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CHARLES A. SPITULNIK
(202) 835-8196

October 21, 1997

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

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~~copies included with this filing sent~~
~~to working office. Original copy is in the~~
~~Office of the Secretary~~
UNDER SEAL

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

Dear Secretary Williams:

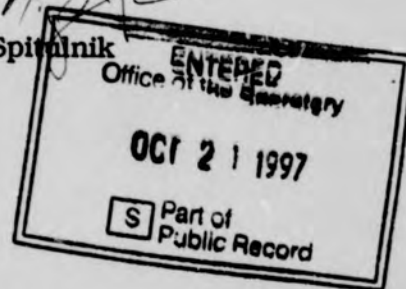
Enclosed are an original and twenty-five (25) copies of the Philadelphia Belt Line Railroad Company's Comments and Request for Conditions (PBL-10) for filing in the above-referenced proceeding. An additional copy of the filing is enclosed for file stamp and return with our messenger. Please note that a copy of the pleading is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Charles A. Spitulnik

Enclosures

cc: Hon. Jacob Leventhal
All Parties Of Record



PBL-10

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D. C.

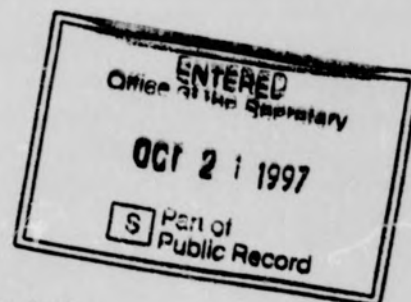
Finance Docket No. 33388



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

**PHILADELPHIA BELT LINE RAILROAD COMPANY'S
COMMENTS AND REQUEST FOR CONDITIONS**

Communications with respect to this
document should be addressed to:



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Jamie Palter Rennert
HOPKINS & SUTTER
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Counsel for the
Philadelphia Belt Line Railroad Company

Dated and filed: October 21, 1997

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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

**Philadelphia Belt Line Railroad Company's
Comments and Request for Conditions**



The Philadelphia Belt Line Railroad Company ("PBL"), pursuant to 49 C.F.R. § 1180.4(d) and Decision No. 12 in this proceeding, hereby submits these comments on, and request for conditions¹ to be imposed upon the Board's approval of, the transaction proposed by the Applicants² on June 23, 1997. PBL opposes the

¹ PBL hereby withdraws its Description of Responsive Application To Be Filed By The Philadelphia Belt Line Railroad Company (PBL-2) in Finance Docket No. 33388 (Sub-No. 53) (filed Aug. 22, 1997) and its Verified Statement of Charles E. Mather III Concerning Environmental and Historical Reporting Requirements (PBL-8) (filed Oct. 1, 1997). PBL has decided to submit these Comments and Request for Conditions instead of a responsive application.

² CSX Corporation and CSX Transportation, Inc., and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries, are referred to collectively as NS. Conrail, Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as the Applicants. See Finance Docket No. 33388, Decision No. 7, slip op. at 1 & n.1 (served May 30, 1997).

proposed transaction unless the Board exercises its discretion under 49 U.S.C. § 11324(c) to condition approval upon the imposition of the following conditions:

(1) Assurance of equal access to PBL's Belt Line North lines by all carriers in Philadelphia in accordance with PBL's Belt Line Principle. Specifically, PBL requests that the Board issue a directive requiring that all carriers that now or will in the future have access to any points in Philadelphia be provided equal, non-discriminatory access to PBL's Belt Line North lines through equitable reciprocal switch rates. Such access is necessary for PBL to fulfill its mandate under its charter and its public interest Belt Line Principle, described further below.

(2) Imposition of the reciprocal switching rights sought by Canadian Pacific Railway Company in the South Jersey/Philadelphia Shared Assets Area. This would allow Canadian Pacific Railway Company (and its subsidiaries and affiliates) ("CP") access to the Belt Line North on a basis equal to that of CSX, NS, and the surviving Conrail entity.

These conditions are critical to the preservation of the Belt Line Principle -- which will not be adhered to under the proposed Shared Assets regime -- for all shippers located on the Belt Line North.

BACKGROUND

PBL is a class III railroad operating in the City of Philadelphia, Pennsylvania (the "City" or "Philadelphia") with an address and telephone number at 226 Walnut Street, Philadelphia, Pennsylvania, 19106, (215) 592-7775. See Verified Statement of Charles E. Mather III in Support of the Philadelphia Belt Line Railroad Company's Comments and Request for Conditions ("Mather V.S."), attached hereto at Appendix I, at 1. PBL was chartered in 1889, and in 1890 the City authorized PBL to construct and operate its lines through Philadelphia. *Id.* at 2. The purpose of PBL was to prevent any one rail carrier from obtaining monopolistic control of the City's port facilities, because the City and its civic leaders considered rail access to the Port

essential for successful economic development of the City and surrounding region. *Id.* at 1-2. The City, its leaders and trade organizations therefore developed the concept of a "belt line" of railroad to run along the riverfront, acting as a terminal and switching company whose facilities and services would be available on an equal access basis to all railroads then and in the future serving the City. *Id.* at 2. This concept of equal access serving the public is known and referred to as the "Belt Line Principle." *Id.* PBL, then, was intended to be the City's guarantee that the Philadelphia waterfront would always be accessible to any railroad company serving the City under neutral, non-discriminatory conditions. *Id.*

The City affirmed and memorialized the Belt Line Principle in 1914 when it passed an ordinance authorizing the execution of a contract known as the South Philadelphia Agreement. *Id.* at 2-3. This agreement among the City, PBL, and several other railroads -- including the predecessors of Conrail and CSX -- established a revised PBL route through the southern part of the City and further provided that the City:

deems it necessary that all railroad companies now or hereafter entering the City should have free access on equal terms to all public and private wharves on the Delaware river [sic] and desirable that what is popularly known as the "Belt Line" principle should be of the most general application

Id. The South Philadelphia Agreement today governs all railroad traffic to port facilities located in South Philadelphia. *Id.* at 3.

Today, PBL owns approximately 16.3 miles of railroad track, right-of-way and trackage rights along the waterfront in Philadelphia, and its lines are available for operation by all freight railroads serving Philadelphia subject to payment of compensation and adherence to the Belt Line Principle. *Id.* PBL's lines are divided into

two segments -- the Belt Line North and the Belt Line South -- which today are physically divided. *See id.*³ Currently, PBL cannot physically provide service over all of its lines because of obstructions across and within the right of way that the City has erected.⁴ *Id.* The three miles of PBL's lines that form the Belt Line North serve approximately 10 shippers, including GATX Terminals and customers served through GATX, Rohm & Haas, Tloga Marine Terminal, Franklin Smelting, Lumber Millwork, and the City of Philadelphia. *Id.* at 4. Belt Line North shippers currently generate at least 1,500 revenue car loads of traffic annually, predominantly moving chemicals, intermodal containers, and goods for import and export. *Id.*

ARGUMENT

A. Standards for Granting Conditions

The Board is empowered to impose conditions upon transactions such as that proposed by the Applicants here, including conditions that could ameliorate a transaction's potential anticompetitive effects. *See* 49 U.S.C. § 11324(c); 49 C.F.R. § 1180.1(d)(1). Furthermore, the Board may impose conditions where essential services are affected and the conditions (i) are related to the impact of the transaction; (ii) are

³ PBL's tracks and trackage rights extend from Bridge Street on the north to Allegheny Avenue, the site of Conrail's former Port Richmond Yard, along or adjacent to Delaware Avenue (also known as Christopher Columbus Boulevard) to South Philadelphia.

⁴ PBL is cognizant of its common carrier obligation to provide service along all of its lines, and hereby reserves its right to return to the Board to enforce this obligation at a later date. Should PBL do so, it would likely seek trackage rights over the following route through the City of Philadelphia: from the end of the Belt Line North at the former Port Richmond Yard/Allegheny Avenue to Falls Junction/West Falls Yard, to CP Field, to Greenwich Yard at the beginning of the Belt Line South. To the extent that this routing involves trackage running along the Schuylkill River, PBL would seek rights on the west side of the River. *See* Mather V.S. at 3 n.1.

designed to enable shippers to receive adequate service; (iii) would not pose unreasonable operating or other problems for the Applicants; and (iv) would not frustrate the ability of the Applicants to obtain the anticipated public benefits of the transaction. See 49 C.F.R. § 1180.1(d)(1).

The conditions that PBL is seeking satisfy these standards: they counterbalance CSX's and NS's plans to divide between and keep entirely for themselves the long haul market from Belt Line North shippers that Conrail currently dominates; they are tailored to redress this negative impact of the proposed transaction and to ensure that Belt Line North shippers receive service at equitable rates from all carriers that reach the Philadelphia market; they would not pose operating or other problems for the Applicants; and they would not prevent the Applicants from achieving the public benefits that they expect to gain from the proposed transaction.

B. The Public Interest Requires Imposition of the Conditions Requested

When the Board considers whether to approve a transaction such as this one, it must consider, among other factors, the proposed transaction's effect on the adequacy of transportation to the public and on competition among rail carriers in the affected region -- here, Philadelphia. 49 U.S.C. § 11324(b); 49 C.F.R. § 1180.1(b)(1). The public interest, stated clearly by the City of Philadelphia in the form of the Belt Line Principle, requires imposition of the conditions that PBL seeks to ensure that Belt Line North shippers are offered a realistic, financially feasible choice of rail carriers, and to foster the competition between or among carriers in Philadelphia that will be hindered by the Applicants' proposed service to the Belt Line North.

The proposed transaction affects the provision of essential services in the Philadelphia market and specifically to the Belt Line North shippers. A service is

"essential" if "there is a sufficient public need for the service and adequate alternative transportation is not available." 49 C.F.R. § 1180.1(c)(2)(ii). There is both a public need for, and no adequate alternative to, multi-carrier rail service to Belt Line North shippers through equitable reciprocal switch rates. The City passed ordinances dating back to the turn of the century mandating public access to the belt line of railroad that runs along the Philadelphia waterfront and memorializing the public interest "Belt Line Principle" of equal access to the Philadelphia port facilities, demonstrating the public need for the conditions that PBL has requested above. See *Mather V.S.* at 2-3. Also, because Belt Line North shippers currently must, as a practical matter, truck their shipments to points in Philadelphia off the Belt Line North or to points outside the City in order to gain rail access to CP or CSX, there is no adequate transportation alternative to multi-carrier service to the Belt Line North through equitable reciprocal switch rates. *Id.* at 4-5. Therefore, service to the Belt Line North is essential and must be protected by the Board under the conditions that PBL seeks herein if the Board determines to approve the proposed transaction.

Today, Belt Line North shippers can in theory use Conrail, CSX, or CP to move their long haul traffic. *Id.* at 4. However, these shippers can only reach the latter two carriers by rail if Conrail performs switching services for them, since today neither CSX nor CP can switch traffic originating or terminating on the Belt Line North (except for Conrail's agreement with CP to switch cars to and from Tioga Marine Terminal). See *id.*; Applicants' Response to Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Production Requests (CSX/NS-98) at 8-9, response to Interrogatory Nos. 7 & 8 (served Oct. 9, 1997), a copy of which is attached hereto at Appendix II; see also Transcript of D. Michael Mohan Deposition at 615, lines 7-11

(Sept. 17, 1997), a copy of which is attached hereto at Appendix III. However, Conrail charges rates for intra-terminal switching in Philadelphia that are significantly higher than other Conrail charges in Philadelphia or elsewhere, thereby discouraging Belt Line North shippers from interchanging with CSX or CP. *Mather V.S.* at 4. Conrail's actions today improperly force a preference for Conrail's own long haul route, in violation of the Belt Line Principle. *Id.* at 5.

As proposed, the transaction encompasses an active agreement on the part of CSX and NS to divide up and dominate the Philadelphia market, and specifically the Belt Line North market, in violation of the Belt Line Principle. While CSX and NS would both receive access to the South Jersey/Philadelphia Shared Assets Area and to the Belt Line North under their proposed Operating Plans, other carriers would not have this access that is mandated under the Belt Line Principle. See Railroad Control Application, Vol. 3A of 8 (CSX/NS-20) at 79, 240; *id.*, Vol. 3B of 8 (CSX/NS-20) at 68, 208; CSX/NS-98 at 6, response to Interrogatory No. 2. In fact, Applicants have stated clearly their intention to assume dominance over the Belt Line North market, similar to that exercised by Conrail today. CSX/NS-98 at 10, response to Interrogatory No. 11 ("Applicants do not currently anticipate any major changes in handling Belt Line North movements").

Because the proposed operating arrangements will violate the requirements of the Belt Line Principle, PBL needs a specific directive from the Board to the Applicants ordering an equitable reciprocal switch rate from the Belt Line North to CSX, NS, CP and any other carrier that now has or might later gain access to Philadelphia. See *Mather V.S.* at 5. Without the imposition of this condition, Belt Line North shippers will be constrained in their choice of carriers, and will be required to

favor CSX or NS as their long haul carrier over CP or any other third party carrier. *Id.* Such a constraint would deprive these shippers of adequate rail service and would suppress competition in the Philadelphia market.

PBL supports CP's request for reciprocal switching in Philadelphia at non-discriminatory rates, which PBL understands that CP is seeking today in its Responsive Application and as described in CP's Description of Anticipated Responsive Application (CP-10) at pages 2-3. *See id.* at 5-6. However, PBL believes that the Board should not restrict the imposition of non-discriminatory reciprocal switching rates to CP, but should state now -- while CSX and NS are unilaterally arranging ownership and operation of track in the South Jersey/Philadelphia Shared Assets Area -- that all carriers that now or might later reach Philadelphia are afforded the same rights, through the imposition of the conditions to this effect that PBL requests above. *Id.* at 6. Conditioning approval of the proposed transaction on the implementation of the conditions that PBL seeks herein will prevent CSX and NS from attaining market dominance over the Belt Line North shippers and will ensure that these shippers are offered adequate rail service.

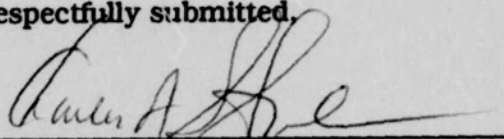
CONCLUSION

The right of equal access to the Belt Line North of all carriers serving Philadelphia is necessary for PBL to maintain neutral access to its lines in accordance with the public interest Belt Line Principle. Unless approval of this transaction is conditioned upon adherence to this Principle, the proposed CSX and NS access to the Belt Line North through the surviving Conrail carrier will result in a discriminatory arrangement that is not in the public interest.

Because imposition of the conditions requested herein will avoid the suppression of competition in part of the South Jersey/Philadelphia Shared Assets Area, the Board should impose these conditions if it approves the Applicants' proposed transaction.

Dated: October 21, 1997

Respectfully submitted,



Charles A. Spitalnik
Alicia M. Serfaty
Jamie Palter Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for Philadelphia Belt Line
Railroad Company

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388

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

**Verified Statement of
Charles E. Mather III in Support of
the Philadelphia Belt Line Railroad Company's
Comments and Request for Conditions**

My name is Charles E. Mather III. I am the President of the Philadelphia Belt Line Railroad Company ("PBL"), a class III rail carrier operating in the City of Philadelphia, Pennsylvania (the "City" or "Philadelphia") with an address and telephone number at 226 Walnut Street, Philadelphia, Pennsylvania, 19106, (215) 592-7775. I am submitting this Verified Statement in support of PBL's Comments and Request for Conditions submitted today in this proceeding. The purpose of this statement is to describe the background of PBL, the public interest Belt Line Principle under which it functions, and the reasons that the conditions requested are essential to preserve the Belt Line Principle's existence and effectiveness in the face of the proposed reallocation of Conrail's assets should this transaction be implemented.

During the 1880's, many Philadelphia interests, including certain influential individuals and trade organizations, became concerned about the future development

of the Port of Philadelphia, recognizing that rail access to the Port was essential for successful economic development of the City and surrounding region. The major concern at the time was over the Pennsylvania Railroad Company's ("PRR") evolving monopolistic control of this access. If one company controlled rail access to the Port, it could control the Port's economic activity, and as a result, the industrial and commercial success of the City. Consequently, these influential persons and trade organizations developed the concept of a "belt line" of railroad to run along the riverfront and act as a terminal and switching company whose facilities and services would be available on an equal access basis to all railroads then and in the future serving the City. This concept of equal access is known and referred to as the "Belt Line Principle."

To implement this concept, PBL was chartered on May 10, 1889 under the Pennsylvania Act of June 8, 1874. A copy of PBL's Charter is attached at Exhibit A. This charter, along with a City ordinance of December 26, 1890, authorized PBL to construct and operate its lines through Philadelphia, and guaranteed that the Philadelphia waterfront would always be accessible to any railroad company serving the City on a neutral, nondiscriminatory basis and under equal conditions. A copy of the City's December 26, 1890 ordinance is attached at Exhibit B.

On February 14, 1914, the City passed an ordinance authorizing the execution of a contract known as the South Philadelphia Agreement. A copy of this 1914 ordinance is attached at Exhibit C. This covenant among the City, PBL, and several other railroads including PRR and the Baltimore & Ohio Railroad ("B&O") -- the predecessors to Consolidated Rail Corporation ("Conrail") and CSX Transportation, Inc. ("CSX"), two of the Applicants in this case -- specified PBL's route through the southern

part of the City (this route was slightly amended from that laid out in the 1890 ordinance). The South Philadelphia Agreement also provides that the City:

deems it necessary that all railroad companies now or hereafter entering the City should have free access on equal terms to all public and private wharves on the Delaware river [sic] and desirable that what is popularly known as the "Belt Line" principle should be of the most general application

The South Philadelphia Agreement today governs all railroad traffic to port facilities located in South Philadelphia.

Today, PBL owns about 16.3 miles of railroad track, right-of-way and trackage rights along the waterfront in Philadelphia. PBL's lines are available for operation by all freight railroads serving Philadelphia subject to payment of compensation and adherence to the Belt Line Principle. Its tracks and trackage rights extend from Bridge Street on the north to Allegheny Avenue, the site of Conrail's former Port Richmond Yard, along or adjacent to Delaware Avenue (also known as Christopher Columbus Boulevard) to South Philadelphia. Currently, PBL cannot physically serve the waterfront lines because of obstructions across and within the right of way that the City has erected. As a result, we no longer can reach the Belt Line South directly. We remain mindful of our common carrier obligation to provide service along this line, and reserve our right to return to the Board to enforce it at a later time.¹ I have attached a map of PBL's lines as Exhibit D to this Statement.

¹Should PBL need to seek trackage rights to carry out its common carrier obligations, it contemplates seeking such rights over the following route: from the end of the Belt Line North at Port Richmond Yard/Allegheny Avenue to Falls Junction/West Falls Yard, to CP Field, to Greenwich Yard at the beginning of the Belt Line South. To the extent that this routing involves trackage running along the Schuylkill River, PBL would seek rights on the west side of the River.

The three miles of PBL's lines that form the Belt Line North serve approximately 10 shippers, including GATX Terminals and customers served through GATX, Rohm & Haas, Tioga Marine Terminal, Franklin Smelting, Lumber Millwork, and the City of Philadelphia. According to Conrail, Belt Line North shippers currently generate about 1,000 revenue car loads of traffic annually from shippers other than Tioga Marine Terminal. I have attached at Exhibit E a copy of a September 11, 1997 letter from Conrail to PBL that provides this information.² From information that our consultant has gathered, I understand that Tioga Marine Terminal moves approximately 400-500 revenue car loads annually over PBL, raising the total revenue car loads for Belt Line North shippers to approximately 1,500 annually. Predominant commodities moving along the Belt Line North include chemicals, intermodal containers, and goods for import and export.

Today, the shippers on the Belt Line North can -- theoretically -- reach CSX and Canadian Pacific Railway Company (and their subsidiaries and affiliates) by rail through Conrail's reciprocal switching service. However, Conrail charges rates for intra-terminal switching in Philadelphia that are significantly higher than other Conrail charges in Philadelphia or elsewhere, violating the Belt Line Principle by discouraging Belt Line North shippers from choosing to interchange with CSX or Canadian Pacific. Instead, Belt Line North shippers must truck their shipments to points off the Belt Line North

²Because Conrail currently leases the Belt Line North, it maintains records of traffic to and from this segment. I am not confident that this traffic figure is accurate, but I also have no factual basis to dispute it other than information that our consultant has received from GATX that it and its customers are generating approximately 2,500 revenue car loads annually over the Belt Line North, rather than the 892 that Conrail claims.

either in Philadelphia or outside it in order to access CP and CSX directly. Thus, Conrail's actions today improperly force a preference for Conrail's own long haul route.

In the future, under the terms of the proposed transaction as I understand them, CSX and Norfolk Southern will divide up the Belt Line North long haul market just as they are doing for the remainder of Philadelphia. This division violates the Belt Line Principle. Because of this, PBL needs a specific directive from the Board that mandates a reasonable reciprocal switch rate from the Belt Line North in the proposed Philadelphia Shared Assets Area to CSX, Norfolk Southern, Canadian Pacific and any other carrier that has or might gain access to Philadelphia. Without this, Belt Line North shippers will be financially hamstrung in their choice of carriers. These shippers will in essence be required to choose CSX or Norfolk Southern (through the surviving Conrail carrier) as their long haul carrier instead of Canadian Pacific or any other carrier, in violation of the Belt Line Principle.

