

STB

FD-33388

7-16-98

D

ID-189880

ARNOLD & PORTER

555 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20004-1200

(202) 942-5000
FACSIMILE: (202) 942-1999

MARY GABRIELLE SPRAGUE
(202) 942-5773

NEW YORK
DENVER
LOS ANGELES
LONDON

July 15, 1998

BY HAND DELIVERY - 25 Copies

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

ENTERED
Office of the Secretary

JUL 16 1998

Part of
Public Record

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 are an original and twenty-five (25) copies of CSX-157 "Response of Applicants CSX Corporation and CSX Transportation, Inc. to Brief Filed By Congressman Dennis J. Kucinich Regarding Brooklyn, Ohio" for filing in the above-referenced docket. Please note that a copy of this filing is also enclosed on a 3.5 diskette in WordPerfect format.

Thank you for your assistance in this matter. Please contact me (202-942-5773) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the enclosures at the time of filing and return them to our messenger.

Respectfully yours,

Mary Gabrielle Sprague

Mary Gabrielle Sprague
Counsel for CSX Corporation and CSX
Transportation, Inc.

Enclosures

cc: Elaine K. Kaiser
All Parties of Record

98594

ENTERED
Office of the Secretary

JUL 16 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

**RESPONSE OF APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC. TO
BRIEF FILED BY CONGRESSMAN DENNIS J. KUCINICH
REGARDING BROOKLYN, OHIO**

Applicants CSX Corporation and CSX Transportation, Inc. ("CSX") hereby
respond to the July 10, 1998 brief entitled "In Re Brooklyn, Ohio Filed by Congressman
Dennis J. Kucinich."

To the extent that Congressman Kucinich disagrees with the environmental
conditions the Board has proposed to impose for the benefit of Brooklyn, Ohio, that
disagreement is more appropriately raised by way of administrative appeal of the Board's
written decision, expected to be issued on July 23, 1998. CSX notes, however, that
Congressman Kucinich does not present in his brief any arguments that call into question



CSX-157



the analysis of the Board's Final Environmental Impact Statement ("Final EIS") or the recommended conditions based on that analysis.¹

To the extent that Congressman Kucinich is asking the Board to compel CSX to negotiate a "voluntary" agreement that goes beyond the conditions imposed by the Board for the benefit of Brooklyn, there is no basis for such an order at this time or at any other time. CSX negotiated with the City of Brooklyn in good faith in April and May 1998, culminating in a settlement offer to Brooklyn on May 14, 1998. At that time, neither CSX nor Brooklyn knew what recommendations for conditions would be made in the Final EIS or what conditions the Board would ultimately impose. In an effort to resolve outstanding disagreements in the Greater Cleveland Area regarding environmental mitigation measures, CSX offered Brooklyn more than it expected the Board would require in exchange for Brooklyn's support for the Transaction. Brooklyn did not respond to CSX's offer prior to the June 8 voting conference.

¹ The Board's Section of Environmental Analysis ("SEA") analyzed all potential impacts of increased traffic on the Conrail Short Line through Brooklyn, as documented in the Draft EIS and Final EIS. It is not correct, as suggested at page 3 of Congressman Kucinich's brief, that SEA commenced analysis of the impacts on Brooklyn only when Congressman Kucinich filed comments on the Draft EIS on February 4, 1998. From the outset of its analysis, SEA analyzed potential impacts on all line segments where the SEA's objective criteria for analysis were met, as is apparent from the Board's environmental regulations at 49 C.F.R. Part 1105, the Notice of the Final Scope of the Environmental Impact Statement issued October 1, 1997, and the Draft EIS, served December 12, 1997. It is correct, however, that SEA considered the comments filed by Congressman Kucinich concerning Brooklyn, and responded in detail to those comments in the Final EIS. See Final EIS at Vol. 3, pages 5-258, 5-270 and 5-304 (concluding that mitigation was warranted for increased transport of hazardous materials but that "SEA did not identify any other safety or noise effects that would warrant mitigation in the Brooklyn area").

Based on the objective criteria of the Final EIS and the thorough analysis of the potential impacts from increased train traffic on the Conrail Short line through Brooklyn, the Final EIS recommended certain mitigation measures for the benefit of Brooklyn. These conditions include the following recommended conditions of the Final EIS: Conditions 4(A), 4(B), 4(C), 4(D), 5(A), 37(D), 38(B), 38(C), and 38(D). CSX is willing to continue to discuss with Brooklyn the specific details of how to best implement these numerous mitigation conditions. If Brooklyn files an administrative appeal, the Board may consider whether to modify the environmental conditions imposed (although, as stated above, CSX does not believe that Brooklyn will supply any persuasive reasons for doing so). However, there is absolutely no basis for the Board to order CSX to enter into a "voluntary" settlement agreement that goes beyond the scope of the conditions ordered by the Board. Neither the Board's Decision No. 71 nor Decision No. 73 cited by Congressman Kucinich included such an extraordinary requirement. There is even less basis for such an order now that the Board has determined the appropriateness of various environmental conditions for the benefit of Brooklyn. CSX will implement those conditions as ordered by the Board.

Accordingly, the requests made by Congressman Kucinich in his July 10, 1998
brief should be denied.

Respectfully submitted,

Mary Gabrielle Sprague

SAMUEL M. SIPE, JR.
DAVID H. COBURN
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036-1795
(202) 429-3000

MARK G. ARON
PETER J. SHUTTZ
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23129
(804) 782-1400

DENNIS G. LYONS
MARY GABRIELLE SPRAGUE
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CSX TRANSPORTATION, INC.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

*Counsel for CSX Corporation and CSX
Transportation, Inc.*

July 15, 1998

.

CERTIFICATE OF SERVICE

I, Mary Gabrielle Sprague, certify that on July 15, 1998, I have caused to be served a true and correct copy of the foregoing CSX-157, "Response of Applicants CSX Corporation and CSX Transportation, Inc. to Brief Filed by Congressman Dennis J. Kucinich Regarding Brooklyn, Ohio" to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

Mary Gabrielle Sprague

STB

FD-33388

7-15-98

D

ID-189815

18985

KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY Co., L.P.A.

ATTORNEYS AT LAW

ENTERED
Office of the Secretary

July 10, 1998

JUL 15 1998

Part of
Public Record



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

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

Dear Mr. Williams:

I am writing on behalf of the Stark Development Board ("SDB") to express our appreciation for the Board's recognition of the need for reliable and competitive service from CSX and NS through our operating carrier, the Wheeling and Lake Erie Railway ("W&LE"), to our Neomodal Terminal after the merger. As the record reflected in this proceeding, shippers in Northeast Ohio deserve competitive and reliable service from CSX and NS to be competitive in the domestic and international marketplace, and therefore, your recognition of the economic development benefits of Neomodal Terminal was truly gratifying.

The Board's recognition of the need to "protect" the Neomodal Terminal, as recognized by Chairman Morgan, provides hope to the SDB and its Neomodal customers, that CSX and NS will be required to negotiate, in good faith, with the SDB to provide truly competitive and reliable service through the W&LE/Neomodal. However, the SDB was particularly disappointed that the Board failed to accept our request and the request of W&LE, for trackage rights to Chicago, or accept our protective conditions requested in this proceeding. I have attached a copy of my Prepared Remarks to the Board, as marked "Exhibit A", which included the eight (8) protective conditions sought by the SDB, to assist the Board in reviewing our clarification request herein.

The Board's failure to issue SDB's protective conditions is particularly troubling due to my client's inability to constructively negotiate with CSX and NS. Although, the SDB's prior negotiations with CSX and NS have been amicable, they have been totally fruitless, for both Class I Railroads have failed to offer any protective conditions or constructive service solutions to the W&LE/SDB. Therefore, SDB is seeking

4775 MONROE STREET NW • P.O. BOX 36963 • CANTON, OHIO 44735-6963 • 330-497-0700 • FAX 330-497-4020
960 W. STATE STREET • KEYBANK BUILDING • ALLIANCE, OHIO 44601-4685 • 330-923-9262 • FAX 330-821-2447
527 FIRST MERIT CENTERS NATIONAL BUILDING • CANTON, OHIO 44702-1413 • 330-497-0700
158 N. BROADWAY STREET • NEW PHILADELPHIA, OHIO 44663 • 330-343-9578
409 EAST SECOND STREET • SALEM, OHIO 44460 • 330-337-6799
MASSILLON, OHIO • 330-832-3331

Vernon A. Williams
July 10, 1998
Page 2

clarification from the Board as to what protective conditions may be imposed on CSX and NS, to ensure the future viability of the Neomodal Terminal. As we have stated previously, CSX Intermodal has provided some business for the Terminal and we look forward to their continued support.

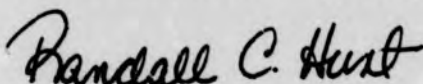
The SDB fully intends to work with CSX and NS and negotiate with CSX and NS during the oversight period, but without assistance and intervention from the Board, SDB is concerned about the future viability of Neomodal and our local carrier, the W&LE. Our request for clarification herein, is consistent with the Board's statement that its "recommendation ensures that overall shippers will be better off after the merger than they were before and that none will have less service than they had before". STB 140-7. Furthermore, SDB's request for clarification and its request for protective conditions are in furtherance of the Board policy which stated that "recommended conditions (will) promote important competitive options and further regional economic development". STB 140-18 in Northeastern Ohio. This policy statement is sensitive to our dilemma and SDB's request for clarification shall promote meaningful and constructive negotiation with our servicing, Class I carriers during the oversight period.

The request for clarification and the review of SDB's protective conditions, as set forth in "Exhibit A", are sought on an expedited basis for they are needed to facilitate meaningful and constructive negotiations with CSX and NS, to ensure the continued existence of the Neomodal Terminal. Without clarification, your recommendation for better shipper service after the merger, and the promotion of competitive intermodal options in Northeast Ohio will not be realized and our state-of-the-art terminal will be destined for closure.

Thank you for your timely consideration of this request for clarification, and I hereby certify that a copy of this request has been served upon all parties of record in this proceeding by first class mail, properly addressed and postage prepaid.

Respectfully submitted,

KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.



Randall C. Hunt
Counsel for the Stark Development Board
RCH/jau

EXHIBIT A



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388 (~~SUB NO. 79~~)

**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**

**PREPARED REMARKS OF RANDALL C. HUNT, VICE CHAIRMAN
OF THE STARK DEVELOPMENT BOARD, INC.
ORAL ARGUMENT**

**Keith G. O'Brien
REA, CROSS & AUCHINCLOSS
1920 N Street, N.W., Suite 420
Washington, D.C. 20036
Tel: (202) 785-3700
Fax: (202) 659-4934**

**Randall C. Hunt, Esq.
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, OH 44735-6963
Tel: (330) 497-0700
Fax: (330) 497-4020**

Counsel for Stark Development Board, Inc.

June 4, 1998

PREPARED REMARKS

In 1995, Stark Development Board, Inc. ("SDB") strategically built an intermodal terminal ("Neomodal") on the Wheeling and Lake Erie Railway Company ("W&LE"), a regional railroad connected to three Class I carriers, Conrail, Inc. and Consolidated Rail Corporation (collectively "Conrail"), CSX Corporation and CSX Transportation, Inc. (collectively CSX"), and Norfolk Southern Companies and Norfolk Southern Railway Company (collectively "NS"). Neomodal was built to foster competitive shipper access to these carriers and help create an efficient and economical rail system in Northeast Ohio ("NEO"). The chain of events leading up to the ODOT's November 1994 award of the funds to the SDB to build Neomodal and the participation of the Class I carriers in the decision have been recited in previous SDB filings. (SDB 4, 7 and 11).

Prior to the Conrail breakup, CSX and NS did not have access to the NEO international market. Furthermore, prior to the Conrail breakup, Neomodal was the only intermodal terminal in NEO (NS has a small international ramp in Cleveland, Ohio), and it provided CSX and NS with an intermodal terminal to compete with Conrail for NEO and Western Pennsylvania intermodal business.

With the breakup of Conrail, CSX is now planning to build an intermodal terminal at the newly acquired Conrail Collingwood, Ohio Yard and NS is planning to build an intermodal terminal at its Bellevue, Ohio Yard and at the newly acquired Conrail Pittsburgh, Pennsylvania Yard. With these new terminals, NS and CSX plan to service the same market that Neomodal was designed, located and constructed to serve, and which was Neomodal's nearly exclusive market, prior to the breakup of Conrail. However, the breakup of Conrail

would create access for CSX and NS to now serve this market through the construction of additional terminals, which will duplicate service and cost, all at the expense of the federal, state, and local governments' investment in Neomodal. Due to the cost of capital for the construction of their respective terminals, CSX and NS will have no incentive to utilize Neomodal.

The construction of the new terminals by CSX and NS will lead to predatory pricing and business practices which, in turn, would lead to an undue concentration of market power in the NEO corridor. Accordingly, it is imperative that the growing NEO industrial and distribution centers continue to have direct access to intermodal service on the W&LE, a reliable rail carrier, to avoid this concentration of market power and potential predatory practices. Consistent therewith, SDB's protective conditions set forth in the conclusion hereof must be granted by the STB, and the W&LE must be granted trackage rights to Toledo, Ohio, Chicago, Illinois and unrestricted trackage rights to Hagerstown, Maryland to keep the W&LE a viable carrier and "to foster sound economic conditions in transportation and to insure effective competition and coordination between rail carriers and other modes." 49 U.S.C. § 10101(5).

CSX and NS, who were partners of W&LE and Neomodal prior to the Conrail breakup, are now after the breakup, and even more so in the future, will become direct competitors of W&LE and Neomodal. As such, CSX and NS can utilize their trackage rights, their financial resources, and their marketing strength to bankrupt the W&LE and Neomodal. This anti-competitive posturing is precisely why CSX and NS have apparently changed their minds, and now are belatedly arguing that SDB should not have built Neomodal on a regional carrier's tracks.

Prior to the proposed Conrail breakup, W&LE and Neomodal had access to all CSX and NS intermodal origin and destination markets through NS Bellevue, Ohio yard and through CSX Willard, Ohio yard. Now, W&LE and Neomodal may have access to NS South and Southwest service if the routes develop in the future, and will have no access to NS East and West service which apparently will no longer go through the Bellevue, Ohio yard. In addition, CSX's plans to move its intermodal train blocking from its CSX Willard, Ohio Yard to its CSX/Conrail Collingwood, Ohio Yard. Unfortunately, W&LE has no direct access to the CSX/Conrail Collingwood, Ohio Yard, and as a result thereof, the W&LE and Neomodal will effectively be eliminated from the major CSX intermodal train system, with the possible exception of one Neomodal train to Chicago, Illinois. These actions obviously do not foster "effective competition and coordination between rail carriers" as envisioned by 49 U.S.C. § 10101(5). The only argument for the proposed intermodal terminals of CSX and NS and the change in the CSX blocking yard is that these Class I railroads do not want a regional railroad, like W&LE, to compete in the intermodal terminal business. NS and CSX obviously want exclusive control of NEO rail and its customers, thereby forcing W&LE and Neomodal out of business. It is a well known fact that eighty percent (80%) of the shippers that are serviced by only one (1) Class I railroad ultimately pay twenty-five percent (25%) to thirty percent (30%) higher rates. Therefore, it is imperative for NEO and its shippers to preserve multi Class I access through Neomodal and W&LE.

Both CSX and NS aggressively pursued the W&LE to secure the line haul Contracts prior to the Conrail breakup, at a time when CSX and NS had no other available intermodal terminals in NEO. Five (5) year contracts are in place.

Competitive rates, service and scheduling are offered by the Class I railroads because the railroads have Class I railroad competition. Wall Street Journal, February 6, 1998. As monopolistic providers, railroads can charge whatever the market will bear and become "profit maximizing sellers." Clearly, the impact of the Conrail breakup, while competitively advantageous for CSX and NS, would practically destroy the W&LE and Neomodal, and would adversely impact two hundred fifty (250) NEO shippers and the entire transportation system of NEO, contrary to sound public policy.

Should the W&LE be forced into inclusion, CSX has recently stated to the SDB that it has no interest in acquiring or taking over any or all of the W&LE system. NS's acknowledged strategy is to shed all unprofitable tracks and NS applied that strategy in its original sale of the W&LE track. (W&LE6). If there are no protective conditions ordered by the STB, W&LE may be facing insolvency which may require it to seek inclusion. As a result of the inclusion of W&LE, NS will shed all or substantially all of the W&LE system over time, and many, if not all, of the shippers on the W&LE will be forced to truck their products. Both CSX and NS have stated that it would be easy to get another regional railroad operator to take over the W&LE. Unfortunately, these pronouncements beg the question, for if the W&LE can't operate this system with very experienced personnel, then how can another operator succeed?

There is no question that if the SDB, ODOT and W&LE knew in 1994 that Conrail would be acquired by CSX and NS and as a result thereof become competitors, then Neomodal would never have been built, and over Eleven Million Two Hundred Thousand Dollars (\$11,200,000) of federal, state, and local funds would not have been spent for its construction.

It is easy for CSX and NS to now state that "the free market should judge whether Neomodal flourishes or fails" (CSX/NS Rebuttal, Vol. 1 of 3, 477). While it is true that the SDB, ODOT and W&LE accepted the risk of building Neomodal on W&LE lines, they accepted that risk before the Conrail breakup; and they would agree that the "free market," as it existed before the Conrail breakup, should control Neomodal's destiny and prevail in this proceeding. Therefore, to maintain this "free market," the STB should issue the protective conditions sought by the SDB and the W&LE. The ultimate result of the Conrail breakup will lead to anti-competitive benefits for CSX and NS, and therefore, protective conditions are essential for a fair and competitive marketplace in NEO.

SDB met with CSX and NS the past two (2) weeks to review the future strategic plans of both railroads and their impact on Neomodal. It is very clear in that after the Conrail breakup, Neomodal is not in their respective intermodal plans. The division of the Conrail tracks and its intermodal ramps between CSX and NS, will place Neomodal at a significant operational disadvantage and will make it extremely difficult if not impossible for Neomodal to be competitive in NEO.

CSXI has designated the Conrail Collingwood, Ohio yard as its "New X" in its system and CSXI will offer direct service to over twenty (20) markets. This service will include direct competition for the one Philadelphia train per day from Neomodal to Chicago, Illinois, as proposed by CSXI. This strategy will make it extremely difficult and require time to build up the Neomodal train volume to compete with the Conrail Collingwood, Ohio yard volume. SDB must be assured that this one (1) CSX train will be in place during this post Conrail breakup ramp-up period.

NS stated that its East-West intermodal trains will no longer go through its Bellevue, Ohio yard, and that the only intermodal service that will travel through its Bellevue, Ohio yard will potentially be a southern route and a southwestern route. NS stated that a viable connection over the Ohio Central Railroad to Columbus, Ohio would open up other potential routes for NEO shippers, such as the Kansas City, Gateway west, but unfortunately that connection is theoretical only.

The sales and marketing of Neomodal is solely in the hands of NS and CSXI. Currently, there is virtually no NS volume and CSXI is working hard to build up its volume which is approximately four hundred (400) lifts per month. Even at these low lift volumes, Neomodal is operational because its operating cost break-even is low as a result of the efficiencies built into the Terminal design. The longer term problem for Neomodal is that "economics drive the market" and it may be less expensive for NEO shippers with a shorter schedule, to dray their products to the CSX Conrail Collingwood, Ohio yard rather than to dray their products to Neomodal and have W&LE rail to the CSX Willard, Ohio yard to connect to the one train to Chicago, Illinois. A better solution would be for CSX to create direct rail access to its Conrail Collingwood, Ohio yard for W&LE and Neomodal, and such a protective condition would create greater market access for NEO shippers.

Normally, it would take two (2) to three (3) years to convert shippers from draying trailers and containers to Chicago, Illinois and to the East Coast, to using Neomodal. However, this planned start-up period for Neomodal has been significantly delayed, due to the following:

1. CSX and NS interests and resources have been diverted to the divestiture of Conrail and establishing new operating and strategic plans and facilities as a result thereof; and

2. The Union Pacific Railroad and Southern Pacific Railroad system problems have spilled over to the W&LE and Neomodal, creating delays and service failures that have caused some NEO shippers to revert to trucking their products.

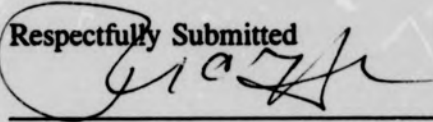
As a result of the delayed startup of Neomodal, SDB has incurred damages in excess of One Million Dollars (\$1,000,000) in the form of operating losses, including but not limited to interest expenses, as well as legal costs.

In conclusion, SDB continues to oppose the breakup of Conrail, but if the breakup is approved by STB, then SDB requests that STB issue the following protective conditions to ensure the future of Neomodal:

1. Written assurance with remedies for ten (10) years, that at least one (1) CSX intermodal train operating East and one (1) intermodal train operating West will stop daily at its Willard, Ohio yard and daily pick up and/or drop off cars to W&LE and Neomodal;
2. Written assurance that CSX will connect the W&LE directly into its Collingwood, Ohio yard and provide timely, reliable, daily access thereto;
3. Written assurance, with remedies for ten (10) years, that at least one (1) NS intermodal train passing through its Bellevue, Ohio yard, in all directions, will daily stop and pick up or drop off cars to W&LE and Neomodal;
4. Written assurance, with remedies, that CSX and NS will provide W&LE and Neomodal with competitive, timely schedules and reliable service within the CSX and NS systems;

5. Written assurance, with remedies for ten (10) years, that NS and CSX will quote a levelized, total intermodal system haulage rate for NS Cleveland, NS Pittsburgh, CSX Collingwood and W&LE/ Neomodal NS and CSX, such that W&LE and Neomodal are not placed in a disadvantage in the NEO marketplace from competing with other CSX and NS Ohio and Western Pennsylvania terminals;
6. Written assurance, with remedies, that CSX and NS will provide a steady, timely supply of empty containers and trailers and intermodal rail cars to Neomodal, as required;
7. CSX and/or NS shall enter into guaranteed ten (10)-year take or pay lift contract(s) with Neomodal at a 1998 level of 20,000 lifts per year, at Thirty Dollars (\$30.00)/perlift. The \$30.00 lift rate and the 20,000 lifts per year shall escalate at five percent (5%) per year, compounded, for the ten (10)-year period;
8. Written assurances that CSX and NS will aggressively market and sell Neomodal as if it was their own terminal.

