven J. Kalish
McCarthy, Sweeney & Harkaway
1750 Pennsylvania Avenue, NW
Washington, D.C. 20006-4502

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

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

Richard E. Kerth, Trans. Mgr.
Champion International Corp.
1010 Knightsbridge Drive
Hamilton, OH 45020-0001

L.P. King, Jr.
General Chairperson, UTU
145 Campbell Avenue, SW
Ste. 207
Roanoke, VA 24011

Sherri Lehman
Corn Refiners Association
1701 Pennsylvania Avenue, NW
Washington, D.C. 20006-5805

Mitchell M. Kraus
TCU
3 Research Place
Rockville, MD 20850

Honorable Dennis J. Kucinich
U.S. House of Representatives
1730 Longworth House Office Building
Washington, D.C. 20515

Paul H. Lamboley
Oppenheimer, Wolff & Donnelly
1020 19th Street, NW
Ste. 400
Washington, D.C. 20036

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

Edward Lloyd
Rutgers Environmental Law Clinic
15 Washington Street
Newark, NJ 07102

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

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

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, D.C. 20036

William G. Mahoney
Highsaw, Mahoney & Clarke
1050 Seventeenth Street, NW
Ste. 210
Washington, D.C. 20036

Robert E. Martinez
VA Secretary of Transportation
P.O. Box 1475
Richmond, VA 23218

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

Michael F. McDride
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Avenue, NW
Ste. 1200
Washington, D.C. 20009

Christopher C. McCracken
Ulmer & Berne, LLP
1300 East Ninth Street, Ste. 900
Cleveland, OH 44114

Francis G. McKenna
Anderson & Pendleton
1700 K Street, NW
Ste. 1107
Washington, D.C. 20006

Ron Marquardt
Local Union 1810 UMW
RD #2
Rayland, OH 43943

John K. Maser, III
Donelan, Cleary, Wood, Maser
1100 New York Avenue, NW
Ste. 750
Washington, D.C. 20005-3934

George W. Mayo, Jr.
Hogan & Hartson
555 Thirteenth Street, NW
Washington, D.C. 20004-1161

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

Thomas F. McFarland, Jr.
McFarland & Herman
20 North Wacker Drive
Ste. 1330
Chicago, IL 60606-3101

Coletta McNamee, Sr.
Cudell Improvement, Inc.
11500 Franklin, Blvd., Ste. 104
Cleveland, OH 44102

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

G. Paul Moates
Sidley & Austin
1722 Eye Street, NW
Washington, D.C. 20006

Karl Morell
Ball, Janik & Novack
1455 F Street, NW
Ste. 225
Washington, D.C. 20005

William A. Mullins
Troutman, Sanders LLP
1300 I Street, NW
Ste. 500 East
Washington, D.C. 20005-3314

S.J. Nasca
State Legislative Director UTU
35 Fuller Road, Ste. 205
Albany, NY 12205

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

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

C.V. Monin
Brotherhood of Locomotive Engineers
1370 Ontario Street
Cleveland, OH 44113

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

John R. Nadolny, VP and Gen. Csl.
Boston & Maine Corporation
Iron Horse Park
No. Billerica, MA 01862

Gerald P. Norton
Harkins & Cunningham
1300 19th Street, NW
Ste. 600
Washington, D.C. 20036

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

Keith G. O'Brien
Rea, Cross and Auchincloss
1920 N Street, NW, Ste. 420
Washington, D.C. 20036

Christopher C. O'Hara
Brickfield, Burchette & Ritts, PC.
1025 Thomas Jefferson Street, NW
Eighth Floor
Washington, D.C. 20007

John L. Oberdorfer
2500 M Street, NW
Washington, D.C. 20037

L. John Osborn
Sonnenschein, Nath & Rosenthal
1301 K Street, NW
Ste. 600
Washington, D.C. 20005

Monty L. Parker
CMC Steel Group
P.O. Box 911
Sequin, TX 78156

F.R. Pickell
General Chairperson UTU
6797 North High St., Ste. 108
Worthington, OH 43085

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

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

Byron D. Olsen
Felhaber, Larson, Fenlon
4200 First Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4302

William L. Osteen
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, TN 37902

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

Patrick R. Plummer
Guerrier, Edmond & Clayman, P.C.
1331 F St., NW
Washington, D.C. 20004

Andrew R. Plump
Zuckert, Scoutt, Rasenberger
888 17th Street, NW, Ste. 600
Washington, D.C. 20006-3939

Larry R. Pruden
Trans. Comm. Intl. Union
3 Research Place
Rockville, MD 20850

Harold P. Quinn, Jr.
Nat'l Mining Association
1130 Seventeenth St., NW
Washington, D.C. 20036

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

Arvid E. Roach, III
Covington & Burling
P.O. Box 7566
1201 Pennsylvania Ave., NW
Washington, DC 20044-7566

James F. Roberts
210 E. Lombard Street
Baltimore, MD 21202

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

Edward J. Rodriquez
P.O. Box 298
67 Main St.
Centerbrook, CT 06409

David Roloff
526 Superior Avenue East
Ste. 1440
Cleveland, OH 44114

John Jay Rosacker
KS, Dept. of Transportation
217 SE 4th Street
2nd Floor
Topeka, KS 66603