Belt Line North shippers need nondiscriminatory access to rail service over the Belt Line North and through Philadelphia in accordance with the Belt Line Principle. The proposed transaction under review in this proceeding gives the Applicant carriers the opportunity to prevent the ability of all shippers in Philadelphia to have that equal access to all carriers that reach Philadelphia. We cannot provide this guarantee ourselves. We are therefore seeking a condition in this case that requires the carriers acquiring control of Conrail to assure that any carrier today or in the future obtains access to any point in Philadelphia be provided equal access to the Belt Line through a reciprocal switch at equitable rates. Again, such carriers would include, but not be limited to, CSX, Norfolk Southern, the surviving Conrail entity that will conduct operations in Philadelphia, and Canadian Pacific. To this end, PBL supports the

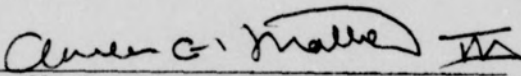
request of Canadian Pacific for reciprocal switching at non-discriminatory rates described in its Description of Anticipated Responsive Application (CP-10) at pages 2-3. However, PBL believes that the Board should not restrict the imposition of non-discriminatory reciprocal switching rates to Canadian Pacific, but should allow all carriers that now or might later reach Philadelphia these same rights, through issuance of a general directive on this matter.

In sum, the equal right of access to the Belt Line North of all carriers serving Philadelphia is necessary for PBL to maintain neutral access to its lines in accordance with the Belt Line Principle and its corporate charter. Unless approval of this transaction is conditioned upon implementation of and adherence to this Principle, the proposed CSX and NS access to the Belt Line North through the surviving Conrail carrier will result in a discriminatory arrangement.

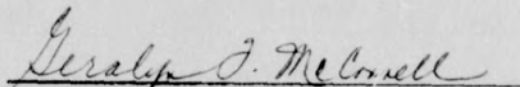
Verification

Commonwealth of Pennsylvania)
)
County of Philadelphia) ss:

Charles E. Mather III, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.


Charles E. Mather III

Subscribed and sworn to
before me this 16th
day of October, 1997.


Notary Public

My commission expires:

Notarial Seal
Geraldyn F. McConnell, Notary Public
Philadelphia, Philadelphia County
My Commission Expires July 27, 1998
Member, Pennsylvania Association of Notaries

ARTICLES OF ASSOCIATION OF THE PHILADELPHIA BELT LINE RAILROAD
COMPANY, ADOPTED MAY 10th, 1889.

1245-1

COPY

EXHIBIT

A

We the undersigned, nine of whom are citizens of Pennsylvania, do hereby form a company for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, under the provisions of an act of the General Assembly of the Commonwealth, of Pennsylvania, entitled "An Act to authorize the formation and regulation of railroad corporations," approved April 4, A.D. 1868, and the acts supplementary thereto: and for that purpose do make and sign these as our articles of association:-

First. That the name of the said Company is the "Philadelphia Belt Line Railroad Company."

Second. That the said Company is to exist for the term of nine hundred and ninety-nine years.

Third. That the places from and to which the said railroad is to be constructed, or maintained and operated, are as follows, namely: Beginning at a point near the Atlantic Refinery on the Schuylkill River, in the Twenty-sixth ward, along property, streets and avenues following the course of the Delaware River and the Schuylkill River to a point near Cottman street in the Twenty-third ward.

Fourth. That the length of the said railroad will be, as near as may be, eighteen miles, and the name of each county in the State through or into which it is made, or intended to be made, is as follows: the county of Philadelphia.

Fifth. That the capital stock of the said company is to be two hundred thousand (\$200,000) dollars, being at least ten thousand dollars for every mile of road constructed, or proposed to be constructed, and shall consist of four thousand (4,000) shares, of a par value of fifty (\$50) dollars each share.

Sixth. The affairs of the company shall be controlled by a President and a Board of ten (10) Directors, and the following are the names and

places of residence of those who shall manage its affairs for the first year, or until others are chosen in their places, a majority of whom are citizens of Pennsylvania.

Name.	Residence
President	
FRANCIS B. REEVES, Directors.	Germantown, Phila.
JAMES DOBSON,	Falls of Schuylkill, Phila.
E. C. KNIGHT,	1605 Chestnut St., Phila.
WHARTON BARKER,	125 South Fourth St., Phila.
WILLIAM BROCKIE,	Germantown, Phila.
WALTER F. HAGAR,	Corner Walnut and Third Sts., Phila.
CHARLES H. CRAMP,	1736 Spring Garden St., Phila.
E. A. HANCOCK,	2040 Chestnut St., Phila.
WILLIAM H. JENKS,	2004 Arch St., Phila.
CALVIN PARDEE,	Germantown, Phila.
WILLIAM M. SINGERLY,	1701 Locust St., Phila.

In witness whereof, the subscribers to these articles of association have hereunto subscribed their names, places of residence and the number of shares of stock which each agrees to take:

Name	Residence	No. of Shares	Value
James Dobson,	Falls of Schuylkill	400	\$20,000
E. C. Knight,	1605 Chestnut St.	400	20,000
Wharton Barker,	125 So. Fourth St.	400	20,000
F. B. Reeves,	Germantown	300	15,000
Wm. Brockie,	Germantown	200	10,000
Walter F. Hagar,	Cor. Walnut & 3rd.	300	15,000
Chas. H. Cramp,	1736 Sp. Garden	400	20,000
E. A. Hancock,	2040 Chestnut St.	400	20,000
Wm. H. Jenks,	2004 Arch Street	400	20,000
Calvin Pardee,	Germantown	400	20,000
Wm. M. Singerly,	1701 Locust St.	400	20,000

State of Pennsylvania) ss.
County of Philadelphia)

Before me, the subscriber, a Notary Public in and for said county and State, in which county the principal office of the company is designated to be located, duly authorized to take the acknowledgement of deeds, personally came William Brockie, Calvin Pardee and William H. Jenks, being three of the Directors named in the foregoing articles of association, and in due form of law acknowledged the foregoing as their act and deed for the purposes therein set forth.

In testimony whereof I have hereunto set my hand and seal this 10th day of May, A.D. 1889

Richard C. Winship,
Notary Public

State of Pennsylvania) ss.

Personally, before me, a Notary Public in and for the county and State aforesaid, came William Brockie, Calvin Pardee and William H. Jenks, being three of the Directors of the Philadelphia Belt Line Railroad Company, and named as such in the foregoing articles of association, who, being duly sworn according to law, depose and say that ten (\$10,000) thousand dollars for every mile of road proposed to be made has been in good faith subscribed thereto, and ten per centum paid thereon in good faith and in cash to the Directors named in said articles of association and that it is intended in good faith to construct the road mentioned in said articles of association.

WILLIAM BROCKIE,
CALVIN PARDEE,
WILLIAM H. JENKS

Affirmed and subscribed before me, this 10th day of May A.D. 1889.

Richard C. Winship,
Notary Public

AN ORDINANCE

To authorize the Philadelphia Belt Line Railroad Company to construct its railroads and branches upon and across streets, to authorize changes and revisions in the lines and grades of certain streets, the location of a new street, the widening of certain streets, and the shifting of the tracks occupied jointly by the River Front and the Philadelphia & Reading Railroad Companies, and the entering of security.

SECTION 1. *The Select and Common Councils of the City of Philadelphia do Ordain*, That the Philadelphia Belt Line Railroad Company be, and the same is hereby, authorized to build its line of railroad from its point of commencement at or near the Atlantic Refinery, in the Twenty-sixth Ward; thence by a line following the general direction of the Schuylkill and Delaware Rivers to the terminus of the said railroad, at or near Monroe, otherwise known as Princeton street, in the Twenty-third Ward; also, to build branches of said railroad from a point marked A on the map accompanying this ordinance by the route shown thereon, to a point on the City Line marked B, and from points marked C, E, G and I, to points marked D, F, H and K, respectively on said map, and to enter upon, occupy, and cross with its line and branches any and all streets, lanes, and alleys between the points above-named, with all the suitable and necessary sidings, turnouts and connections into and upon the warehouses and wharves which are now or may hereafter be located along said line or branches, when such sidings, turnouts, or connections are requested by the owners of said warehouses and wharves, so that the manufacturing and business interests along the said line shall have full benefit of receiving from and delivering property to the said railroad. It is expressly understood that no siding shall be laid longitudinally upon any other streets or avenues mentioned hereafter without permission of Councils is first by ordinance obtained.

The route of the said Philadelphia Belt Line Railroad and branches thereof shall be shown upon a map to be filed at the Department of Public Works.

The route shall be as follows :

Commencing with a double track on Schuylkill avenue, at Curtin street, in the Twenty-sixth Ward, thence southwardly in Schuylkill avenue to a point at or near Hoyt street; thence curving southeastwardly to a point at or near the intersection of Avenue Thirty-seven south and Thirty-second street; thence southeastwardly crossing the tracks of the Girard Point Extension Railroad, to a point at or near the intersection of Avenue Forty-two south and Twenty-seventh street; thence curving southwardly to a point in Twenty-sixth street near Avenue Forty-three south; thence southwardly in Twenty-sixth street to a point north of Avenue Forty-five south; thence curving eastwardly to a point in Avenue Forty-five south, east of Twenty-sixth street; thence eastwardly in Avenue Forty-five south to Government avenue near Twenty-second street; thence northeastwardly in Government avenue to a point where the said avenue is intercepted by Sixteenth street extended; thence eastwardly in Government avenue to a point at or near Fifth street; thence northwardly on Fifth street to a point at or near Johnson street; thence curving eastwardly on Johnson street, crossing the tracks of the Pennsylvania Railroad Company, to a point on Delaware avenue; thence northwardly on Delaware avenue and east of the right of way of the Pennsylvania Railroad Company to a point at or near the intersection of Delaware avenue, Porter street and Commercial avenue; thence northwestwardly along Commercial avenue parallel with and east of the right of way of the Pennsylvania Railroad Company and the Schuylkill River East Side Railroad Company, to a point at or near the intersection of Commercial avenue, Moore street and Meadow street; thence northwardly in and along Meadow street east of and parallel with the right of way of the Schuylkill River East Side Railroad Company, to a point at or near the intersection of Meadow street and Tasker street; thence curving westwardly and northwardly to a point in Front

street, north of Tasker street, crossing the tracks of the Schuylkill River East Side Railroad in Meadow street, and the tracks of the Pennsylvania Railroad in Swanson street; thence northwardly along Front street to a point at or near Queen street; thence curving eastwardly into and along Queen street to a point in Delaware avenue north of Queen street, crossing the Swanson Street Branch of the Philadelphia, Wilmington and Baltimore Railroad, and the tracks of the Pennsylvania Railroad; thence northwardly with a single track along Delaware avenue, and property adjacent thereto, nine and one-half ($9\frac{1}{2}$) feet east of the east rail of the tracks now laid in Delaware avenue to a point at or near Callowhill street; thence with a double track northeastwardly along Delaware avenue and Beach street to a point at or near the Aramingo Canal; thence curving northwardly in and along the general course of said canal to the Richmond Branch of the Philadelphia and Reading Railroad; thence northeastwardly in and along the said Aramingo Canal, or street, to a point near Butler street; thence curving eastwardly to a line parallel with and northeast of Butler street; thence southeastwardly along same to a point near Casper street; thence curving eastwardly to a point in Carbon street at or near Wheat Sheaf lane; thence northeastwardly in Carbon street to a point in the line of Carbon street extended, on the river bank, at or near Buckius street; thence northwardly by the general courses of the river bank to Bridge street; thence northeastwardly by a line outside of the river bank, and crossing the mouth of Frankford Creek to a point on the wharf of the Philadelphia Cordage Company; thence northwardly, crossing the tracks of the Kensington and Tacony Branch of the Pennsylvania Railroad, to a point in Milnor street, at or near Funk street; thence northeastwardly in Milnor street to Monroe, otherwise known as Princeton street.

The route of the branch from point marked A, on the main line, to point marked B, on County Line, shall be as follows:

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Aramingo Canal, or street, south of Butler street; thence northeastwardly in the Aramingo Canal, or

street, to a point south of Wheat Sheaf lane; thence curving westwardly, crossing Wheat Sheaf lane west of the Aramingo Canal, or street, and passing under the Philadelphia and Trenton Railroad immediately south of Frankford Creek; thence along and south of Frankford Creek, passing under Frankford avenue, and under Kensington avenue at or near "P" street; thence northwestwardly, crossing Juniata avenue at or near "O" street, Cayuga street at or near "N" street, Courtland street at or near "L" street, Fisher's lane at or near "J" street; thence northwestwardly, following the general course of Tacony Creek, as shown on the map, to the line between the counties of Philadelphia and Montgomery, at or near the intersection of Cheltenham avenue with Cheltenham avenue; the said branch to have Y connection with the railroad tracks of the main line, parallel with, and northeast of Butler street.

The route of the branch from point marked C, on the main line, to a point marked D, shall be as follows:

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Carbon street, north of Butler street; thence southwestwardly in Carbon street to a point in the line of Carbon street extended on the river bank; thence southwestwardly by the general courses of the river bank to Allegheny avenue. The said branch to have Y connection with the railroad tracks of the main line, parallel with, and northeast of Butler street.

The route of the branch from point marked E, on the main line, to point marked F, shall be as follows:

Commencing at a point in the main line of the Philadelphia Belt Line Railroad in Beach street, south of the Aramingo Canal, thence northeastwardly in Beach street to Cumberland street.

The route of the branch from point marked G, on the main line, to a point marked H, shall be as follows:

Commencing at a point in the main line of road on Government avenue, near and west of Fifth street; thence extending eastwardly along Government avenue and Avenue Forty-three

south to the river bank at or near Third street ; thence along the river bank to a point at or near Spangler street.

The route of the branch from point marked I, on the main line, to point marked K, shall be as follows :

Commencing at a point in Schuylkill avenue, at or near Hoyt street ; thence southwardly in Schuylkill avenue to near Avenue Thirty-six south ; thence curving westward to the river bank ; thence following the general line of the river bank along the Schuylkill River to a point near the prolongation southward of Thirtieth street ; thence curving northward to a connection with the tracks of the Girard Point Extension Railroad, at or near Avenue Forty-five south.

There shall be no crossings at grade of existing streets now opened, nor of railroad tracks now constructed and in use prior to June 20th, 1889, by the portion of the Philadelphia Belt Line Railroad along the Aramingo Canal and Frankford and Tacony Creeks to the county line, excepting Richmond street at its crossing of the Aramingo Canal, and on the portion of the branch line along Butler street between Richmond street and Carbon street. All streets crossing Butler street, between the Aramingo Canal and Richmond street, including Richmond street, shall be crossed overhead at an elevation of not less than thirteen (13) feet.

The Department of Public Works, through the Board of Surveys be, and is hereby, authorized and directed, from time to time, upon the demand of the Philadelphia Belt Line Railroad Company, to widen Beach street and Delaware avenue from Cumberland street to the south side of Callowhill street, on either or both sides of said streets, to an additional width of not more than thirty (30) feet ; also to shift the tracks occupied by the River Front Railroad Company and the Philadelphia and Reading Railroad Company, wherever necessary between Cumberland street and the south side of Callowhill street, and to make such revision of street and curb lines as may be necessary to enable the tracks of the Philadelphia Belt Line Railroad Company to be constructed and operated upon said widened streets ; *Provided*, That the shifting of the aforesaid tracks shall be done by or under the direction of the Department of Public Works, and

that all expenses of every kind arising from the widening of said streets, the revision of street and curb lines, and vacation of sidewalks, and the shifting of aforesaid tracks, including all damage to private property, shall be borne and paid by the Philadelphia Belt Line Railroad Company.

SECT. 2. That the Philadelphia Belt Line Railroad Company, wherever it shall cross or occupy any now opened public street, shall keep that portion thereof occupied by its tracks in good order and condition at all times, and shall save the City of Philadelphia harmless, so far as the City may be liable therefor, from any responsibility that may grow out of the construction or operation of the said railroad and branches over, upon, or under the streets as aforesaid.

When the City of Philadelphia shall direct the opening and paving or macadamizing of any street now upon the approved plan, or a change of grade of any street now open across the line of said railroad track to avoid grade crossings, in such a way as shall make necessary the construction of bridges and abutments, the railroad company shall construct at its own expense such bridges and abutments thus made necessary, in accordance with plans furnished by the Department of Public Works.

SECT. 3. The said Philadelphia Belt Line Railroad Company shall have the right to occupy with double tracks any portion of the property of the City of Philadelphia across which the route of the said railroad and branches may extend.

SECT. 4. The Philadelphia Belt Line Railroad Company shall enter into an agreement with the City of Philadelphia, that where the line of the said railroad shall be constructed on any portion of Delaware avenue as it now exists, that the said company will move its tracks to the eastern side of said avenue whenever Delaware avenue shall be widened or opened of a sufficient width to permit this to be done. And thereupon the said Philadelphia Belt Line Railroad Company shall have the right to lay and maintain an additional track, with necessary turnouts and switches upon said portion of Delaware avenue so widened or opened ; and if at any time hereafter the said avenue

shall be so widened, the railroad company shall indemnify the City of Philadelphia against being put to any expense by reason of the building of bulkheads and of the grading and paving thereof.

SECT. 5. The rights conferred by this ordinance are granted upon the express and precedent condition, that before any of the said rights herein conferred shall be exercised by the Philadelphia Belt Line Railroad Company, it shall procure such contracts under bonds, the amount of which is to be hereinafter specified, to be executed with the City of Philadelphia, in such form as shall be approved by the City Solicitor as will make effectual the following conditions:

That the Philadelphia Belt Line Railroad Company shall, in conjunction with all the stockholders of said company, enter into an agreement bearing the approval of the Mayor and the City Solicitor, that the whole of the Philadelphia Belt Line Railroad and in its branches shall be completed within five (5) years after the passage of this ordinance and that as fast as the said Philadelphia Belt Line Railroad and branches shall be completed, each part thereof, as rapidly as it shall be constructed, shall be open to the use of all railroad companies which shall execute a satisfactory agreement to comply with all reasonable rules and regulations, which rules and regulations shall apply to all without discrimination.

SECT. 6. That the Philadelphia Belt Line Railroad Company shall be subject to the same limitations and penalties respecting the time of running its trains and the standing of its engines or cars upon any part of its track between Callowhill street and Dock street, as were provided for the River Front Railroad Company, in ordinance approved May 31st, 1877, entitled "An ordinance to authorize the River Front Railroad Company and the Philadelphia and Reading Railroad Company to severally and jointly occupy and use certain streets for railroad purposes," as well as the subsequent decree of the Court of Common Pleas confirming the restrictions as provided by ordinance.

SECT. 7. The position of the said railroad tracks upon said streets and avenues now opened shall conform to the established

grade thereof, and when the growth of improvement shall require bringing the streets not yet opened, along which the said railroad or its branches may be laid, to the confirmed grades of the City, the said railroad company shall, at its own expense, raise or depress its tracks to conform to the said grades, wherever and whenever it shall be notified to do so by ordinance of Councils, ordering the opening and paving or macadamizing of said streets, and the construction as to plan and character of rail shall be approved by the Department of Public Works; and it is hereby stipulated, that before any of the streets or avenues herein designated shall be occupied for railroad purposes, the company shall file an obligation with the City Solicitor, protecting the said City from any expenses whatever consequent upon, or growing out of the laying of said railroad tracks, hereby authorized, so far as the said City shall be liable.

SECT. 8. That no higher charges shall be made by the Philadelphia Belt Line Railroad Company for the transportation of any traffic over the line of the railroad authorized to be constructed, than are permitted by the provisions of the Act of General Assembly of the Commonwealth of Pennsylvania, entitled "An Act regulating railroad companies," approved the nineteenth day of February, 1849, and all supplements thereto.

SECT. 9. That the dividends on the fully-paid stock be limited to six (6) per cent. per annum. All excess of earnings to go to the City of Philadelphia.

SECT. 10. That the privileges herein and hereby given to the Philadelphia Belt Line Railroad Company are conditioned upon their giving to the City of Philadelphia, prior to the commencement of each section, as hereinafter specified, upon the approval of the City Solicitor, the following bonds of indemnification, protecting the City from all loss, damage, claim, or demand by reason of the construction of the railroad tracks herein authorized to be constructed by the Philadelphia Belt Line Railroad Company: Upon that portion of the line between Point Breeze and Pollock street, fifty thousand (50,000) dollars; and upon that portion of the line between Pollock street and Reed street, seventy-five thousand (75,000) dollars; between Reed

street and Lehigh avenue, two hundred and fifty thousand (250,000) dollars; between Cumberland street and Tacony, one hundred thousand (100,000) dollars; between Lehigh avenue and County Line, fifty thousand (50,000) dollars; said bonds shall bear the guarantee or security of one or more of the Philadelphia trust companies, and shall terminate and become void at the expiration of two years after the completion of the respective sections to which they apply.

SECT. 11. That the Department of Public Works be and is hereby authorized and directed to make modifications in the lines and grades of streets crossed by the Philadelphia Belt Line Railroad, as follows:

Lay out a new street, fifty feet wide, on the west side of the Aramingo Canal, from Richmond street to East Girard avenue. Lower the grade of East Norris street and East Girard avenue, at the crossing of the Aramingo Canal, to $+ 4.0$ City datum; revise the lines and grades of Frankford avenue, the elevation of tracks at said avenue to be $+ 8.0$ City datum, and of the Asylum road, near Crescentville, so that those streets shall be carried over the railroad, on bridges, with a clearance of nineteen feet; revise the grades of Kensington avenue and Old Front street, so that Kensington avenue may be carried over the railroad on a bridge with nineteen feet clearance; revise the grades of Fisher's lane, Olney road, and Old Second street, so that each may be carried, on a bridge, over the railroad, with a clearance of nineteen feet; revise the lines and grades of all streets not now open along the line of Frankford Creek, between the Aramingo Canal and the Montgomery county line, so that said streets, when opened, may pass either under or over the Philadelphia Belt Line Railroad; revise the grade on Queen street, between Delaware avenue and Swanson street, and on the west side of Delaware avenue.