Respectfully Submitted

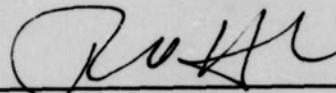


Randall C. Hunt, Esq. (0016865), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, OH 44735-6963
Tel: (330) 497-0700
Fax: (330) 497-4020

ATTORNEYS FOR
STARK DEVELOPMENT BOARD, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. mail this
_____ day of June, 1998, to the counsel and/or parties of record on the restricted service list.



Randall C. Hunt (0016865), of
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
ATTORNEYS FOR
STARK DEVELOPMENT BOARD, INC.

STB

FD-33388

7-10-98

D

ID-189529

187537

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1310 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1796

(202) 429-3000

FACSIMILE: (202) 429-3902

TELEX: 89-2503

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250

FACSIMILE: (011-7-501) 258-5251

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200

FACSIMILE: (602) 257-5299

DAVID H. COBURN

(202) 429-8063

dcoburn@steptoe.com

July 10, 1998

Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building
Room 700
1925 K Street, N.W.
Washington, D.C. 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 are an original and twenty-five (25) copies of CSX-156 "Reply of Applicants CSX Corporation and CSX Transportation, Inc. to Petition for Clarification and Modification by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana and Whiting, Indiana" for filing in the above-referenced docket. Please note that a copy of this filing is also enclosed on a 3.5 diskette in WordPerfect format.

Thank you for your assistance in this matter.

Sincerely,

ENTERED
Office of the Secretary

JUL 10 1998

Part of
Public Record

David H. Coburn
Counsel for CSX Corporation and CSX
Transportation, Inc.

DHC/dyj
Enclosures
cc: Service List

189529

CSX-156

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

REPLY OF APPLICANTS CSX CORPORATION
TO PETITION FOR CLARIFICATION AND MODIFICATION BY THE
CITIES OF EAST CHICAGO, INDIANA; HAMMOND, INDIANA; GARY,
INDIANA; AND WHITING, INDIANA

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
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

ENTERED
Office of the Secretary

JUL 10 1998

Part of
Public Record

DENNIS G. LYONS
MARY GABRIELLE SPRAGUE
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

SAMUEL M. SIPE, JR.
DAVID H. COBURN
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

July 10, 1998

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

REPLY OF APPLICANTS
CSX CORPORATION AND CSX TRANSPORTATION, INC.
TO PETITION FOR CLARIFICATION AND MODIFICATION BY THE
CITIES OF EAST CHICAGO, INDIANA; HAMMOND, INDIANA; GARY,
INDIANA; AND WHITING, INDIANA

Applicants CSX Corporation and CSX Transportation, Inc. ("CSX") hereby reply to the July 7, 1998 Petition for Clarification and Modification by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (the "Four Cities Petition"). That Petition, which seeks the imposition of broad new environmental conditions relating to train operations in the Four Cities, comes very late in the day – only 16 days before the release of the Board's written decision, over five weeks after the May 29, 1998 release of the Final Environmental Impact Statement ("Final EIS") by the Section of Environmental Analysis ("SEA"), and over four weeks after the Board's expression at the June 8 Voting Conference of its willingness to consider "over the next few weeks" input designed to "fine tune" the

recommended environmental conditions.¹ In view of the late hour, CSX will not burden the Board with an extensive reply to the Four Cities Petition. CSX offers some brief comments here primarily to underscore the obvious fact that the Four Cities Petition goes well beyond any legitimate effort to clarify or "fine tune" the recommended environmental conditions – it attempts to add significant new conditions to those numerous conditions that, following its meticulous study of the relevant facts, SEA recommended as appropriate to mitigate environmental impacts projected for the Four Cities.

I. The Proposed Reporting Requirements

The Four Cities Petition proposes an addition to Final EIS Condition No. 24 that would require CSX and NS to provide monthly reports directly to the Four Cities with respect to the level of train operations on certain CSX and NS line segments, the average speed of trains on one CSX segment, and the status of CSX's upgrading of certain segments. The Four Cities also seek reports describing in detail the compliance by CSX and NS with various Final EIS Conditions as they relate to the Four Cities. CSX does not oppose providing relevant information to the Four Cities, but does not agree that these proposed reporting requirements should be imposed as an additional condition.

Final EIS Condition No. 24(i) requires that the Applicants attend "regularly scheduled meetings" with Four Cities representatives to provide a forum to assess traffic delays, emergency response and driver compliance with railway grade crossing warning systems through improved education and enforcement. CSX understands that this condition subsumes an

¹ Voting Conference Transcript at 115. Further, in Decision No. 88 served in this proceeding on June 19, 1998, the Board stated its willingness to accept petitions "with respect to clarification of recommendations contained in the Final Environmental Impact Statement." Decision at 2 (emphasis supplied).

obligation on the part of both the Applicants and the Four Cities to provide each other with information relevant to the obligations of each party to address any transaction-related impacts, including the status of the Applicants' compliance with environmental conditions placed on the transaction. CSX fully intends to monitor its performance in the Four Cities and to share pertinent and timely information at these meetings, just as it expects the Four Cities to share information concerning issues such as their efforts to enhance driver compliance with rail crossing warnings. CSX is confident that the parties can best determine in the informal setting of such meetings the exact nature and scope of relevant information that each party will provide to the other and the frequency with which such information will be exchanged consistent with SEA's intent in recommending Condition 24(i).² If, however, the Four Cities are not satisfied that these meetings are bearing fruit in that regard, they can always seek appropriate relief from the Board at that time.

II. CSX's July 1, 1998 Report on Warning Devices

The Four Cities have chosen to characterize CSX's July 1, 1998 Report on the Final EIS as a request that CSX be relieved from certain Final EIS conditions relative to grade crossing warning devices. Based on that characterization, they request that SEA impose broad new conditions (including a 120 day negotiation period and associated train caps or curfews) on the transaction of the sort that the Four Cities have previously, and unsuccessfully, sought in this proceeding.

As is quite plain from the July 1 Report, however, CSX is not seeking to "backtrack" from any recommended environmental conditions, as the Four Cities claim. The

² CSX further notes that the Board will require Applicants to submit confidential reports with respect to their operations in the Chicago Terminal Area, including construction projects.

(Continued ...)

Board expressly invited proposals to "fine tune" the recommended environmental conditions. In that spirit, and in an effort to achieve the results sought by the Final EIS in a more technically appropriate manner, CSX proposed a slight modification to the recommendation with respect to grade crossing warning devices for three crossings that, in its view, would better achieve the mitigation goals of the Final EIS.

Thus, the Four Cities suggestion that a negotiation period be established should be rejected as entirely unnecessary. Likewise, their proposals that train caps or curfews be imposed, and that the Hobart-Clarke Junction line remain inactive, during such negotiation period (or subsequent period that the Board might establish if negotiations do not succeed) should be rejected on the basis that such proposals are not only unnecessary to address any legitimate environmental concern, but could adversely impact implementation of the CSX Operating Plan.³ Condition 24, and other relevant Final EIS conditions, offer the Four Cities mitigation commensurate with the predicted impacts, and there is no need at this late stage to revisit the scope and nature of that mitigation merely because CSX has proposed what it believes is a more technically suitable means of implementation at three grade crossings.

Accordingly, the Board should be well-positioned to assess any problems that might develop.

³ In proposing a 120 day consultation period, the Four Cities relies on a model of consultation over grade crossings approved at the June 8 Voting Conference with respect to the State of Ohio. That model does not, however, fit the situation involving the Four Cities. The 120 day Ohio consultation period was imposed with respect to a state agency with jurisdiction over grade crossing safety matters. The Four Cities have no comparable jurisdiction. (As the July 1 Report states, CSX has consulted with the State of Indiana with respect to the proposed technical modifications to the three crossings.) Further, unlike the Four Cities' proposal, no moratorium on CSX activities was proposed in connection with the Ohio consultations.

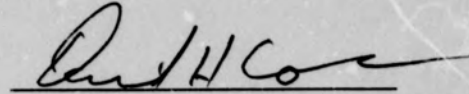
III. The Four Cities' Environmental Justice Claims are Misplaced

The Four Cities contend that SEA failed to consider whether mitigation is appropriate on the basis of environmental justice considerations with respect to two line segments – Warsaw to Tolleston (C-026) and Tolleston to Clarke Junction (C-024). The Four Cities correctly note that these two line segments were identified in the Draft EIS as segments that met the environmental justice threshold for additional analysis based on the demographics of the population in the relevant area. See Draft EIS at Volume 5A, Appendix K, Table K-15 at K-22, K-23. However, the Draft EIS makes crystal clear that no impacts other than possibly noise (as to which the impacts were identified as falling below the Board's threshold for significance) were projected for these line segments and that additional studies of noise impacts were scheduled by SEA.⁴ The Final EIS then completed the environmental justice analysis by analyzing the magnitude of impacts and assessing whether minority and low income populations were disproportionately impacted. Based on the thorough environmental justice impact analyses undertaken by SEA, these line segments were not identified in the Final EIS as segments at which any disproportionately high and adverse impacts were found. The Four Cities Petition offers no basis on which this result should be revisited.

CONCLUSION

For each of the above reasons, the Four Cities Petition should be denied.

Respectfully submitted,



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
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

July 10, 1998

DENNIS G. LYONS
MARY GABRIELLE SPRAGUE
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

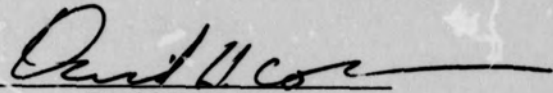
SAMUEL M. SIPE, JR.
DAVID H. COBURN
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for CSX Corporation
and CSX Transportation, Inc.

⁴ See Draft EIS, Vol. 3A, Table 5-IN-40 at p. IN-75 and at pp. IN-76, IN-78.

CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of July, 1998 caused a copy of the foregoing
Reply of Applicants CSX Corporation and CSX Transportation, Inc. to Petition for Clarification
and Modification by the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana and
Whiting, Indiana to be served on all parties on the Service List in Finance Docket No. 33388, by
first class mail, postage prepaid.


David H. Coburn

STB

FD-33388

7-10-98

D

ID-189530

189530

ENTERED
Office of the Secretary

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

JUL 10 1998

Part of
Public Record

SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006-4103 (202) 835-8000

FACSIMILE (202) 835-8136

INTERNET <http://www.hopeut.com>

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4203
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220

CHARLES A. SPITULNIK
(202) 835-8196
Email: CSpitulnik@hopeut.com



July 10, 1998

Honorable Vernon A. Williams
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

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 Sir:

Enclosed are an original and twenty-five (25) copies of the Joint Submission of Settlement Agreement By and Between CSX Corporation and CSX Transportation, Inc. and City of Cleveland, Ohio. I am also enclosing two (2) additional copies for date stamp and return with our messenger. Please note that a diskette in WordPerfect 5.1 format is also enclosed.

Thank you for your assistance.

Sincerely,

Charles A. Spitulnik

Enclosures.

ENTERED
Office of the Secretary

JUL 10 1998

Part of
Public Record

189530
CLEV-20/CSX-155

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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



JOINT SUBMISSION OF SETTLEMENT AGREEMENT
BY AND BETWEEN CSX CORPORATION AND CSX TRANSPORTATION, INC.
AND CITY OF CLEVELAND, OHIO

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and the City of Cleveland, Ohio ("Cleveland"), notified the Board at the oral argument on June 4, 1998 that they had entered into a settlement agreement, subject to the approval of the Cleveland City Council. CSX and Cleveland are now pleased to advise the Board that the Cleveland City Council approved the settlement on June 8, 1998. A true copy of the Memorandum of Agreement ("Agreement") between these parties is attached hereto.

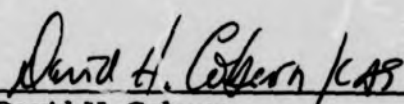
Pursuant to the terms of the Agreement, CSX and Cleveland hereby request that the Board adopt the terms of the attached Agreement as a condition of the Board's approval of the Conrail Application.

Pursuant to and in consideration of the Agreement, Cleveland hereby confirms its withdrawal of its request for conditions other than those encompassed in the Agreement to be imposed on CSX or affecting CSX to mitigate environmental impacts of the Conrail Transaction.

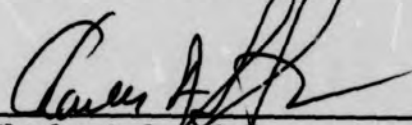
It is the understanding, intent and request of CSX and Cleveland that the Board substitute the Agreement for the local environmental mitigation conditions for Cleveland that would otherwise have been imposed by the Board pursuant to the recommendations of the Final Environmental Impact Statement ("FEIS"), namely, Condition 11, to the extent that it refers to mitigation within the City of Cleveland, and Conditions 37(A), 37(B), 37(C), 37(D), 37(E), 37(F) and 38(D) because, among its other purposes, the Agreement provides a mechanism for accomplishing the objectives of these recommended conditions. With respect to bridge maintenance contemplated in Condition 38(D), paragraph (c), the parties understand that bridge maintenance includes the obligation to inspect bridges regularly to ensure their continuing structural integrity. CSX and the City also understand that in circumstances covered by Condition 65, which is not superseded by their Agreement, the mitigation provided under Condition 38(D) may be appropriate for rail lines in Cleveland that experience Transaction-related increases other than the Short Line. The Agreement shall not substitute for any of the other environmental mitigation conditions recommended in the FEIS that would pertain to CSX lines, facilities or operations in Cleveland.

Dated: July 10, 1998

Respectfully submitted


David H. Coburn
Stephoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for CSX Corporation and
CSX Transportation, Inc.


Charles A. Spink
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, D.C. 20006-4103
(202) 835-8000

Counsel for City of Cleveland, Ohio

CLEVELAND SETTLEMENT

This Settlement Agreement dated June 3, 1997 by and between the City of Cleveland and CSX Corporation on behalf of its self and the railroad subsidiaries.

1. **Community Impacts Fund** - In consideration of Cleveland's concerns about adverse environmental impacts from the transaction, and in order to assist Cleveland with mitigation thereof, CSX will provide a total amount of \$10,700,000 (ten million seven hundred thousand dollars) to Cleveland over a period of five years for a Community Impacts Fund ("CIF") to be established by the City
 - A. **Schedule of CSX Payments** - CSX will make payments to Cleveland to fund the CIF as follows: An initial payment of \$2,140,000 (two million one-hundred forty thousand dollars) will be made no later than 30 days after the Closing Date of the Transaction, the balance of \$8,560,000 (eight million three hundred thousand dollars) will be paid in four equal annual installments, each installment of \$2,140,000 (two million one hundred forty thousand dollars) to be paid no later than 12 months after the prior payment.
 - B. **Purpose and Use of CIF** - Subject to Subsection 1D hereof, Cleveland will utilize the CIF at its sole discretion for mitigation projects designed to mitigate what the City deems to be adverse environmental impacts resulting from the Transaction and associated with the rail lines and facilities that will be operated in Cleveland by CSX post-Transaction. Such impacts may include, but are not limited to those in the areas of noise and vibration, noise mitigation structures and landscaping, emergency response and vehicular delay, hazardous materials transport and response, hazmat responder training and emergency vehicular access, pedestrian and vehicular safety, grade crossing maintenance, and cultural preservation. CIF funds may be used for purposes determined by the City to be related to protection of the City's neighborhoods from the adverse impacts of the Transaction, which

may include but are not limited to projects designed to mitigate some or all of these impacts, including but not limited to noise mitigation projects, hazardous materials training and equipment, grade crossing maintenance projects, home value guarantees, fencing projects adjacent to parks and other pedestrian safety projects, landscaping, a maintenance endowment fund for maintenance of landscaping constructed or installed by the City, and other projects that, in the sole discretion of the City, are reasonably related to the impacts of the Transaction and are associated with the lines and facilities to be operated by CSX post-Transaction. It is also understood that the City may expend up to \$250,000 of CIF monies for improvements to Rockefeller Park to the extent that the City determines that such proposals merit such expenditures. *WKS* *The African-American Cultural Center* *EWS*

C. Ownership and Maintenance of Noise Mitigation Structures and Landscaping -

Any noise mitigation structures and landscaping constructed or installed on CSX right of way or CSX property shall become the property of CSX and CSX shall be solely responsible for maintaining the structural integrity of such noise mitigation structures in accordance with applicable law and regulations, including all necessary preventive maintenance, ongoing maintenance and repairs; provided, however, that the City shall bear responsibility for keeping the walls free from graffiti or other visual defacement of such structures. The parties understand that the cost of construction of any such noise mitigation structure shall be paid out of the CIF funds or will be credited towards any obligation of CSX to contribute funds to ~~CSX~~ ^{City}. The cost of maintaining such structures shall be borne by CSX ^{installed by the City} under ~~Section 10.1~~ thereof. The cost of maintaining the landscaping shall be borne by the City out of CIF funds. *WKS* *EWS*

D. Mitigation Required by STB The parties understand that the Surface Transportation Board may require mitigation for environmental impacts resulting from the transaction, including noise and safety mitigation in the City of Cleveland. The parties will request the STB to impose this Settlement Agreement as a condition to its approval of the Courall Transaction and the Community

JWS
within the City of Cleveland

Impact Fund as its sole mitigation for environmental impacts resulting from this transaction. The parties will cooperate in securing the STB's approval.

- study of Cleveland*
- E. Fencing and Other Landscaping - CSX will expend \$2.4 million (two million four hundred thousand dollars) in Cleveland over a five year period for fencing, landscaping or other improvements to limit access to railroad property, and for the cost of installation of landscaping related to noise mitigation measures and any other mitigation condition imposed by the Board relating to the City of Cleveland. *JWS*

- JWS*
per property
- F. Further Study of Sensitive Receptors - The City and CSX specifically agree that the monies in the CIF agreed upon for measures to mitigate noise in the City of Cleveland were based on the City's assumption that 185 habitable homes will require home insulation under the criteria for mitigation established by the STB in the Final EIS. The parties agree that, within 90 days after the effective date of the STB's approval of the Transaction, they will conduct a joint assessment of the number of habitable houses that meet such criteria. If the parties agree that there are additional habitable houses that meet such criteria, CSX and the City each will contribute 50 percent of the cost of the noise mitigation for such houses, up to an additional \$10,500 per habitable house for mitigation of noise impacts. Should the City and CSX agree that there are fewer than 185 habitable homes requiring home insulation then CSX's contribution to the CIF shall be reduced by an amount equal to the average actual expenditure per house times the number of houses below 185.

- G. Liability - In providing funds to the CIF, CSX does not in any way acknowledge that the mitigation projects to be implemented through the CIF are required as a matter of law. Nor does CSX acknowledge or warrant that the projects to be implemented through the CIF will necessarily achieve any mitigation or any particular level or degree of mitigation of the adverse impacts they are intended to remedy. To the extent permitted by law, Cleveland agrees to bear full legal responsibility for any and all damages, claims or injury arising out of the

administration of the CIF by the City, the selection, construction and installation of projects undertaken with CIF funds by the City. CSX agrees to bear full legal responsibility for any and all damages, claims or injury arising out of the construction and/or maintenance of noise mitigation structures by CSX pursuant to this Agreement. Further, Cleveland agrees to include in any contract related to the CIF for projects undertaken with CIF funds which requires the contractor to enter onto any property owned by CSX a requirement that the contractor maintain appropriate insurance and indemnify and hold harmless CSX against any claims related to the construction, installation or maintenance of such projects.

- H. Approval Standards - To the extent that any noise mitigation structures are to be constructed or installed on CSX's right of way or other CSX property, the City shall be required to consult with CSX and to obtain CSX's concurrence with respect to the design, schedule for construction and/or installation, and, to the extent permitted by law, the identity of individuals or entities performing the construction and/or installation. CSX agrees not to unreasonably withhold such concurrence. The City understands that all noise mitigation structures or landscaping constructed and/or installed on CSX's right of way and/or property must be in compliance with any applicable federal law or regulations governing railroads, including but not limited to the regulations of the Federal Railroad Administration, and must conform with any applicable engineering and other standards of CSX. CSX shall grant the City such easements or licenses as may be necessary for construction and/or installation of such noise mitigation structures and landscaping.

2. Capital Improvements - CSX intends to spend \$28.1 million (twenty-eight million one hundred thousand dollars) for major track and infrastructure improvements, including the installation of continuous-welded rail, on the Short Line and to invest \$10.1 million (ten million one hundred thousand dollars) to construct a new intermodal terminal and make other improvements at Collinwood Yard.

3. Bridges, Crossings and Properties - CSX agrees to maintain the railroad bridges, at-grade crossings and properties in Cleveland that it will acquire from Conrail, consistent with any existing Conrail agreements pertaining to those bridges, crossings and properties, and in accordance with all enforceable and applicable laws.
4. Surplus Property Within 90 days of the Closing Date of the Transaction, CSX agrees to provide the City with an inventory of all non-operating properties in Cleveland that will be acquired. CSX commits to work with the City to establish a process to develop and market those properties which CSX determines to be surplus. The City further agrees to provide to CSX all City services that are commensurate with its standing as a valued corporate citizen of the City of Cleveland.
5. Billboards - CSX will provide the City with an inventory of all billboard leases for billboards on CSX's post-Transaction rights of way, bridges and other property in Cleveland, within 90 days from the Closing Date of the Transaction. Such inventory shall indicate, to the extent that the information is available to CSX, the locations of the billboards covered by the lease and the terms of such leases. Where such information is not available to CSX, CSX shall provide the City with pertinent information about the lease or prior parties interest to the lease that is reasonably available to CSX. CSX agrees not to enter into any lease that would have the effect of adding a billboard to a location where there is no billboard or increasing the number of billboards at a location where there is already one or more billboards, as of the Closing Date of the Transaction.
6. Emergency Response and Training - CSX is committed to working with the City of Cleveland to develop comprehensive pre-emergency response plans that are realistic and effective for the prevention and mitigation of CSX rail incidents. A detailed proposed Emergency Response Plan has been submitted to the City. CSX agrees to adopt and implement this plan. Furthermore, CSX agrees to reimburse the City for the following costs, which may be associated with response to a hazardous materials incident:

- A. Use of expendable items on an as used basis (firefighting foams, absorbents, detector tubes, disposable protective clothing or other similar one time use items). Costs will be on a replacement cost basis using current items prices.
- B. Overtime costs for response or support personnel used beyond normal shifts or hours.
- C. Callback costs for manpower necessary to provide normal coverage for fire, rescue and police protection.
- D. The City will prepare one invoice for the incident detailing costs by city department to include listings for manpower costs, expendables used and other cost incurred during the response. This invoice will be forwarded to CSX Transportation, 500 Water Street, Jacksonville, FL 32202 Attn: Hazardous Materials Group.