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

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

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

Scott M. Saylor
North Carolina Railroad co.
3200 Atlantic Avenue, Ste. 110
Raleigh, NC 27604

G. Craig Schelter
PIDC
1500 Market Street
Philadelphia, PA 19102

Thomas E. Schick
Chemical Manufacturing Association
1300 Wilson Boulevard
Arlington, VA 22209

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

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

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

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

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

Roger A. Serpe
Indiana Harbor Belt Railroad
175 West Jackson Boulevard, Ste. 1460
Chicago, IL 60604

James E. Shepherd
Tuscola & Sagniwa Bay
P.O. Box 550
Owosso, MI 48867-0550

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

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

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

Patrick B. Simmons
NC Dept. of Transportation
1 S Wilmington Street, Room 557
Raleigh, NC 27611

William C. Sippel
Oppenheimer, Wolff & Donnelly
180 N Stetson Avenue
Two Prudential Plaza, 45th Floor
Chicago, IL 60601

Richard G. Slattery
Amtrak
60 Massachusetts Avenue, NE
Washington, D.C. 20002

William L. Slover
Slover & Loftus
1224 Seventeenth Street, NW
Washington, D.C. 20036-3003

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

Paul Samuel Smith
U.S. Department of Transportation
400 7th Street, SW
Room 4102 C-30
Washington, D.C. 20590

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

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

Mary Gabrielle Sprague
555 Twelfth Street, NW
Washington, D.C. 20004-1202

Scott N. Stone
Patton Boggs, LLP
2550 M Street, NW, 7th Floor
Washington, D.C. 20037-1346

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

James F. Sullivan
CT Department of Transportation
P.O. Box 317546
Newington, CT 06131

Robert G. Szabo
V. Ness Feldman
1050 Thomas Jefferson Street, NW
Washington, D.C. 20007

K.N. Thompson
General Chairperson UTU
1017-F Gravois Industrial Plaza
St. Louis, MO 63128

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

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

Anne D. Stubbs
Coneg Policy Research Center, Inc.
400 North Capitol Street, Ste. 382
Washington, D.C. 20001

Daniel J. Sweeney
McCarthy, Sweeney & Harkaway, P.C.
1750 Pennsylvania Avenue, NW, Ste. 110
Washington, D.C. 20006

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

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

Merrill L. Travis
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62703-4555

Stephen M. Uthoff
Coniglio & Uthoff
110 West Ocean Boulevard, Suite C
Long Beach, CA 90802

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

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

John a. Vuono
Vuono, Lavelle & Gray
2310 Grant Building
Pittsburg, PA 15219

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

Jack A. Walter
WCI Steel, Inc.
1040 Pine Avenue, SE
Warren, OH 44483

James R. Weiss
Preston, Gates, Ellis et al
1735 New York Avenue, NW, Ste. 500
Washington, D.C. 20006

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

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

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

Robert J. Will
United Transportation Union
4134 Grave Run Road
Manchester, MD 21102

Henry M. Wick, Jr.
Wick, Streiff, et al
1450 Two Chatham Center
Pittsburgh, PA 15219

Richard R. Wilson
1126 Eighth Avenue, Ste. 403
Altoona, PA 16602

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

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

Timothy A. Wolfe
Wyandot Dolomite, Inc.
P.O. Box 99 1794 Co. Rd. #99
Carey, OH 43316

L. Pat Wynns
Ste. 210
1050 - 17th Street, NW
Washington, D.C. 20036-5503

E.C. Wright
Rail Transportation Procurement Manager
1007 Market Street
Dupont Building 3100
Wilmington, DE 19898

Scott M. Zimmerman
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, NW
Washington, D.C. 20006

Robert A. Wimbish, Esq.
Rea, Cross & Auchincloss
1920 N Street, NW
Ste. 420
Washington, D.C. 20036

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

Sergeant W. Wise
Branch Wise Dewart & Cooper
65 West Broad Street
Rochester, NY 14614

Frederic L. Wood
Donelan, Cleary, Wood & Maser, P.C.
1100 New York Avenue, NW
Ste. 750
Washington, D.C. 20005-3934

Edward Wytkind, Executive Director
Transportation Trades Dept. AFL-CIO
400 North Capitol Street, SW, Ste. 861
Washington, D.C. 20001

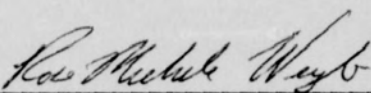
Sheldon A. Zabel
Schiff, Hardin & Waite
7200 Sears Tower
Chicago, IL 60606

Peter A. Gilbertson
Louisville & Indiana Railroad Company
Ste. 350
53 W. Jackson Boulevard
Chicago, IL 60604

Walter E. Zullig
347 Madison Avenue
New York, NY 10017-3706

William P. Hernan, Jr.
P.O. Box 180
Hillard, OH 43026

Eileen S. Stommes, Director, T&M Div.
Agricultural Marketing Service, USDA
P.O. Box 96456
Washington, D.C. 20090-6456



Rose-Michele Weinryb