The Department of Public Works is hereby further authorized and directed to make such revision of the grades of any and all streets upon the plan of the City which shall be affected by the aforesaid revisions, or by the construction of the Philadelphia Belt Line Railroad Company, as may be necessary to

enable the said railroad to be constructed, and to make effectual the aforesaid revisions of grades; conditioned that said Philadelphia Belt Line Railroad shall file its bond in the sum of two hundred and fifty thousand (250,000) dollars, to be approved by the City Solicitor, and file in the Law Department, providing that said Company shall pay all damages arising out of the changes and modification of the grades of the streets, avenues and lanes, now opened, mentioned in this section.

SECT. 12. All work herein and hereby authorized shall be done under the supervision and to the satisfaction of the Department of Public Works, and nothing herein or hereby granted shall prevent Councils, by ordinance, from establishing proper regulations for running of the cars and locomotives over the streets herein named as may be required for the protection of the citizens and business interests of the City, and before exercising any of the rights or privileges herein and hereby granted, the sum of fifty (50) dollars shall be paid by the Philadelphia Belt Line Railroad Company into the City Treasury for the printing of this ordinance.

SECT. 13. That, before exercising any of the rights or privileges herein or hereby granted, the Philadelphia Belt Line Railroad Company, the officers, directors and all the shareholders thereof, shall execute, to the satisfaction of the Mayor and City Solicitor, an agreement providing for the creation of a voting trust for all the stock of the said railroad company. Also, an agreement providing for a gift of fifty-one (51) per cent. of the present stock of said railroad company and fifty-one (51) per cent. of all the stock which may hereafter be issued by it to such corporations and persons as may be legally competent to act thereunder, to the end that the said railroad may forever be maintained for the common use of all railroads upon equal terms, without discrimination.

Approved the twenty-sixth day of December, A. D. 1890.

EDWIN H. FITLER,

Mayor of Philadelphia.



Clerk's Office, Select Council.

EXHIBIT C

Philadelphia Feb 14 1914

Philadelphia Belt Line Railroad Co.

328 Chestnut St

This is to certify that the following is a true and correct copy of the ordinance approved
by the Mayor on the 14th day of Feb. A. D. 1914

AN ORDINANCE

Authorizing the execution of a contract between the City of Philadelphia, the Philadelphia, Baltimore and Washington Railroad Company, the Pennsylvania Railroad Company, the Schuylkill River East Side Railroad Company, the Baltimore and Ohio Railroad Company, and the Philadelphia Belt Line Railroad Company, providing for the abolition of railroad grade crossings in that portion of the City lying south of Christian street, and between the Delaware and Schuylkill rivers, so as to enable the City to revise the lines and grades of streets, and carry out its plan for the improvement of that portion of the City, including the construction, extension and improvement of its docks, wharves, etc., and for that purpose providing that said railroad companies may change, relocate or elevate certain portions of the lines of railroad owned, leased or controlled and operated by them, and establish new lines, terminals and yards with the necessary connections therewith within said portion of the City; providing for the placing upon the City plan, the striking from the City plan, and the vacation, widening and revision of the lines and grades of streets and for the opening and physical changes of streets; for the alteration, construction and reconstruction of buildings, bridges and yards, tracks, terminals and operating appliances of the said railroads; for the acquisition of property for railroad and highway purposes and for piers and other river front improvements and for the apportionment between the City and the railroad companies of the expense of acquiring the property for opening, widening and revising streets, of constructing and reconstructing street fixtures and of changing, relocating, constructing and reconstructing or elevating railroad tracks, terminals, yards and connections, and all other expense contingent to the work herein provided for, and defining the methods of making payment of the respective portions of such expense; providing for the carrying out and completion of all the aforesaid work and all work of every character necessary for and incidental to the abolishment of certain existing grade crossings, and the effectual establishment of the plan whereby the readjustment of railroad lines with reference to street crossings within the territory affected may be provided for; also authorizing a general revision of the lines and grades of streets; the amendment of the ordinance approved December 26, 1890, authorizing the construction of the Philadelphia Belt Line Railroad; and making an appropriation for a part of the City's proportion of the cost of the work provided for in said contract.



or otherwise improve and relocate, extend, construct, reconstruct and elevate the certain portions of the lines of railroad owned, held, or controlled and operated by them, hereinafter specifically mentioned as hereinafter provided; may provide for railroad yards and terminals; may provide for the alteration and construction or reconstruction of buildings, bridges, tracks and operating appliances on the said lines of railroad; and may carry out and complete the work of every character necessary and incidental to the fulfillment of the purposes stated in the recital hereinbefore contained, and the City hereby further agrees to take all action that is or may be necessary upon its part to enable the said Companies to carry into effect the work covered by this agreement. The following are the lines of railroad affected by this agreement:

(1) The Washington Avenue Branch of the Philadelphia, Baltimore and Washington Railroad from Thirtieth street and Gray's Ferry avenue to the Delaware river; (2) the Delaware Extension of the Pennsylvania Railroad from the Arsenal bridge over the Schuylkill river to Delaware avenue and Queen street; (3) the Girard Point Branch of the Pennsylvania Railroad from Hamburg Junction to Girard Point; (4) the Schuylkill River Branch Extension of the Pennsylvania Railroad from its connection with the Girard Point Branch to its terminus east of Broad street; (5) the Schuylkill River East Side Railroad from near Vare avenue, in its East Side Yard along the Schuylkill river to Shunk and Vandalia streets; and (6) The Philadelphia Belt Line Railroad from Queen street to Point Breeze.

Second.—The said City covenants, promises and agrees to make such general revision of the lines and grades of streets as may be necessary to complete the City plan and provide for the improvements within the territory south of Christian street and between the Delaware and Schuylkill rivers, and, in connection therewith, to vacate such streets; to place such streets on the City plan and to make such revision of the lines and grades of streets crossing and adjacent to the lines of railroad herein specifically mentioned, and the yards, facilities and appurtenances thereon and thereof, as may be necessary to properly provide for the execution of the work to be co-operatively undertaken and completed by the City and the respective Railroad Companies in accordance with this agreement.

Third.—The City covenants, promises and agrees to issue the usual notices to all owners whose property may be affected by the work to be done under this agreement and to notify the owners of property over and through which the following streets, as laid out and revised under authority of the ordinance authorizing this agreement, will pass, that at the expiration of three months from the date of said notices said streets will be required for public use: Twenty-fifth street, from Washington avenue to Point Breeze avenue; Point Breeze avenue, from Twenty-fifth street to Wolf street; Twenty-ninth street, from Passyunk avenue to Magazine lane; and Delaware avenue from the north side of Bigler street to the north property line of the proposed terminal yards of the Pennsylvania Companies. Upon the execution of this agreement and the confirmation of any or all of the revisions of the City plan provided for in Article Second hereof, the Mayor shall enter security, on behalf of the City, for the payment of any and all damages which may be caused in carrying into effect any and all of the work herein authorized. Upon the filing of the said security and at the expiration of the time limit of the notice provided for in this Article, the Director of the Department of Public Works of the City (hereinafter for convenience called "Director") shall enter upon and take for public use such properties as may be required to enable said ordinance and this agreement to be carried into full and complete effect, and the work of construction shall be commenced as soon thereafter as possible and at as many

points as practicable upon each line of railroad and upon the streets in so far as they shall or may be affected by the same, and shall be carried to completion by the City and the Railroad Companies, respectively, with the least possible delay or interruption, which date shall not be later than five years from the date of this agreement. In the event of delay due to failure to obtain right-of-way for railroads required or to be constructed, or to strikes, injunctions or other causes beyond the control of the Railroad Companies or the City, or to the delay of the City in making sufficient appropriations, suitable extension beyond five years shall be agreed upon by the City and the Railroad Companies.

Fourth.—The City covenants, promises and agrees to prepare plans and specifications for and to carry out, so far as they may be affected or are made necessary by the work provided for in this agreement, the grading, paving or repaving, and setting or resetting of curbs to the lines and grades established under authority of said ordinance upon all streets legally or physically opened prior to the approval of said ordinance; the grading and drainage of the streets provided to be opened by Article Third hereof; the construction, reconstruction and alteration or removal of all sewers, water and gas mains, electrical conduits and municipal structures and street improvements and their appurtenances and the underpinning or removal of buildings adjacent to the work. *Provided, however,* That the curbing and paving of Delaware avenue shall apply only to that portion of said avenue between Queen street and Reed street and the paving of intersections of all legally and physically opened streets crossing said Delaware avenue between Reed and Bigler streets, inclusive.

Upon the approval of the said plans and specifications by the Chief Engineer or Chief Engineers (hereinafter for convenience called "Engineer" or "Engineers") of the Railroad Companies interested in and affected by the same, the said Director shall advertise for proposals and enter into contracts, to be approved by the Engineer, or Engineers, of the said Railroad Companies affected, for the work covered by the said plans and specifications, and said work shall be carried out by and under the supervision of the City. The said plans, specifications and contracts shall be identified by the signatures of the said Director, the Chief Engineer of the Bureau of Surveys of the City and the Engineer, or Engineers, of the said Railroad Companies, and shall be filed and preserved in the Department of Public Works, and copies shall be furnished to the said Railroad Companies.

Fifth.—The Pennsylvania Companies and the Baltimore Companies covenant, promise and agree to prepare plans and specifications and take the necessary corporate action for the work of changing, widening, straightening, improving, relocating, extending, constructing or reconstructing and elevating their respective railroads, tracks, yards, terminals and work appurtenant thereto, and to enter into the necessary contracts for and to carry out all of said work.

The said plans and specifications shall be separated and divided into such parts or sections as shall, in the opinion of the Engineer, or Engineers, of the Railroad Companies affected and the Director, tend to facilitate and promote the most speedy and economical execution of the work. The following general provisions shall govern the preparation of the plans and specifications and the conduct of the work:

The tracks and yards of the Washington Avenue Branch of the Philadelphia, Baltimore and Washington Railroad along Gray's Ferry avenue from Thirty-first street to Twenty-fifth street shall continue to occupy their present location, or such new location as shall be shown upon the plans and approved as herein provided for, and such branch shall be reconstructed as a two-track elevated railroad upon an earthen embankment and a metal, or metal and concrete,

or masonry structure on a new grade beginning near Thirtieth street and Gray's Ferry avenue, and extending thence to a connection with, or crossing at grade of, the Delaware Extension of the Pennsylvania Railroad at or near Twenty-fifth street and Washington avenue, at such an elevation as will carry said line adjacent to Gray's Ferry avenue over all intersecting streets now legally opened with a clear head-room of at least fourteen feet. From Twenty-fifth street to Sixth street the said Washington Avenue Branch shall be reconstructed as an elevated railroad, with three tracks to Seventeenth street and two tracks to Sixth street, upon a metal, or metal and concrete, or masonry structure on a new grade beginning at a point of connection with the hereinafter described elevated line of the said Delaware Extension of the Pennsylvania Railroad near Gray's Ferry avenue and passing along and above Washington avenue, and over all intersecting streets now legally or physically opened, with a clear head-room of at least fourteen feet above the surface of same to the east building line of Sixth street, and thence as a two-track railroad on a descending grade between concrete or masonry retaining walls to the west building line of Fifth street, at or near which point said tracks shall connect at grade with the present or revised tracks of the said Washington Avenue Branch on Washington avenue. To replace the present tracks on Washington avenue between Twenty-fifth street and Broad street, which are used for storage purposes, a storage yard shall be provided on property to be acquired between Washington avenue and Ellsworth street and between Eighteenth street and Nineteenth street. The present storage and delivery tracks and freight stations located between Washington avenue and Carpenter street and between Seventeenth street and Broad street shall be reconstructed in such a manner as to provide, upon the same grade as the new elevated structure on Washington avenue, facilities equal in capacity to those now existing, with provision for an inclined driveway, on property to be acquired for that purpose, from the street level to the reconstructed carload delivery yard. Likewise storage and delivery yards and facilities shall be provided in place of those to be abandoned between Broad street and Fifth street.

The tracks of the Delaware Extension of the Pennsylvania Railroad shall continue to occupy approximately their present location from the Arsenal Bridge over the Schuylkill river to near Twenty-fifth and McKean streets, from which point they shall curve to the westward and occupy Point Breeze avenue, as revised and widened, to near Twenty-ninth and Wolf streets, where they shall curve to the southward to a right of way west of the west building line of Twenty-ninth street, continuing on said right of way to Passyunk avenue, where said tracks shall curve to the eastward into Twenty-ninth street and occupy a portion thereof to Magazine lane, at which point they shall curve slightly to the westward on right of way west of the west building line of Twenty-ninth street to Penrose avenue, thence curving to the eastward on property of the Girard Point Storage Company and on a right of way north of Government avenue and through League Island Park, and under Broad street at a point not less than six hundred feet north of the property line of the Philadelphia Navy Yard, thence to a connection east of Broad street with the proposed terminal yard of the Pennsylvania Companies, provided for in Article Tenth hereof. From said connection east of Broad street the said Delaware Extension of the Pennsylvania Railroad shall continue in a diagonal line directly north of the said proposed terminal yards to Delaware avenue and Hoyt street, thence northwardly along Delaware avenue to Bigler street, at which point they shall connect with the present tracks of the Pennsylvania Companies as relocated to Queen street. A single track switching line may be constructed at grade by the Pennsylvania Companies, at their expense, along Vandalia street from the above described relocated line

of the Delaware Extension to Packer street and thence diagonally to a connection at Pollock street with the present tracks of the Swanson Street Branch of the Pennsylvania Companies.

The said Delaware Extension of the Pennsylvania Railroad shall be reconstructed as a two-track elevated railroad (with no opposing grade exceeding 0.3 per cent. south or east bound and 0.6 per cent. north or west bound, with proper compensation for curvature), on an earthen embankment between retaining walls from the Arsenal Bridge over the Schuylkill river to the north side of Washington avenue, with a metal, or metal and concrete, or masonry bridge over Gray's Ferry avenue having a clearance of not less than fourteen feet above the revised grade thereof, and upon a metal, or metal and concrete, or masonry viaduct from the north side of Washington avenue to the south side of Wolf street, west of Twenty-ninth street, thence on an earthen embankment to the north side of Passyunk avenue, alongside of a similar two-track structure (hereinafter described) to be built by the Baltimore Companies as a portion of the relocated Schuylkill River East Side Railroad, thence as a two-track metal, or metal and concrete, or masonry viaduct within the building lines of Twenty-ninth street to the south side of Magazine lane, at such an elevation throughout as to give not less than fourteen feet clearance above the grades of all intersecting or longitudinal streets now opened or agreed to be opened; thence curving on right of way west of the west building line of Twenty-ninth street on an earthen embankment and with metal, or metal and concrete, or masonry bridges, over the intersecting streets hereinafter enumerated, with a clearance of not less than fourteen feet above the grades thereof, to the south side of Penrose avenue; thence on a descending grade to and under Broad street at the point hereinbefore described; thence as a two-track railroad east of Broad street and north of the said proposed terminal yards of the Pennsylvania Companies, substantially on the same grade as the streets to be opened directly north of said yards (but which streets between Broad street and Delaware avenue shall not now or hereafter be extended to cross said tracks at grade) to the connection with the tracks of the Pennsylvania Companies on Delaware avenue near Bigler street, and thence along Delaware avenue as a two-track railroad to Vandalia street and as a three-track railroad from the last mentioned point to Queen street.

The tracks of the Schuylkill River East Side Railroad shall continue approximately on their present route to near Thirtieth and Wolf streets, from which point they shall curve to the southward into a right off-way west of and adjoining the relocated tracks of the Delaware Extension of the Pennsylvania Railroad; thence continuing parallel with and directly alongside of the said tracks of the Delaware Extension of the Pennsylvania Railroad to a connection with terminal yards to be constructed by the Baltimore Companies between Broad street and the Delaware river and south of the terminal yards of the Pennsylvania Companies. From said point of connection east of Broad street the Schuylkill River East Side Railroad shall continue also parallel and adjacent to the tracks of the Delaware Extension of the Pennsylvania Railroad north of the hereinbefore mentioned terminal yards of the Pennsylvania Companies to Delaware avenue, thence along the latter avenue to Vandalia street, there connecting with the tracks of the Baltimore Companies. The track of the Baltimore Companies in the bed of Vandalia street may, at the expense of the Baltimore Companies, be extended as a single track switching line southwardly in the bed of said street from Oregon avenue to a connection with the relocated Schuylkill River East Side Railroad.

The Schuylkill River East Side Railroad shall be constructed as a two-track elevated railroad (with no opposing grade exceeding 0.6 per cent. in either direction, with proper compensation for curvature) on an earthen embankment from a point near Vare avenue, in its East Side Yard along the Schuylkill river, to a point near

Twenty-ninth and Ritner streets, where same shall adjoin the tracks of the relocated Delaware Extension of the Pennsylvania Railroad, with metal, or metal and concrete, or masonry bridges over the streets now opened or agreed to be opened, having a clearance of not less than fourteen feet above the grades thereof; thence on an earthen embankment to the north side of Passyunk avenue, and thence following the line and grade and same construction of said Delaware Extension of the Pennsylvania Railroad (hereinbefore described) to and under Broad street to the proposed terminal yards of the Baltimore Companies and a connection with the tracks of the latter Companies at Delaware avenue and Vandalia street.

To replace the existing connections and sidings of the respective Companies with or into the various industries north of Jackson street which they now serve, proper and satisfactory connections shall be made from the relocated, reconstructed and elevated lines of railroad in cases where satisfactory plans can be worked out, the cost of elevating that portion of such existing connections and sidings extending to the line of private property to be included as part of the work the cost of which, under this agreement, is to be shared jointly by the Railroad Companies and the City, and the cost of the elevation of such connections and sidings beyond said line to be borne wholly by the owners thereof. Proper and satisfactory connections for joint use shall also be made from the relocated, reconstructed and elevated lines of railroads of the respective Companies to the existing or readjusted tracks in the works of the Atlantic Refining Company, the United Gas Improvement Company, the Philadelphia Navy Yard, and, for the use of the Pennsylvania Companies, to those of the Girard Point Storage Company, which readjustment of tracks shall also be carried out as a part of the work covered by this agreement.

Connections and sidings into present and future industries, business establishments, warehouses and piers may be made from the relocated, reconstructed and elevated lines of railroads herein provided for when the same are requested by the owners of said industries, business establishments, warehouses and piers located along the line of said railroads, but no part of such expense thereof shall be borne by the City.

The route of the Philadelphia Belt Line Railroad shall extend along the right of way provided in Article Sixteenth hereof to be reserved for that Company parallel to and adjoining the tracks of the Pennsylvania and Baltimore Companies from Twenty-ninth street and Magazine lane to Delaware avenue and Hoyt street, thence northward along Delaware avenue to Queen street.

All tracks, yards and rights of way, and all existing rail connections not otherwise herein provided for or a necessary part of the work herein authorized, along the following lines shall be abandoned for railroad purposes, viz., the present line of the Delaware Extension of the Pennsylvania Railroad from Twenty-fifth street, near McKean street, to Delaware avenue and Bigler street; the Girard Point Branch of the Pennsylvania Railroad from Hamburg Junction, near Twenty-fifth and Bigler streets, to the south side of Penrose avenue; the Schuylkill River Branch Extension of the Pennsylvania Railroad from its connection with the Girard Point Branch to its terminus east of Broad street, and the present line of the Schuylkill River East Side Railroad from near Thirtieth and Wolf streets to the intersection of Shunk and Vandalia streets.

Unless otherwise provided for herein each of these lines shall be abandoned and the tracks and operating appurtenances and appliances removed immediately upon the completion and operation of any new line of railroad herein provided for which it is intended shall be used as a substitute.

The construction work shall include the following items:—The necessary alteration, construction and reconstruction of railroad yards, yard tracks and yard build-

ings, freight stations, signal towers, coaling stations, and other railroad structures and their appurtenances, and all necessary tracks and operating appliances of said railroads, including telegraph, telephone and electric light lines, block signals, signal bridges and interlocking plants between the terminal points named in this Article, with as good accommodations as now exist and with complete and convenient facilities newly constructed, for conducting business and operating the said railroads, and with provisions for the continuance of track connections, wherever feasible, with commercial and industrial establishments now having such connections along all lines authorized to be reconstructed; the construction of the necessary elevated structures, bridges, embankments, abutments, and retaining and other masonry walls; the construction, reconstruction and removal of temporary railroad tracks and the maintenance of railroad and highway travel during construction.

All of the plans, specifications and contracts provided for in this section shall be submitted to and approved by the said Director and the Chief Engineer of the Bureau of Surveys, and shall be identified by the signatures of the said Director and the Chief Engineer of the Bureau of Surveys, and the Engineer or Engineers of the Railroad Companies affected, and copies thereof shall be filed and preserved in the Department of Public Works.

Sixth.—It is understood and agreed between the City and the Railroad Companies that in the relocation, construction, reconstruction and elevation of the lines of railroad referred to in Article Fifth hereof, the following streets shall be opened and graded to their full width as now upon the City plan, or as placed upon the City plan, or as revised under authority of the ordinance authorizing this work, and the cost thereof shall be included in the cost of the work:—Twenty-fifth street, from Washington avenue to Point Breeze avenue; Point Breeze avenue, from Twenty-fifth street to Wolf street; Twenty-ninth street, from Passyunk avenue to Magazine lane; and Delaware avenue, from the north side of Bigler street to the north property line of the proposed terminal yards of the Pennsylvania Companies at Hoyt street. And it is further understood and agreed that provision shall be made to permit of the physical opening of so much of the following streets as are now upon the City plan, or as revised and placed thereon under authority of said ordinance, as lie upon or across the rights of way of the Pennsylvania Companies, the Baltimore Companies and the Belt Line Company respectively:

WASHINGTON AVENUE BRANCH OF THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD:

Twenty-eighth street; Federal street east of Twenty-eighth street; Annin street; Ellsworth street; Twenty-seventh street; Washington avenue longitudinally, and all intersecting streets, between Grays Ferry avenue and Fifth street, except the central portion of Washington avenue between the east building line of Sixth street and the west building line of Fifth street, which will be occupied by the two-track railroad to be constructed between retaining walls.