In addition to its own program, CSX agrees to install two OREIS software packages and to train the City's personnel in the use of such software; and to provide the City with annual reports of the number of carloads of hazardous materials that have moved through the City (including a breakdown by four digit STCC code of the types of materials transported.) The cost of such OREIS installation, software and training shall be paid out of or credited towards the CIF.

7. Community Advisory Committee - The parties hereby acknowledge their intent to continue the working relationship that has developed between them and to work together to strengthen that relationship over time as long as CSX conducts operations in the City. CSX and the City agree to jointly establish a Community Advisory Committee comprised of members approved by the Mayor, CSX, and the City Council. The purpose of the Committee shall be to provide a forum for ongoing discussion and dialogue between CSX and the City regarding any issues of concern. The Committee shall meet regularly beginning in the first quarter after the Closing Date of the Transaction.

M.L.W.
OWS

Committee
The ~~City Council~~ shall include three members from CSX, three appointed by the Mayor, three by the City Council, and three ~~other~~ members of the community appointed by the Mayor, with City Council approval.

8. Job Opportunities/Economic Development - CSX will work cooperatively with the City of Cleveland to create job opportunities at local CSX facilities and to identify rail-served businesses that can be located within Cleveland. CSX will make the resources of its Industrial Development program available to the City to assist in economic development initiatives. CSX will endeavor to hire up to 40% of the permanent terminal jobs established during the start up period at its expanded intermodal facility from among qualified residents of Cleveland.
9. Train Operations - CSX has not offered to restrict any train operations by hour of day because that would impair the service demanded by our shippers and would result in loss of business and loss of jobs. However, as information, the current Operating Plan provides that 70% of the CSX trains will operate between 7:00 a.m. and 9:00 p.m. Based on current projections, CSX has discussed limiting maximum train lengths to no more than Conrail's current maximum train lengths during construction of sound mitigation. Train speed will be limited to 30 miles per hour from Collinwood to the RTA tracks near ~~University Circle~~. *Harvard Tunnel*. *JWS MRLW*
10. Conditions No. 65 and Consultation with City - CSX agrees that it will not oppose the imposition by the STB as a condition of its approval of the Transaction of Condition No. 65 in the Final Environmental Impact Statement, which states the following: "If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental conditions in this Decision, and upon petition by a party who demonstrates such material changes, the Board may review the continuing applicability of its final mitigation, if warranted." CSX agrees that, for the purposes of this Agreement, the implementation of any tunnel enlargement to the five existing railroad tunnels in the City of Cleveland on the Short Line will constitute a "material change in the facts or circumstances" within the meaning of Condition No. 65. Six months prior to making any such tunnel enlargement, CSX will notify the City of such improvement and provide it an environmental assessment of anticipated noise or safety impacts associated therewith and any mitigation proposed by CSX for such impact. CSX and the City will

consult on such assessment and mitigation and use their good faith efforts to resolve any differences over the 120-day period immediately following such notice. In the event that CSX and the City are unable to agree, then CSX will not oppose on procedural grounds a petition by the City of Cleveland to reopen the Proceeding based upon the aforesaid material change in the facts or circumstances, in accordance with said Condition No. 65. Notwithstanding the foregoing, CSX reserves the right to take such position on the merits of any request for additional mitigation that Cleveland may make in such a petition to reopen. The parties understand that the aforesaid references to tunnel enlargement do not include any maintenance or repair of any such existing tunnel or any improvement to such tunnels necessary in CSX's reasonable judgment for safe operations.

11. Frequency Study - CSX has previously advised the City that its Operating Plan contemplates the routing of approximately ^{thru} 44 trains on the Short Line and approximately 12 trains on the Lakeshore on an average daily basis, and that the crossover at Berea limits the number of trains that CSX can safely and efficiently operate over the Lakeshore. CSX hereby reaffirms the above and commits to operate ^{thru} 12 trains on the Lakeshore on an average daily basis subject to NS making its facilities available for CSX's safe and efficient operation with schedules satisfying customer requirements. In addition to the foregoing, with respect to the Lakeshore CSX shall conduct, within six months from the Closing Date of the Transaction, a study with Norfolk Southern to determine whether two additional ^{thru} CSX trains can be operated over the Lakeshore in a safe and efficient manner, without interference with CSX and NS main line train operations, and with schedules that satisfy customer requirements. CSX shall furnish the City a copy of the study. The parties understand that Condition 65 may apply in the event of any material change in accordance with its terms.

12. East 152nd Street Improvements - CSX agrees to Condition 37 (e) of the Final EIS that states CSX will make traffic and signal improvements along 152nd Street to improve the movement of trucks to the Collinwood Intermodal facility.

If the study concludes that 2 additional trains can be operated over the Lakeshore in a safe and efficient manner, with no interference with mainline trains and with schedules satisfying customer requirements, CSX will do so.

13. Other Community Projects - CSX agrees to sponsor the annual model train exhibit in Cleveland that was previously sponsored by Conrail.
14. Submission to the City Council - Upon execution of this Agreement, the City's Mayor and appropriate Director(s) shall immediately take all actions necessary to place this Agreement before the Council of the City of Cleveland for its earliest consideration. The Mayor and such Director(s) shall recommend to the City Council that it approve this Agreement and shall take all other necessary and appropriate actions to ensure the most expeditious consideration of the Agreement by the City Council.
15. STB Notification - Promptly upon execution of this Agreement and its approval by the City Council:
- is the sole and exclusive mitigation for the City*
- A. CSX and Cleveland will notify the STB in writing that they have entered into this Agreement and will advise the STB of the terms of this Agreement. CSX and Cleveland will further ^{stipulate by} request at that time that the STB adopt the terms of this agreement as a condition of the STB's approval of the Conrail Application; and (MWS) JWS
- B. The City will advise the STB in writing that, in consideration of this Agreement, it is withdrawing its opposition to, and its request for conditions upon, so much of the Conrail Application as it relates to CSX's acquisition of control of Conrail and CSX proposed post-transaction rail operations.
16. STB Approval Process - The proposals made herein by CSX are conditioned upon: (1) CSX being able to secure the Surface Transportation Board's approval of the Conrail Transaction and acceptance of this Settlement Agreement as provided herein; (2) CSX being able to implement the CSX/Norfolk Southern Operating Plan that will move CSX trains over the Short Line and to the Collinwood terminal; and (3) the City of Cleveland's withdrawal of its opposition to the transaction; and (4) agreement by the City not to initiate or be a party to litigation related to either the transaction or the proposed CSX Operating Plan except for any action related to the enforcement of this Agreement or the

City's participation in the STB's oversight process. Upon joint acceptance of this proposal, CSX and the City of Cleveland agree to work cooperatively toward implementation of the Operating Plan.

Agreed and Accepted this 4th day of June, 1998.

The City of Cleveland, Ohio

CSX Corporation

By: 

Michael R. White

Mayor

By: 

John W. Snow

Chairman, President & CEO

CSX/CLEVELAND SETTLEMENT AGREEMENT

Inserts for Final Agreement dated June 4, 1998

Page 2:

Item B, Last Sentence should be replaced with the following:

"It is also understood that the City may expend up to \$250,000 of CIF monies for improvements to Rockefeller Park and the African-American Cultural Garden to the extent the City determines that such proposals merit such expenditures."

Item C, Second Sentence should be replaced with the following:

"The parties understand that the cost of construction of any such noise mitigation structure shall be paid out of the CIF funds or will be credited towards any obligation of CSX to contribute funds to the City."

Item C, Third Sentence should be replaced with the following:

"The cost of maintaining such structures shall be borne by CSX."

Item C, Last Sentence should be replaced with the following:

"The cost of maintaining the landscaping installed by the City shall be borne by the City out of CIF funds."

Page 3:

Item D, Second Sentence should be replaced with the following:

"The parties shall request the STB to impose this Settlement Agreement as a condition to its approval of the Conrail Transaction and the Community Impact Fund as its sole mitigation for environmental impacts within the City of Cleveland resulting from this transaction."

Item E should be replaced with the following:

"CSX will expend \$2.4 million (two million four hundred thousand dollars) in Cleveland over a five year period for fencing, landscaping or other improvements to limit access to railroad property, and for the cost of installation of landscaping related to noise mitigation measures."

Item F, Third sentence should be replaced with the following:

"If the parties agree that there are additional habitable houses that meet such criteria, CSX and the City each will contribute 50 percent of the cost of the noise mitigation for such houses, up to an additional \$10,500 per party per habitable house for mitigation of noise impacts."

Page 6:

Insert the following sentence in Paragraph 7 after the Second Sentence:

"The Committee shall include three members from CSX, three appointed by the Mayor, three by the City Council, and three members of the community appointed by the Mayor with City Council approval."

(Note: The NS deal includes three appointed by the City Council President. The language describing the Council appointments probably should be modified at the table to conform to the NS language.)

Page 7:

Paragraph 9, Last Sentence should be replaced with the following:

"Train speed will be limited to 30 miles per hour from Collinwood to the Harvard tunnels."

Page 8:

Paragraph 11, First Sentence:

Insert the word "through" after "44"

Paragraph 11, Second Sentence:

Insert the word "through" after "12"

Paragraph 11, Third Sentence:

Insert the word "through" after "two additional"

Insert the following sentence in Paragraph 11 after the Third Sentence:

"If the study concludes that 2 additional trains can be operated over the Lakeshore in a safe and efficient manner without interference with the mainline trains and with schedules satisfying customer requirements, CSX will do so."

Page 9:

Paragraph 15, Item A, Last Sentence should be replaced with the following:

"CSX and Cleveland will further strongly request at that time that the STB adopt the terms of this agreement as the sole and exclusive mitigation for the City and as a condition of the STB's approval of the Conrail Application; and"

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 1998, a copy of the foregoing Joint Submission of Settlement Agreement By and Between CSX Corporation and CSX Transportation, Inc. and City of Cleveland, Ohio was served by hand delivery upon the following:

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

John M. Nannes
Skadden, Arps, Slate, Meagher
& Flom L.L.P.
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

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

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

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

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

and by first class mail, postage pre-paid upon all other Parties of Record in this proceeding.



Charles A. Spitulnik

STB

FD-33388

7-1-98

D

ID-189176

189176
ENTERED
Office of the Secretary

JUL 02 1998

MARY GABRIELLE SPRAGUE
(202) 942-5773

Part of
Public Record

ARNOLD & PORTER

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

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

NEW YORK
DENVER
LOS ANGELES
LONDON

July 1, 1998

BY HAND DELIVERY - 25 Copies

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building
Room 700
1925 K Street, N.W.
Washington, D.C. 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 are an original and twenty-five (25) copies of the "Report of Applicants CSX Corporation and CSX Transportation, Inc. on Recommended Conditions 24(A), 38(C) and 45(B) of the Final Environmental Impact Statement" for filing in the above-referenced docket.

Thank you for your assistance in this matter. Please contact me (202-942-5773) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the enclosures at the time of filing and return them to our messenger.

Respectfully yours,

Mary Gabrielle Sprague
Counsel for CSX Corporation and CSX
Transportation, Inc.

Enclosures
cc: Elaine K. Kaiser
All Parties of Record

92512

CSX-154

ENTERED
Office of the Secretary

JUL 02 1998

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

**REPORT OF APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC. ON
RECOMMENDED CONDITIONS 24(A), 38(C) AND 45(B) OF THE
FINAL ENVIRONMENTAL IMPACT STATEMENT**

The Final Environmental Impact Statement ("FEIS") served by the Surface Transportation Board on May 22, 1998 recommended installation of constant warning time circuits at eight specified crossings in East Chicago, Gary, Hammond and Whiting, Indiana (Recommended Condition 24(a)) and at all grade crossings in Fostoria, Ohio that are currently equipped with active warning devices (Recommended Condition 45(B)). The FEIS also recommended installation of additional train defect detection devices in the Greater Cleveland Area (Recommended Condition 38(C)). These recommendations, which were presented for the first time in the FEIS, raised some potential concerns about engineering and operating feasibility. In the Comments of Applicants CSX Corporation and CSX Transportation, Inc. on the Final Environmental Impact Statement (CSX-153), filed June 2, 1998 ("CSX Comments on the FEIS"), CSX proposed to submit to the

Board by July 1, 1998 this report on technical considerations relating to these Recommended Conditions so that the Board could better effectuate the objectives of the FEIS. See CSX Comments on FEIS at 8-9, 11-12 and 13-14. The Board accepted this proposal at its voting conference on June 8, 1998. Transcript pages 114, 127.

As explained herein, CSX agrees that installation of constant warning time circuits would be feasible from an operating and engineering perspective at the great majority of the grade crossings identified in the FEIS. CSX seeks modification of the recommended conditions with respect to only a few crossings. CSX has also concluded that high and wide load detectors can be installed at Wickliffe and Olmsted Falls as recommended in the FEIS. Finally, CSX has concluded that the Wheel Impact Load Detector ("WILD") recommended for the west side of the Greater Cleveland Area could be located in the vicinity of Olmsted Falls as recommended in the FEIS, but CSX requests that it be granted the discretion to install the WILD farther west on the Berea-Greenwich line segment if more detailed evaluation indicates that another location on the line segment would be better from an operating and engineering perspective.

I. RECOMMENDED CONDITION 24(a): INSTALLATION OF CONSTANT WARNING TIME CIRCUITS AT EIGHT CROSSINGS IN EAST CHICAGO, GARY, HAMMOND AND WHITING, INDIANA

Recommended Condition 24(a) of the FEIS directs CSX to install constant warning time circuits to reduce crossing blockage time at seven specified grade crossings on the Pine Junction-Barr Yard line segment (C-023) and at one specified crossing on the Tolleston-Clark Junction line segment (C-024) in northwest Indiana. This recommendation was evaluated by CSXT's Train Control Department. Based on this

technical evaluation, CSX requests that this condition be slightly modified to require the following signal control upgrades:

(1) Installation of constant warning time circuits at five of the specified crossings:

- Calumet Avenue
- Indianapolis Boulevard (U.S. 20)
- Railroad Avenue
- Kennedy Avenue
- 5th Avenue (U.S. 20)

(2) Installation of constant warning time circuits for westbound trains and upgrade from DC circuitry to motion detectors for eastbound trains at two of the specified crossings:

- Hohman Avenue
- Sheffield Avenue

(3) Upgrade from DC circuitry to motion detectors at the Columbia Avenue crossing, with further upgrade to constant warning time circuits when the configuration of tracks in the vicinity of the crossing is simplified.¹

As explained in CSX's Comments on the FEIS (at pages 8-9), the design and installation of constant warning time control equipment is more complex than of other warning equipment. Installation is particularly complex where there are switches or rail

¹ The Chicago, South Shore and South Bend rail line crosses the CSX Barr Subdivision at a diamond in the vicinity of the Columbia Avenue grade crossing. This diamond complicates the circuitry for the grade crossing warning system at Columbia Avenue. A project has been proposed that would remove the diamond in the vicinity of Columbia Avenue.

crossing diamonds in the approach distance for the crossing. This increased difficulty in design and installation can increase the exposure to system malfunction. The Columbia Avenue grade crossing and the eastbound approaches to the Hohman Avenue and Sheffield Avenue crossings present these complex configurations. As explained above, the Columbia Avenue grade crossing is located in the vicinity of a rail crossing diamond. The eastbound approaches for Hohman and Sheffield Avenues are within the State Line interlocking. In addition, eastbound trains are expected to accelerate through State Line interlocking and normally will not stop within the interlocking. Therefore, installation of constant warning time circuits for eastbound movements at the Hohman and Sheffield Avenue crossings would provide no benefit.

CSX believes that motion detectors are the better choice of technology in these complex situations. Installation of motion sensors at the Columbia Avenue grade crossing and on the eastbound approaches of the Hohman and Sheffield Avenue crossings would provide reduction in crossing blockage time as compared to the present DC track circuitry. This benefit can be provided without the disadvantage of the constant warning time control equipment in these situations. CSX thus believes that the objective of Recommended Condition 24(a) will be better achieved by this modest modification.

CSX presented this technical evaluation to representatives of the Indiana Department of Transportation on June 26, 1998. CSX believes that the meeting was productive. It was not possible, however, to achieve a joint report by July 1, 1998. CSX accordingly submits its own technical analysis of Recommended Condition 24(a) and requests that the condition be modified consistent with this analysis.

II. RECOMMENDED CONDITION 45(B): INSTALLATION OF CONSTANT WARNING TIME CIRCUITS AT CROSSINGS EQUIPPED WITH ACTIVE WARNING DEVICES IN FOSTORIA, OHIO

Recommended Condition 45(B) of the FEIS directs CSX to install constant warning time circuits at all crossings on its lines in Fostoria, Ohio that are currently equipped with active warning devices and at those crossings in Fostoria where active warning devices would be added as a result of other Board conditions or voluntary actions. There are 19 such crossings. This recommendation was evaluated by CSXT's Train Control Department. Based on this technical evaluation, CSX requests that this condition be slightly modified to require the following signal upgrades:

(1) Installation of constant warning time circuits at nine crossings on the B&O east-west line through Fostoria:

- Tiffin Street (BI 37.67)
- Cleveland Street (BI 37.63)
- Adams Street (BI 37.57)
- Vine Street (BI 37.46)
- Findlay Street (BI 37.23)
- County Line Street (BI 37.16)
- Union Street (BI 37.03)
- Main Street (BI 36.77)
- Poplar Street (BI 36.62)

(2) Installation of constant warning time circuits at seven crossings on the C&O north-south line through Fostoria:

- North Street (CD 38.19)

- Sandusky Street (CD 88.32)
- Fremont Street (CD 88.32)
- High Street (CD 88.40)
- Jackson Street (CD 88.73)
- Culbertson Street (CD 88.97)
- Jones Road (CD 89.72)

(3) Installation of constant warning time circuits at Columbus Avenue on the C&O north-south line (CD 88.12), except that the circuitry on the northeast and northwest slow-speed connections shall be upgraded from DC circuitry to motion detectors rather than constant warning time circuits;

(4) Installation of constant warning time circuits at Columbus Avenue on the B&O east-west line (B. 36.17), except that the circuitry on the northeast and B&O/NS slow-speed connections shall be upgraded from DC circuitry to motion detectors rather than constant warning time circuits; and

(5) Upgrade from DC circuitry to motion detectors at Columbus Avenue on the B&O/NS slow-speed connection track.

The installation of constant warning time devices materially reduces crossing blockage time where there is a significant difference in the speed of trains that may operate over a specific crossing. This speed differential does not normally occur on slow-speed connection tracks. Accordingly, constant warning time circuits are not appropriate for grade crossings of slow-speed connection tracks.

CSX presented its engineering evaluation to representatives of the Public Utility Commission of Ohio and to the Ohio Rail Development Commission on June 25, 1998.

CSX believes that the meeting was productive. There was agreement on the principle that constant warning time circuits should only be installed where feasible from an operating and engineering perspective and where consistent with the objective of reducing crossing blockage time. There was also general agreement on the technical issues discussed herein. It was not possible, however, to achieve a joint report by July 1, 1998. CSX accordingly submits its own technical analysis of Recommended Condition 45(B) and requests that the condition be modified consistent with this analysis.

III. RECOMMENDED CONDITION 38(C): INSTALLATION OF ADDITIONAL TRAIN DEFECT DETECTORS IN THE GREATER CLEVELAND AREA

A. High and Wide Load Detectors

The FEIS recommended installation of two high and wide load detectors on the CSX system in the Greater Cleveland Area, one east of the Greater Cleveland Area at Wickliffe, OH and one west of the Greater Cleveland Area at Olmsted Falls, OH. After evaluation of these proposed locations, CSX concurs that Wickliffe and Olmsted Falls are appropriate locations for installation of high and wide load detectors.

B. Wheel Impact Load Detectors

The FEIS recommended installation of two wheel impact load detectors ("WILDs") on the CSX system in the Greater Cleveland Area, one east of the Greater Cleveland Area at Wickliffe, OH and one west of the Greater Cleveland Area at Olmsted Falls, OH.

WILD east of the Greater Cleveland Area. As stated in the CSX Comments on the FEIS (at 12), there is an existing Conrail WILD at West Springfield, PA, about 60 miles to the east of the City of Cleveland. This WILD provides sufficient detection capability on the east side of the Greater Cleveland Area. It detects defects in wheels on

cars moving through the Greater Cleveland Area from east to west, the purpose of the recommended WILD at Wickliffe. A second WILD at Wickliffe would be redundant. In its letter to Secretary Williams dated June 12, 1998, the City of Cleveland expressed its "initial reaction" that the existing WILD "may be sufficient 60 miles to the east of Cleveland for trains approaching from that direction." June 12, 1998 letter at page 3. CSX reiterates its request that Recommended Condition 38(C) be modified to replace installation of a new WILD at Wickliffe, OH with maintenance of the existing WILD for the westbound track at West Springfield, PA.

WILD west of the Greater Cleveland Area. CSX concurs in the recommendation to install a WILD on the west side of the Greater Cleveland Area, on the eastbound track of the Berea to Greenwich line segment (C-061), to detect defects in wheels on cars moving through the Greater Cleveland Area from west to east. A WILD installation requires a stretch of level tangent track with 50 mph capability. A WILD installation also requires utilities (electricity and telephone). It is thus advisable to locate a WILD in the vicinity of a hot bearing detector so that utilities (electricity and telephone) can be shared. In addition, consideration should be given in locating a WILD to the locations of car maintenance facilities.

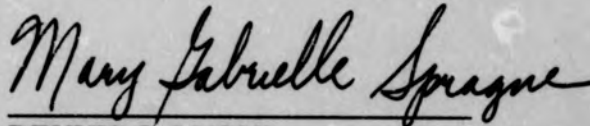
Based on these criteria, it appears that the FEIS's proposed location in the vicinity of Olmsted Falls (MP 19.0) is an acceptable location for installation of a WILD. However, New London (MP 50.5) may be a better location than Olmsted Falls. In particular, because New London is located about 20 miles farther from the City of Cleveland, CSX would have more time to evaluate the data provided by the WILD and to determine the appropriate action before a wheel with a potential defect traverses the

Greater Cleveland Area. CSX has not been able, in the limited time available, to complete its analysis and to determine whether Olmsted Falls or New London is the optimal location from an engineering and operating perspective. However, since a WILD at either location would provide benefit to the Greater Cleveland Area and serve the purpose of the recommended condition, CSX requests that Condition 38(C) be modified to require the installation of a WILD on the eastbound track of the Berea-Greenwich line segment (C-061), but allow CSX the discretion to exercise its engineering and operating expertise to select the precise location for the WILD on this line segment.

C. Hot Bearing/Dragging Equipment Detectors

In CSX's Comments on the FEIS, CSX requested that Condition 38(C) be modified to require installation of an additional hot bearing/dragging equipment detector in the vicinity of Marcy Yard, rather than at Brooklyn and Kinsman. In its letter to Secretary Williams dated June 12, 1998, the City of Cleveland stated that it did not object to the proposed change in location. June 12, 1998 letter at page 4. CSX reiterates its request that Recommended Condition 38(C) be modified to replace installation of hot bearing/dragging equipment detectors at Brooklyn and Kinsman with installation of a detector near Marcy Yard.

Respectfully submitted,



DENNIS G. LYONS
MARY GABRIELLE SPRAGUE
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

SAMUEL M. SIPE, JR.
DAVID H. COBURN
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036-1795
(202) 429-3000

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
CSX TRANSPORTATION, INC.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

*Counsel for CSX Corporation and CSX
Transportation, Inc.*

July 1, 1998

CERTIFICATE OF SERVICE

I, Mary Gabrielle Sprague, certify that on July 1, 1998, I have caused to be served a true and correct copy of the foregoing CSX-154, "Report of Applicants CSX Corporation and CSX Transportation, Inc. on Recommended Conditions 24(A), 38(C) and 45(B) of the Final Environmental Impact Statement" to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

Mary Gabrielle Sprague

STB

FD-33388

6-24-98

D

ID-188909

188909

LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER L.L.P.

888 SEVENTEENTH STREET, N.W.
 WASHINGTON, D.C. 20006-3939
 TELEPHONE: (202) 298-8667
 FACSIMILES: (202) 342-0683
 (202) 342-1316

June 24, 1996

Via Hand Delivery

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



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

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of NS-69/CLEV-19, "Joint Submission of Settlement Agreement By and Between Norfolk Southern Corporation and Norfolk Southern Railway Company and City of Cleveland, Ohio."

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

Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen
 Andrew R. Plump

ENTERED
 Office of the Secretary

JUN 24 1996

Part of
 Public Record

Counsel for Norfolk Southern
 Corporation and Norfolk
 Southern Railway Company

Enclosures

cc: All Parties of Record
 Elaine K. Kaiser

NS-69
CLEV-19

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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



**JOINT SUBMISSION OF SETTLEMENT AGREEMENT
BY AND BETWEEN NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY AND
CITY OF CLEVELAND, OHIO**

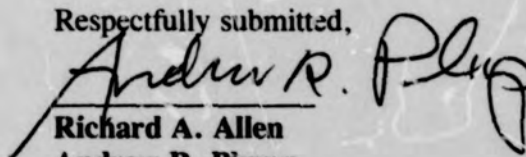
Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") and the City of Cleveland, Ohio ("Cleveland"), notified the Board on June 2, 1998 that they had entered into a settlement agreement, subject to the approval of the Cleveland City Council. NS and Cleveland are now pleased to advise the Board that the Cleveland City Council approved the settlement on June 8, 1998. A true copy of the Memorandum of Agreement ("Agreement") between these parties is attached hereto.

Pursuant to the terms of the Agreement, NS and Cleveland hereby request that the Board adopt the terms of the attached Agreement as a condition of the Board's approval of the Conrail Application.

Pursuant to and in consideration of the Agreement, Cleveland hereby confirms its withdrawal of its request for conditions other than those encompassed in the Agreement to be imposed on NS or affecting NS to mitigate environmental impacts of the Conrail Transaction.

It is the understanding, intent and request of NS and Cleveland that the Board substitute the Agreement for the local environmental mitigation conditions for Cleveland that would otherwise have been imposed by the Board pursuant to the recommendations of the Final Environmental Impact Statement ("FEIS"), namely, Condition 11, to the extent that it refers to mitigation within the City of Cleveland, and Conditions 37(A), 37(B), 37(C), 37(F) and 37(G), because, among its other purposes, the Agreement provides a mechanism for accomplishing the objectives of these recommended conditions. The Agreement shall not substitute for any of the other environmental mitigation conditions recommended in the FEIS that would pertain to NS' lines, facilities or operations in Cleveland.

Respectfully submitted,

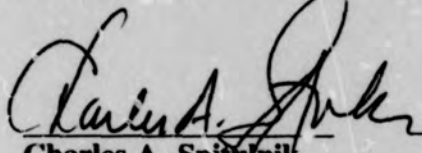


Richard A. Allen

Andrew R. Plump

Zuckert, Scutt & Rasenberger, LLP
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

*Counsel for Norfolk Southern Corporation and
Norfolk Southern Railway Company*



Charles A. Spitalnik

Hopkins & Sutter

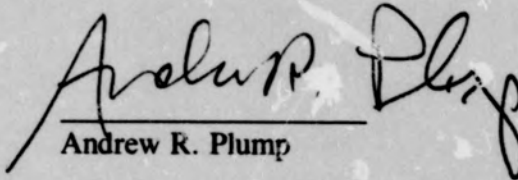
888 Sixteenth Street, N.W.
Washington, D.C. 20006-4103
(202) 835-8000

Counsel for City of Cleveland, Ohio

Dated: June 24, 1998

CERTIFICATE OF SERVICE

I, Andrew R. Plump, certify that on June 24th, 1998, I caused to be served by U.S. mail, postage prepaid, or by more expeditious means, a true and correct copy of the foregoing NS-69/CLEV-19, Joint Submission of Settlement Agreement By and Between Norfolk Southern Corporation and Norfolk Southern Railway Company and City of Cleveland, Ohio, on all parties of record on the service list in STB Finance Docket No. 33388.



Andrew R. Plump

Dated: June 24, 1998

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into this 22nd day of May, 1998 by and between the City of Cleveland, Ohio, by and through its Mayor and subject to the approval of the City Council, and Norfolk Southern Corporation and Norfolk Southern Railway Company, by their undersigned Chairman/President/Chief Executive Officer.

WHEREAS, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") are among the Applicants in the railroad control proceeding currently pending before the United States Surface Transportation Board (the "STB") under Finance Docket No. 33388 (the "Conrail Application"), in which NS and CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") are seeking authority to jointly acquire Conrail, Inc. and Consolidated Rail Corporation (collectively, "Conrail") and to thereafter separately operate parts of the rail lines, facilities and other assets of Conrail; and

WHEREAS, NS submitted to the STB an Operating Plan and Environmental Report as part of the Conrail Application, which submissions describe certain changes in rail traffic and operations that are projected to result from the Conrail Transaction (the "Transaction"); and

WHEREAS, the City of Cleveland, Ohio ("Cleveland" or the "City") has participated as a party in the proceedings at the STB regarding the Conrail Application and has in filings and comments submitted to the STB requested that the STB order NS and CSX to take certain actions to avoid what the City has described as significant adverse environmental impacts of the Transaction upon the City and its residents, or alternatively, that the STB condition any approval of the Conrail Application on the imposition of various conditions designed to mitigate such impacts; and

WHEREAS the STB's Section of Environmental Analysis ("SEA") issued a Draft Environmental Impact Statement ("DEIS") with respect to the Conrail Application in December 1997 which included a characterization of the City as a community with "unique circumstances" and directed NS to consult with government agencies, elected officials and interested parties in Cleveland regarding certain projected train traffic increases on certain lines to be operated by NS post-Transaction in Cleveland; and

WHEREAS, NS and the City have engaged in such consultations with the goal of reaching agreement on mitigation measures to ameliorate the adverse environmental impacts in Cleveland of the projected changes in rail traffic and operations on rail lines and facilities to be operated by NS post-Transaction resulting from the Transaction; and

WHEREAS, the City recognizes the concerns of its neighboring communities, particularly the City of Berea, Ohio, regarding potential adverse impacts of the Transaction, and has sought to reach an agreement with NS that does not harm the interests of those communities while preserving the right and ability of those communities to pursue their own agreements to protect the interests of residents and businesses located therein; and

WHEREAS, NS and the City have reached agreement on such mitigation measures and have made certain other commitments to each other as described hereinafter, including but not limited to certain commitments by NS to make certain changes to its Operating Plan, certain capital investments and certain financial contributions for mitigation of Transaction impacts and for the benefit of the City; and

WHEREAS, the Mayor has agreed to recommend to the Council of the City of Cleveland that it approve this Agreement and authorize the Mayor and the appropriate Directors of the City

to take such further actions as are necessary to effectuate the terms hereof;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

I. Modifications to Operating Plan. In consideration of the concerns of Cleveland and other communities in the Greater Cleveland area about increases in train frequencies projected for certain of the lines that NS will operate following approval by the Surface Transportation Board of the Conrail Application, NS agrees to modify its original Operating Plan. The modifications to the Operating Plan are summarized herein and are described more fully in NS' Mitigation Proposal for Train Frequencies in Greater Cleveland and Vicinity, which was submitted to the STB on April 16, 1998 (hereinafter, the "Mitigation Proposal").

A. Cloggsville Connection Construction: NS agrees to construct what is termed the "Cloggsville Connection," which construction is comprised of two main elements: upgrading the rail lines and facilities between the NS Nickel Plate line at Cloggsville and the Conrail Lakefront line at CP-190 to double-track main line standards through changes and improvements to tracks, bridges, connections, signals and other appurtenant rail facilities, as described more fully in the Mitigation Proposal; and building approximately 7,950 feet of new rail line to connect two parallel rail lines that are approximately 2,100 feet apart, thereby creating a double connection at Vermilion between NS' Nickel Plate line and the Conrail Chicago line to be operated by NS post-Transaction, instead of the single connection described in NS' original Operating Plan, as described more fully in the Mitigation Proposal.

1. Funding: The cost of the construction and improvements to the rail lines and facilities between Cloggsville and CP-190 is currently estimated at \$24,350,000. The cost of constructing a double connection at Vermilion is currently estimated at \$3,000,000 more than constructing the single connection originally proposed in the Operating Plan. NS hereby commits to fund up to the full cost of these Cloggsville Connection projects. (NS previously committed in its Operating Plan to spend the approximately \$2,587,000 needed to construct a single connection at Vermilion.) NS' commitment to fund up to the full cost of these projects is not limited to the current cost estimates contained herein.

2. Schedule: NS estimates that construction of the double connection at Vermilion will take three to five months to complete, and that construction of the improvements to the rail lines and facilities between Cloggsville and CP-190 will take 18 to 24 months to complete, and NS hereby agrees to use its best efforts to complete these construction projects within these time frames. NS will commence implementation of both elements of the Cloggsville Connection projects within ten days of the date on which the approval by the STB of the Conrail Application has become effective, and NS will advance completion thereof with reasonable expedition in view of operating, engineering and other construction-related constraints, and any need to obtain additional governmental approvals.

3. Government Approvals. NS commitment to construct the Cloggsville Connection project and to do so in accordance with the schedule detailed above is subject to the acquisition of any necessary federal, state and local regulatory, governmental, environmental and other permits, approvals and authorizations for the projects specified herein, including but not limited to any necessary and applicable STB approvals. NS shall make all necessary efforts to obtain such approvals within a time frame that will permit completion of the projects within the estimated time frames described in Section I. A. 2. hereof.

4. Removal/Relocation of Utility Facilities. If the Cloggsville Connection construction requires the removal and/or relocation of any electric utility poles or facilities, the allocation of cost of such removal and/or relocation shall be determined in accordance with existing easements, licenses and other agreements applicable to such utility poles or facilities; and NS specifically agrees that no order of the STB approving the Conrail Application or any part thereof shall be interpreted to preempt the application of the terms of any such existing easements, licenses or other agreements to any such removal or relocation. NS will cooperate with the applicable utility company to minimize or avoid interruption of service to utility customers.

B. Rerouting of Trains from Nickel Plate to Conrail Lines: NS agrees to further modify its Operating Plan as follows. Within twenty (20) days after

completion of construction of the double connection at Vermilion, NS will reroute approximately 10.6 trains per day from a Rochester, PA -- Youngstown, OH -- Ashtabula, OH -- Cleveland (Cloggsville) -- Vermilion routing through Cleveland via the NS Nickel Plate line (as provided in the original Operating Plan), to a Rochester, PA -- Alliance, OH -- White, OH -- Cleveland (CP 181) -- Berea, OH -- Vermilion routing through Cleveland via Conrail lines to be operated by NS post-Transaction. Once this rerouting is accomplished, NS projects that average daily freight train traffic on the Nickel Plate line will be approximately 26.0 trains between Ashtabula and Cleveland (Cloggsville) and approximately 23.5 trains between Cleveland (Cloggsville) and Vermilion.

C. Rerouting of Trains from Nickel Plate to Cloggsville Connection

Route: NS agrees to further modify its Operating Plan as follows. Within twenty (20) days after completion of the construction and improvements to the lines and facilities between Cloggsville and CP-190, NS will reroute approximately 9.6 trains per day from a Cleveland (Cloggsville) to Vermilion routing via the NS Nickel Plate line (as provided in the original Operating Plan) to the Cleveland (Cloggsville)—CP-190—Berea—Vermilion routing created by virtue of the aforesaid construction and improvements. Once this rerouting is accomplished, NS projects that average daily freight train traffic on the following line segments will be: Cleveland (Cloggsville) to CP-190 -- 13.8; CP-190 to Berea -- 63.1; Berea to Vermilion -- 55.1.

D. Revisions to Traffic Projections: Table 1, attached hereto, contains the average daily freight train traffic projections from NS' original Operating Plan for the lines to be operated by NS in Cleveland and the Greater Cleveland area post-Transaction. NS agrees to modify its Operating Plan by substituting the average daily freight train traffic projections contained in Table 2, attached hereto, for these lines. Once the rerouting associated with completion of the full Cloggsville Connection is accomplished, the projections contained in Table 2 hereto will be in effect, including the following projections of average daily freight train traffic:

26.0 trains on the Nickel Plate line between Ashtabula and Cleveland (Cloggsville); 13.9 trains on the Nickel Plate line between Cleveland (Cloggsville) and Vermilion; 40.3 trains on the Pittsburgh line (currently operated by Conrail) between White, OH and Cleveland (CP-181); 53.5 trains on the Lakefront line (currently operated by Conrail) between CP-181 and CP-190, 13.8 trains on the "Cloggsville Connection" line between Cleveland (Cloggsville) and CP-190; and 63.1 trains on the Lakefront line between CP-190 and Berea, OH.

II. Grade Separation Projects. Subject to the approval of the projects by the appropriate state authorities and the availability and commitment of funding from federal, state and other public sources necessary to complete the projects, NS agrees to contribute up to \$1,500,000 in the aggregate toward two grade separation projects, one at Dille Road and one at London Road. The total cost of the Dille Road and London Road grade separation projects is estimated to be \$13,500,000. It is expected that amounts exceeding

NS' contribution will come from public sources, including but not limited to funds provided by the federal government and/or the Ohio Rail Development Commission. NS shall pay its portion of the cost of each of these projects in accordance with such schedule(s) as may be established by the appropriate government agency or agencies with jurisdiction over the projects.

III. Community Impacts Fund. In consideration of Cleveland's concerns about adverse environmental impacts from the Transaction, and in order to assist Cleveland with mitigation thereof, NS will provide a total amount of \$10,000,000 (ten million dollars) to Cleveland over a period of five years for a Community Impacts Fund ("CIF") to be established by the City.

A. Schedule of NS Payments. NS will make payments to Cleveland to fund the CIF as follows: An initial payment of \$2,000,000 (two million dollars) will be made no later than 30 days after the date on which the STB's approval of the Transaction has become effective; the balance of \$8,000,000 (eight million dollars) will be paid in four equal annual installments, each installment of \$2,000,000 (two million dollars) to be paid no later than 12 months after the prior payment.

B. Purpose and Use of CIF. Cleveland will utilize the CIF at its sole discretion for mitigation projects designed to mitigate what the City deems to be adverse environmental impacts resulting from the Transaction and associated with the rail lines and facilities that will be operated in Cleveland by NS post-

Transaction. Such impacts may include, but are not limited to, those in the areas of noise and vibration, emergency response and vehicular delay, hazardous materials transport and response, pedestrian and vehicular safety, grade crossing maintenance, and cultural preservation. CIF funds may be used for purposes determined by the City to be related to protection of the City's neighborhoods from the adverse impacts of the Transaction, which may include but are not limited to projects designed to mitigate some or all of these impacts, including but not limited to noise mitigation projects, hazardous materials training and equipment, grade crossing maintenance projects, home value guarantees, fencing projects adjacent to parks and other pedestrian safety projects, landscaping, a maintenance endowment fund and other projects that, in the sole discretion of the City, are reasonably related to the impacts of the Transaction and are associated with the lines and facilities to be operated by NS post-Transaction. It is also understood that the City may expend up to \$250,000 of CIF monies as "seed money" for the furtherance of proposals to preserve and enhance the Mill Creek Waterfall and to better incorporate the Mill Creek Waterfall into the Cleveland Metroparks in the event and to the extent that the City determines that such proposals merit such expenditures.

C. Establishment and Administration of CIF. The CIF shall be established and administered solely by the City or its duly appointed designee(s). NS agrees to participate as a consultant to the City and/or its designee(s) with

respect to CIF matters affecting or relating to NS operations or property.

Cleveland shall have sole responsibility for selecting, managing and maintaining CIF mitigation projects, except as stated hereinafter.

D. Construction/Installation of Noise Mitigation Structures and Landscaping. The City may, in its discretion, utilize CIF funds for noise walls, noise barriers and/or other structures, improvements, equipment or appurtenances designed to mitigate noise (hereinafter, collectively, "noise mitigation structures") as well as for landscaping designed to mitigate noise or visual impacts (hereinafter "landscaping"). To the extent that any such projects are to be constructed or installed on NS' right of way or other NS property, the City shall be required to consult with NS and to obtain NS' concurrence with respect to the design, schedule for construction and/or installation, and, to the extent permitted by law, the identity of individuals or entities performing the construction and/or installation. NS agrees not to unreasonably withhold such concurrence. The City understands that all noise mitigation structures or landscaping constructed and/or installed on NS' right of way and/or property must be in compliance with any applicable federal law or regulations governing railroads, including but not limited to the regulations of the Federal Railroad Administration, and must conform with any applicable engineering and other standards of NS. NS shall grant the City such easements or licenses as may be necessary for construction and/or installation of such noise mitigation structures and landscaping.

E. Ownership and Maintenance of Noise Mitigation Structures and Landscaping.

1. Any noise mitigation structures constructed or installed on NS right of way or NS property by the City shall become the property of NS, subject to the following agreements regarding maintenance of such noise mitigation structures. NS shall be solely responsible for maintaining the structural integrity of such noise mitigation structures in accordance with applicable law and regulations, including all necessary preventive maintenance, ongoing maintenance and repairs; provided, however, that the City shall bear responsibility for keeping the walls free from graffiti or other visual defacement of such structures.

2. Any landscaping constructed or installed on NS right of way or NS property by the City shall be owned by the City, and the City shall have sole responsibility for the maintenance of such landscaping. NS shall grant the City such rights of access as may be necessary for the City to perform such maintenance of the landscaping.

F. Maintenance Endowment Fund. As stated in subsection B of this section, CIF funds may be used for, among other things, a Maintenance Endowment Fund. Such Maintenance Endowment Fund would be used for maintenance of landscaping constructed or installed by the City pursuant to subsections D and E of this Section and for other maintenance projects related to

or associated with impacts from the rail lines and facilities to be operated by NS post-Transaction which impacts are not ordinarily the responsibility of the railroad under applicable laws and regulations. The parties agree that prior to the expiration of a period of five years from the date on which the STB's approval of the Transaction has become effective, NS and the City will engage in discussions regarding the question of whether the Maintenance Endowment Fund should be continued beyond the five-year period of the CIF and, if so, for what period of time and with what level of additional NS commitment of funds. It is understood that NS' agreement to participate in such discussions regarding the Maintenance Endowment Fund does not commit NS to entering into an agreement with the City at that time regarding continuation of the Maintenance Endowment Fund. It is also understood that the establishment of the Maintenance Endowment Fund does not alter NS' maintenance obligations under applicable laws, regulations or agreements, except as otherwise provided in this Agreement.

G. Liability. In providing funds to the CIF, NS does not in any way acknowledge that the mitigation projects to be implemented through the CIF are required as a matter of law. Nor does NS acknowledge or warrant that the projects to be implemented through the CIF will necessarily achieve any mitigation or any particular level or degree of mitigation of the adverse impacts they are intended to remedy. To the extent permitted by law, Cleveland agrees to bear full legal responsibility for any and all damages, claims or injury arising out

of the administration of the CIF by the City, the selection, construction and installation of projects undertaken with CIF funds by the City, the maintenance of any landscaping constructed or installed by the City pursuant to subsections D and E of this section, and the maintenance of other projects undertaken with CIF funds by the City where such other projects are not constructed on NS property. NS agrees to indemnify and hold harmless the City against any and all damages, claims or injury arising out of the maintenance of noise mitigation structures by NS pursuant to subsection E of this section. Further, Cleveland agrees to include in any contract related to the CIF for projects undertaken with CIF funds which requires the contractor to enter onto any property owned by NS a requirement that the contractor indemnify and hold harmless NS against any claims related to the construction, installation or maintenance of such projects.

IV. Modification of Commitments in the Event of Operating Changes. Given the fluctuating nature of rail freight traffic over time, and the possibility that a change in circumstances could have a significant effect on the assumptions and projections of the NS Operating Plan, the parties recognize that deviations from the projected average train frequencies set forth in NS' Operating Plan as revised by Table 2 hereto may be necessary. To preserve NS' operating flexibility while affording a mechanism for addressing certain future impacts of any substantial increases in NS train traffic over the projections contained in Table 2, the parties agree as follows:

A. Nickel Plate Line Noise Mitigation. Except as provided hereinafter, if during the eight-year period beginning on the date on which construction of the Cloggsville Connection has been fully completed, there is any period of twelve consecutive months in which the average daily number of trains on the Nickel Plate line between Cloggsville and Vermilion equals or exceeds 26 trains per day on an annualized basis, NS shall contribute \$2,600,000 in additional funds to the CIF for noise mitigation projects along this rail segment. Such payment shall be made within 90 days after the end of such twelve-month period. The provisions of this subsection shall not apply to train movements prior to the date on which construction of the Cloggsville Connection has been fully completed, and none of the twelve-month periods of traffic increases referred to in this subsection shall include any period prior to such Cloggsville Connection project completion date.