DELAWARE EXTENSION OF THE PENNSYLVANIA RAILROAD:

Grays Ferry avenue; Washington avenue; Twenty-fifth street, longitudinally, and all intersecting streets, from Washington avenue to Point Breeze avenue; Point Breeze avenue and all intersecting streets between Twenty-fifth and Twenty-ninth streets; Twenty-ninth street; Vare avenue; Passyunk avenue; Twenty-ninth street longitudinally, and all intersecting streets, from Passyunk avenue to, and including, Magazine lane; Sixty-third street as extended from west of the Schuylkill river; Pattison avenue; Penrose avenue; Pennypacker avenue, and one street to be opened on the line of Twenty-sixth street, or between Twenty-fifth and Twenty-sixth streets.

SCHUYLKILL RIVER EAST SIDE RAILROAD:

Schuykill avenue; Passyunk avenue; Twenty-ninth street longitudinally, and all intersecting streets, from Passyunk avenue to, and including, Magazine lane; Sixty-third street as extended from west of Schuykill river; Pattison avenue; Penrose avenue; Pennypacker avenue, and one street to be opened on the line of Twenty-sixth street, or between Twenty-fifth and Twenty-sixth streets.

Broad street shall be carried over the tracks of the Delaware Extension of the Pennsylvania Railroad and the Schuykill River East Side Railroad and over the right of way of the Belt Line Company at the point hereinbefore designated, and with a clearance of not less than nineteen feet above the tops of the rails of the said tracks to the underside of the proposed bridge carrying Broad street. The elevation of tops of rails of said tracks need not be lower than + 1.0 City datum.

The viaducts and bridges to carry the said railroads shall be constructed so as to give a clearance of not less than fourteen feet above the grades of all avenues and streets passing underneath the same, with the right, in special cases to be approved by the Director, to place steel columns within the curb lines of streets, and in the case of avenues one hundred feet or over in width, additional columns may be placed along the center lines thereof. In cases where streets or avenues are occupied longitudinally by elevated structures, columns may be placed in the driveways and within the curb lines of said streets or avenues.

In case the City desires in the future to open streets or avenues now on the City plan, as revised under the authority of the said ordinance, over or under the elevated and reconstructed railroads referred to, in addition to those hereinbefore enumerated, they shall be so opened as not to require any change in the grades of the said railroads, and such openings, including bridge construction, within the right of way lines of the Railroad Companies, shall be at the equal expense of the City and the said Railroad Company or Companies respectively affected. The City agrees to strike from the City plan and vacate any and all streets and avenues that may now pass through the property which will, as herein provided, comprise the new terminal yards of the Railroad Companies situate between Broad street and the Delaware river and south of the relocated lines of the said Companies.

No streets or avenues shall hereafter be laid out to cross at grade the portions of railroads of the Pennsylvania and Baltimore Companies and the Belt Line Company herein provided to be elevated, or to cross at grade that part of the Delaware Extension of the Pennsylvania Railroad and the Schuykill River East Side Railroad and the Belt Line Railroad which is partly elevated and partly on the surface from Penrose avenue to and under Broad street, or the extension of the running tracks of the said Companies to Delaware avenue, or the new terminal yards of the Railroad Companies lying between Broad street and the Delaware river, except that the provisions of this sentence shall not apply to the extension of the Swanson Street Branch southwardly to a connection with the relocated main running tracks of the Delaware Extension of the Pennsylvania Railroad, the extension of the Schuykill River East Side Railroad on Vandalia street southwardly to a junction with the relocated main running tracks of the Baltimore Companies, nor to the surface tracks on Delaware avenue. New connections between main running tracks and existing tracks and sidings now reached by the respective Railroad Companies to serve existing industries and branches may be constructed across streets at grade, but no connections to serve new industries shall be constructed across the full width of any street at grade without the approval of the City.

Seventh.—It is further agreed by and between the City and the Railroad Companies that the general supervision of the work provided for in Article Fourth hereof

shall be in charge of the said Director, the Chief Engineer of the Bureau of Surveys or such engineer as the said Director shall designate for that duty, and that the general supervision of the work provided for in Article Fifth shall be in charge of the Engineer or Engineers of the Railroad Companies affected or such engineer or engineers as they shall designate for that duty. They shall confer with each other in respect to the plans and specifications for the various parts or portions of the work, and in respect to the performance of the work, at all times during the preparation and progress of the same, and each shall, upon notice from the other, or upon any fault or failure of any party, firm or corporation holding contracts for any part of said work, promptly proceed to secure full compliance with the plans and specifications pertaining thereto, in accordance with the provisions of the contract.

The Engineers of the Railroad Companies are authorized to employ such engineers, assistants, draughtsmen, engineer corps, and inspectors as may be necessary to prepare or examine plans and specifications and to insure the prompt and efficient execution of the work, and shall prepare the necessary certificates and other documentary records and accounts of the work under their supervision, which records and accounts shall at all times be open to inspection by the authorized representatives of the City. All expenses for salaries, transportation, office and incidental expense of said engineering force, and the costs of inspection and tests not otherwise provided for, shall be included in the cost of the work.

The Director is hereby authorized to appoint such engineers, assistants, draughtsmen, engineering corps and inspectors as may be required to enable the Department of Public Works to prepare or examine plans and specifications, to properly inspect the work during progress of construction and to prepare the necessary certificates and other documentary records and accounts of the work under its supervision, which records and accounts shall at all times be open to inspection by the authorized representatives of the Railroad Companies. All expenses for salaries, transportation, office and incidental expenses of said engineering force, and the expenses of inspection and tests not otherwise provided for shall be included in the cost of the work.

In case of emergency work in maintaining railroad or highway travel, and in other cases where necessary, not covered by contract, the Engineer or Engineers of the Railroad Companies shall have authority to employ laborers and mechanics, hire machinery and purchase tools and materials to perform such work; and a labor force account and an account of the machinery, tools and materials so used, including freight charges thereon at published rates, shall be kept and, after approval by the Engineer or Engineers of the Railroad Companies affected and the Director, shall be paid by the said Railroad Companies and included in the cost of the work.

In cases of emergency work in protecting and maintaining municipal structures, in other cases where necessary, and in such classes of work upon the highways as may not be covered by contract, the said Director is authorized to employ laborers and mechanics, hire machinery and purchase tools and materials to perform such work and a labor force account and an account of the machinery, tools and materials so used, including freight charges thereon at published rates, shall be kept, and, after approval by the Director and by the Engineer or Engineers of the Railroad Companies affected, shall be paid by the City and included in the cost of the work. After the completion of the work the repairs, maintenance and renewals of the driveways of streets and to sewers, gas and water pipes, conduits and municipal structures provided for or affected by this agreement, for which the Railroad Companies are to pay a share of the original cost, shall be made by, and at the sole expense of, the City.

In recording the cost of the work, the Railroad Com-

panies shall (and the City may if it so desires), for their own records, include interest during construction.

Eighth.—The said City hereby further agrees that the Pennsylvania Companies, the Baltimore Companies and the Belt Line Company shall, after the completion of the work required hereunder, be at liberty, from time to time, and at all times, to enter upon all streets, lanes or alleys, whereon the supports of the said several elevated structures shall rest, including bridge abutments, piers and all columns and other supports of the elevated structures of all kind provided for herein, for the purpose of inspecting, maintaining, renewing or repairing the same, and each of them. Such work shall be done by and at the sole expense of the companies affected and for this purpose the City shall issue such permits as may from time to time be required by the said companies.

Ninth.—It is further agreed that whenever and wherever in the opinion of the Mayor of the City and the Pennsylvania Companies and the Baltimore Companies, the acquisition of property is necessary to carry out the purposes of this agreement such property may be acquired by purchase or gift, the City and the Railroad Companies co-operating with each other in such acquisition, or the said Railroad Companies shall exercise their respective rights to appropriate property for railroad purposes, and the City shall exercise its right to appropriate property for public use, in any case where, under their powers, or the powers of either of them, such property may be lawfully appropriated.

Tenth.—With the exception of the yard tracks of the Girard Point Branch north of Penrose avenue which are to be relocated alongside of, and substantially on the same elevation as, the new four-track running line west of Twenty-ninth street and which now serve the yards and facilities of the Girard Point Storage Company south of that avenue and the works of the Atlantic Refining Company and other industries north thereof, the Pennsylvania Companies hereby agree to abandon the use for railroad purposes of all existing yards along the running tracks and branches of the Delaware Extension of the Pennsylvania Railroad from a point south of Twenty-fifth and McKean streets to Delaware avenue and Bigler street, together with the piers and terminal equipment at Greenwich Point, and to use, in lieu thereof, and in substitution therefor, yards, piers and terminal facilities to be constructed south of the south building line of Hoyt street and between Broad street and the Delaware river. The property so to be abandoned by the Pennsylvania Companies shall, for the purposes of this agreement, be divided into two sections. *Section One* shall include the real estate, piers and terminal facilities and appurtenances (whether owned by the Pennsylvania Companies or others), located between the east line of Delaware avenue and the pierhead line and between the north property line of the Pennsylvania Companies south of Bigler street and the south building line of Hoyt street, and *Section Two* shall include the remainder of the real estate and railroad facilities other than that used for the two running tracks so to be abandoned by the Pennsylvania Companies, namely, that situate between Twenty-fifth and McKean streets and Delaware avenue and Bigler street.

The City hereby agrees to purchase, and the Pennsylvania Companies agree to sell, for municipal development of the waterfront or for other municipal purposes, but not for sale or lease to any other railroad company now, or hereafter, incorporated, unless such railroad company be exclusively owned by the City, the real estate, piers, terminal facilities and appurtenances included in said *Section One*, and the City agrees to pay therefor to the Pennsylvania Companies the appraised value of the said real estate based upon the purposes for which the same is now used, and an additional sum equivalent to the estimated cost of replacing in kind the piers, terminal

facilities and appurtenances, including the cost of dredging between the pierhead line and the bulkhead line. The said appraised value of the real estate shall be determined by a board of three appraisers, one to be selected by the Mayor of the City and one by the Pennsylvania Companies, the two appraisers so chosen to select a third appraiser, and the decision of the said three appraisers, or a majority of them, shall be binding upon the Pennsylvania Companies and the City. In case either of the said parties fail to select an appraiser as aforesaid for the period of twenty days after the written notice given by the other party to make such selection, then, in that event, the appraiser selected by the party not in default shall select an experienced appraiser for the defaulting party and the two so chosen shall select a third and the said three parties, or a majority of them, shall determine said value. The expenses of said appraisal shall be borne equally by the City and the Pennsylvania Companies.

The cost of the real estate to provide the said new area equal to the area abandoned in Section Two and the cost of the new terminal yard and its facilities south of the south building line of Hoyt street equal to those now used and enjoyed and which will be abandoned for railroad purposes by the Pennsylvania Companies in said Section Two, shall be included in the general cost of the work herein provided to be borne equally by the City and the Pennsylvania Companies, but an appraisal shall be made, in the manner provided in the foregoing paragraph, of the value of real estate owned and of the market value of the materials comprising the railroad tracks and facilities so to be abandoned by the Pennsylvania Companies in said Section Two and in the two running tracks from Twenty-fifth and McKean streets to Delaware avenue and Bigler street, and in the Girard Point Branch and in the Schuylkill River Branch Extension, and one-half of said appraised value shall be credited to the City's proportion of said cost, but in no event shall the amount so credited for real estate in Section Two exceed the City's proportion of the said cost of the real estate obtained for the said new area and terminal facilities.

The Baltimore Companies hereby agree to abandon the use for railroad purposes of all existing yards and real estate which they may have along the running tracks and branches of the Schuylkill River East Side Railroad between a point in Wolf street, near Thirtieth street, and Shunk and Vandalia streets, together with the piers and terminal facilities situated between McKean and Jackson streets and between Delaware avenue and the pierhead line, and to use, in lieu thereof, real estate, yards, piers and terminal facilities to be acquired or constructed by the Baltimore Companies between Broad street and the Delaware river and directly south of the new terminal yard of the Pennsylvania Companies hereinbefore mentioned.

The City hereby agrees to purchase, and the Baltimore Companies, for themselves and for any subsidiary company holding under or for them, agree to sell, for municipal development of the waterfront, or for other municipal purposes, but not for sale or lease to any other railroad company now, or hereafter, incorporated, unless such railroad company be exclusively owned by the City, the real estate, piers, terminal facilities and appurtenances of the said Baltimore Companies situate between McKean street and Jackson street and between the east line of Delaware avenue and the pierhead line, and to pay therefor to the Baltimore Companies the appraised value of the said real estate, based upon the purposes for which the same is now used, and an additional sum equivalent to the estimated cost of replacing in kind the piers, terminal facilities and appurtenances, including the cost of dredging between the pierhead line and the bulkhead line. The said appraised value of the real estate shall be determined by a board of three appraisers, one to be selected by the Mayor of the City and one by the Baltimore Companies, the two appraisers so chosen to select a third ap-

praiser, and the decision of the said three appraisers, or a majority of them, shall be binding upon the Baltimore Companies and the City. In case either of the said parties fail to select an appraiser as aforesaid for the period of twenty days after written notice given by the other party to make such selection, then, in that event, the appraiser selected by the party not in default shall select an experienced appraiser for the defaulting party, and the two so chosen shall select a third, and the said three parties, or a majority of them, shall determine said value. The expenses of said appraisal shall be borne equally by the City and the Baltimore Companies.

Real estate and yard facilities in the new area south of the said proposed yard of the Pennsylvania Companies equal to that abandoned by the Baltimore Companies—excepting real estate and yard facilities included in the area between McKean street and Jackson street and between the east line of Delaware avenue and the pierhead line to be sold to the City—shall be provided in the manner hereinbefore set forth for the replacement of real estate and yard facilities abandoned by the Pennsylvania Companies in Section Two. If additional real estate is desired by the said Pennsylvania Companies and the Baltimore Companies in their respective new areas, the cost thereof shall be wholly paid for by the said Companies, as shall also the cost of all facilities for enlarging and extending the yard facilities so furnished in lieu of those abandoned.

The dredging of the Delaware river from the channel to the pierhead line of the terminal yards of the Pennsylvania Companies and the Baltimore Companies south of the south building line of Hoyt street, and the depositing of the dredged material within the limits of the said yards, must be completed before the abandonment by the Pennsylvania Companies of the said Greenwich Point terminals between Bigler street and the said south building line of Hoyt street, and the abandonment by the Baltimore Companies of their terminals between McKean and Jackson streets and between Delaware avenue and the pierhead line, and sufficient time must be allowed said Companies to construct on the material deposited the new terminal facilities and appurtenances. Provision shall be made for the said dredging and depositing of the material within the limits of the new yards and the cost thereof shall be borne jointly by the City and the Railroad Companies.

The Railroad Companies shall dedicate to the City so much of the property owned or controlled by them within the territory covered by this agreement as lies within the lines of any street now upon the City plan or placed thereon under authority of said ordinance, except such portions of streets as shall be actually occupied by solid elevated railroad structures, and the City shall provide a right of way for the Railroad Companies over and through property owned or controlled by it required to carry out the purposes of this agreement, including the necessary right of way through League Island Park. In accordance therewith, the Pennsylvania Companies agree to dedicate to the City all property owned by them and to change and remove such buildings thereon and therefrom and readjust all tracks and facilities required for the opening of Delaware avenue between Queen street and Bigler street, and the City agrees to strike from the City plan and vacate Washington avenue from Delaware avenue to the pierhead line of the Delaware river, Ellsworth street from Front street eastward as far as the same is now legally open, Federal and Wharton streets from Front street eastward as far as the same are now upon the City plan, Water street from Reed street to Washington avenue and Lee street from Reed street northward as far as the same is now open; and to widen Washington avenue twenty feet on the south side from Front street to Delaware avenue, Reed street thirty feet on the north side from Front street to Delaware avenue and Front street twenty feet on the east side from Reed street to Washing-

ton avenue, to permit of the construction and reconstruction by the Pennsylvania Companies between Reed street and Queen street of yards and yard facilities. The cost of that portion replacing tracks for storage and yard facilities given up by the said Pennsylvania Companies in the adjustment necessitated by such opening of Delaware avenue between Queen street and Bigler street—including the purchase of the property therefor between Reed street and Washington avenue; and Front street and Delaware avenue—shall be shared equally by the City and the Pennsylvania Companies. The Baltimore Companies agree to dedicate to the City all property owned by them between Jackson street and Vandalia street required for the opening of Delaware avenue, and the City agrees to strike from the City plan and vacate Dilworth and Severn streets between Jackson street and Snyder avenue, and while Jackson street, between Thirty-sixth street and the Schuylkill river, is to remain as at present on the City plan, the same shall be used by the City only for sewer and drainage purposes and shall not hereafter be opened for highway purposes.

Eleventh.—It is further understood and agreed that, except where it is herein otherwise expressly provided, the City shall pay one-half and the Pennsylvania Companies and the Baltimore Companies shall each respectively pay the remaining one-half of the cost of all work on the said Companies' respective railroads in cases where the portions of relocated or improved lines of railroad will be used exclusively by either the Pennsylvania Companies or the Baltimore Companies, as well as that portion of the joint four-track railroad on Delaware avenue from Bigler street to Vandalia street and the three-track railroad of the Pennsylvania Companies from Vandalia street to Queen street and that in the case of that portion of the respective two-track railroads of the Pennsylvania Companies and the Baltimore Companies (to be used as a part of the hereinafter mentioned joint four-track line) from a point near Twenty-ninth street and Passyunk avenue to Delaware avenue and Bigler street, the City shall pay two-fifths and the Railroad Companies, in equal proportions, three-fifths of all costs connected with the substitution of said four-track railroad for the existing running lines of the respective Companies, except that the cost of the right of way required, as hereinafter in Article Sixteenth provided, for a six-track line from Twenty-ninth street and Magazine lane to Delaware avenue and Hoyt street shall be borne in the proportions of three-fifths by the City and two-fifths, in equal proportions, by the said Railroad Companies. Each of the said Companies and said City shall and will make prompt payment of their respective proportions of said costs at the times and in the manner hereinafter set forth.

Twelfth.—It is agreed by and between the parties hereto that the Director shall arrange with the proper officials of the Pennsylvania Companies and the Baltimore Companies for the keeping by the City and by the Railroad Companies of true and itemized accounts concerning the various payments and disbursements made, or to be made, by each upon all obligations whether assumed by contract or in any manner herein authorized. Settlements between the City and the said Companies—based upon said itemized accounts, duly certified—shall be made monthly as the work herein provided for shall progress and the said Director shall draw a warrant or warrants for any balance that may be payable to either the Pennsylvania Companies or the Baltimore Companies; in like manner the said Pennsylvania Companies and the Baltimore Companies shall promptly pay into the City Treasury all such sums as may be found to be due and payable to the City, and all such sums shall be credited to the appropriation by the City and become immediately available for the work provided for herein.

Thirteenth.—It is hereby further mutually covenanted and agreed between the parties hereto that the City and the Pennsylvania Companies and the Baltimore Companies shall, in like proportion to the cost of the construction work on the various sections of the respective railroads of said Companies borne by the said parties, be liable for and will pay (a) all claims for damages, or judgments for the recovery thereof, including interest and costs, arising from accidents due to, or arising from or incident to the execution of the work for which either party may be held to be responsible, excepting such accidents as may be due solely to negligence or carelessness in railroad operation, (b) (excepting where otherwise herein provided) all damages arising from the opening, widening, vacation or physical changes in the lines or grades of streets, lanes or alleys at the points whereat and to the extent the same are made necessary by the work herein provided for, and (c) (excepting where otherwise herein provided) all claims and judgments, including interest and costs, for consequential injury to persons, property or estates, arising from or growing out of the changes in location or elevation of the railroads of the Pennsylvania Companies and the Baltimore Companies; and for the more speedy and economical adjustment of claims arising or to arise hereunder, the City Solicitor, with the advice and consent of the Mayor, and the approval of the said Railroad Companies, shall compromise, settle and adjust any and all of such claims, and the Director shall draw warrants upon the City Treasurer for such sums as shall be required from time to time for the settlement and payment of such claims, the amounts thereof to be taken from the appropriations made and to be made by the City to carry out the work herein provided for: *Provided*, That when any claims shall be presented to or any suit on account thereof shall be brought against any of the said parties, the others shall be promptly notified thereof and shall have the right to appear and defend, on their own behalf, or otherwise they shall not be bound by any judgment or decree in the premises. The City Solicitor shall arrange with the said Railroad Companies and their attorneys for a division of the work of preparing cases for trial, the preparation and production of testimony, and the conduct of hearings or trials, and all expenses connected with the defence of such claims or suits, save the service of the City Solicitor, or his associates, or of special counsel to be employed on behalf of the City, and the services of the attorneys or counsel of the Pennsylvania Companies and the Baltimore Companies, shall be included in and settled and paid for, as part of the expense of the work provided for herein.