B. W. 117th Street Grade Crossing Mitigation. If during the five-year period beginning on the date on which construction of the Cloggsville Connection has been fully completed, there is any period of twelve consecutive months in which the average daily number of trains on the Nickel Plate line between Cloggsville and Vermilion equals or exceeds 19 trains per day on an annualized basis, NS shall work cooperatively with Cleveland in seeking the support of and funding from the applicable state authorities for a grade separation project for the

W. 117th Street grade crossing, and NS shall contribute up to 10 percent of the cost of funding such project. NS shall pay its portion of the cost of such project in accordance with such schedule as may be established by the appropriate government agency or agencies with jurisdiction over the project.

C. Aetna and Bessemer Streets Grade Crossing Mitigation. If during the five-year period beginning on the date on which construction of the Vermilion double connection has been fully completed, there is any period of twelve consecutive months in which the average daily number of trains on the existing Conrail line to be operated by NS post-Transaction between White, OH and Cleveland (CP-181) equals or exceeds 45 trains per day on an annualized basis, NS shall: (1) work cooperatively with Cleveland in seeking the support of and funding from the applicable state authorities for grade separation projects for the Aetna Street and Bessemer Street grade crossings, and NS shall contribute up to 10 percent of the cost of funding such project and NS shall pay its portion of the cost of such project in accordance with such schedule as may be established by the appropriate government agency or agencies with jurisdiction over the project; and (2) in the event that it is not advisable or possible to construct a grade separation at Aetna Street and Bessemer Street, or at either of them, NS will cooperate with the City on developing an alternative capital improvement or improvements, to be negotiated by NS and the City, designed to improve access to emergency and other public safety responders for the neighborhoods surrounding

such grade crossing(s), with NS' funding commitment for such capital improvement(s) to be up to 10 percent of the cost of a grade separation at such grade crossing(s) but not to exceed the total cost of such capital improvement(s).

D. Mitigation for Capacity Increases. Except as provided hereinafter, if during the ten-year period beginning on the date on which the STB's approval of the Transaction has become effective, NS decides to increase capacity through the construction of an additional main rail line in Cleveland or of a rail siding in excess of three miles in length in Cleveland, NS agrees to provide prior notice of such project(s) to the City and to enter into good faith discussions with the City regarding the question of whether there are any significant environmental impacts resulting from such project(s) and regarding the possible mitigation of any such impacts. As used herein, the terms "construction of an additional main rail line" and "construction . . . of a rail siding in excess of three miles in length" do not include the construction of industrial tracks or spurs, nor do they include other rehabilitation, improvement or upgrading of any existing track or the signals or structures appurtenant thereto, nor do they include the addition of any main line track by or on behalf of any other railroad on the right of way of NS unless NS has the ability to use such main line track. It is understood that NS' agreement to participate in good faith discussions regarding the environmental impacts of and

possible mitigation of such impacts of those projects contemplated by this subsection of the Agreement, does not constitute an acknowledgement that such projects will have significant environmental impacts or commit NS to entering into an agreement with the City at that time regarding mitigation of such impacts. It is further agreed and understood that the provisions of this subsection shall not apply to the capacity increases to be constructed as part of the Cloggsville Connection project.

E. NS Reports to Cleveland.

1. In furtherance of this Section IV, NS agrees to provide the City on a monthly basis with an accurate written report on the average daily number of freight trains that operated over each NS line in the City. Each such report shall be provided to the City by NS within 30 days of the end of the applicable month, and shall be contemporaneously submitted by NS to the STB. NS shall provide such monthly reports for a period of ten years from the date on which the STB's approval of the Transaction has become effective.

2. In furtherance of this Section IV, NS also agrees to notify the City in writing of the date on which construction of the Vermilion double connection has been fully completed and the date on which construction of the remainder of the Cloggsville Connection project has been fully completed, with each such

written notification to be provided within 15 days of each such completion date.

3. In furtherance of this Section IV, NS also agrees to provide timely advance written notification to the City of any planned capacity increases to which the terms of subsection D hereof would apply.

V. Agreements Regarding Berea Interlocking and Other Train Frequency Issues.

The City desires to reduce the frequency of train operations through residential neighborhoods and to minimize the adverse environmental impacts of the Transaction on the City of Cleveland and the surrounding communities, including but not limited to the City of Berea. NS believes that the integrity of its Operating Plan for train operations in and around Cleveland would be compromised if too many trains had to be crossed at the Berea interlocking between the Lakefront line to be operated by NS post-Transaction and the Short line to be operated by CSX post-Transaction. NS has determined after extensive study that a maximum of 15 trains per day can be crossed at the Berea interlocking without causing undue congestion or unduly disrupting NS operations; and the City acknowledges and accepts the validity of this determination by NS. NS agrees that as many as 15 CSX trains can and will be accommodated to operate via trackage rights on the Lakefront line to be operated by NS post-Transaction for as long as NS controls operations on said Lakefront line.

VI. Community/Railroad Committee. The parties hereby acknowledge their intent to continue the working relationship that has developed between them and to work together to strengthen that relationship over time as long as NS conducts operations in the City. NS and the City agree to jointly establish a Community/Railroad Committee (the "Committee") comprised of twelve (12) persons: Three members appointed by NS, three members appointed by the Mayor, three members appointed by the City Council President, and three members of the community appointed by the Mayor. The purpose of the Committee shall be to provide a forum for ongoing discussion and dialogue between NS and the City regarding issues of mutual concern. The Committee shall meet quarterly, beginning in the first quarter after the effective date of the STB's approval of the Conrail Application, and continuing thereafter according to a schedule established by the Committee itself. Issues to be discussed by the Committee may include, but are not limited to, matters discussed in this Section VI, as well as consideration of citizen complaints relating to NS' operations, potential joint economic and job training initiatives, and general monitoring of the mutual obligations set forth in this Agreement. The Committee will prioritize these issues, and will develop for each issue an appropriate process and time schedule. It is understood that with respect to each of the issues of concern identified in this Section VI, the parties' agreement to discuss the issue at the Committee does not commit either NS or the City to enter into any agreements regarding the issue following such discussions, but the City and NS agree to make efforts to resolve issues brought to the Committee.

A. Asset Management. In consideration of concerns expressed by the City regarding ongoing maintenance, condition and appearance of existing NS railroad facilities in Cleveland and of railroad facilities to be operated by NS in Cleveland post-Transaction, including railroad bridges, rights of way and rail yards, NS agrees that within twelve months of the date on which the STB's approval of the Transaction shall have become effective, NS and the City shall conduct joint inspections of such facilities and NS shall, upon completion of such twelve month period, submit to the City an asset management plan for its rail facilities in Cleveland. The scope and content of such asset management plan shall be determined by discussions between NS and the City at the Committee. NS also agrees that within 180 days after the date on which the STB's approval of the Transaction shall have become effective, NS will provide the City with an inventory of all NS bridges, rights of way, rail yards and railroad operating properties located in Cleveland. NS agrees to maintain the structural integrity of its bridges in Cleveland and to maintain its rail facilities in Cleveland in accordance with all applicable laws, regulations and existing agreements to which NS is a party or for which NS is or will be legally responsible. NS agrees to complete any unfinished components of the program of railroad bridge painting/repair agreed to by Conrail and the City in 1993 with respect to those Conrail bridges on the lines to be operated by NS post-Transaction. The parties

agree that they will attempt to resolve any disputes or issues with regard to asset management through discussions at the Committee.

B. Surplus Properties. NS agrees to provide the City with an inventory of all surplus real properties in Cleveland owned or controlled by NS post-Transaction. Such an inventory shall be provided within 90 days of the date on which the STB's approval of the Transaction shall have become effective. NS agrees to discuss with the City's Economic Development Director and the Committee possible dispositions of such surplus real property, including but not limited to possible dispositions that would result in the use of such property for City-supported economic or community development. For purposes of this Agreement, the term "surplus real properties" means those properties located in the City that, as of the effective date of the Transaction, are owned or controlled by NS and are either not then in use by NS in connection with its rail operations or are not believed by NS to have the potential to be used in the future in connection with its rail operations.

C. Billboards. NS will provide the City with an inventory of all billboard leases for billboards on NS' post-Transaction rights of way, bridges and other property in Cleveland, within 90 days of the date on which the STB's decision approving the Transaction shall have become effective. Such inventory shall indicate, to the extent that the information is available to NS, the locations of the billboards covered by the leases and the terms of such leases. Where such

information is not available to NS, NS shall provide the City with pertinent information about the lease or prior parties in interest to the lease that is reasonably available to NS. NS agrees not to enter into any lease that would have the effect of adding a billboard to a location where there is no billboard or increasing the number of billboards at a location where there is already one or more billboards, as of the effective date of the Transaction. NS further agrees to take the following actions to eliminate the advertising of tobacco and alcohol products on the billboards on its property in Cleveland: (1) If a current billboard lease permits NS to do so, NS will instruct the lessee that the billboard cannot be used for such advertisements; (2) when each current billboard lease term expires, NS will incorporate a prohibition on tobacco and alcohol advertisements into the terms of any renewal or replacement lease; and (3) if any billboard lease shall not have expired by the end of five years from the date on which the STB's decision approving the Transaction shall have become effective, NS shall otherwise take all legal and practicable steps to eliminate tobacco and alcohol advertisements from any billboard covered by such lease. NS also agrees to ongoing discussions with the City at the Committee regarding the City's desire to eliminate all billboards from railroad property.

D. Capacity Increases. If during the ten-year period beginning ten years after the date on which the STB's approval of the Transaction has become effective, NS decides to increase capacity through the construction in Cleveland

of an additional main rail line or of a rail siding in excess of three miles in length (as such terms are defined in Section IV. D. hereof), NS will provide timely written advance notice to the Community/Railroad Committee, and NS agrees to enter into good faith discussions with the Committee regarding the question of whether there are any significant environmental impacts resulting from such project(s) and regarding the possible mitigation of any such impacts. Prior to the expiration of the ten-year period beginning ten years after the date on which the STB's approval of the Transaction has become effective, NS agrees to discuss with the Committee the question of whether there should be any continuation of NS' commitment to discuss such capacity increases with the Committee.

E. Lakefront Track Realignment. NS agrees to discuss with the City at the Committee the issue of potentially realigning railroad tracks along a portion of the Lakefront so as to consolidate NS and CSX tracks into a single rail corridor there.

F. Mill Creek Waterfall. NS agrees to discuss with the City at the Committee questions with respect to proposals to preserve and enhance the Mill Creek Waterfall and to better incorporate the Mill Creek Waterfall into the Cleveland Metroparks.

G. Business Development. The parties agree to enter into discussions with the City's Economic Development Director and the Committee with the goal of developing an intermodal business development alliance between NS and

Cleveland. The parties may also discuss business development along the NS rights of way.

H. Old River Channel. The parties agree to discuss at the Committee proposals for development of the Old River Channel and the pedestrian tunnels on the Lakefront line.

I. [Intentionally omitted.]

J. Permitting Generally. The City agrees to discuss with NS at the Committee any issues, concerns or problems that NS is or may experience in obtaining permits or other types of approvals from City or other local governmental organizations for any of NS' business operations and activities in Cleveland for which such permits or approvals are required.

K. Other Topics. Other topics of discussion at the Committee may include, but are not limited to, the following: the I-480/I-71 Junction and Rockport Yard improvements; the Cloggsville construction and improvements; redevelopment of the southeast quadrant of East 93rd and Quincy; issues relating to the Flats Industrial Railroad; the East 9th/Ontario Intermodal Yard; public transit; and issues relating to hazmat.

VII. Other Understandings and Undertakings.

A. NS acknowledges that it is bound by any system-wide mitigation measures mandated by the STB for hazardous materials transport and intends to

apply NS' own system-wide program for the safe transportation of hazardous materials (as further described in Attachment A hereto) to the lines and facilities it will operate in Cleveland post-Transaction. In addition to the program described in Attachment A, NS agrees to provide the City with four OREIS (Operation Respond) software packages, to install such software for the City and to train the City's personnel in the use of such software; to provide, upon request, periodic training in railroad/hazmat issues, including classroom, tabletop and full-scale drills; to provide the City with annual reports of the number of car loads of hazardous materials that have moved through the City (including a breakdown by four (4) digit STCC code of the types of materials transported); and to coordinate with the City's personnel or authorized agents the latter's periodic access to NS yards, lines and facilities for the purpose of hazardous materials incident preparedness and planning. It is expressly understood that nothing in this Agreement would absolve NS of its legal, regulatory or business responsibilities associated with hazmat transportation or incidents in Cleveland.

B. With respect to the Cloggsville Connection projects, Cleveland agrees to cooperate with NS, if such cooperation is requested, in obtaining any applicable City or local governmental permits or approvals for the projects, and agrees to use its good offices to assist in resolving any issues that may arise with respect to these projects between NS and any utility companies or other interested third parties.

C. Cleveland agrees that through NS' consultations with the officials and elected representatives of the City of Cleveland, which consultations have culminated in this Agreement, NS has complied with the directives in the DEIS regarding consultations with the City of Cleveland with respect to potentially significant impacts resulting from the Transaction.

D. The City agrees not to seek at the STB, in any court, or in any other forum, any conditions or mitigation with respect to NS in connection with the STB's approval of the Conrail Application that would be contrary to or otherwise inconsistent with this Agreement, the terms hereof or the acknowledgements made herein. NS agrees not to seek at the STB, in any court, or in any other forum, any conditions or mitigation in connection with the STB's approval of the Conrail Application that would be contrary to or otherwise inconsistent with this Agreement, the terms hereof or the acknowledgements made herein.

E. NS and the City agree that neither of them will enter into any agreement with any other individual or entity, seek any decision or order of the STB or of any court, or take any other actions that would be contrary to or would otherwise be inconsistent with this Agreement, the terms hereof or the acknowledgements made herein; provided, however, that nothing in this subsection E shall prevent the City from protecting its rights or pursuing all available remedies with respect to CSX in connection with the Conrail Application as long as the City does not seek the imposition of a remedy that is

contrary to or otherwise inconsistent with this Agreement, the terms hereof, or the acknowledgements made herein.

F. Notwithstanding any other terms of this Agreement, this Agreement shall not constrain the City from pursuing efforts to obtain reductions in the numbers of trains projected to be operated by CSX post-Transaction on the Short line, through negotiations with CSX and/or requests for conditions at the STB.

Notwithstanding any other terms of this Agreement, this Agreement shall not constrain the City from pursuing efforts to obtain other mitigation with respect to CSX, through negotiations with CSX and/or requests for conditions at the STB, provided that such mitigation does not relate to NS.

G. The parties agree that as long as the City shall have complied with the terms of this Agreement, including particularly the terms of subsections D and E of this Section, the imposition by the STB of conditions on the Transaction that would have the effect of requiring more than 15 trains per day to cross at the Berea interlocking shall not itself void this Agreement pursuant to Section X. A. hereof.

H. The parties acknowledge and agree that NS' commitment to build the Cloggsville Connection and NS' commitment to accommodate as many as 15 CSX trains per day on the Lakefront line to be operated by NS post-Transaction are unique commitments that are essential to the purpose of this Agreement. Accordingly, in the event that NS notifies the City or the City otherwise

determines that NS has not or cannot fulfill either of these commitments (or both of them), the parties agree that: (a) if such notification or determination occurs during the term of any STB oversight proceeding with respect to the Transaction, the City shall have the right to petition the STB for an order compelling specific performance by NS of such commitment(s); and (b) if such notification or determination occurs after the term of any STB oversight proceeding with respect to the Transaction, NS shall consent to the reopening of the Conrail Application by the STB for the purpose of the STB considering a petition by the City for an order compelling specific performance by NS of such commitment(s); and (c) in either event, if the STB determines that specific performance of such commitment(s) shall not be ordered, the parties agree that the STB's approval of the Conrail Application shall be reopened for the limited purpose of reconsideration of the adverse environmental impacts of the Transaction upon the City and of the conditions imposed by the STB for mitigation of such adverse environmental impacts. The parties' agreement to this subsection H does not constitute a waiver by either party of any other remedies that may be available to it with respect to the rights and obligations set forth in this Agreement.

VIII. Submission to City Council. Upon execution of this Agreement, the City's Mayor and appropriate Director(s) shall immediately take all actions necessary to place this Agreement before the Council of the City of Cleveland for its earliest

consideration. The Mayor and such Director(s) shall recommend to the City Council that it approve this Agreement, and shall take all other necessary and appropriate actions to ensure the most expeditious consideration of the Agreement by the City Council.

IX. STB Notification. Promptly upon execution of this Agreement and its approval by the City Council:

A. NS and Cleveland will notify the STB in writing that they have entered into this Agreement and will advise the STB of the terms of this Agreement. NS and Cleveland will further request at that time that the STB adopt the terms of this Agreement as a condition of the STB's approval of the Conrail Application; and

B. The City will advise the STB in writing that, in consideration of this Agreement, it is withdrawing its opposition to, and its request for conditions upon, so much of the Conrail Application as relates to NS' acquisition of control of Conrail and NS' proposed post-Transaction rail operations.

X. Conditions. The commitments set forth above are conditioned on:

A. The STB's approval of the Conrail Application, provided that such approval (1) adopts the terms of this Agreement as a condition of such approval, and (2) includes the STB's approval of NS' Operating Plan, as modified by the NS Mitigation Proposal and the commitments made herein; and

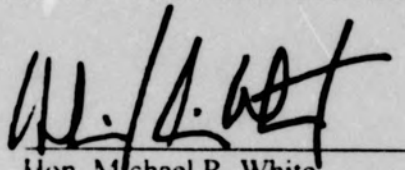
B. The acceptance by NS of any other conditions imposed by the STB upon the approval of the Conrail Application; and

C. The approval of the Conrail Application by the STB having become effective.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.
all as of the day and year first above written.

THE CITY OF CLEVELAND, OHIO

By:


Hon. Michael R. White
Mayor

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY

By:



David R. Goode
Chairman, President and
Chief Executive Officer

Table 1 NS Original Operating Plan

Segment	Freight Trains per Day		
	Pre	Post	Change
Rochester to Youngstown	12.6	17.7	5.1
Youngstown to Ashtabula*	11.7	23.8	12.1
Ashtabula to Cleveland (Cloggsville)	13.0	36.6	23.6
Cleveland (Cloggsville) to Vermilion	13.5	34.1	20.6
Rochester to Alliance	37.9	26.3	-11.6
Alliance to White	26.4	30.1	3.7
White To Cleveland (CP-181)	12.5	29.7	17.2
Cleveland (CP-181) to CP-190**	48.4	42.9	-5.5
CP-190 to Berea	48.4	42.9	-5.5
Cleveland (Cloggsville) to CP-190	2.0	4.2	2.2
Berea to Vermilion	48.4	34.9	-13.5
Vermilion to Bellevue	15.6	27.0	11.4
Bellevue to Oak Harbor	7.7	27.2	19.5
Vermilion to Oak Harbor	48.3	41.4	-6.9
Vermilion Connection west of Coen Road	0	7	7
Vermilion Connection east of Coen Road	n/a	n/a	n/a

* Post numbers include 7 CSX trains per day

** Post numbers include 10 CSX trains per day

*** Post numbers include 2 CSX trains per day

n/a = not applicable

Table 2 NS Revised Cloggsville Connection Mitigation Proposal

Segment	Freight Trains per Day		
	Pre	Post	Change
Rochester to Youngstown	12.6	7.1	-5.5
Youngstown to Ashtabula*	11.7	13.2	1.5
Ashtabula to Cleveland (Cloggsville)	13.0	26.0	13.0
Cleveland (Cloggsville) to Vermilion	13.5	13.9	0.4
Rochester to Alliance	37.9	36.9	-1.0
Alliance to White	26.4	40.7	14.3
White To Cleveland (CP-181)	12.5	40.3	27.8
Cleveland (CP-181) to CP-190**	48.4	53.5	5.1
CP-190 to Berea	48.4	63.1	14.7
Cleveland (Cloggsville) to CP-190	2.0	13.8	11.8
Berea to Vermilion	48.4	55.1	6.7
Vermilion to Bellevue	15.6	26.0	10.4
Bellevue to Oak Harbor	7.7	26.2	18.5
Vermilion to Oak Harbor	48.3	42.4	-5.9
Vermilion Connection west of Coen Road	0.0	0.9	0.9
Vermilion Connection east of Coen Road	0.0	11.6	11.6

- * Post numbers include 7 CSX trains per day
- ** Post numbers include 10 CSX trains per day
- *** Post numbers include 2 CSX trains per day
- n/a = not applicable

ATTACHMENT A. NORFOLK SOUTHERN'S COMMITMENT TO SAFE TRANSPORTATION OF HAZARDOUS MATERIALS

Safety, including safe transport of hazardous material is Norfolk Southern's (NS') highest priority. This unflagging commitment, which goes beyond simply complying with existing regulations and accepted industry practices, has resulted in NS' industry-leading safety performance. NS is dedicated to being a responsible member of the communities it serves and is also motivated by the tenet that safety is good business. Simply put, accidents are both damaging and expensive, and NS is devoted to preventing them. The following summarizes NS' ongoing commitment to safe transportation of hazardous materials.

WHAT IS HAZARDOUS MATERIAL?

The U.S. Department of Transportation (DOT) defines a hazardous material as "*Any substance or material in a quantity or form which poses an unreasonable risk to health, safety, and property when transported in commerce*." This includes a rather extensive list of chemicals of varying degrees of hazard.

Norfolk Southern has transported over 250,000 loads of hazardous materials annually for the last several years with an excellent safety record. Overall, 99.96 percent of the hazardous materials shipped on NS arrive without incident, and NS is continually working to improve their safety and environmental performance. System-wide, hazardous materials traffic amounts to about five percent of the 3.8 to 4.0 million total carloads of freight handled by NS each year. Completion of the Conrail Transaction will increase hazardous materials loads on some rail line segments, and decrease loads on others. However, NS expects the system-wide percentage of hazardous materials to other freight to remain about five percent post-Transaction.

NS' EXISTING RISK MANAGEMENT PROGRAM FOR HAZARDOUS MATERIALS

Prevention is the primary objective of the NS Risk Management Program for Hazardous Materials. Prevention means minimizing risks while maximizing employee safety and protection of the environment. NS achieves this objective through effective training, regulatory compliance, safe operating practices, equipment and right-of-way maintenance, risk assessment, and contingency planning.

Employee Training - Effective employee training is the cornerstone of hazardous materials incident prevention. Since 1993, over 20,000 NS employees have successfully participated in the NS hazardous materials training program. Since then, NS has provided refresher training annually to employees with key hazardous materials management and handling responsibilities - even though federal regulations only require such refresher training every three years. Environmental Awareness training is also conducted for all employees on a regular basis.

Regulatory Compliance - NS must abide by several federal laws and regulatory programs designed to ensure the safe handling and transport of hazardous materials, including:

- U.S. DOT hazardous materials regulations (49 CFR 170-179)
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
- Resource Conservation and Recovery Act of 1976 (RCRA)

The DOT regulations closely regulate the transportation of hazardous materials. For example, each rail car (or block of cars) containing hazardous materials must have the proper documentation, including identification of the material and an emergency telephone number. Most cars containing hazardous materials must display a placard or other markings to identify the contents and the associated hazards. The regulations also control the placement of hazardous materials cars in a train. Cars containing incompatible materials are not to be placed next to each other to reduce the risk of a chemical reaction. Similarly, incompatible cars are not to be placed next to each other. For example, a hazardous materials tank car may not be placed next to a flat car carrying steel pipe, as the pipe could shift and damage the tank car.

NS also must comply with Federal Railroad Administration (FRA) regulations covering track and signal safety standards, locomotive and freight car safety standards, and railroad operating rules and practices, all of which reduce the risk of hazardous materials releases from accidents.

Safe Operating Practices - Industry recommended safe operating practices for the transportation of hazardous materials are provided in the American Association of Railroads (AAR) Circular OT-55. There are four main areas addressing incident prevention:

- **Key Trains** are trains that carry a specified amount of hazardous materials, and have certain restrictions such as a maximum speed of 50 mph and procedures for meeting and passing other trains.
- **Key Routes** are any rail line segments with an annual volume of 10,000 car loads (or greater) of any hazardous materials. Key routes are subject to specific track maintenance requirements (twice yearly inspections of main track and annual inspections of sidings), and a maximum distance of 40 miles between track-side safety detectors (sensors that monitor performance of passing train cars, including such items as wheels and dragging equipment). *Since 1992, NS has applied key route requirements to rail line segments with 9,000 car loads of hazardous materials. Track-side safety detectors are placed only 11 to 15 miles apart over the entire NS system.*
- **Yard Operating Procedures** establish safe train car switching operations in rail yards, often going beyond the federal regulations. *NS has even tighter restrictions*

*limiting the number of cars of certain commodities which can be cut-off,
prohibiting any tank cars containing flammable gas from being cut-off in motion,
and limiting loaded hazardous materials car coupling speeds to 4 mph or less.*

- **Storage Distance** defines the minimum distances from railroad mainline tracks and passenger operations for storage and handling of hazardous materials. *In addition, NS has a general policy against transloading hazardous materials on company property. Where transloading is approved, special precautions are taken to provide spill containment and environmental protection.*

Although compliance with each of these areas is totally voluntary, NS has adopted OT-55 as part of its operating policy and practice.

NS is also a member of the Chemical Manufacturers Association (CMA) Responsible Care partnership program. This program focuses on prevention of accidents by adopting a code of management practices established by the CMA for safer handling and transport of chemicals. The program includes chemical transport risk management, compliance review and training, safety performance reviews and recommendations, handling and storage practices, and emergency preparedness procedures. *The incorporation of these elements into NS' existing safety and environmental programs further strengthens NS' risk management of hazardous materials transportation.*

Maintenance - Maintenance of the railroad infrastructure and equipment is an extremely important element in preventing accidents. Large annual expenditures are made to keep NS rails in "tip-top" shape and ensure the safest travel for all traffic, including hazardous materials. Most tank cars are privately owned and NS is not responsible for their maintenance other than ensuring safe running gear. Nonetheless, accidents with hazardous materials cars can result from other cars in the train. Therefore, NS has an effective maintenance and inspection program in place to keep all railroad owned equipment up to the required standards of safety.

Contingency Planning - NS has two types of plans that address potential hazardous materials incidents. These are the *NS Emergency Action Plans for Hazardous Materials Incidents* and *Division Emergency Action Plans for Hazardous Materials Incidents*. Both of these contingency plans emphasize finding and fixing the source of the spill or release, containing and controlling the spill or release, identifying the material and notifying the proper authorities, and cleaning up the spill and restoring the environment. Both plans are updated as required by regulation, and when warranted by changes in NS operations. In addition, NS uses internal and external Hazardous Materials audits to evaluate their emergency response plans and hazardous materials training programs.

Additional emergency response resources include private, on-call contractors, who provide supplemental hazardous materials handling knowledge, personnel, and equipment.

These resources are located strategically throughout the NS system, and are available to support railroad personnel and local police and fire departments during incidents.

ADDITIONAL SAFETY MEASURES TO BE TAKEN BY NS IN RESPONSE TO POST-TRANSACTION INCREASES IN HAZARDOUS MATERIALS TRAFFIC

Implementation of the Conrail Transaction will affect the volume of hazardous materials shipped on NS lines, and the routes used to move the hazardous materials to customers. Some NS rail line segments will experience increases in hazardous materials traffic, while other line segments will experience decreases. The Draft Environmental Impact Statement (DEIS) on the Transaction, prepared by the Surface Transportation Board (STB), identifies NS rail line segments which are anticipated to experience increases in hazardous materials traffic. The DEIS recommends specific safety measures for rail line segments projected to experience increases in hazardous materials traffic above the key route threshold of 10,000 cars annually as a result of the Transaction, with additional safety measures for rail line segments where hazardous materials traffic is expected to double and exceed 20,000 car loads annually.

NS concurs with the DEIS recommendation that the increases in hazardous materials transportation warrant additional safety measures. In keeping with the DEIS recommended mitigation strategy and NS' own proactive approach to safety, and contingent on the STB's approval of the joint CSX-NS application to acquire control of Conrail, NS commits to the following:

System-Wide Safety Measures

NS will implement its existing Risk Management Program for Hazardous Materials across the entire post-Transaction NS system. This will include the following specific actions:

1. **NS will develop and maintain Emergency Action Plans for Hazardous Materials system-wide.** NS has two types of plans that address potential hazardous materials incidents. These are NS *Emergency Action Plans for Hazardous Materials Incidents* and *Division Emergency Action Plans for Hazardous Materials Incidents*. Similar plans will be prepared and implemented for the newly-acquired Conrail rail lines and facilities.
2. **NS will maintain and continue to improve its safety policies and procedures to reduce the risk of hazardous material incidents.** NS has established a Risk Management Program for Hazardous Materials within its Environmental Protection department. In addition, NS corporate operating policies and procedures incorporate the safety policies and procedures of AAR Circular OT-55 for the safe transport of hazardous materials and the CMA Responsible Care program for the safe transport and handling of chemicals. These operating policies and procedures will be implemented throughout the expanded NS system. A Safety Integration Plan (SIP) was prepared by NS and submitted

with it's application to the STB. The SIP details NS' plans to incorporate the NS safety policies and procedures into the Conrail operations acquired by NS.

Local Safety Measures - Key Routes

NS will provide the following risk management measures to rail line segments that become "Key Routes":

1. **NS will implement the AAR Circular OT-55 guidelines for the safe transportation of hazardous materials, including:**
 - Wayside defective bearing detectors shall be placed a maximum of 40 miles apart on key routes, or an equivalent level of protection may be installed based on improvement in technology.
 - Main track on key routes must be inspected by rail defect detection and track geometry inspection cars or any equivalent level of inspection no less than two times each year; and sidings must be similarly inspected no less than one time each year.
 - Any track used for meeting and passing key trains must be Class 2 or better. If a meet or pass must occur on less than Class 2 track due to an emergency, one of the trains must be stopped before the other train passes.
 - Training of employees who handle shipments of hazardous materials on a key route must be conducted on an annual basis.
2. **NS will provide hazardous materials contingency plan information to counties along key routes for distribution to the Local Emergency Planning Committees (LEPCs).** These contingency plans will contain information on NS hazardous materials emergency response plans, key sources and contacts for additional emergency assistance, and NS contacts. The information provided by NS will supplement existing contingency planning efforts by the LEPCs, but is not intended to take the place of local planning. It is neither necessary nor cost-effective for every local firefighter and policeman to have the expert skills and equipment to respond personally to any hazardous materials emergency. Through the proper awareness training and contingency planning, states and local communities will be able to pool their response capability with those of federal agencies and NS to provide for a more coordinated and better managed emergency response system.
3. **NS has an established 24-hour toll-free telephone line which can be used to obtain hazardous materials emergency response information. The emergency response**

information "hotline" is established in the NS Police Communications Center in Roanoke, Virginia, which can immediately access all NS dispatch centers.

Additional Safety Measures on Routes Where Hazmat Traffic is expected to Double and Exceed 20,000 car loads annually

NS will provide the following risk management measures to rail line segments where hazardous material traffic doubles and exceeds 20,000 car loads annually:

1. **NS will implement the mitigation measures noted above for Key Routes, including implementation of the OT-55 guidelines for Key Routes, provision of hazardous materials contingency planning information to affected counties for dissemination to LEPCs, and a 24-hour toll-free "hotline" for hazardous materials emergency response information.**
2. **NS will provide hazardous materials emergency response training drills for each rail line segment within two years after Approval of the Transaction. These drills will be held in cooperation with the LEPCs, and interested federal and state agencies.**

STB

FD-33388

6-19-98

D

ID-188698

LAW OFFICES

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

888 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-3939
TELEPHONE: (202) 298-8360
FACSIMILES: (202) 342-0683
(202) 342-1316

RICHARD A. ALLEN

June 18, 1998



ENTERED
Office of the Secretary

JUN 19 1998

Part of
Public Record

Via Hand Delivery:

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

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty-five copies of CSX/NS-207, "Reply Of Norfolk Southern And CSX To Motion For Clarification Of The Wheeling And Lake Erie Railway." Also enclosed is a 3-1/2" computer disk containing the pleading in Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen
Richard A. Allen

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Enclosures

cc: Hon. Jacob Leventhal
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



**REPLY OF NORFOLK SOUTHERN AND CSX TO MOTION FOR
CLARIFICATION OF THE WHEELING AND LAKE ERIE RAILWAY**

Applicants NS¹ and CSX² submit this reply to a letter dated June 15, 1998 from Mr. Keith O'Brien, attorney for the Wheeling and Lake Erie Railway ("W&LE"), purporting to request the Board to "clarify" certain conditions recommended by the Board's staff at the voting conference in this proceeding on June 8, 1998, which the Board indicated its intention to approve in the final written decision scheduled to be issued on July 23, 1998.

NS and CSX do not believe the staff recommendations discussed by W&LE require clarification. Furthermore, certain of the requested "clarifications" plainly seek to change rather than to clarify the recommended decisions. If the Board believes that the points discussed need to be clarified, the position of NS and CSX on them is as follows:

1. Haulage/Trackage Rights to Toledo and Lima, OH. NS and CSX do not oppose W&LE's having both haulage and trackage rights to Toledo and Lima, Ohio and the option to utilize either. The precise terms of those rights, including the charges for the rights,

¹ "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR").

are matters that should be negotiated in the first instance by the parties, as has been the practice with respect to similar conditions in previous cases, rather than dictated at the outset by the Board. Only in the event the parties are unable to agree on particular terms should the Board be asked to determine them.

2. Huron Dock lease. The staff recommended "extension of W&LE's lease for the Huron Docks." W&LE seeks a "clarification" that would change and significantly expand that condition by (1) removing a commodity restriction in the existing lease that W&LE negotiated with NS and has been operating with as long as it has had the lease, and (2) converting the lease to a conditional sale that would give W&LE the right to acquire it from NS. There is no warrant whatever for this requested modification. Furthermore, any requests for changes in the decision, as Chairman Morgan indicated at the voting conference, should be made after the written decision is issued, not before.

For the reasons stated in their rebuttal and briefs, NS and CSX submit that W&LE has justified none of its requested conditions under the standards and evidentiary requirements established by the Board's precedents. At the oral argument and at the voting conference, the Board members and staff indicated concern with W&LE's loss of friendly connections, which haulage and trackage rights to Toledo and Lima would preserve. The Board also evidently accepted W&LE's argument that NS's termination of the Huron Dock lease was Transaction-related and would cause unwarranted harm to W&LE. Extension of the existing lease, as recommended by the staff, will prevent any such harm. There is no justification for expanding the lease or for converting it to a conditional sale.

(...continued)

² "CSX" refers to CSX Corporation and CSX Transportation, Inc. ("CSXT").

As to the duration and other terms of the lease, NS believes those are also matters that should be negotiated in the first instance by W&LE and NS before the Board is asked to resolve them. NS will not insist upon retention of a 90-day cancellation provision, but believes that a 15-year term is too long. If those matters cannot be resolved between NS and W&LE, the Board can be asked to do so then.

3. Access To Aggregate Shippers. The staff also recommended that Applicants be required to "negotiate with W&LE concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregate shippers or to serve shippers along CSX's line from Benwood to Brooklyn Junction, WV." W&LE asks the Board "to confirm and clarify" that such arrangements must include various specific terms desired by W&LE.³

No such "confirmation and clarification" is warranted. The recommended condition clearly expresses the intent of the Board and the staff not to dictate the details of such arrangements unless and until the parties have undertaken to work them out among themselves and have been unable to do so. NS and CSX are willing to engage in such negotiations with W&LE, and will do so. Those negotiations may result in mutually satisfactory arrangements making any further recourse to the Board unnecessary. There is no warrant for the Board to attempt at this stage to dictate the specifics of such arrangements.

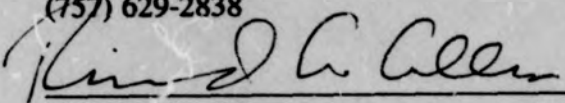
³ W&LE also seems to assume, contrary to the staff's recommendation, that the arrangements must enable W&LE both to serve aggregate shippers and to serve shippers on the Benwood-Brooklyn Junction Line.

CONCLUSION

W&LE's request that the Board clarify or confirm various aspects of the conditions recommended by the Staff and approved by the Board at the June 8, 1998 voting conference should be denied.

Respectfully submitted,

James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
Robert J. Cooney
George A. Aspatore
Roger A. Petersen
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838

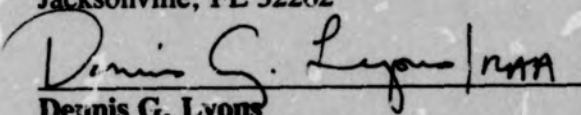

Richard A. Allen
John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20006-3939
(202) 298-8660

Scot B. Hutchins
Skadden, Arps, Slate, Meagher & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 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 23219
(804) 782-1400

P. Michael Giffos
Paul R. Hirschcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202


Dennis G. Lyons
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 942-5000

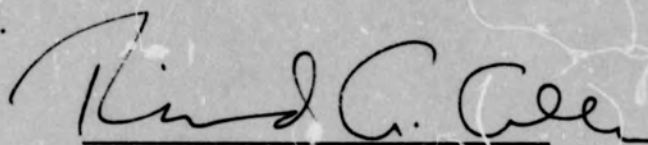
Samuel M. Sipe, Jr.
David H. Coburn
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

*Counsel for CSX Corporation and CSX
Transportation, Inc.*

CERTIFICATE OF SERVICE

I, hereby certify that on this 18th day of June, 1998, I have served the foregoing CSX/NS-207, Reply Of Norfolk Southern And CSX To Motion For Clarification Of The Wheeling And Lake Erie Railway, on all parties of record by first class mail, postage pre-paid, or by more expeditious means, and by hand delivery on the following:

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



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

Dated: June 18, 1998

STB

FD-33388

6-19-98

D

ID-188750

188750

DENNIS G. LYONS
(202) 942-5858

ARNOLD & PORTER

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

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

June 19, 1998

ENTERED
Office of the Secretary

JUN 19 1998

Part of
Public Record

NEW YORK
DENVER
LOS ANGELES
LONDON

BY HAND DELIVERY

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

D



**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 are an original and twenty-five (25) copies of CSX/NS-208, a letter brief on behalf of CSX and NS, constituting their "Response to Motion to Strike, etc. filed by Wyandot Dolomite, Inc." in letter form, for filing in the above-referenced docket. A certificate of service is made at the end of the letter brief.

Please note that a copy of this letter filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Thank you for your assistance in this matter. Please contact me (202-942-5858) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the enclosures at the time of filing and return them to our messenger.

Respectfully yours,

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

Enclosures
cc: All Parties of Record

ARNOLD & PORTER

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

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

DENNIS G. LYONS
(202) 942-5858



188750

June 19, 1998

BY HAND DELIVERY - 25 Copies

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building
Room 700
1925 K Street, N.W.
Washington, D.C. 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
Response to "Motion to Strike," etc., filed by Wyandot Dolomite, Inc.**

Dear Secretary Williams:

We have received a copy of a letter addressed to the Board, through you, dated June 16, 1998, from counsel for Wyandot Dolomite, Inc. ("Wyandot"). It is one of a series of letters that has been submitted to the Board by various protesting parties in this case subsequent to the June 8, 1998, voting conference, in an effort to shape, favorably to the letter writers, the conditions to be imposed on the Transaction in the Board's written decision, anticipated for July 23, 1998.

While we are not certain as to whether the Board wishes to receive such letters, let alone responses to them, since the Wyandot letter contains a "Motion to Strike," CSX and NS do wish to respond to it in this letter. We wish to stress in particular that there is no basis whatever for Wyandot's claims that CSX and NS made misrepresentations or otherwise acted improperly in stating to the Board what they were willing to do for Wyandot.

Hon. Vernon A. Williams
June 19, 1998
Page 2

The subject of the Motion to Strike appears to be a letter, or at least a portion of a letter, which we wrote to the Board, dated June 6, 1998, on behalf of CSX and NS in response to a request by the Board through its Chairman, made at the close of the oral argument on Thursday, June 4, for lists of withdrawing parties and of conditions in settlement that the Applicants proposed. Transcript, June 4, 1998, at 475-76.

The specific issue raised by the Motion to Strike appears to be that the Applicants in their June 6 letter made public a settlement agreement drafted and advanced by Applicants. The proposed settlement agreement had been executed by both CSX and NS and by Martin Marietta Materials ("Martin"). The agreement as signed by Martin came into effect independently without the necessity of it being executed by the other two aggregate shippers.

The proposed settlement agreement had been described to the Board at the oral argument on June 4, 1998, and had been then proffered as a condition that the Applicants would accept. Mr. Allen, counsel for NS, described the proffered agreement as follows:

With respect to the three Ohio stone shippers that have presented requests for conditions in this case, we have had discussions with them with respect to their problems and have tried very hard to work out their problems. We have not succeeded in reaching an agreement with all of them.

However, for perfectly valid and independent commercial reasons, Norfolk Southern and CSX concluded that, well, indeed, if a reciprocal grant - not a reciprocal, but a grant to each other of operating rights would make sense, a grant to each other of operating rights that would permit one or the other of them to continue providing single-line service to those three shippers on the - for the movements that they are currently moving, would make sense to both of our railroads. Because of, really, the unique nature of this transportation - its fairly short haul, it's a very low-rated commodity - and for that reason, we have agreed among ourselves and have reached an agreement with ourselves - between ourselves - to give each other

Hon. Vernon A. Williams
June 19, 1998
Page 3

operating rights to permit single-line service to these three shippers.

We have offered each of those shippers to sign on to that agreement. One of them - Martin Marietta - has done so, and has, therefore, withdrawn from this proceeding. The other two are not satisfied even so - even still with what we have agreed to do. I think they - I suppose that they want more and want to be able to have single-line service for the rest of time to wherever they may want to go.

(Transcript, June 4, 1998, at 371-73.) Mr. Allen thus made it plain in the open hearing on June 4 that the offer was one of movements which it commercially made sense to CSX and NS to operate on a single-line basis; that Wyandot and National Lime and Stone Company ("National Lime") were being offered the same terms as Martin; that they had turned those terms down; and that the terms did not cover "for the rest of time" or "wherever they may want to go."

The present writer later in the April 4 hearing made it clear that CSX joined with NS in proposing the terms of the agreement which Martin had accepted as conditions acceptable to CSX and NS not only for Martin but for Wyandot and National Lime. (Transcript, June 4, 1998, at 434.)

The submission by the June 6 letter of the proffered conditions, both for Martin which had settled and for those two shippers who had not, but for whose benefit the conditions were proffered, fulfilled the request for a written presentation made by the Chairman at the close of the hearing on June 4.¹ It

¹ Wyandot takes CSX and NS for having "drafted the Martin settlement agreement to contain the terms of the proffered settlements to both Wyandot and National. The Primary Applicants' underhandedness is shocking and ought not to be condoned." (Letter, at 7, n.9.) Why this is "underhanded" or "shocking" is not apparent. The two-page proposed agreement was drafted without any knowledge of which, if any, of the three aggregate shippers would accept it; it was not the "Martin settlement agreement" at all when drafted, but a proposal to all three shippers. The individual copies prepared for signature by the individual shippers followed the same format, showing each shipper the single-line routes proffered to the others. See the attached versions as tendered to Martin, Wyandot and National Lime for signature. This format had the effect of preventing any of the three from having concern that others of the three were

Footnote continued on next page

Hon. Vernon A. Williams

June 19, 1998

Page 4

simply confirmed the representations made orally on June 4 at the hearing. It further identified representations to which the Board has admonished Applicants to adhere. (Merger Team's Final Recommendation # 31.)

The premise of the Motion to Strike appears to be that a party who has made an offer in compromise cannot make that offer public; in other words, that he must treat his own offer as confidential, even though he has no agreement with anybody to treat it as confidential. There is no support whatsoever in the law for any such contention, and none is cited by Wyandot. The pertinent rule, as codified in Rule 408 of the *Federal Rules of Evidence*, simply says that:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.