Fourteenth.—It is mutually understood and agreed that the work contemplated and to be done under this agreement for which the cost is to be apportioned between the City and the Pennsylvania Companies and the Baltimore Companies, other than that herein specifically provided for, shall consist only of that which may be necessary to provide the various railroad lines affected with real estate equal in area, and tracks and facilities for the handling of railroad traffic equal to those now used and enjoyed by them and only such changes of physically and legally open streets and municipal structures as may be necessitated by the changing, construction, reconstruction or elevation of the railroad lines under, over and adjoining such streets. Except as herein otherwise specifically provided for, all real estate for yards, rights-of-way or other railroad purposes and all construction work, including all labor, structural work, and material required for the same, intended to increase the traffic facilities of the said Railroad Companies, all new freight depots, signal towers, signals, telegraph or telephone stations or other appurtenances or improvements intended to increase traffic facilities and all changes or improvements to existing stations and appurtenances other than those required to adapt the present

traffic facilities and appurtenances to the new conditions shall be wholly paid for by the said Companies respectively.

Fifteenth.—It is mutually understood and agreed that upon the completion of the work herein provided for, all real estate purchased by the Pennsylvania Companies and the Baltimore Companies, after the date of this agreement, for the use and benefit of the said work, but not actually used for the joint interest, and all old rails and other materials now in use by the said Pennsylvania Companies and Baltimore Companies, which may not be used in the construction of the new work, shall be disposed of at public sale and the proceeds thereof shall be credited to the joint appropriation. It is also further understood and agreed that upon the completion of the work herein provided for, all old paving materials and street improvements removed from the work, but not actually used for the joint interest, shall be disposed of at public sale and the proceeds thereof shall be credited to the joint appropriation. Provided, that should the Pennsylvania Companies or the Baltimore Companies desire to hold any of the said real estate, old rails or other materials so to be disposed of, an appraisal of the value of the same shall be made and such appraised value credited to the joint appropriation. *Provided, further,* That should the City desire to hold any paving materials or street improvements removed from the work and so to be disposed of, an appraisal of the value of the same shall be made and such appraised value credited to the joint appropriation.

Sixteenth.—The City deems it necessary that all railroad companies now or hereafter entering the City should have free access on equal terms to all public and private wharves on the Delaware river and desirable that what is popularly known as the "Belt Line" principle should be of the most general public application, and recognizes that the Philadelphia Belt Line Railroad Company, although legally a "corporation for profit," is in fact a corporation created and existing in the public interest. The Railroad Companies desire to co-operate in this policy so far as they may in complying with the terms of this agreement, having due regard to the existing investments of the moneys of their stock and bondholders and the additional investments to which they are obligated under this agreement. To carry out this common intent it is covenanted and agreed as follows, the words and phrases used in this Article being intended to be taken in their popular and usual acceptance and not in any technical sense, and the grant of a right being intended to include, without express definition, everything necessary for the exercise of such right.

1. Nothing in this agreement shall be construed as limiting or abrogating any agreement between the Belt Line Company, and other companies, or any rights or franchises of the Belt Line Company, north of Queen street.

2. The City hereby grants to the Belt Line Company the right to lay two tracks on Delaware avenue from Queen street to Hoyt street, in consideration for which grant the Belt Line Company hereby relinquishes and surrenders all rights and privileges heretofore granted between said points for which the rights hereby granted are a substitute.

3. The right of way for that portion of the joint railroad from Twenty-ninth street and Magazine lane to Delaware avenue and Hoyt street shall be of sufficient width to fully provide for six running or main tracks.

4. Two of which tracks with the necessary right of way shall be owned by the Pennsylvania Companies, two by the Baltimore Companies and two by the Belt Line Company.

5. The cost of acquiring said right of way shall be apportioned and borne as follows:—60 per cent. by the City, 20 per cent. by the Pennsylvania Companies, 20 per cent. by the Baltimore Companies. Between Magazine lane

and Passyunk avenue the cost shall be borne two-fifths by the City and three-fifths by the two railroad companies.

6. In the interest of economy of expenditure, and to leave free for vehicular traffic the largest possible space on Delaware avenue, it is not required that tracks shall at once be laid by the Belt Line Company either on Delaware avenue or on its right of way west thereof to Magazine lane, but such failure to lay tracks shall not constitute any default on the part of the said Belt Line Company, or be construed as prejudicing its rights under this agreement, until an additional track or tracks are needed to accommodate the business of any other user, in which case such track or tracks shall be laid by the Belt Line Company, the City, or by any other user designated by the City.

7. The construction of the relocated tracks of the Pennsylvania Companies and the Baltimore Companies from Twenty-ninth street and Passyunk avenue to Delaware avenue and Vandalia street shall proceed jointly, the said Pennsylvania Companies and the Baltimore Companies, however, to reserve the ownership in their respective double-track railroads, and each to bear its proportion of the cost thereof provided by this agreement, and after construction to each pay all interest and other obligations thereof. Pending the construction by the Belt Line Company of tracks on Delaware avenue between Vandalia and Queen streets, the Baltimore Companies may construct one or both of said tracks, and the Belt Line Company may use the same on terms to be agreed upon, or may take over the ownership thereof upon reimbursing the Baltimore Companies for the actual cost of said tracks, and pending such construction, the tracks of the Pennsylvania Companies on Delaware avenue between Vandalia and Queen streets shall be operated as a continuation or extension of the joint railroad unless some other arrangement shall be made between said Companies. Upon completion, said joint railroad, including its main, passing and industrial tracks and facilities, shall be operated and maintained by the Pennsylvania Companies and the Baltimore Companies, as may be mutually agreed upon, as a joint railroad for the movement of trains, impartially and satisfactorily for the present owners and future users hereinafter referred to.

There shall be constructed at grade, and operated as part of said railroad, such connections and crossings as may be necessary to adequately serve all owners and users. Operating, maintenance and renewal expenses including taxes and insurance shall be borne in accordance with the number of engines and loaded and empty cars moving or moved over the line. Prior to and until the entrance thereon of another company, the Pennsylvania Companies and the Baltimore Companies shall each bear one-half of the cost of all future sidings, additions and betterments made for joint use. No charge shall be made for the occupancy or use for such purposes of the Belt Line's right of way, but whenever the two additional tracks (or one of them) are to be laid, then all sidings, switches, additions and every track laid thereon shall be moved and relocated at the equal expense of all Companies then using said joint railroad, in such a manner as to permit of the laying and operation of said one or two additional tracks.

8. It is agreed that the joint railroad between Passyunk avenue and Queen street shall constitute an open gate way for the traffic of all railroads to the proposed new municipal docks, and the present and future commercial and industrial developments in the said southern portion of the City. To make this effective, the Pennsylvania Companies and the Baltimore Companies agree that if, after the construction and commencement of operation of said joint railroad, any standard gauge steam railroad company, whether operated by steam or other motive power, and hereinafter designated for convenience as "using Company" or "users," shall desire to use the same

between said points for the movement of traffic, it shall have the right to do so, upon the terms and subject to the limitations following, to wit:

(a.) It must have the requisite State and Municipal authority to construct and operate a line of railroad to a connection therewith, or to a connection with the Belt Line;

(b.) It must file with the City open evidence satisfactory to the Mayor of its financial ability to meet all necessary obligations, as a guarantee of which it shall deposit with a bank or trust company, satisfactory to the Mayor, the sum of fifty thousand (50,000) dollars, to be returned to it upon the written order of the Mayor when its road has been constructed and it has used the joint railroad for a period of six months;

(c.) It must pay as rental a proportionate share (1) (computed on the car and engine basis hereinbefore provided) of the total operating, maintenance and renewal expenses, including taxes, insurance and such other items as may now or hereafter be prescribed in the expense classification promulgated by the Interstate Commerce Commission; and (2) one-third of the interest at six (6) per cent. per annum upon the total actual cost to said owning companies, respectively, of said joint railroad, including all additions, improvements and facilities forming a part thereof, and including also the value of the present lines of railroad of each of said Pennsylvania Companies and Baltimore Companies for which the joint railroad is a substitute, and such value shall be determined by appraisal in the manner provided in Article Tenth. If there be two such other users, the rental to each shall be one-fourth of said cost, and in like proportion for each user, whenever the users and owners shall exceed four in number. If, however, an additional user shall, at its own cost construct an additional track or tracks on the right of way of the Belt Line Company, it shall be credited with interest on such cost, and it shall be entitled to contribution in like manner from any subsequent user. In no event, however, shall any additional user be entitled to demand rental from the Pennsylvania Companies or Baltimore Companies, even if its outlay should exceed that of either of these Companies;

(d.) The cost of the said joint railroad shall be divided into two sections, one section including the portion on Delaware avenue between Hoyt street and Queen street, and the other including the portion between Delaware avenue and Hoyt street, and Twenty-ninth street and Passyunk avenue, and any other company shall have the right to use either or both of said sections, and in the event of its using only one section, its rental as hereinbefore defined shall include interest only on the cost of that section plus half the value of the present lines abandoned by the Pennsylvania and Baltimore Companies. Should it subsequently use the other section, there shall be added to the rental interest on the remaining half of the value of the abandoned lines. In the calculation of rental the total actual cost to the owning companies shall include interest only for and during the period of construction, but not thereafter.

The bills for the rental prescribed herein shall be rendered and paid in accordance with recognized railroad practice. No dispute or question shall delay the payment of bills as rendered, but any adjustment necessary shall be made in the accounts of subsequent months.

9. Upon the construction of tracks additional to the four tracks to be forthwith constructed between Twenty-ninth street and Magazine lane and Delaware avenue and Vandalia street, and to the three tracks of the Pennsylvania Companies between Vandalia and Queen streets the same shall thereupon become part of the joint railroad, so far as operation is concerned, so that there may be unanimity of operation of the joint railroad as a five or six-track line, including mutual cross-over privileges, so

as to furnish facilities to all users to reach both industrial establishments and wharves and docks now or hereafter existing.

It is further agreed that the Belt Line Company or the Baltimore Companies or the Pennsylvania Companies are hereby empowered to make a contract with, and confer upon, any standard gauge steam railroad company the right to the use of the joint railroad upon complying with the terms and conditions hereinbefore expressed and paying the rental hereinbefore stipulated, and subject to all the terms and conditions of this agreement.

10. This agreement is intended to secure the right of equal usage of said joint railroad with the Pennsylvania Companies and the Baltimore Companies to all other companies, so that it shall in effect constitute an open gateway, but it is equally intended to prohibit and deny to any company access into or the use of the terminal yards, piers and other terminal facilities of any other company, except with their consent and approval, and on such terms as may be mutually agreed upon, and the property, tracks and facilities of the Girard Point Storage Company are included in the terminals of the Pennsylvania Companies.

11. The Pennsylvania Companies and Baltimore Companies agree that the joint railroad including main, passing and industrial tracks and other facilities connected with and forming a part thereof shall at all times be impartially operated, so that all users shall be accorded equal facilities and service.

12. It is further expressly understood that whenever the City of Philadelphia shall by ordinance consent to the use of such joint railroad within the limits and upon the terms and conditions hereinbefore stated by any other such railroad company or companies, then this agreement in so far as it relates to the said joint railroad, shall be taken and construed to be for the benefit and advantage of such railroad company or companies desiring to use the said joint railroad and for the benefit and advantage of the City of Philadelphia, having consented thereto as aforesaid, as well as for the benefit and advantage of the Pennsylvania Companies and the Baltimore Companies, and either the said City or the said railroad company or companies, or both, desiring to use the said joint railroad shall have the full and unrestricted right and capacity to enforce this provision of the agreement by legal or equitable process, or in any other manner whatsoever, to the same intent and with like force and effect as if such railroad company or companies had been specifically named and mentioned herein. It is the intention of the parties hereto that this clause shall be of the essence of this contract between them, and shall operate as a condition upon which this contract takes effect.

13. In case of disagreement between any of the parties hereto as to the meaning or construction of this Article, or any part thereof, or as to the respective rights and obligations of the parties thereunder, such points of contention or matter as to which there may be failure to agree shall be submitted to the Interstate Commerce Commission (or such of their number as that body may designate) for decision and determination, and such decision shall be final, conclusive, and binding, and no appeals shall be taken therefrom, nor shall the same be questioned in any forum or proceeding, except in a proper court for the sole purpose of enforcing the decision so made. If the Commission declines or fails to act, within sixty (60) days after written request is made, then the questions at issue shall be decided by arbitration in the manner provided in Article Eighteenth of this agreement. The expense of such proceedings shall be borne equally by all parties concerned in the contention.

14. The trains, engines and employees of the Companies owning or using the joint railroad, while upon the said railroad, shall be subject to the regulations and orders of the Superintendent or other officers of the Company op-

erating the same, and to secure uniformity in time, rules and signals, the said Companies agree to conduct their use of said joint railroad in conformity with the standard time, rules and signals adopted from time to time by said Company operating the line. Said operating Company shall provide for the running over said joint railroad of such trains or engines as the owning and using Companies may desire to run under this agreement and as nearly in accordance with their wishes as may be practicable, and said operating Company shall give equal rights to all trains of the same class. Any employe of the said owning or using Companies below the rank of Train Master shall, at any time, be removed from service on, or in connection with, the said joint railroad, upon complaint in writing showing sufficient cause therefor addressed to the General Manager of the Company employing the individual complained of by the General Manager of the Company making such complaint; but such removal shall not prevent the employment elsewhere of the individual so removed. It is understood and agreed that in said use of said joint railroad each owning and using Company shall assume all liability for damage to its own trains, engines, cars, and property in its charge, employes, or other persons and property injured or damaged by its trains, engines, or cars and shall protect, indemnify and save harmless the other Companies against any claims or demands in consequence of, or growing out of, such injury or damage. In case of injury or damage caused by the trains, engines, or cars of two or more of such owning or using Companies, each of such Companies affected shall assume all liability for damage to its own property, or property in its charge, and to its employes, but liability for damage to other persons and property shall be jointly assumed by the Companies affected in equal proportion. Any loss or damage not above described shall be included in the cost of operation and maintenance of the said joint railroad. Superintendents, managers, agents, telegraph operators, train dispatchers, section foremen or laborers, watchmen, switchmen or any other person or persons subordinate to the General Manager employed in, or charged with, the maintenance or care of or operation of the said joint railroad shall in respect to the liability of any Company using the said railroad, to each other or to third persons, growing out of the fault or neglect of such officers, agents or employes, be deemed and held to be the sole servants of that Company to, or upon, or in connection with, whose trains, business, traffic, or property any loss or damage may have occurred.

Seventeenth.—This agreement provides for a complete plan of track relocation, change and elevation, and municipal improvements, to the completion of which, in all its parts, the parties hereto are committed as heretofore provided. It is agreed, however, that the work to be done hereunder shall be divided into sections of such grades and curvature as will permit of the use thereof by the railroads without imposing unreasonable or impractical operating conditions, and that one or more sections shall be executed at a time, as and when appropriations therefor shall be made by the City. Unless otherwise agreed in writing, by the parties of the second and third parts, they shall not be required to undertake and contribute to the cost of any section of the work unless the City shall have first appropriated a sum sufficient to meet its share of the estimated cost of such section.

Eighteenth.—In case of any difference or dispute arising under this agreement, the parties hereto agree to submit the same, except wherein otherwise specifically provided, to two competent arbitrators, one of whom shall be appointed by the party or parties hereto holding to the one contention, and the other by the party or parties hereto holding to the contrary contention involved in such difference or dispute, and if these arbitrators cannot agree they shall select a third disinterested and competent party, and the three arbitrators, or a majority of them, shall decide

with all reasonable despatch the issues before them, and such decision shall be a condition precedent to the enforcement of any right of action under this agreement. In case either of the said parties shall fail to appoint an arbitrator, as aforesaid, for the period of twenty days after written notice given by the other party, or parties, to make such appointment, then, in that event, the arbitrator appointed by the party, or parties, not in default shall appoint an arbitrator of like experience and skill for the defaulting party, and the said two arbitrators so appointed shall select a third arbitrator, and the three so chosen, or a majority of them, shall decide such issues. The expenses of such arbitration shall be borne equally by the parties involved in such difference or dispute.

Nineteenth.—All the covenants in this agreement contained shall extend to and bind the respective successors and assigns of the parties hereto with the same force and effect as if the words "successors and assigns" had in each case been particularly mentioned.

Twentieth.—It is hereby understood and agreed that neither the purpose nor intent, nor the obligation of this contract, if and when approved by the Public Service Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said Commission of any of the powers vested in it by the Public Service Company Law, approved July 28, 1913.

In Witness Whereof the parties hereto have caused their respective seals to be hereunto affixed, duly attested the day of A. D. 1914.

Signed, sealed and delivered in the presence of:

Mayor of Philadelphia.

PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY:

By

President.

Attest:

Secretary.

THE PENNSYLVANIA RAILROAD COMPANY:

By

President.

Attest:

Secretary.

SCHUYLKILL RIVER EAST SIDE RAILROAD COMPANY:

By

President.

Attest:

Secretary.

BALTIMORE AND OHIO RAILROAD COMPANY:

By

President.

Attest:

Secretary.

THE PHILADELPHIA BELT LINE RAILROAD COMPANY:

By

President.

Attest:

Secretary.

SECT. 2. The Mayor is hereby authorized and directed to execute, acknowledge and deliver the said contract on behalf of the City (which contract shall be recorded) and to fill in the blanks left for the date in the above agreement; and he is further authorized to do and perform, or to cause to be done and performed, each and every thing contained in the said contract on the part of the City of Philadelphia to be done and performed.

SECT. 3. In addition to the revisions of the lines and grades of streets specifically provided for in and necessary for the carrying out of the work covered by said contract, which revision the Department of Public Works, Board of Surveyors, is hereby authorized and directed to make, the said Department of Public Works, Board of Surveyors, is authorized and directed to make such general revision of the lines and grades of streets as may be necessary to provide for the better service and development of the water fronts and more direct and convenient approaches thereto, to provide for proper and adequate facilities for circulation and transportation, for commercial, industrial and residential development, and to complete the City plan, within the territory bounded as follows: Beginning at Christian street and the Delaware river, thence southward along the Delaware river to the boundary line of property of the United States Government, thence westward along the same to the Schuylkill river, thence northward along the various courses of the same to Reed street, thence following the southern boundary of the completely built up area of the City to Front street, thence northwardly along the same to Christian street, and thence eastwardly to the Delaware river and place of beginning.

SECT. 4. The Director of the Department of Public Works is hereby authorized and directed to issue the usual notice to all owners whose properties may be affected by the opening of the streets or by any of the work provided for in said contract and shall enter upon and take said streets for public use at the expiration of three months from the date of said notice.

The Mayor is hereby authorized and directed to enter security, on behalf of the City of Philadelphia, for the payment of any damages, for which the said City may be held liable, which may be caused in carrying into effect any or all of the work provided for in said contract. Upon the filing of said security and upon the expiration of the time limit of the notices provided for in this section the Director of the Department of Public Works may enter upon and take for public use such properties as may be required to enable the work provided for in said contract to be carried into full and complete effect.

Provided, That before any action shall be taken, under this ordinance, affecting the plot of ground bounded by Front street, Washington avenue, Water street and Reed street, the licenses at the northeast corner of Front and Reed streets and northwest corner of Water and Reed streets shall all first be transferred by the License Court of the Court of Quarter Sessions to other locations.

SECT. 5. The ordinance approved the twenty-sixth day of December, 1890, entitled "An Ordinance to authorize the Philadelphia Belt Line Railroad Company to construct its railroads and branches upon and across streets, to authorize changes and revisions in the lines and grades of certain streets, the location of a new street, the widening of certain streets and the shifting of the tracks occupied jointly by the River Front and the Philadelphia and Reading Railroad Companies, and the entering of security," is hereby amended by striking from Section 1 thereof the letters G, I, H and K where they are recited as points on a map indicating branch lines of the said railroad; also by striking from Section 1 thereof the following portion of a paragraph, "Commencing with a double track on Schuylkill avenue, at Curtin street, in the Twenty-sixth Ward; thence southwardly in Schuylkill avenue to a point

at or near Hoyt street; thence curving southeastwardly to a point at or near the intersection of Avenue Thirty-seven south and Thirty-second street; thence southeastwardly, crossing the tracks of the Girard Point Extension Railroad, to a point at or near the intersection of Avenue Forty-two south and Twenty-seventh street; thence curving southwardly to a point in Twenty-sixth street near Avenue Forty-three south; thence southwardly in Twenty-sixth street to a point north of Avenue Forty-five south; thence curving eastwardly to a point in Avenue Forty-five south, east of Twenty-sixth street; thence eastwardly in Avenue Forty-five south to Government avenue near Twenty-second street; thence northeastwardly in Government avenue to a point where the said avenue is intercepted by Sixteenth street extended; thence eastwardly in Government avenue to a point at or near Fifth street; thence northwardly on Fifth street to a point at or near Johnson street; thence curving eastwardly on Johnson street, crossing the tracks of the Pennsylvania Railroad Company, to a point on Delaware avenue; thence northwardly on Delaware avenue and east of the right of way of the Pennsylvania Railroad Company to a point at or near the intersection of Delaware avenue, Portar street and Commercial avenue; thence northwestwardly along Commercial avenue parallel with and east of the right-of-way of the Pennsylvania Railroad Company and the Schuylkill River East Side Railroad Company to a point at or near the intersection of Commercial avenue, Moore street and Meadow street; thence northwardly in and along Meadow street east of and parallel with the right of way of the Schuylkill River East Side Railroad Company to a point at or near the intersection of Meadow street and Tasker street; thence curving westwardly and northwardly to a point in Front street, north of Tasker street, crossing the tracks of the Schuylkill River East Side Railroad in Meadow street, and the tracks of the Pennsylvania Railroad in Swanson street; thence northwardly along Front street to a point at or near Queen street; thence curving eastwardly into and along Queen street to a point in Delaware avenue north of Queen street, crossing the Swanson Street Branch of the Philadelphia, Wilmington and Baltimore Railroad and the tracks of the Pennsylvania Railroad, and inserting in lieu thereof the following: "Commencing with a double track on Schuylkill avenue, as revised, at or near Twenty-ninth street (from which point it may connect with the tracks through the property of the Girard Point Storage Company) and thence extending westwardly and northwardly along Schuylkill avenue, as revised, to a point north of Magazine lane, thence curving to the eastward and southward connecting with and crossing the joint four-track railroad of the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company at or near Magazine lane, thence continuing southward and eastward parallel with and immediately adjacent to the said joint four-track railroad to Hoyt street and Delaware avenue, thence connecting with and crossing the said joint four-track railroad and continuing northward parallel with, upon the east side of, and immediately adjacent to the same in the bed of Delaware avenue, to a point north of Queen street," also by striking from Section 1 thereof the following paragraphs:

"The route of the branch from point marked G on the main line to point marked H shall be as follows:

Commencing at a point on the main line of road on Government avenue near and west of Fifth street; thence extending eastwardly along Government avenue and Avenue Forty-three south to the river bank at or near Third street; thence along the river bank to a point at or near Spangler street.