The decisions of the federal courts confirm that there is no policy or legal rule against permitting an offeror of a settlement from disclosing, or even using as evidence, his own offer. In *Crues v. KFC Corp.*, 768 F.2d 230 (8th Cir. 1985), permitting an offeror to place its offer in evidence, the court observed that: "The rule [Rule 408] is concerned with excluding proof of compromise to show liability of the offeror." The court cited McCormick, *McCormick on Evidence* § 264, at 712 (E. Cleary 3d ed. 1984). (768 F.2d at 233-34.) A similar result was reached in *Morley-Murphy Co. v. Zenith Electronics Corporation*, 910 F. Supp. 450 (W.D. Wisc. 1996), *rev'd on other grounds*, 1998 WL 166122 (7th Cir., April 10, 1998) (ruling on admissibility of offer in compromise not disturbed). In the *Morley-Murphy* case the court observed, in reference to use of its own settlement proposal by an offeror:

Footnote continued from previous page

offered a different and better deal than the one which it was being offered. How this is "underhanded" or prejudices the nonsettling parties is hard to imagine; it disclosed a willingness on CSX's and NS's part to compromise (on a win-win basis), not the willingness of National Lime or Wyandot to compromise, since they have not evidenced any such willingness. Mr. Allen's remarks on June 4 quoted above made this crystal clear.

Hon. Vernon A. Williams
June 19, 1998
Page 5

In this instance, the dual rationales for exclusion [of offers in compromise] are not implicated because defendant is offering in evidence its own settlement offer rather than an offer by the opposing party. See *Crues v. KFC Corp.*, 768 F.2d 230, 23-34 (8th Cir. 1985) (use by offeror to show unreasonableness of recipient not excluded by Rule 408 because rule concerned with "excluding proof of compromise to show liability of the offeror"); 23 Charles Alan Wright and Kenneth Graham, *Federal Practice and Procedure* § 5308 at p. 243 (1980) (prohibiting use by party of its own compromise offer on the basis of Rule 408 "makes little sense" because the policy of encouraging settlement offers is not implicated). 910 F. Supp. at 456.

While the Rule might have limited the purposes for which Wyandot could have used the offer contained in the Settlement Agreement against CSX and NS, the Rule is not pertinent here, since CSX and NS's purpose for putting their own offer forward is not to prove "liability for or invalidity of" a claim, but simply to express the willingness of CSX and NS to submit to the arrangements set forth in the proposal. Indeed, the purpose of putting it forward was not to have the offer used as evidence at all, even though the cases cited hold that an offeror may use his rejected offer as evidence if pertinent to an issue in the case. The offer was put forward simply (a) as defining the basis on which Martin had settled, clearly of interest to the Board in imposing a condition as to it, and (b) to indicate the conditions which the Applicants were willing to accept with respect to Wyandot and National Lime. CSX and NS could have made their proposal public at the time they made it, and Wyandot would have had no complaint; the fact that they waited until Wyandot declined to sign the settlement agreement does not alter the matter.

The motion to strike should accordingly be denied; the submission was one requested by the Board and making it violated no principle of law. Had CSX and NS disclosed some willingness to compromise on the part of Wyandot, the principles that Wyandot appears to urge might well have been applicable. But no such compromise has been put forward by Wyandot, so that is not the issue.

Hon. Vernon A. Williams
June 19, 1998
Page 6

Indeed, Wyandot's approach to the relief it requests and requires remains, as page 5 of its letter demonstrates, what it always has been, it wants to maintain single line service, not only to points where it is actually moving aggregates at the present time, but wherever it could conceivably move those aggregates single-line on the present-day undivided Conrail. Moreover, these requirements - that CSX and NS jointly provide Wyandot single-line service which does not replicate any present actual single-line moves - are "permanent," says Wyandot; the "single-line service" over routes that are to be no longer in fact single-line must be kept open perpetually. And, clearly, no test of whether the service is an efficient one for the railroads (as the service they offered in the proffered agreement was) is to be imposed, according to Wyandot.

Each of the actions taken by CSX and NS to address the concerns of shippers whose current single-line service will become joint-line service post-Transaction has been offered voluntarily. In accepting and imposing these voluntary arrangements, the Board creates no legal precedent regarding conditions in control proceedings. It should be pointed out that the creation by spin-off from a major railroad of every regional railroad or short-line carriers with it an inevitable change for some shippers of single-line to joint-line service. Imposing a nonvoluntary condition like that demanded by Wyandot in this Finance Docket would have a severe chilling effect on the creation of new short lines and regionals - a precedent not justified by Wyandot's overreaching demands.

Wyandot's proposal to keep open forever, despite a permanent change in the rail map in the Eastern United States, theoretical present-day single-line routings which are not being used or never have been used would condemn the railroads to provide inefficient routings in perpetuity.

In another of this series of letters, dated June 18, 1998 (CLS-9), National Lime supports the Motion to Strike, repeats some material it previously submitted in another such letter dated June 8, 1998, and urges conditions under which it is to be given single-line service over joint-line track, even where single-line service makes no economic sense to CSX and NS. The notion that, as National Lime claims (June 18 letter, pages 5-6) that single-line run-through trains operated by a single carrier should be required to be made up to carry as few as one or two cars, not simply of aggregates but of more highly rated lime and other materials, to a variety of destinations in perpetuity, is ludicrous on its face. Any movements of National Lime not qualifying under

ARNOLD & PORTER

Hon. Vernon A. Williams
June 19, 1998
Page 7

the proffered condition will remain eligible for the relief available under the NITL Settlement, Paragraph III (E). And the final subparagraph of Paragraph 14 of the Merger Team's Final Recommendations, approved by the Board at the voting conference on June 8, 1998, also may be pertinent. National Lime, like Wyandot, seeks to condemn the railroads to provide inefficient routings and to support inefficient movements in perpetuity.

The settlement accepted by Martin and rejected by Wyandot and by National Lime, instead, reasonably terminates (unless renewed by the two sides) after a five-year period of transition, during which the shippers may serve present customers on a single line basis while developing new markets that they may serve via efficient rail routes.

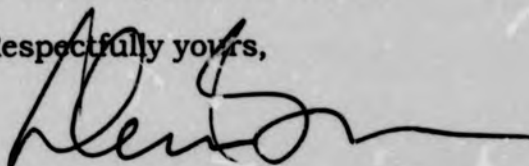
The motion to strike should be denied. The "three-aggregate shippers" condition should be imposed in the form described by Mr. Allen at the June 4, 1998, hearing and set forth in the submission of June 6, 1998. This appears to be clearly the intent and letter of item 23 of the staff's "Merger Team's Final Recommendations," approved by the Board on June 8 at the voting conference.

We are authorized to say that NS joins with CSX in this response.

An original and twenty-five copies of this letter are being provided, together with a diskette containing the text of the letter, readable in WordPerfect 5.1 format.

I certify that copies of this letter are being sent to all parties of record on the service list by first-class mail or more expeditious means.

Respectfully yours,



Dennis G. Lyons
*Counsel for CSX Corporation and CSX
Transportation, Inc.*

Attachments

cc: Hon. Jacob Leventhal
Richard A. Allen, Esq.
Service List

SETTLEMENT AGREEMENT

NORFOLK SOUTHERN CORPORATION (NS) and CSX CORPORATION (CSX) on behalf of their rail carrier subsidiaries, NORFOLK SOUTHERN RAILWAY COMPANY (NSR) and CSXT TRANSPORTATION, INC. (CSXT) have filed an application before the Surface Transportation Board (STB) in Finance Docket No. 33388 (Application) for the authority to operate and control specified portions of Conrail.

CSXT and NSR recognize that the transportation attributes of short-haul aggregate do not in all instances lend themselves to efficient joint line rail service.

CSXT and NSR further recognize that CSXT will operate certain Conrail lines in western Ohio that will serve stone origin points of MARTIN MARIETTA MATERIALS, INC. (Martin), NATIONAL LIME AND STONE COMPANY (National) and WYANDOTTE DOLOMITE, INC. (Wyandotte) and NSR will operate certain Cowail lines in eastern Ohio that will serve certain stone destination points to which these stone shippers have recently shipped.

In light of the foregoing, CSXT and NSR agree as follows:

1. NSR will grant CSXT operational rights between Crestline and Wooster, Ohio, so that CSXT may provide the functional equivalent of single-line service to National's aggregate traffic between Spore and Wooster, Ohio.
2. NSR will grant CSXT operational rights between Crestline and Alliance, Ohio, so that CSXT may provide the functional equivalent of single-line service for Wyandotte's aggregate traffic between Carey and Alliance, Ohio.
3. CSXT will grant NSR operational rights between Toledo and Woodville, Ohio, so that NSR may provide the functional equivalent of single-line service to Martin for aggregate traffic between Woodville and Twinsburg, Ohio, and between Woodville and Hugo, Ohio.
4. CSXT will have full pricing authority for rates and transportation contracts for the rail transportation outlined in Paragraphs 1 and 2 above. NSR will have the same pricing authority for the rail transportation outlined in Paragraph 3 above.
5. The above-mentioned operating rights and single-line service will pertain to shipments to current receivers of stone shipments at the above-referenced destinations in unit trains or blocks of 40 or more cars, and will apply only to movements of aggregate (STCC 1421965 and 1421990), and not to lime, shipments. This arrangement will remain in place for five (5) years. Renewal will be at the mutual discretion of NSR and CSXT.

6. The parties hereto acknowledge that CSXT and NSR are proposing the foregoing functional equivalent of single-line service and related operating rights because, given the routes and distances involved, it appears to NSR and CSXT to be economically superior for CSXT and NSR than is joint-line service. CSXT and NSR will make all regulatory filings necessary to implement the foregoing as soon as practicable, so as to become effective on the date on which the divided allocation of Conrail's lines for operation by NSR and CSXT is effected. Movements not qualifying for the above treatment, such as lime, or which may for any other reason not be eligible for such treatment will remain eligible for handling under the terms of Paragraph III.E of the NITL settlement with CSXT and NSR dated as of December 12, 1997.

**NORFOLK SOUTHERN RAILWAY
COMPANY**

Accepted this 1st day of June, 1998

By: D. W. Seale

CSX TRANSPORTATION, INC.

Accepted this 1st day of June, 1998

By: Devin W. Smith

In return for the above-referenced actions of NSR and CSXT, Martin agrees to promptly rescind and withdraw its request for protective conditions, its support for conditions proposed by others, and opposition to the Application at the STB, and further agrees to support the proposed transaction.

MARTIN MARIETTA MATERIALS, INC.

Accepted this ____ day of _____, 1998

By: _____

SETTLEMENT AGREEMENT

NORFOLK SOUTHERN CORPORATION (NS) and CSX CORPORATION (CSX) on behalf of their rail carrier subsidiaries, NORFOLK SOUTHERN RAILWAY COMPANY (NSR) and CSXT TRANSPORTATION, INC. (CSXT) have filed an application before the Surface Transportation Board (STB) in Finance Docket No. 33388 (Application) for the authority to operate and control specified portions of Conrail.

CSXT and NSR recognize that the transportation attributes of short-haul aggregate do not in all instances lend themselves to efficient joint line rail service.

CSXT and NSR further recognize that CSXT will operate certain Conrail lines in western Ohio that will serve stone origin points of MARTIN MARIETTA MATERIALS, INC. (Martin), NATIONAL LIME AND STONE COMPANY (National) and WYANDOTTE DOLOMITE, INC. (Wyandotte) and NSR will operate certain Conrail lines in eastern Ohio that will serve certain stone destination points to which these stone shippers have recently shipped.

In light of the foregoing, CSXT and NSR agree as follows:

1. NSR will grant CSXT operational rights between Crestline and Wooster, Ohio, so that CSXT may provide the functional equivalent of single-line service to National's aggregate traffic between Spore and Wooster, Ohio.
2. NSR will grant CSXT operational rights between Crestline and Alliance, Ohio, so that CSXT may provide the functional equivalent of single-line service for Wyandotte's aggregate traffic between Carey and Alliance, Ohio.
3. CSXT will grant NSR operational rights between Toledo and Woodville, Ohio, so that NSR may provide the functional equivalent of single-line service to Martin for aggregate traffic between Woodville and Twinsburg, Ohio, and between Woodville and Hago, Ohio.
4. CSXT will have full pricing authority for rates and transportation contracts for the rail transportation outlined in Paragraphs 1 and 2 above. NSR will have the same pricing authority for the rail transportation outlined in Paragraph 3 above.
5. The above-mentioned operating rights and single-line service will pertain to shipments to current receivers of stone shipments at the above-referenced destinations in unit trains or blocks of 40 or more cars, and will apply only to movements of aggregate (STCC 1421965 and 1421990), and not to lime, shipments. This arrangement will remain in place for five (5) years. Renewal will be at the mutual discretion of NSR and CSXT.

6. The parties hereto acknowledge that CSXT and NSR are proposing the foregoing functional equivalent of single-line service and related operating rights because, given the routes and distances involved, it appears to NSR and CSXT to be economically superior for CSXT and NSR than is joint-line service. CSXT and NSR will make all regulatory filings necessary to implement the foregoing as soon as practicable, so as to become effective on the date on which the divided allocation of Conrail's lines for operation by NSR and CSXT is effected. Movements not qualifying for the above treatment, such as lime, or which may for any other reason not be eligible for such treatment will remain eligible for handling under the terms of Paragraph III.E of the NITL settlement with CSXT and NSR dated as of December 12, 1997.

**NORFOLK SOUTHERN RAILWAY
COMPANY**

Accepted this 1st day of June, 1998

By: D. W. Seale

CSX TRANSPORTATION, INC.

Accepted this 1st day of June, 1998

By: Derrick W. Smith

In return for the above-referenced actions of NSR and CSXT, Wyandotte agrees to promptly rescind and withdraw its request for protective conditions, its support for conditions proposed by others, and opposition to the Application at the STB, and further agrees to support the proposed transaction.

WYANDOTTE DOLOMITE, INC.

Accepted this ____ day of _____, 1998

By: _____

SETTLEMENT AGREEMENT

NORFOLK SOUTHERN CORPORATION (NS) and CSX CORPORATION (CSX) on behalf of their rail carrier subsidiaries, NORFOLK SOUTHERN RAILWAY COMPANY (NSR) and CSXT TRANSPORTATION, INC. (CSXT) have filed an application before the Surface Transportation Board (STB) in Finance Docket No. 33388 (Application) for the authority to operate and control specified portions of Conrail.

CSXT and NSR recognize that the transportation attributes of short-haul aggregate do not in all instances lend themselves to efficient joint line rail service.

CSXT and NSR further recognize that CSXT will operate certain Conrail lines in western Ohio that will serve stone origin points of MARTIN MARIETTA MATERIALS, INC. (Martin), NATIONAL LIME AND STONE COMPANY (National) and WYANDOTTE DOLOMITE, INC. (Wyandotte) and NSR will operate certain Conrail lines in eastern Ohio that will serve certain stone destination points to which these stone shippers have recently shipped.

In light of the foregoing, CSXT and NSR agree as follows:

1. NSR will grant CSXT operational rights between Crestline and Wooster, Ohio, so that CSXT may provide the functional equivalent of single-line service to National's aggregate traffic between Spore and Wooster, Ohio.
2. NSR will grant CSXT operational rights between Crestline and Alliance, Ohio, so that CSXT may provide the functional equivalent of single-line service for Wyandotte's aggregate traffic between Carey and Alliance, Ohio.
3. CSXT will grant NSR operational rights between Toledo and Woodville, Ohio, so that NSR may provide the functional equivalent of single-line service to Martin for aggregate traffic between Woodville and Twinsburg, Ohio, and between Woodville and Hugo, Ohio.
4. CSXT will have full pricing authority for rates and transportation contracts for the rail transportation outlined in Paragraphs 1 and 2 above. NSR will have the same pricing authority for the rail transportation outlined in Paragraph 3 above.
5. The above-mentioned operating rights and single-line service will pertain to shipments to current receivers of stone shipments at the above-referenced destinations in unit trains or blocks of 40 or more cars, and will apply only to movements of aggregate (STCC 1421965 and 1421990), and not to lime shipments. This arrangement will remain in place for five (5) years. Renewal will be at the mutual discretion of NSR and CSXT.

6. The parties hereto acknowledge that CSXT and NSR are proposing the foregoing functional equivalent of single-line service and related operating rights because, given the routes and distances involved, it appears to NSR and CSXT to be economically superior for CSXT and NSR than is joint-line service. CSXT and NSR will make all regulatory filings necessary to implement the foregoing as soon as practicable, so as to become effective on the date on which the divided allocation of Conrail's lines for operation by NSR and CSXT is effected. Movements not qualifying for the above treatment, such as line, or which may for any other reason not be eligible for such treatment will remain eligible for handling under the terms of Paragraph III.E of the NITL settlement with CSXT and NSR dated as of December 12, 1997.

**NORFOLK SOUTHERN RAILWAY
COMPANY**

CSX TRANSPORTATION, INC.

Accepted this 1st day of June, 1998

Accepted this 1st day of June, 1998

By: *D. J. Seale*

By: *Derick W. Smith*

In return for the above-referenced actions of NSR and CSXT, National agrees to promptly rescind and withdraw its request for protective conditions, its support for conditions proposed by others, and opposition to the Application of the SIB, and further agrees to support the proposed transaction.

NATIONAL LIME AND STONE COMPANY

Accepted this ____ day of _____, 1998

By: _____

STB

FD-33388

6-18-98

D

ID-188697

188697

JONES, DAY, REAVIS & POGUE

ATLANTA LONDON
BRUSSELS LOS ANGELES
CHICAGO NEW DELHI
CLEVELAND NEW YORK
COLUMBUS PARIS
DALLAS PITTSBURGH
FRANKFURT RIYADH
GENEVA TAIPEI
HONG KONG
IRVINE TOKYO

ETROPOLITAN SQUARE
1450 G STREET, N.W.
WASHINGTON, D.C. 20005-2088

TELEPHONE: 202-879-2039
FACSIMILE: 202-737-2832
WRITER'S DIRECT NUMBER:

June 18, 1998

BY HAND

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

ENTERED
Office of the Secretary

JUN 19 1998

Part of
Public Record



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

NLS - 9

**Response of National Lime and Stone Company
In Support of Motion to Strike and
Requests for Reconsideration and Clarification
of Wyandot Dolomite, Inc.**

Dear Secretary Williams:

National Lime and Stone Company (National) hereby responds to the "Motion to Strike, and Requests for Reconsideration and Clarification" filed by Wyandot Dolomite, Inc. (Wyandot) on June 16, 1998 in this proceeding. Wyandot requests that the Board take two actions prior to, or as part of, the Board's written decision in this proceeding. For the reasons stated below, National supports Wyandot's requests.

Background

In a June 6, 1998 letter, the Primary Applicants unilaterally filed several "proffered conditions" purportedly designed to address the protests and requests for conditions submitted by various parties. One such proffered condition was an unexecuted "Settlement Agreement" between Norfolk Southern, CSX, Wyandot, National and Martin Marietta Materials, Inc. (MMM). The June 6, 1998 letter indicated that this proffer of conditions was being extended to National, Wyandot and MMM "regardless of whether they agree to such Agreement or not."

Hon. Vernon A. Williams
 June 18, 1998
 Page 2

The "proffer of conditions" regarding National contained in the Primary Applicants' June 6, 1998 letter is blatantly inconsistent with representations made by the Primary Applicants on the record in this case. During oral argument before the Board on June 4, 1998, National stated its request for conditions in clear terms: "National only asks that the status quo be maintained. We plead that the Board order the applicants to negotiate with National the arrangements needed to assure the continuation of the single-line service that is the lifeblood of National's business, and required by National's customers to obtain necessary industrial minerals at reasonable costs." June 4, 1998 Oral Argument Transcript, at page 131. In support of this request, National explained the importance of National's existing single-line movements from both Bucyrus (Spore) and Carey, Ohio to points in eastern Ohio, Pennsylvania and West Virginia. As explained in National's prior pleadings, National currently relies on single-line service from Conrail (1) to ship industrial minerals from Carey to eastern markets, and (2) to ship aggregates from Bucyrus to eastern markets.¹

In their rebuttal argument, counsel for the Primary Applicants made several sweeping claims that appeared to address significant aspects of National's protest and request for conditions. Mr. Richard Allen, speaking on behalf of Norfolk Southern, stated:

With respect to the three Ohio stone shippers that have presented requests for conditions in this case, we have had discussions with them with respect to their problems and have tried very hard to work out their problems. We have not succeeded in reaching an agreement with all of them.

However, for perfectly valid and independent commercial reasons, Norfolk Southern and CSX concluded that, well, indeed, if a reciprocal grant -- not a reciprocal, but a grant to each other of operating rights would make sense, a grant to each other of operating rights that would permit one or the other of them to continue providing single-line service to those three shippers on the -- for the movements that they are currently moving, would make sense to both of our railroads.

* * * * *

¹ See Attachments 1, 2 and 3 hereto. As Attachment 3 shows, and as National's counsel stated in oral argument, one of National's requests is that Norfolk Southern acquire certain trackage rights over CSX track between Upper Sandusky and Carey; these rights are currently held by Conrail. See June 4, 1998 Oral Argument Transcript, at pages 140-41 and Attachment 3.

Hon. Vernon A. Williams
June 18, 1998
Page 3

We have offered each of those shippers to sign on to that agreement. One of them -- Martin Marietta -- has done so, and has therefore, withdrawn from this proceeding. The other two are not satisfied even so -- even still with what we have agreed to do. I think they -- I suppose that they want more and want to be able to have single-line service for the rest of time to wherever they want to go.

June 4, 1998 Oral Argument Transcript, at pages 371-73 (emphasis added). The existence of this new agreement between Norfolk Southern and CSX was later confirmed by Mr. Lyons, counsel for CSX, when he later appeared during the rebuttal phase of oral argument. Id. at pages 433-34.

At the time of oral argument, National had not received a settlement offer from the Primary Applicants that, as Mr. Allen stated, "would permit one or the other of [the Primary Applicants] to continue providing single-line service to those three shippers on the -- for the movements that they are currently moving." The Primary Applicants' statements caused National both hope and fear -- hope that the Primary Applicants intended to extend a meaningful settlement proposal to National, and fear that the Primary Applicants were exaggerating their offer to National in order to (incorrectly) portray National as unreasonable and unwilling to negotiate. National therefore sent a letter to the Primary Applicants' counsel on Friday morning, June 5, 1998, requesting that the Primary Applicants extend to National the offer of settlement the Primary Applicants had described to the Board in oral argument. National also asked the Primary Applicants to contact the Board and explain that the Primary Applicants had not yet extended to National a settlement offer that "would permit one or the other of [the Primary Applicants] to continue providing single-line service to those three shippers on the -- for the movements that they are currently moving."

To date, National has not had the courtesy of a reply from the Primary Applicants' counsel. However, on Friday afternoon, June 5, 1998, a CSX Vice President for Marketing, in a telephone call to National, disavowed the statements of the Primary Applicants' counsel made in rebuttal at the June 4, 1998 oral argument and sent by fax a more limited two-page "settlement offer" to National. This offer, which National did not receive in writing until after the June 4, 1998 oral argument, failed to provide National with post-transaction single-line service covering National's existing single-line movements on Conrail.

As of noon on June 8, 1998, the date of the Board's voting conference, National had received no indication from the Primary Applicants that they would inform the Board that the actual "settlement offer" (sent to National for the first time after the oral argument) was far more limited in nature than claimed by counsel for the Primary Applicants during oral argument. To explain to the Board the significant inconsistencies between the Primary Applicants' statements on the record during oral argument and their actions, National then submitted to the Secretary a copy

Hon. Vernon A. Williams
 June 18, 1998
 Page 4

of the two-page agreement between CSX and NS, as sent to National on June 5, 1998, together with a letter explaining the obvious variance from the Primary Applicants' statements in oral argument.

Unknown to National, the Primary Applicants had sent their June 6, 1998 letter to the Board by hand delivery. As discussed above, the Primary Applicants attached to the June 6, 1998 letter an unexecuted version of the two-page "Settlement Agreement" and described the document as a condition to the Conrail transaction's approval proffered to address the claims of National, Wyandot and M&M. National did not receive a copy of the June 6, 1998 letter (which was sent to National by regular mail) until June 9, 1998 -- the day after the Board's voting conference.

The Motion to Strike

Wyandot requests that the Board strike from the record of this proceeding the text of the unexecuted "Settlement Agreement" filed by the Primary Applicants on June 6, 1998. National fully supports Wyandot; it would be inappropriate for the Board to rely on this late, unilateral filing of a "proffer of conditions" in resolving the merits of National's protest and request for conditions in this proceeding. National itself filed a version of this "Settlement Agreement" with the Board on June 8, 1998 in order to demonstrate to the Board that the Primary Applicants' dealings with National fell "far short of offering National continued single-line service to all destinations served by Conrail (or in the words of Mr. Allen 'for the movement' that they are currently moving')."² The Primary Applicants should not be permitted to submit the unexecuted "Settlement Agreement" after their contrary statements in oral argument. The Primary Applicants' actions (including serving the June 6 letter to National by regular mail so that National did not receive it until after the voting conference) deprived National of an opportunity to respond to the merits of the June 6, 1998 letter prior to the Board's voting conference in this proceeding. Any order of the Board that relies on the unexecuted "Settlement Agreement" as the basis for conditions (putatively offered to protect National) would be procedurally defective because National did not have an opportunity to address the Primary Applicants' June 6, 1998 filing prior to the Board's voting conference.

The Request for Clarification and Reconsideration

Wyandot also requests that the Board reconsider and clarify the protective conditions approved during the Board's June 8, 1998 voting conference. For the following reasons, National supports Wyandot's request.

² June 8, 1998 letter from National to the Board. That letter should be designated NLS-8.

Hon. Vernon A. Williams
June 18, 1998
Page 5

Whether by design or inadvertence, the Primary Applicants' actions have resulted in a confusing and unreliable record with respect to the remedy proposed by the Applicants to address National's protest and request for conditions. The Board should reaffirm that it will, consistent with the staff's final recommendations, "hold applicants to their representations to provide single-line service by either CSX or NS for the existing movements" of National.³

In implementing this recommendation, the only relevant representations are those made by the Primary Applicants' counsel on the record during the rebuttal phase of oral argument. Counsel for the Primary Applicants were responding to National's own statements at oral argument, where National explicitly requested a remedy that addressed all of National's current single-line movements on Conrail, including National's shipments of lime and limestone-based industrial minerals from Carey. June 4, 1998 Oral Argument Transcript, at page 131. See also National's October 23, 1997 Protest and Request for Conditions, at pages 7-9. In rebutting the statements made on National's behalf at oral argument, Mr. Allen stated that the Primary Applicants had developed an agreement that "would permit one or the other of [the Primary Applicants] to continue providing single-line service to those three shippers . . . for the movements that they are currently moving." June 4, 1998 Oral Argument Transcript, at page 372. The Primary Applicants should be held to this representation and should be required to provide continued single-line service for all of the single-line movements National currently enjoys on Conrail.

To the extent the Board's order discusses the merits of the unexecuted "Settlement Agreement" attached to the Primary Applicants' June 6, 1998 letter, the Board's order should explicitly recognize that the portions of the unexecuted "Settlement Agreement" that address National do not provide National with single-line service for National's existing movements. The unexecuted "Settlement Agreement" states that NS will grant CSX "operational rights between Crestline and Wooster," so that CSX may provide "the functional equivalent of single-line service to National's aggregate traffic between Spore and Wooster." The unexecuted "Settlement Agreement" states that these operating rights will pertain only "to unit trains or blocks of 40 or more cars, and will apply only to movements of aggregate, and not to lime, shipments." Finally, the unexecuted "Settlement Agreement" will remain in effect for only five years.

This falls far short of providing National single-line service for its "existing movements." The Primary Applicants' commitment covers just a single movement, from Bucyrus to Wooster. The commitment ignores National's existing movement of limestone aggregates from Bucyrus to Weirton Steel Company in Weirton, West Virginia. See National's October 21, 1997 Protest and Request for Conditions, at pages 8-9. The commitment also ignores National's existing

³ Merger Teams' Final Recommendations, STB Finance Docket No. 33388, <http://www.stb.dot.gov/newsrels.nsf/58b70...3b7f0fed06438525661e004c1947?OpenDocument> (retrieved June 9, 1998).

Hon. Vernon A. Williams

June 18, 1998

Page 6

movements of lime and limestone-based industrial minerals via Conrail from Carey to (1) Weirton, West Virginia; (2) Meadville, Pennsylvania; and (3) Martin's Ferry, Ohio. Id. at pages 7-8. In addition, the commitment imposes:

1. a volume requirement (only shipments via 40-car unit trains or blocks are covered, not National's current shipments of less than 40 cars);
2. a product limit (only aggregates shipments are covered, not National's industrial mineral shipments); and
3. a duration limit (the offer covers only five years, whereas National had an opportunity to secure single-line service from Conrail so long as Conrail remained in operation).

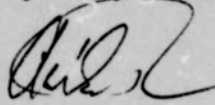
The Primary Applicants have failed to justify in any respect these limits on National's existing single-line movements via Conrail.⁴ These limits also contradict the statements of Chairman Morgan at the voting conference. Chairman Morgan stated that the Board was ensuring, by "imposing conditions to assist others such as aggregates shippers . . . that, overall, shippers will be better off after the merger than they were before, and that none will have less service than they had before." If the Board allows the Primary Applicants to impose on National the terms of the unexecuted "Settlement Agreement," National will "have less service than [it] had before." Such a result would be clearly contrary to national transportation policy and should not be permitted.

⁴ National, through the submission of substantial record evidence, established that the "1 to 2" effects of the Conrail transaction as proposed would rob National of adequate transportation service. See June 4, 1998 Oral Argument Transcript at pages 130-31; National's October 23, 1997 Protest and Request for Conditions and the attached Verified Statement of Ronald Kruse. Ronald Kruse's Verified Statement addressed National's movements of both aggregate and industrial minerals. The Primary Applicants never rebutted this evidence.

Hon. Vernon A. Williams
June 18, 1998
Page 7

WHEREFORE, National requests that the Board (1) grant Wyandot's motion to strike, and (2) clarify or in the alternative reconsider, the Board's actions at the June 8, 1998 voting conference with respect to National, consistent with the discussion above.

Respectfully submitted,

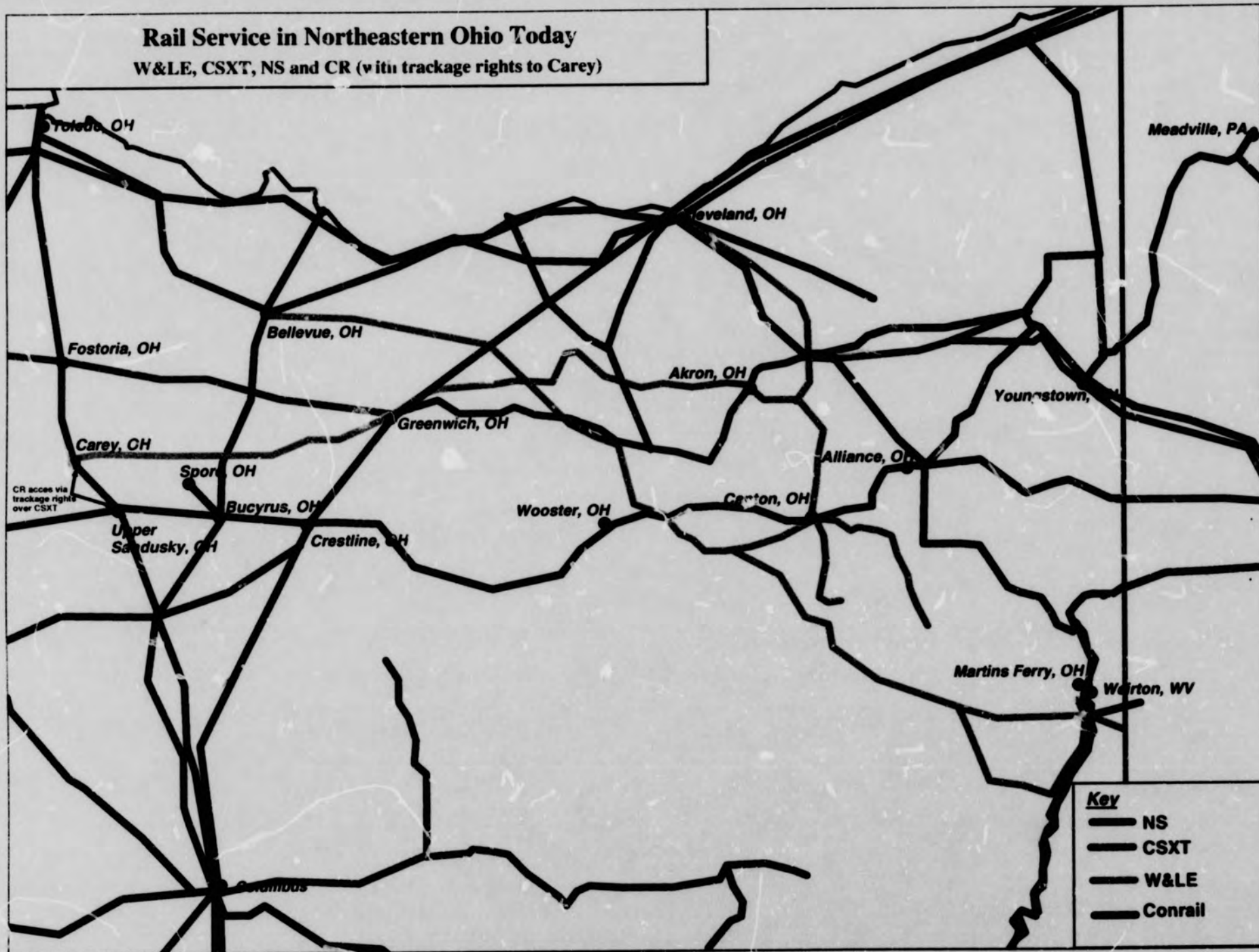


Clark Evans Downs
Kenneth B. Driver
Counsel for National Lime
& Stone Company

cc: Chairman Morgan, by hand
Vice Chairman Owen, by hand
Administrative Law Judge Levanthal
Richard A. Allen, Esq., by hand
Dennis G. Lyons, Esq., by hand
Robert A. Wimbish, Esq., by hand
All Parties

ATTACHEMENT 1





Rail Service in Northeastern Ohio Today W&LE, CSXT, NS and CR (with trackage rights to Carey)

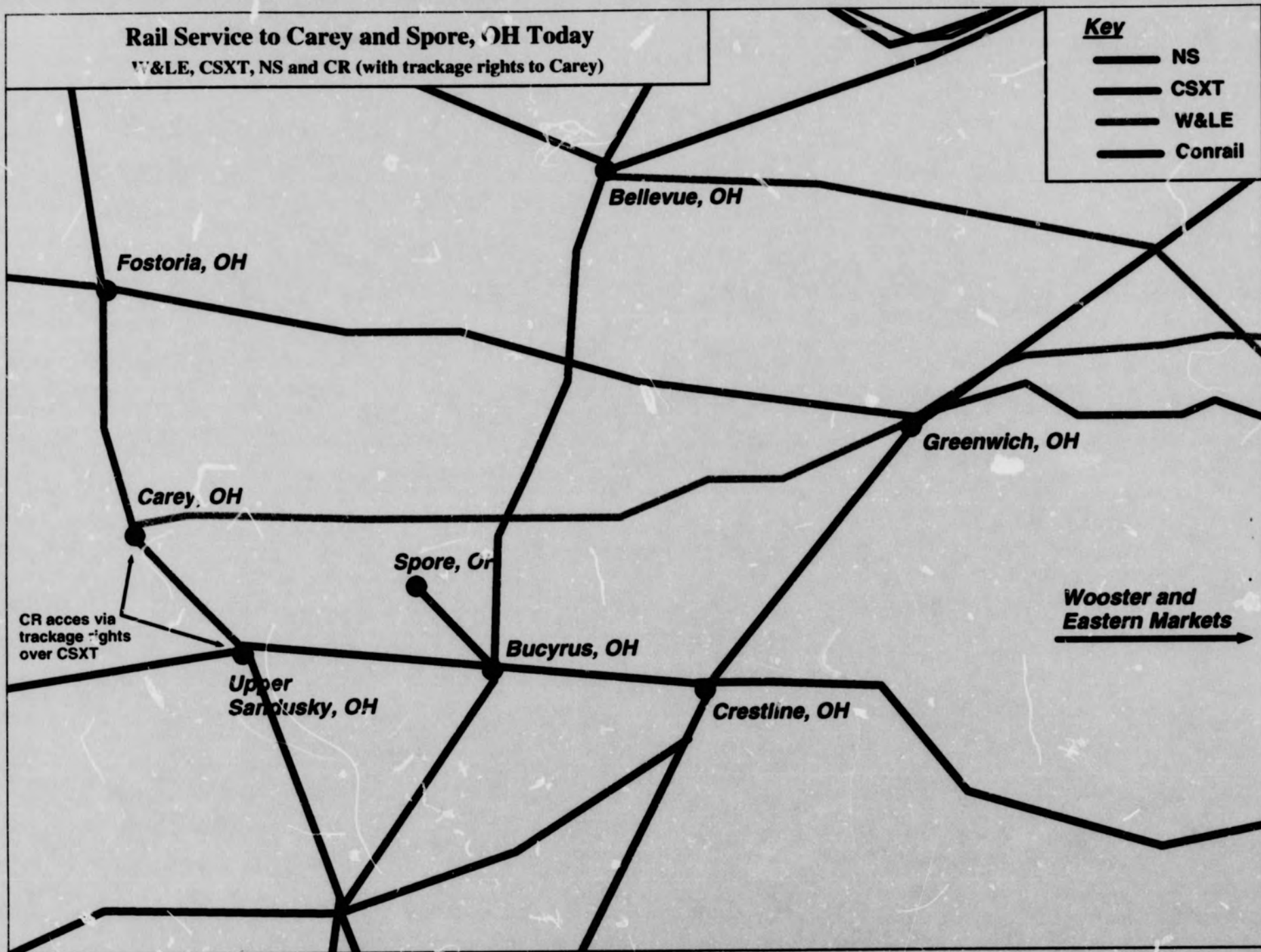


ATTACHMENT 2

Rail Service to Carey and Spore, OH Today
W&LE, CSXT, NS and CR (with trackage rights to Carey)

Key

-  NS
-  CSXT
-  W&LE
-  Conrail



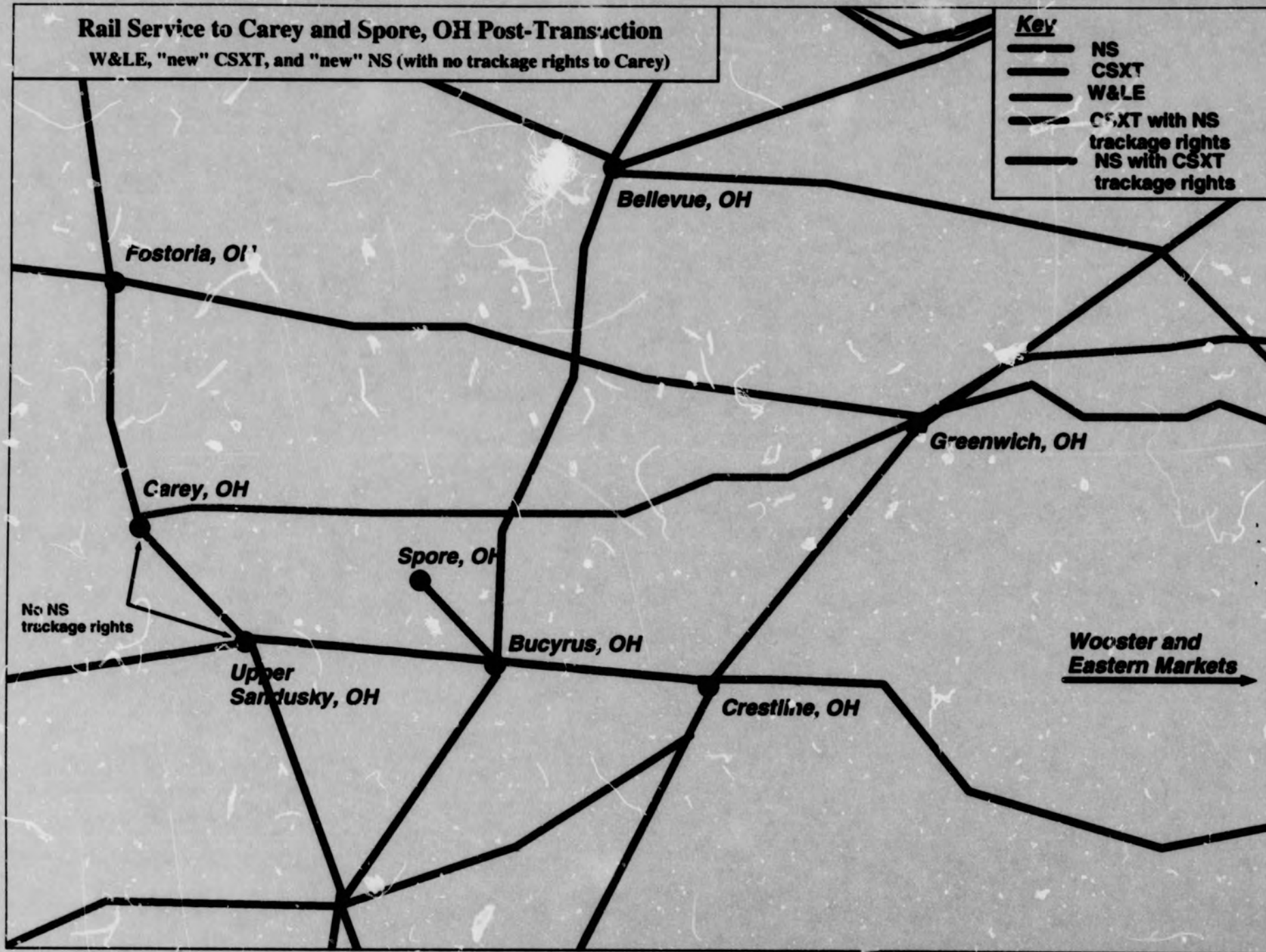
ATTACHMENT 3

Rail Service to Carey and Spore, OH Post-Transaction

W&LE, "new" CSXT, and "new" NS (with no trackage rights to Carey)

Key

- NS
- CSXT
- W&LE
- CSXT with NS trackage rights
- NS with CSXT trackage rights



CERTIFICATE OF SERVICE

I certify that I will cause today to be served a conformed copy of the foregoing "Response of National Lime and Stone Company in Support of Motion to Strike and Requests for Reconsideration and Clarification of Wyandot Dolomite, Inc.," filed in Finance Docket No. 33388, by first class mail, properly addressed with postage prepaid, or more expeditious manner of delivery, upon all persons required to be served as set forth in 49 C.F.R. § 1180.(d), namely:

- (i) The applicants;
- (ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 7th Street, S.W., Washington, D.C. 20590);
- (iii) The Attorney General of the United States;
- (iv) Judge Jacob Leventhal; and
- (v) All parties of record in Finance Docket 33388.

Dated at Washington, D.C., this 18th day of June, 1998.



Kenneth B. Driver

STB

FD-33388

5-28-98

D

ID-188409

MAY. 28. 1998 8:24AM

NO. 8350 P. 2 188409

LOUIS STOKES

11TH DISTRICT, OHIO

MEMBER,

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

RANKING MEMBER,

VVH/INDEPENDENT AGENCIES

MEMBER,

LABOR/HHS/EDUCATION

Congress of the United States

House of Representatives

Washington, DC 20515-3511

May 26, 1998

2306 KAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3511
(202) 225-7032

DISTRICT OFFICE:
2645 WARRENSVILLE CENTER RD.
SUITE 304
SHAKER HEIGHTS, OH 44122
(216) 522-4900

The Honorable Vernon Williams
Secretary, Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20425

Dear Secretary Williams:

I am writing to formally request the opportunity to testify before the Surface Transportation Board during its upcoming hearing regarding the CSX and Norfolk Southern merger. As my staff has discussed with Ms. Nancy Byter on your staff, I would appreciate the opportunity to testify on June 4, 1998, at 10:00 a.m.

I look forward to testifying before the Board. I also want to thank you for your consideration of my request. If you and/or your staff have any questions and/or concerns regarding this request confirmation, please do not hesitate to contact my Chief of Staff, Ms. Fredette West. With regard to my schedule, the contact person in my Office is Ms. Rochelle Kelley. Ms. West and Ms. Kelley can be reached at (202) 225-7032.

Again, I thank you for this opportunity.

Sincerely,


LOUIS STOKES
Member of Congress

LS/fw