The route of the branch from point marked I on the main line to point marked K shall be as follows:

Commencing at a point in Schuylkill avenue at or near Hoyt street; thence southwardly in Schuylkill avenue to or near Avenue Thirty-six south; thence curving west-

ward to the river bank; thence following the general line of the river bank along the Schuylkill river to a point near the prolongation southward of Thirtieth street; thence curving northward to a connection with the tracks of the Girard Point Extension Railroad at or near Avenue Forty-five south."

SECT. 6. The acquisition of property and the work of construction involved in the abolishment of grade crossings and the change, relocation and elevation of the railroads, and the municipal improvements authorized in this ordinance shall be carried on from time to time as Councils shall provide the necessary funds, and the Railroad Companies shall provide their proportion of the cost whenever they shall be notified to do so by ordinance of Councils: *Provided*, That the work so ordered to be done shall be in such locations and in such sections as will permit of the continuous operation of the railroad or railroads affected, and further *Provided*, That every contract for public improvements authorized by this ordinance shall contain a clause that it is subject to the provisions of the Act of June 1, 1885, P. L. 37, and the liability of the City thereunder shall be limited by the amounts which shall have been or may be from time to time appropriated for the same.

SECT. 7. That the sum of one million (1,000,000) dollars provided for the removal of grade crossings in the southern section of the City by ordinance approved the ninth day of February, 1907, be and is hereby appropriated for the following work:

The purchase of the rights-of-way for the Pennsylvania Companies and the Baltimore Companies west of Twenty-ninth street, between Wolf street and Oregon avenue.

The purchase of the rights-of-way for the Pennsylvania Companies, the Baltimore Companies and the Belt Line Company around the southern section of the City, between Twenty-ninth street and Magazine lane and Delaware avenue and Bigler street.

The purchase of property for freight yards of the Pennsylvania Companies east of Broad street and south from Hoyt street, and the purchase of the additional track area west of Twenty-ninth street along the new line of railroad between Magazine lane and Penrose avenue.

The construction of the highway bridge to carry Broad street over and above the proposed railroad tracks to be located at a point about 800 feet north of the south line of Government avenue.

The opening of Twenty-ninth street from Passyunk avenue to Magazine lane.

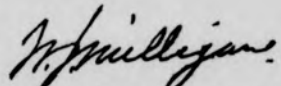
The readjustment of tracks and freight yards along Delaware avenue between Queen street and Bigler street.

The readjustment of tracks along Oregon avenue with the connections necessary to permit of the opening of the north and south streets between Twenty-third street and Vandalia street.

For engineering and incidental expenses as authorized by this ordinance.

SECT. 8. All ordinances or parts of ordinances inconsistent herewith be, and the same are, hereby repealed.

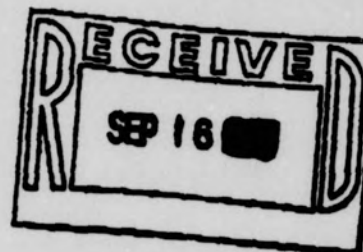
Attest:


Chief Clerk, Select Council.

CONRAIL



EXHIBIT E



September 11, 1997

File No.: PHL-043

Mr. Paul Hermann
The Philadelphia Belt Line R.R. Co.
226 Walnut St.
Philadelphia, PA 19406

Dear Mr. Hermann:

The following represents Conrail's 1996 car counts over the Philadelphia Belt Line Railroad Company:

Customer	In Count	Out Count	Total
Tioga Marine Terminal			
GATX	439	453	892
Franklin Smelting	27	0	27
Lumber Millwork	3	0	3
Rohm and Haas	79	1	80

Note, Tioga Marine Terminal was not available as of this memo. I will supply that information as soon as it becomes available.

I can be reached at (215) 209-7143 if there are any questions.

Sincerely Yours,

Michael DeLon
Manager Contracts

cc: J.J. Keating
A.E. Treadway
R.J. Lackemeyer

1996 Car Counts Over Philadelphia Belt Line

Customer	1996 IN Count	1996 OUT Count	Total
Tioga Marine Terminal			
GATX	53	130	183
Allied Signal	2	15	17
BP	0	125	125
Gattermin	112	6	118
Gatterser	82	1	83
Sun	0	162	162
Velchemic	0	12	12
Elfatonor	0	2	2
Genametra	146	0	146
Airprochem	44	0	44
Franklin Smelting	27	0	27
Lumber Millwork	2	0	2
Lumindust	1	0	1
Rohm & Haas	79	1	80
Totals	548	454	1002

Appendix II

CSX/NS-98

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

APPLICANTS' RESPONSE TO
PHILADELPHIA BELT LINE RAILROAD COMPANY'S
FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS

CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail, Inc. and Consolidated Rail Corporation hereby respond to Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Requests to Applicants (PBL-06), served September 24, 1997.¹

¹ CSX Corporation and CSX Transportation, Inc. are collectively referred to as "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company as "NS" and Conrail, Inc. and Consolidated Rail Corporation as "Conrail". CSX, NS and Conrail are collectively referred to as "Applicants". Philadelphia Belt Line Railroad Company is referred to as "requester" or "PBL".

GENERAL RESPONSES

The following general responses are made with respect to all of the requests and interrogatories.

1. Applicants have conducted a reasonable search for responsive documents and information to respond consistent with the stated objections. Except as objections are noted herein, all responsive documents have been or shortly will be made available for inspection and copying in Applicants' document depository, which is located at the offices of Arnold & Porter in Washington, D.C.²

2. Where objections have been raised as to the scope of the request or interrogatory, Applicants are willing to discuss searching for and producing documents or information covered by a more limited request or interrogatory taking account the stated objections.

3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

4. In line with past practice in cases of this nature, Applicants have not secured verifications for the answers to interrogatories herein. Applicants are prepared to discuss the matter with requester if this is of concern with respect to any particular answer.

² Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

GENERAL OBJECTIONS

The following general objections are made with respect to all of the interrogatories and document requests. Any additional specific objections are stated at the beginning of the response to each interrogatory or document request.

1. Applicants object to production of, and are not producing, documents or information subject to the attorney-client privilege, the work product doctrine and/or the joint or common interest privilege.

2. Applicants object to production of, and are not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. Applicants object to production of, and are not producing, readily available public documents or information, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. Applicants object to the production of, and are not producing, draft verified statements and documents related thereto, in accordance with past practice in railroad control proceedings.

5. Applicants object to the production of, and are not producing, information or documents that are as readily obtainable by the requester from its own files.

6. Applicants object to the production of, and are not producing, information or documents that contain confidential

or sensitive commercial information, including information subject to disclosure restrictions imposed by law, in other proceedings, or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

7. Applicants object to the requests to the extent they seek documents or information in a form not maintained by Applicants in the regular course of business or not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which Applicants object to performing.

8. Applicants object to PBL's Instruction No. 1 as overbroad and unduly burdensome to the extent that it seeks information or documents for periods prior to January 1, 1995.

9. Applicants object to PBL's Instructions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

10. Applicants object to Instruction No. 7 to the extent it requests detailed information regarding otherwise responsive documents that fall within the scope of a privilege. Such detailed information is not necessary, and it is unduly burdensome to provide. Such information was not required or provided in the most recent major control cases, and no showing has been made here to warrant different treatment.

13. CSX, NS and Conrail each objects to any requests that seek information regarding current or future operations on, or

any other plans or activities relating to or employment on, rail lines or properties other than those defined in PBL's requests as being their own line segments or, with respect to future operations, Conrail line segments they will operate at the relevant future time. The best source of such information is the railroad that owns or operates the line segment in question. Subject to any other applicable objections, CSX will provide responses regarding the CSX line segments and Conrail line segments it will operate at the relevant future time, NS regarding the NS line segments and Conrail line segments it will operate at the relevant future time; and Conrail regarding the Conrail line segments.

14. Applicants object to Definition No. 1 insofar as it purports to require Applicants to obtain information from affiliates.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify the entity that will assume the rights and obligations of Conrail under the current lease agreement between PBL and Conrail dated March 1, 1987, after consummation of the proposed transaction.

Response:

Without waiving any objections, and subject to the general objections above, CSX and NS respond as follows:

It is anticipated that the Shared Assets Operator will do so, subject to the Transaction Agreement and the Shared Assets Area Operating Agreement for South Jersey/Philadelphia. See Application, Vols. 8A, 8C.

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INTERROGATORY NO. 2:

State whether NS and CSX will be allowed physical access to the Belt Line North to handle movements originating or terminating on the Belt Line North under Section 3(a) of the proposed Shared Assets Area Operating Agreement for South Jersey/Philadelphia among Conrail, CSX, and NS.

Response:

Without waiving any objection, and subject to the general objections above, CSX and NS respond as follows:

Yes.

INTERROGATORY NO. 3:

If the answer to Interrogatory No. 2 is yes, state the nature of this right of access (i.e., reciprocal switch, trackage rights, or other method of access).

Response:

Without waiving any objections, and subject to the general objections above, CSX and NS respond as follows:

The nature of the access will be as specified in the Transaction Agreement and as more particularly described in Exhibit H thereto, the Shared Assets Area Operating Agreement for South Jersey/Philadelphia, which documents speak for themselves. See Application, Vols. 8B & 8C.

INTERROGATORY NO. 4:

If the access referred to in Interrogatory Nos. 2 and 3 is by reciprocal switch, state the switching rate and the source of the rate for both NS and CSX.

a. If the rate will be established by an agreement, identify the agreement.

b. If the rate was established by a tariff, identify the tariff.

Response:

Without waiving any objection, and subject to the general objections above, CSX and NS respond as follows:

Not applicable.

INTERROGATORY NO. 5:

If the answer to Interrogatory No. 2 is no, state whether CSX or NS will be allowed access to the Belt Line North under any other provision of the Shared Assets Area Operating Agreement or any other agreement among the parties and what the nature of this right of access will be.

Response:

Without waiving any objection, and subject to the general objections above, CSX and NS respond as follows:

Not applicable.

INTERROGATORY NO. 6:

If the answer to Interrogatory No. 2 is yes and if a carrier other than the Shared Assets Operator chooses to serve PBL shippers on the Belt Line North, state whether such service would eliminate any positions in the operating crafts of the Shared Asset Operator.

Response:

Without waiving any objections, and subject to the general objections above, CSX and NS respond as follows:

Applicants do not anticipate that any positions in the operating crafts of the Shared Assets Operator will be eliminated since its staffing will be established at levels appropriate in light of anticipated operations in the area post-Transaction. The anticipated labor impacts are summarized in CSX/NS-26 in the Labor Impact Exhibit based on the 1996/1997 Head Count.

INTERROGATORY NO. 7:

State whether there is currently an arrangement to allow CSX to switch traffic originating or terminating on the Belt Line North and whether such arrangement will be modified or changed after consummation of the transaction.

a. If CSX currently has the option to switch traffic originating or terminating on the Belt Line North in the Philadelphia switching district, please describe the arrangement under which it may do so, e.g., whether by tariff or contract, where the interchange will occur, where the physical delivery will occur, and the rate currently in effect.

b. If the current arrangement will be modified or changed after consummation of the transaction, please describe what changes will take place.

Response:

Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

No. After consummation of the Transaction, the Transaction Agreement and the Shared Assets Area Operating Agreement for South Jersey/Philadelphia will govern. See Application, Vols. 8B & 8C.

INTERROGATORY NO. 8:

State whether there is currently an arrangement to allow CP to switch traffic originating or terminating on the Belt Line North in the Philadelphia switching district and whether such arrangement will be modified or changed after consummation of the transaction.

a. If CP currently has the option to switch traffic originating or terminating on the Belt Line North in the Philadelphia switching district, please describe the arrangement under which it may do so, e.g., whether by tariff or contract, where the interchange to CP will occur, where the physical delivery will occur, and the rate currently in effect.

b. If the current arrangement will be modified or changed after consummation of the transaction, please describe what changes will take place.

Response:

Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

Conrail currently has an agreement with CP to deliver cars to or take cars from Tioga Marine Terminal to interchange with CP at South Philadelphia or Allentown.

INTERROGATORY NO. 9:

State whether the reference "Philadelphia Belt Line ... PA ... TR" in Attachment I to Schedule 1 of the Transaction Agreement among Conrail, CSX, and NS, see Railroad Control Application Vol. 8B of 8 (CSX/NS-25) at 102, means that Conrail currently has trackage rights over the Belt Line North.

a. If so, state the basis for and duration of these trackage rights, and the lines, yards, and mileposts over which Conrail operates pursuant to these rights.

b. If the above reference does not mean that Conrail has trackage rights over the Belt Line North, please state the precise meaning of the reference.

Response:

Without waiving any objection, and subject to the general objections above, NS responds as follows:

As the introductory note to Attachment I to Schedule 1 of the Transaction Agreement states, the designation "TR" in that attachment indicates Conrail freight operating rights other than by ownership. See Application, Vol. 8B at 95. That designation is used in the attachment wherever Conrail operates over lines that it does not own. It is not limited to trackage rights and includes other types of operating authority such as leases.

INTERROGATORY NO. 10:

Describe how the movements originating or terminating on the Belt Line North which are currently via West Falls Yard, will be handled under the Shared Assets Area Operating Agreement after consummation of the transaction, since West Falls Yard will not be one of the Shared Assets. Include the rate (and source of rate and reciprocal switching arrangements) if the originating shippers or receivers seek to move their traffic via: (i) NS, (ii) CSX, or (iii) CP.

Response:

Without waiving any objection, and subject to the general objections above, CSX and NS respond as follows:

The Belt Line North traffic will be handled in the Shared Assets Area through yard facilities within the Shared Assets Area or routing as provided in the Shared Assets Area Operating Agreement for South Jersey/Philadelphia and as described in the CSX and NS Operating Plans. See Application, Vol. 8C at 97, 116; Vols. 3A & 3B.

INTERROGATORY NO. 11:

Describe any changes that will be made by the Shared Assets Operator to the current movement of traffic originating or terminating on the Belt Line North by Conrail.

Response:

Without waiving any objection, and subject to the general objections above, CSX and NS respond as follows:

Applicants do not currently anticipate any major changes in handling Belt Line North movements other than as provided for in the Shared Assets Area Operating Agreement for South Jersey/Philadelphia and as described in the CSX and NS Operating Plans. See Application, Vol. 8C, 3A & 3B.

INTERROGATORY NO. 12:

Identify any documents containing traffic data for carloads originating or terminating on the following shippers for the years 1994, 1995, 1996 and 1997 (year to date):

- (a) Tioga Marine Terminal
- (b) GATX, and all customers served through the GATX terminal
- (c) Franklin Smelting
- (d) Lumber Millwork
- (e) Rohm and Haas
- (f) City of Philadelphia

Response:

Applicants object to Interrogatory No. 12 on the ground that it is unduly burdensome and overbroad insofar as it seeks 1) data prior to the 1995 base year used for purposes of the Application; 2) "any documents" rather than documents sufficient to show the traffic data requested; and 3) data subsequent to the 1995 base year used for purposes of the Application. Applicants further object to Interrogatory No. 12 on grounds of overbreadth, undue burden and relevance to the extent it seeks data for any traffic originated or terminated by the listed shippers without regard to whether such traffic moved over the Belt Line North; Applicants will assume for purposes of their response that the interrogatory is limited to traffic of such shippers that moved over the Belt Line North. Applicants also object to Interrogatory No. 12 to the extent it would require them to conduct a burdensome and oppressive special study to determine whether or not all of the listed shippers originated or terminated traffic that moved on the Belt

Line North. Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

See 1995 Conrail traffic tapes previously placed in the depository.

INTERROGATORY NO. 13:

Identify the source for all traffic data identified in response to Interrogatory No. 12, if the documents identified are not the primary source of such traffic data.

Response:

Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

Not applicable.

INTERROGATORY NO. 14:

If the documents identified in response to Interrogatory No. 12 are contained in the document depository, identify their precise location.

Response:

Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

See response to Interrogatory No. 12.

INTERROGATORY NO. 15:

Identify all individuals who have assisted counsel for Applicants in responding to these interrogatories.

Response:

Without waiving any objection, and subject to the general objections above, Applicants state that the individuals primarily responsible for providing information in connection with these responses were:

CSX: D.L. Houchin
E.D. Jenkins

NS: G. William Schafer
John H. Williams

Conrail: Paul Carey

DOCUMENTS REQUESTED

DOCUMENT PRODUCTION REQUEST NO. 1:

All documents relating to PBL and/or the Belt Line North.

Response:

Applicants object to Document Request No. 1 as overbroad and unduly burdensome to the extent it seeks "[a]ll documents relating to" PBL and/or the Belt Line North. Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

All documents specifically identified in response to interrogatories will be placed in the document depository.

DOCUMENT PRODUCTION REQUEST NO. 2:

All documents which identify switching rates charged, either by tariff or contract, to third party carriers for switching traffic originating or terminating on the Belt Line North.

Response:

Applicants object to Document Request No. 2 as overbroad and unduly burdensome to the extent it seeks "[a]ll documents relating to" the matters specified. Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

Responsive documents, if any, will be placed in Applicants' depository.

DOCUMENT PRODUCTION REQUEST NO. 3:

All documents containing traffic data for carloads originating on the following shippers for the years 1994, 1995, 1996 and 1997 (year to date):

- (a) Tioga Marine Terminal
- (b) GATX, and all customers served through the GATX terminal
- (c) Franklin Smelting
- (d) Lumber Millwork
- (e) Rohm and Haas
- (f) City of Philadelphia

Response:

Without waiving any objection, and subject to the general objections above, Applicants respond as follows:

See response to Interrogatory No. 12.

Respectfully submitted,

JAMES C. BISHOP, JR.
 WILLIAM C. WOOLDRIDGE
 J. GARY LANE
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 ROBERT J. COONEY
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Paul A. Cunningham
 PAUL A. CUNNINGHAM
 GERALD P. MORTON
 Harkins Cunningham
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 Washington, DC 20036
 (202) 973-7600

Counsel for Conrail Inc.
 and Consolidated Rail
 Corporation

CERTIFICATE OF SERVICE

I, J. Patrick Kennedy, certify that on October 9, 1997, I caused to be served by facsimile service a true and correct copy of the foregoing CSX/NS-98, Applicants' Response to Philadelphia Belt Line Railroad Company's First Set of Interrogatories and Document Production Requests, on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Docket No. 33388.


J. Patrick Kennedy

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

RICHARD A. ALLEN

DIRECT LINE:
(202) 973-7902VIA FACSIMILEMEMORANDUM

TO: All Parties on the Restricted Service List in Finance
Docket No. 33388

FROM: Richard A. Allen *RAA*

DATE: October 8, 1997

RE: Transcript of D. Michael Mohan Deposition (second day)
on September 17, 1997, and Errata to Transcripts of
September 5 and 17, 1997.

Consistent with practice in prior cases, Norfolk Southern will designate the transcripts of the depositions of its witnesses as "HIGHLY CONFIDENTIAL" for purposes of the Board's Protective Order in this case until it has had an opportunity to review them and determine, and notify parties, which portions of it may be changed to a "CONFIDENTIAL" or "PUBLIC" status. We will do so as quickly as possible.

We have now reviewed the transcript of the second day of the deposition of D. Michael Mohan on September 17, 1997, and have determined to change all of it to a PUBLIC status. (Previously we changed all of the transcript of Mr. Mohan's first deposition day, on September 5, 1997, to a PUBLIC status.)

Exhibits 1, 3, 5, 6, 8, 13 and 14 shall remain HIGHLY CONFIDENTIAL; Exhibits 2, 4 and 7 shall remain CONFIDENTIAL; Exhibits 9, 10, 11, 12, 15 and 16 shall be PUBLIC.

We also enclose errata sheets for the transcripts of Mr. Mohan's deposition on September 5 and September 17, 1997.

1 BEFORE THE
2 SURFACE TRANSPORTATION BOARD
3 Finance Docket No. 33388
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.
5 NORFOLK SOUTHERN CORPORATION AND
6 NORFOLK SOUTHERN RAILWAY COMPANY
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --
8 CONRAIL INC.* AND CONSOLIDATED RAIL CORPORATION
9 RAILROAD CONTROL APPLICATION

10 HIGHLY CONFIDENTIAL

11 Washington, D.C.

12 Wednesday, September 17, 1997

13 Continued deposition of D. MICHAEL

14 MOHAN, a witness herein, called for examination
15 by counsel for the Parties in the above-entitled
16 matter, pursuant to agreement, the witness being
17 previously duly sworn, taken at the offices of
18 Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700,
19 888 Seventeenth Street, N.W., Washington, D.C.,
20 20006-3939, at 9:05 a.m., Wednesday, September
21 17, 1997, and the proceedings being taken down by
22 Stenotype by JAN A. WILLIAMS, RPR, and
23 transcribed under her direction.

24

25

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

1 THE WITNESS: Well, I have a general
2 understanding that it does -- I don't believe it
3 loops the entire city. But I do believe it goes
4 up the river and intersects other lines at other
5 points.

6 BY MR. STONE:

7 Q. Okay. Do you have any understanding
8 what carriers have access to the Belt Railway of
9 Philadelphia?

10 A. Only that Conrail does. I'm uncertain
11 what the access of others may be.

12 Q. On page 24 there's a reference to a
13 dispatching control center. This is the
14 paragraph under the three bullet points. And I
15 have to say I'm a little confused whether
16 dispatching for the South Jersey/Philadelphia
17 shared asset area would be at Pavonia or whether
18 there's been a decision now to have it be done at
19 Harrisburg. Do you know?

20 A. I don't know the -- if there has been a
21 final determination. The discussion has been as
22 to whether the South Jersey shared asset area
23 would best be dispatched from a new office at
24 Pavonia or whether it would best be dispatched
25 from the location where the dispatching consoles

ALDERSON REPORTING COMPANY, INC.

(202)289-2260 (800) FOR DEPO
1111 14th ST., N.W., 4th FLOOR / WASHINGTON, D.C., 20005

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 1997, a copy of the foregoing Philadelphia Belt Line Railroad Company's Comments and Request for Conditions (PBL-10) and all attachments thereto 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.
David H. Coburn
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.
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Dennis G. Lyons
Drew A. Harker
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202

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

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



Jamie Palter Rennert

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HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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

FACSIMILE (202) 835-8136

INTERNET <http://www.hopsut.com>CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4205
DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220ALICIA M. SERFATY
(202) 835-8049

October 21, 1997

D

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

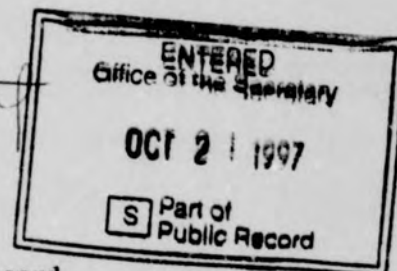
Re. CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation. Finance Docket No. 33388

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the **public version** of the Comments Of The New York City Economic Development Corporation (NYC-9) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Alicia M. Serfaty



Enclosure

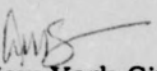
cc: The Honorable Jacob Leventhal
Applicants Representatives and all other Parties of Record

HOPKINS & SUTTER

October 21, 1997

MEMORANDUM

TO: All Parties of Record -- Finance Docket No. 33388

FROM: Alicia M. Serfaty 
Counsel for the New York City Economic Development Corporation

RE: Highly Confidential Versions Of Our Filings

The Highly Confidential Version of the Comments being filed today by the New York City Economic Development Corporation are being served only on the Board, Applicants' counsel and Judge Leventhal. All other parties of record will receive the public version. If you would like to receive a copy of the highly confidential version and have already signed the appropriate undertaking, you may fax me a written request, accompanied by a copy of the executed undertaking, at 202-835-8136.

Public Version - NYC-9

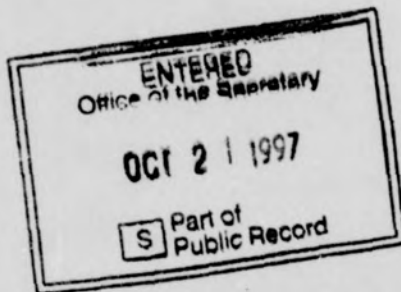
**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D. C.**

Finance Docket No. 33388



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

**COMMENTS OF
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**



Communications with respect to this document
should be addressed to:

Charles A. Spitulnik
Alicia M. Serfaty
Jamie Palter Rennert
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006
(202) 835-8000

Counsel for the New York City Economic
Development Corporation acting on behalf of
the City of New York

Dated filed: October 21, 1997

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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



COMMENTS OF
THE NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

In accordance with Decision No. 12, served on July 23, 1997, the New York City Economic Development Corporation ("NYCEDC"), on behalf of the City of New York, hereby submits its comments on the proposed transaction. As discussed herein, NYCEDC opposes the transaction as proposed because it will adversely affect the competitive balance in the New York region and harm the commercial and public policy interests of New York City and Long Island and their citizens.

Accompanying these comments, and filed separately herewith, is a Joint Responsive Application filed by NYCEDC and the State of New York, seeking trackage rights over portions of the rail line east of the Hudson River in New York that will enable a third party operator to provide a competitive alternative for service to and from shippers and receivers in New York City and on Long Island. See NYC-10 and NYS-11 (the "Joint Responsive Application"). These comments will provide support to that Joint Responsive Application by identifying the competitive and public interest concerns of NYCEDC and providing the legal and factual basis for granting the relief requested therein.

I. Introduction

NYCEDC is a private non-profit corporation created by the City of New York. Its mission is to serve as a catalyst for public and private investment to promote the long term viability of New York City, and to attract and provide opportunities to its businesses and citizens.¹ As part of that mission, NYCEDC is responsible for securing transportation access to the region's markets and overseeing the City's freight transportation and distribution facilities. NYCEDC's role in this proceeding, therefore, is to speak on behalf of the City of New York and to ensure, consistent with public policy, that the proposed acquisition of Consolidated Rail Corp. ("Conrail") by Norfolk Southern Railway Company ("NS") and CSX Transportation, Inc. ("CSX") allows for adequate, competitive service for all shippers and receivers moving traffic to and from New York City (the "City") and Long Island.

In a transaction such as this, the Surface Transportation Board ("STB" or "Board") is required by statute and regulation to evaluate the public interest and weigh the harm to such interest against the benefits of the transaction. *See* 49 U.S.C. § 11324(b), (c); 49 C.F.R. § 1180.1(c). This inquiry has largely, if not entirely, focused on the effect of the proposed transaction on competition. For the City of New York, an adverse impact on competition in the region has extremely broad ramifications -- ranging from the ability of the City to attract and maintain business to the devastating effects on the City's roads, bridges and tunnels that the increased use of trucks brings when there is no viable rail alternative for shippers and consumers. As shown herein and in the accompanying Joint Responsive

¹ NYCEDC is located at 110 William Street, New York, NY 10038. The telephone number is 212-619-5000.

Application, there will be an adverse effect on competition, not in the traditional sense of a reduction from two carriers to one, but because the manner in which Applicants have chosen to carve up the market and bring competition to Northern New Jersey only -- while allowing CSX monopoly power in the market east of the Hudson River -- will place shippers and consumers in the City and on Long Island in a serious competitive disadvantage when it comes to using rail transportation to support their businesses. NYCEDC is submitting testimony from a city official, its own office and the operator of the Harlem River Yard which demonstrates the immediate and adverse effects of the Applicants' decision not to bring competition to the line on the east side of the Hudson River.

This is no traditional merger. The carve up of Conrail by two competitors, and their joint decision about how the New York market should be divided among them and where competition may take place, must be very carefully scrutinized by the Board in light of the public interest, antitrust principles discussed briefly herein, and in light of guiding principles of the Final System Plan,² which tried but failed to bring true competition to the Northeast. Applicants have stated that the transaction is intended to promote competition, and indeed it goes a long way to do that. But it does not go far enough, especially when one of the areas where competition is being denied is one of the largest consumer markets in the country. The Final System Plan's goal was to bring competition to all areas of the Northeast and Midwest. That did not happen and Applicants' piecemeal effort to carry out that goal is simply not

² As discussed herein, *infra*, the Final System Plan is the plan developed by the United States Railway Association ("USRA") in 1975 which formed the Conrail system and implemented Congress' mandate, as set forth in the Regional Rail Reorganization Act of 1973, to reorganize the rail system of the Northeast and Midwest.

enough because their decision to deny competitive alternatives to New York City and Long Island will have serious consequences for the City and for those whose livelihood depends upon the presence of adequate transportation services.

II. Statement of NYCEDC Position

NYCEDC does not support the transaction as currently configured because of the adverse impact on New York City and Long Island shippers and receivers. As described more fully in these comments and in the accompanying Joint Responsive Application, the relief requested would address and ameliorate NYCEDC's concerns. NYCEDC would therefore support the transaction only if Board approval were conditioned on a grant of the relief sought in the Joint Responsive Application.

III. The Competitive Structure Of The Region And The Proposed Transaction

In enacting the Rail Reorganization Act of 1973, Congress had as one of its stated goals "the retention and promotion of competition in the provision of rail and other transportation services in the [Midwest and Northeast] region." Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, § 206(a)(5), 87 Stat. 984, 995 (1974) (the "3R Act"); *accord* *Regional Rail Reorganization Act of 1973: Report by the Comm. on Interstate and Foreign Commerce Together With Supplemental and Additional Views [To Accompany H.R. 9142]*, 93d Cong. 48 (1973). The United States Railway Association ("USRA"), which developed the Final System Plan for the region in accordance with the mandate of the 3R Act, echoed this goal. Final System Plan, July 26, 1975, Volume I at 2. USRA emphasized that the "basic structure" of the Plan was to "offer competition between at least two railroads in

major markets of the Region, supplemented by the services of smaller railroads." *Id.* at 3. During the process of developing the plan, there were a number of parties which advocated the creation of two or more railroads out of fear that a single large entity like Conrail would "harm other railroads, shippers and localities." *Id.* USRA nevertheless chose to have Conrail as the predominant carrier operating in the Northeast, finding that this solution "offers the best opportunity to achieve a revitalized, profitable and competitive rail service system in the Region under private management." *Id.* at 6, 36.

In spite of these goals, since 1976 when the Final System Plan was implemented, Conrail has held a virtual monopoly on rail service in the region. In New York, Conrail operates parallel service on two lines: (i) on the east side of the Hudson River from Fresh Pond, N.Y., located in the borough of Queens, to Albany, N.Y.; and (ii) on the west side of the river from Northern New Jersey to Albany, N.Y. In their Primary Application filed on June 23, 1997, Applicants propose to make Northern New Jersey a "shared access area," which means that both acquirers of Conrail -- CSX and NS -- will compete for service to and from metropolitan New Yorkers located on the west side of the Hudson River. The line east of the Hudson River will be transferred to CSX intact, allowing CSX to succeed to the monopoly created by Conrail. There is also a new haulage agreement between NS and Canadian Pacific Railway Company ("CP") for service through the Albany gateway that will give rise to a new connection for shippers and receivers in New York routing freight to and from CP. See Application, Vol. 3B, V.S. Mohan at 19-20. As currently envisioned, the haulage agreement would benefit only those shippers and

receivers on the west side of the Hudson River where NS will provide a competitive alternative.

The Applicants have touted their proposed transaction as "a unique, pro-competitive proposal to reconfigure the railroad industry in the eastern United States." Application, Vol 1, at 2. They also promise that the transaction, if approved, "will create two strong rail networks of broad geographic scope that will reach virtually all major ports, gateways and commercial areas in the eastern United States." *Id.* With regard to New York, the Applicants claim that "[t]he transaction is unique in its competitive dimensions -- not only does it entail virtually no reduction in rail competition, it will create new rail competition, most notably in the large New York/New Jersey area." *Id.* at 4.

While some of what Applicants say is true, let there be no mistake that the City of New York, home to one of the largest consumer markets in the country, will neither be reached by the "two strong rail networks" nor will it be the beneficiary of the "new rail competition" that Applicants promise will be brought to the New York region. Instead, Applicants, two similarly situated competitors, have jointly agreed to split the New York market in two, using the Hudson River as the dividing line. On the west side of the river, they have chosen to introduce competition, while on the east side they have agreed that there will be no competition and that CSX will have a monopoly. This carving up of the market, and its consequent adverse impact upon those whom the Applicants have chosen to perpetuate a monopoly, is not in the public interest. The lack of competition -- aggravated by the fact that some in the region will now enjoy competition -- will harm shippers and receivers alike and

place the economic stability and environmental balance of the City and Long Island in jeopardy.

The transaction should not, therefore, be permitted to go forward absent some relief which would provide New York City and Long Island shippers with competitive options, just as their counterparts in New Jersey and along the west side of the Hudson River are being given. The Board should do now what Congress and USRA first thought they were doing when they promulgated the 3R Act and implemented the Final System Plan, respectively, over twenty years ago. The opportunity to do so is now, when Applicants have proposed a transaction that goes part of the way toward realizing the goal of bringing competition to the Northeast. As shown below, increased competition to the New York City/Long Island region will provide the benefits of rail competition that the Final System Plan sought to accomplish without detracting from the public benefits that Applicants hope to obtain from implementation of the transaction. If nothing is done now, the competitive balance of the region will be adversely affected, competition and rail service to New York City and Long Island will further decline, and it may be twenty more years before the opportunity to correct it will come along again.

IV. The Proposed Transaction, Insofar As It Pertains To New York, Will Not Serve The Public Interest

In transactions such as this, the Interstate Commerce Act, 49 U.S.C. § 11323(c), mandates that the "single and essential standard of approval is that the [Board] find the transaction to be 'consistent with the public interest.'" Finance Docket No. 32760, *Union Pacific Corporation et al. -- Control and Merger -- Southern Pacific Rail Corporation et al.* ("UP-SP"), served August 12, 1996, *slip op.*

at 98, citing *Missouri-Kansas-Texas R. Co. v. United States*, 632 F.2d 392, 395 (5th Cir. 1980). Accord *Penn-Central Merger and N & W Inclusion Cases*, 389 U.S. 486, 498-99 (1968). To make this public interest finding, the Board employs a balancing test, weighing the benefits to applicants and the public against harm to the public if the transaction as proposed is approved. 49 C.F.R. § 1180.1(c). This balancing test focuses primarily on the effects on competition generated by the transaction. *Id.*; see also *UP-SP*, Finance Docket No. 32760, served August 12, 1996, *slip op.* at 98-99.

Insofar as New York City and Long Island are concerned, this balancing test weighs heavily against Applicants and the competitive harm that will come from dividing the New York market and allowing competition in certain select locations. At the outset, the public benefits of the transaction, which may exist in other markets, will be absent in New York City and Long Island. Rates will not be lowered and service will not be improved, and CSX has not indicated that it will offer any service beyond the minimal service currently provided by Conrail. If anything, CSX will acquire a substantial private benefit from Conrail, the ability to unilaterally decide the level of rates and service to offer to New York City and Long Island shippers and receivers. CSX's increased market power in New York City vis-à-vis Northern New Jersey will provide it with the opportunity, if it so desires, to increase rates while providing the same or an even worse level of service than Conrail did. This is a private benefit that the Board says should detract from whatever public benefits the Applicants claim may come to this region. See *UP-SP*, Finance Docket No. 32760, served August 12, 1996, *slip op.* at 99.

Moreover, reference to the most basic of antitrust principles demonstrates that what CSX and NS are attempting to do in New York City is against the public interest and in violation of the law. While this Board is not bound by antitrust principles when reviewing a merger transaction such as this one, according to the Supreme Court of the United States, these laws do give the Board "understandable content to the broad statutory concept of the public interest." *FMC v. Aktiebolaget Linien*, 390 U.S. 238, 244 (1968). The agreement between NS and CSX, two similarly situated competitors, to carve up the market and decide among themselves where competition should and should not take place is not in the public interest and would likely, in an unregulated environment, be considered a horizontal market allocation and a *per se* violation of Section 1 of the Sherman Act. 15 U.S.C. §1.

In the seminal case of *United States v. Topco Assoc., Inc.*, 405 U.S. 596 (1972), the Supreme Court found a *per se* violation of Section 1 of the Sherman Act when members of a cooperative association of small and medium sized regional supermarket chains, who did not compete with each other previously, agreed to define exclusive territories in which individual members could and could not compete. 405 U.S. at 608. The Supreme Court rejected the claim, which was accepted by the lower court, that such an agreement was permissible because it was intended to allow each member of the cooperative compete more effectively with the large national and regional supermarket chains within a given territory. *Id.* at 610 ("[T]he Court has consistently rejected the notion that naked restraints of trade are to be tolerated because they are well intended or because they are allegedly

developed to increase competition.").³ The Court found further that implicit in the freedom to compete "is the notion that [competition] cannot be foreclosed with respect to one section of the economy because certain private citizens or groups believe that such foreclosure might promote greater competition in a more important section of the economy." *Id.* In this case, CSX and NS have agreed to do exactly what the Supreme Court in *Topco* says is a *per se* violation of antitrust law because they have allocated the New York market between them and decided for themselves which segment of that market (Northern New Jersey) is more deserving of competition. Even more egregious, however, is the fact that the agreement between CSX and NS, unlike that of the cooperative members in *Topco*, does not even have the noble purpose of fostering competition in the territory allocated, because CSX will have absolutely no competitors to and from the New York City market east of

³ See also *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49 (1990) ("[I]t is equally clear that the district court and the court of appeals erred when they assumed that an allocation of markets or submarkets by competitors is not unlawful unless the market in which the two previously competed is divided between them.... [Horizontal allocation] agreements are anticompetitive regardless of whether the parties split a market within which both do business or whether they merely reserve one market for one and another for the other"); *Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951) (Agreements between legally separate companies to divide up world markets among themselves suppresses competition and cannot be justified based on foreign trade conditions or by labeling arrangement as a "joint venture"); *United States v. Sealy, Inc.*, 388 U.S. 350 (1967) (where licensees control manufacturing company, company-approved division of territories is *per se* unlawful); *Blackburn v. Sweeney*, 53 F.3d 825, 827-29 (7th Cir. 1995) (Partnership dissolution agreement which divides territory in which former partners can advertise for new clients is *per se* unlawful allocation agreement even where all had previously worked as part of one firm and had not competed against each other before.); *Garrett Anderson Agencies v. Blue Cross & Blue Shield United of Wisconsin*, 1993-1 Trade Cas. (CCH) ¶70,235 at 70,162 (N.D. Ill. 1993) ("Assuming Blue Cross entered an agreement whereby it agreed to stay out of the Illinois health insurance market but Health Care [its competitor] did not reciprocally agree to stay out of the Wisconsin health insurance market, the net effect is an anticompetitive effect on the Illinois health insurance market. This is sufficient to render the agreement between Blue Cross and Health Care unlawful on its face....").

the Hudson River once the allocation agreement is implemented. If the Supreme Court found a violation in an agreement to allocate markets when the ultimate purpose was to benefit the public interest through increased competition, the Board should look very carefully at the agreement between CSX and NS, whose underlying purpose would not promote competition but would instead harm the competitive balance in the region and adversely affect the businesses in New York City and Long Island.

A. The Transaction As Proposed Will Adversely Affect The Competitive Balance In The New York Region And Harm New York City And Long Island Businesses.

The reality is that shippers, receivers and others dependent on rail transportation into and out of New York City and Long Island will be competitively harmed by the Applicants' decision to perpetuate a monopoly on the east side of the Hudson River while introducing competition on the west side. Attached hereto as Attachment 1 is the verified statement of Anthony M. Riccio, Jr. ("Riccio V.S."), the operator of the Harlem River Yard located in the Bronx, New York. As a relatively new rail yard operator -- the Yard opened for rail operations in June, 1996 -- and as the operator of a new intermodal facility at the Yard that will be completed in Spring, 1998, Mr. Riccio details the immediate effect of the transaction on his ability to attract customers. He states that if his competitors on the west side of the River have competition, this means they will have better rates and better service to offer their customers. Riccio V.S. at 6. Mr. Riccio, who hopes to attract new tenants such as the New York Post and the New York Paper Mill Corporation to his yard, will have a hard time convincing them to use rail when his options are limited and the rates and level of service he can offer will be much lower than those offered by his

counterparts. *Id.* at 2-3. Likewise, without competition, Mr. Riccio will be limited in attracting the business of his neighbors, the Hunts Point Market, whose fresh produce wholesalers represent the greatest potential for rail service coming into the City and Long Island, but whose reliance on trucks has grown because of a lack of rail competition and accompanying lack of service. *Id.* at 3-4.

As Mr. Riccio correctly observes, his ability to provide such service has been limited with Conrail. *Id.* at 4. However, before this transaction, all shippers and consumers in the New York/New Jersey region were similarly situated and, even though New Jersey enjoyed some operational advantages, the playing field was relatively even. *Id.* The proposed transaction would destroy that level playing field and provide benefits to his counterparts on the west side of the Hudson and in New Jersey -- in the form of lower rates, better service and alternative routing options that would accompany the arrival of competition -- that Mr. Riccio will not enjoy.

Likewise, there are numerous shippers who will be adversely impacted by the proposed transaction. Attached to the comments submitted by the State of New York, NYCEDC's co-applicant for trackage rights on the east side of the Hudson River, are verified statements from: (i) Steven D'Arrigo, President of D'Arrigo Bros. Co. of New York and Chairman of the Traffic Committee of the Hunts Point Market; (ii) Jim Christie, Regional Vice President of USA Waste (the current tenant at the Harlem River Yard); and (iii) Alan Firestone of Firestone Plywood Corp. (a shipper located in Hicksville, on Long Island). All of these shippers/receivers demonstrate clearly how the absence of competition, and now the advent of competition to their competitors in New Jersey, will have harmful and immediate impacts on their businesses.

The ability of these shippers, receivers and yard operators to compete will also be hampered by the fact that the new monopolist, CSX, will have a different market orientation than Conrail, one which will encourage less not more attention to their needs. As described more fully in the Verified Statement of Andrew C. Robertson ("Robertson V.S."), attached to the Joint Responsive Application, Conrail now serves as the terminal railroad for the Northeastern United States where it terminates much more traffic than it originates. Robertson V.S. at 4. Because so much traffic originates outside its territory, Conrail can be neutral towards its interchange railroads (and their shippers) from the South, West, Midwest, Canada and New England. *Id.* Unlike Conrail, CSX originates many of the commodities consumed by rail users in the Northeast such as coal, lumber and paper. *Id.* Following industry practice and consistent with their desire to maximize single system routing, CSX can be expected to favor its system longhaul when it acquires its portion of Conrail. *Id.* In practice, Mr. Robertson notes, CSX will favor shippers in the South over those in places such as Maine or Quebec and this will be harmful to New York City receivers who often look to Canadian and Western sources for needed materials. *Id.* at 6.

A clear example of this problem can be found when looking at the rail market for paper. *Id.* at 6. Currently Conrail customers in the Midwest and Northeast source paper from a broad range of off-line origins such as Maine, Quebec, Georgia, Louisiana and Wisconsin. *Id.* By contrast, NS and CSX customers source most of their paper from Southern points on NS or CSX, respectively. *Id.* So, even if CSX chooses to maintain adequate service standards on the east side, it will likely choose to source traffic from its own origins, thus precluding Canadian, Western and New

England shippers of paper from competing in the New York market. *Id.* at 6-7. As Mr. Robertson emphasizes, New York City and Long Island shippers and receivers will not have a semblance of intramodal competition to check CSX and ensure that their needs are being met. *Id.* at 7.

There is also the fear, given the market orientation of CSX, and the fact that CSX will have to compete with NS for business on the west side of the Hudson, that CSX will choose to demarket the service on the east side of the river. *Id.* at 5-6. This result would be equally harmful in its impact on the ability of shippers and receivers to move traffic by rail, and therefore to compete in the market.

B. The Proposed Transaction Insofar As It Relates To New York City And Long Island Is Against Public Policy.

The adverse impact of the transaction is not limited to shippers and receivers. New York City itself will suffer greatly in the absence of competition along the line east of the Hudson River. Attached as Attachments 2 and 3, respectively, are the verified statements of Randy L. Levine, the Deputy Mayor of Economic Development, Planning and Administration for the City of New York ("Levine V.S.") and Michael Canavan, Vice-President of NYCEDC ("Canavan V.S."). As both of these verified statements demonstrate, there are very important and far-reaching public policy concerns with the transaction. The first, of course, is the economic well-being of the City and its ability to maintain and attract manufacturing and distribution facilities within City limits. As Mr. Canavan notes, New York City is not just a huge consumer market. There are still manufacturing facilities in the City and on Long Island and the construction industry remains strong. Canavan V.S. at 2. And both markets are growing rapidly. According to a recent study conducted by Mercer Management Inc. ("Mercer"), the potential for rail oriented traffic --

commodities which would commonly move by rail to and from the nation's rail network -- in the New York City area is expected to grow [] by the year 2020. *Id.* at 3. So, when the many businesses and individuals in New York and Long Island that are heavily reliant on transportation services are harmed because of the competitive options (or lack thereof) available to them in their present location, they will naturally look to relocate to places where they will enjoy greater competition and more choice of service. The harm demonstrated in Part IV.A., *supra*, therefore, will not only affect the individual businesses identified there, but will also adversely affect the City itself.

As Messrs. Levine and Canavan also emphasize, the lack of adequate rail alternatives means resort to trucks. Levine V.S. at 2; Canavan V.S. at 1. In the past decade, traffic overall on the cross-Harbor tunnels and bridges has increased significantly reaching nearly 30,000 trips per day. Canavan V.S. at 4. Under the proposed transaction, that number will continue to increase dramatically. The increased congestion associated with the use of these trucks will also interfere with the economic development of the businesses and industry located with the City. *Id.* When traffic rises to an unacceptable level and businesses are given no alternative means of moving or receiving their goods, these businesses will be adversely impacted. If the problem is chronic, as it is today and will be even more so if the transaction is consummated (when competition on the west side of the Hudson, with its attendant lower rates and better service, will likely encourage City and Long Island shippers to truck their goods to and from New Jersey), manufacturing and distribution facilities which rely very heavily upon transportation services may

choose to relocate out of the City. *Id.* The use of trucks also takes their toll on the roadways and on the bridges, which causes great environmental concern to the City. *Id.* Trucks add congestion to overcrowded highways and their emissions add to air pollution in a metropolitan area that needs to find ways to improve, not worsen, the quality of the air. *Levine V.S.* at 2-3; *Canavan V.S.* at 4.

Lack of competitive rail options also adversely impacts the very important task of moving waste out of the City. Transportation of waste as a freight commodity has increased steadily over the past several years growing to nearly 14 million tons per year in 1995. *Canavan V.S.* at 2. With the upcoming closing of the Arthur Kill landfill on Staten Island, transportation of waste beyond the City will become an even greater issue than in the past. *Id.* Efficient and cost effective rail service must exist as the City moves forward with its plans to manage an additional 13,000 tons of municipal solid waste a day. *Id.* at 2-3. Otherwise trucks will once again be depended on at the cost of increased congestion, expense and safety. *Id.* at 3.

Given its current infrastructure, the City has little choice in the manner in which it moves freight into and out of the City. The float bridge system now operating through the New York harbor is inadequate because of limited capacity and problems with the current operator. *Canavan V.S.* at 3. The only alternative, absent trucks, which as noted above pose serious environmental and economic development problems, is the use of the east line of the Hudson. Yet the lack of competition precludes meaningful use of this route. Without competition, and in the face of new competition in Northern New Jersey, the line east of the Hudson will decline even further. The proposed transaction, while itself not the cause of some of

the problems of freight rail transportation in the New York City region, will nevertheless directly and adversely impact the competitive balance of the region and market in and around New York City. Where monopoly currently produces mediocre service and rates for all in the region, the advent of competition for a limited segment of the market will destroy the viability of rail freight service for those not lucky enough to get competition. Such an outcome is surely not in the public interest and should not be acceptable to the Board.

VI. The Request for Relief

NYCEDC and the State of New York have filed a Joint Responsive Application seeking trackage rights to ameliorate the competitive harm to New York City and Long Island that will certainly result if the transaction is approved as proposed. These trackage rights, as set out in greater detail in the accompanying Joint Responsive Application, are consistent with the public interest. The Primary Application should not be approved unless they are granted.

First, pursuant to 49 C.F.R. § 1180.6(a)(2)(i), the trackage rights sought would extend to shippers and receivers in New York City and Long Island the benefits of intramodal rail competition that Applicants propose to confer on their counterparts located in the Northern New Jersey Shared Assets area. The request is narrowly tailored to foster intra- and intermodal competition where it is needed and to address the public health and safety concerns of the City of New York, discussed above, that accompany a lack of competition and increased reliance on truck. Second, as demonstrated by the verified statements of Walter Schuchmann of R.L. Banks and Associates and Donald N. Nelson, president of Metro-North, attached to the Joint

Responsive Application, the line is fully capable of handling the operations of a second carrier. CSX witness John W. Orrison in deposition testimony acknowledged that operations more extensive than currently in place -- in the range of 30 to 50 more freight trains -- could co-exist on the line with passenger service. Deposition of John W. Orrison, September 11, 1997, at 51-52. Likewise, Metro-North has indicated that it is able and willing to negotiate a trackage rights arrangement with another party to operate over its portion of the line between CP-75 near Poughkeepsie, N.Y. and Mott Haven Junction, N.Y. Nelson V.S. at 3, 9.⁴

Third, there is enough divertible traffic that is now either moving via rail through New Jersey or by truck to the City and Long Island to support the operations of a second carrier on the line. Using Conrail's 1995 waybill files, Mr. Robertson analyzed how much existing traffic could potentially be diverted to the new operator. He concluded that although the precise amount of divertible traffic would depend upon which carrier was selected to be the operator -- there are a

⁴ It is Metro-North's position that it is not prohibited or otherwise restricted from granting the necessary rights by the terms of any agreements now in effect between Metro-North and any other party, including Conrail. Nelson V.S. at 3, 8-9. On information and belief, however, Conrail and/or CSX may challenge this position, and claim exclusive rights to conduct rail freight operations over the Metro-North line between CP-75 and Mott Haven Junction. As shown herein and in the Verified Statements of Witnesses Nelson and Schuchmann, attached to the Joint Responsive Application, the subject lines can accommodate coordinated operations by two (2) rail freight carriers safely and efficiently, based on existing capacity and traffic projections. As such, and given that trackage rights over the Metro-North lines in favor of a second freight carrier are a necessary part of the overall transaction described by the Joint Responsive Application, NYCEDC and the State of New York have requested that in addition to imposing the conditions described in the Application, the Board issue a declaration that pursuant to 49 U.S.C. §11321(a), Metro-North may enter into agreements to grant the necessary rights over the lines between CP-75 and Mott Haven Junction, notwithstanding any purported restrictions on such authority that may be claimed by the Primary Applicants or others.

**Highly Confidential
Redacted Material**

number of choices, among them the Delaware & Hudson, the New York & Atlantic or even the NS -- there is no doubt that the total existing and potential traffic base for a new east of the Hudson carrier is large enough to support a new competitor to CSX and NS service in New Jersey. Robertson V.S. at 8. To arrive at this conclusion, Mr. Robertson looked first at Conrail's carload traffic to and from the New York Business Economic Area (BEA12) that is east of the Hudson River. *Id.* at 8-9. Excluding traffic from the General Motors automotive plant at Tarrytown, N.Y which recently closed, and excluding traffic moving to and from CSX points and those Conrail stations to be inherited by CSX (which would likely remain with CSX even if a second carrier were present on the line), Mr. Robertson concluded that the remaining traffic base would be approximately [] cars southbound and [] cars northbound. *Id.* at 9. The southbound number represents mostly processed food, paper and produce, while the northbound number is largely solid waste products leaving New York City and Long Island. *Id.*

Mr. Robertson also looked at traffic moving in and out of the New Jersey side of the New York BEA as a potential source of traffic. *Id.* Again, excluding all carload traffic to/from Conrail, NS and CSX stations and the states they dominate in the South and Midwest, as well as several commodities such as chemicals, hazardous materials, waste and coal because they were unlikely candidates for diversion, Mr. Robertson found that the inbound New Jersey carload traffic totaled over [] cars with about [] cars outbound. *Id.* at 10. Mr. Robertson then made the assumption, based upon the ability of the new carrier to find cooperative interchange partners, that the new carrier would be able to capture 50% of the

non-CSX traffic on the east side and 10% of the non-CSX traffic on the New Jersey side. *Id.* at 11.

Combining both New York and New Jersey diversions, he then determined that the new carrier could attract [] cars southbound on the line east of the Hudson with [] carloads moving northbound. *Id.* Making final assumptions that the equipment could not be reloaded in New York and that service would take place 260 days per year, Mr. Robertson concluded that over [] loaded and empty carloads per year could be generated, enough to move an additional train of carload traffic per day. *Id.* This figure, Mr. Robertson concluded, would only be the starting point for a new carrier because of the great potential for development of new rail traffic coming from substantial untapped intermodal and truck traffic that exists in the region. *Id.*

The exercise of trackage rights by a new carrier would, in light of the discussion above, pose no undue burden on the operations of CSX. The operations of a second carrier would co-exist with those of CSX and would be in addition to the level of service that CSX has provided for in its Operating Plan. Nor would the exercise of trackage rights frustrate CSX's ability to obtain the anticipated public benefits of the proposed transaction. As stated above, whatever the anticipated public benefits of the transaction to be derived on other parts of the Conrail system, none of those benefits will inure to CSX as a result of its succession to Conrail's monopoly on the line east of the Hudson. By its own admission, CSX will maintain the same level of inadequate service that Conrail currently offers and has no immediate plans to offer anything more. See Application, Vol. 3A, at 447. The

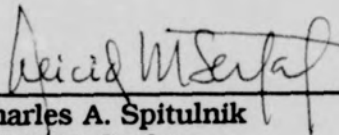
trackage rights requested by NYCEDC and New York State will therefore promote the statutory goals of effective competition and adequate service to the public without affecting the anticipated benefits of the transaction that will be realized by the Applicants elsewhere.

VI. Conclusion

For all of the reasons stated herein, and in the accompanying Joint Responsive Application of the New York City Economic Development Corporation and the State of New York, NYCEDC respectfully urges the Board to condition the approval of the proposed transaction upon the grant of relief set forth in the Joint Responsive Application.

Dated: October 21, 1997

Respectfully submitted,



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ATTACHMENT 1

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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

Verified Statement of Anthony M. Riccio, Jr.

My name is Anthony M. Riccio, Jr. and my business address is 98 Lincoln Avenue, Bronx, N.Y. 10454. I am Senior Vice President of the Galesi Group and Vice President of its subsidiary, the Harlem River Yard Ventures, which is the operator of the Harlem River Yard in the Bronx. Harlem River Yard Ventures operates the yard pursuant to a lease executed in 1991 with State of New York, the owner of the property. Prior to my work with the Galesi Group and Harlem River Yard Ventures, I was a Commissioner of the Department of Ports and Trade for the City of New York from 1989 to 1990, Assistant Commissioner and Deputy Commissioner for the Department from 1986-1988, head of the Mayor's office of rail freight development from 1980 to 1986 and I worked in policy research for the Office of Economic Development for the City of New York from 1972 to 1980. During my tenure at the Office of Economic Development, I participated on a city task force which addressed the establishment of Conrail and implementation of the Final System Plan as it pertained to the City of New York. I am

thus quite familiar with the rail transportation issues that have been and continue to be of importance to the City of New York.

I am filing this verified statement in support of the request for rail competition through trackage rights that is being made by both the City and State of New York along the line east of the Hudson River. As a relatively new rail operator that hopes to bring more tenants to the yard and promote a new intermodal terminal within the yard that will be complete by Spring of 1998, I am particularly troubled by the negative impact on competition that the proposed transaction will have on shippers and consumers in New York City and Long Island. If shippers and consumers on the west side of the Hudson will be the beneficiary of increased competition, as the applicants are proposing to do, there is little doubt in my mind that the shippers and consumers on the east side, who will not receive such benefits, will be severely disadvantaged in the marketplace. From my own perspective, my efforts to promote the Harlem River Yard as an option for rail and intermodal traffic will be greatly hindered by the comparative lack of choice that I can offer prospective tenants and customers.

As I said earlier, the Harlem River Yard Ventures entered into a long term lease for the Harlem River Yard in 1991 with the State of New York. The lease was the culmination of a public bidding process undertaken by the State of New York in 1988. Although there was some intermittent traffic over the years through the yard, the Harlem River Yard was essentially dormant since implementation of Final System Plan, from which it was

excluded. After the lease was executed, we began the process of preparing the yard for operations. This involved environmental reviews and other state and local regulatory requirements. Our operations commenced in June, 1996, with USA Waste being our first tenant. Since 1996 we have moved over 20,000 containers of solid waste through the yard. Our hope is to expand use of the yard to other tenants and exploit the existing market in New York for the movement of solid waste out of the City and the movement of goods into this market. So, in addition to our desire to expand service for USA Waste, we are expecting other tenants to come to the yard. We are now planning for the New York Post to commence construction on a new newsprint plant at the yard sometime in 1998 and there is the possibility that a new paper recycling mill will also be constructed at the yard. A lease has already been signed with the New York Paper Mill Corporation in anticipation of a closing on the financing of the project in July, 1998. If all goes according to plan, construction will begin in the last quarter of 1998. In addition, our goal is also to serve the Hunts Point Market, a fresh produce market located not far from the Yard in the Bronx. Fresh produce represents the largest commodity potential for intermodal traffic moving through the yard, in either trailers or containers on flatcars. To date, the Hunts Point Market is served primarily by truck because of the delays, poor service and high rates that Conrail currently offers to them. In the produce industry, delay of even one day can adversely impact business, since failure to go to market one day does not mean that losses can be made up another day. If

anything the opposite is true, given the demand for produce in the marketplace, a resulting oversupply because of delays could be devastating.

My ability to attract new tenants or customers of the yard is therefore contingent on being able to offer competitive, efficient service at attractive rates. Although our ability to offer such service with Conrail in the past has been limited, all shippers and consumers in the New York/New Jersey region were similarly situated and, even though New Jersey enjoyed some operational advantages, the playing field was relatively even. The proposed transaction completely destroys the level playing field and provides advantages to shippers, consumers and my counterparts on the west side of the Hudson and in New Jersey that we on the east side of the river will not benefit from.

One of the major gateways for transporting goods to the region is from Chicago and points West, and from the north in Canada. Our ability to exploit traffic from the north, such as bulk flour, newsprint and other paper products is severely impaired by the fact there will be no competition -- and thus no competitive rates or service -- on the line east side of the Hudson. With competition along the west side of the Hudson, there is simply more incentive for goods to move from Canada and out west along that line to intermodal facilities in Westchester or northern New Jersey, and then by truck to the City and Long Island. This means that our yard and proposed intermodal facility will be at a great disadvantage from the start.

As I noted above, we are in the process of constructing a new intermodal terminal within the Harlem River Yard which will be complete by the spring of 1998. That facility will have the capacity to move up to 100,000 trailers per year, and will have the ability to serve all sorts of businesses and industry, not only the Hunts Point Market mentioned earlier, but also those industries involving meats, other foodstuffs, lumber, manufactured goods, equipment and small machinery, parcels and, perhaps, the garment industry. From an environmental standpoint, this would translate into 100,000 less trucks on the City's roads and bridges. This great potential, coupled with the ease and efficiency of movement that result from use of the newly completed Oak Point Link -- which is almost operative and will provide the required clearance to serve as a detour for freight traffic around the commuter traffic in the vicinity of the Harlem River Yard -- will go untapped if I am unable to market the facility. And that is what I fear will happen and what the Applicants themselves have predicted. In my discussions with CSX representatives, they questioned the viability of intermodal service on the east side of the Hudson, especially in light of the intermodal service that will be brought to Northern New Jersey. Because CSX can control the levels of traffic on both sides of the river, it will promote intermodal service to a greater extent along the west side, where competition will be greater and where CSX can favor its long haul.

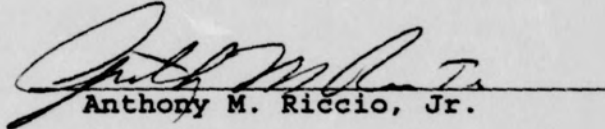
The bottom line is that the proposed transaction will put me at a severe competitive disadvantage in expanding use of the

Harlem River Yard to my current tenant and prospective ones, and in promoting the new intermodal terminal that I hope will be operative in the Spring of 1998. If my counterparts on the west side of the Hudson and in New Jersey have alternative competitive options while I do not, I will be hard pressed to convince local businesses that they will get better service and rates from my yard than if they move or receive traffic via New Jersey or the west side of the Hudson. The reality is that they will not. Competition means better rates and service and those facilities who have it will attract more customers than I will. My future success is dependent upon competition. While the Applicants will most certainly say that I have nothing to complain about because my situation does not change because of the transaction, they are wrong. When my competitors for traffic are given competitive alternatives when I am not, that puts me at a disadvantage. As I understand it, when there is an adverse impact on competition, the Board must do something to fix it. As I have shown above, my ability to compete is severely undermined by the increased competition that will be brought to Northern New Jersey and the west side of the Hudson. The plan that the City of New York and the State of New York have proposed will level the playing field and bring competition to the east side of the Hudson. The Board should grant their request.

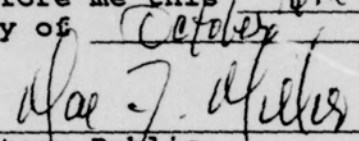
VERIFICATION

State of New York)
)
Borough of the Bronx) ss:

Anthony M. Riccio being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.


Anthony M. Riccio, Jr.

Subscribed and sworn to
before me this 10th
day of October, 1997.



Notary Public

My commission expires:

MAE F. MILLER
Notary Public, State of New York
No. 01M15079388
Qualified in New York County
Commission Expires June 2, 1999

ATTACHMENT 2

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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

**Verified Statement of
Randy L. Levine**

My name is Randy L. Levine. I am Deputy Mayor of Economic Development, Planning and Administration for the City of New York. I am submitting this verified statement in support of the application of the New York City Economic Development Corporation ("NYCEDC"), on behalf of the City of New York, together with the State of New York, for trackage rights, to be operated by a neutral third party carrier up the east side of the Hudson River from New York City to Albany over the lines from.

- Fresh Pond, in the Borough of Queens, N.Y. to Oak Point, N.Y. ;
- then from Oak Point, N.Y. over the line owned by the Metropolitan Transportation Authority to Poughkeepsie, N.Y.;
- and finally from Poughkeepsie, N.Y. to Selkirk, N.Y. and points north therefrom where Delaware and Hudson Railroad currently interchange with Consolidated Rail Corporation ("Conrail").

New York City and its surrounding metropolitan region is one of the largest consumer markets in the world. The City has been faced with a situation for the past 20 years where Conrail has had a virtual monopoly over rail freight transportation to and from this area. While there

is competition from other modes of transportation, the fact of life for businesses that rely on rail transportation has been that Conrail has been their only meaningful option. As a result when we in the City of New York learned of the plans of CSX Transportation, Inc. ("CSXT") and Norfolk Southern Corporation ("NS") to acquire and divide the assets of Conrail, we were delighted. We read of the plans to bring meaningful rail competition to this great city and its surrounding metropolitan area for the first time since the formation of Conrail in 1976, and we heard of the statements by public officials that stressed the importance of preserving competition where it existed and introducing competition where it did not already exist. However, we were seriously concerned when we learned that CSXT and NS considered that bringing two rail companies to the borders of the City and into Northern New Jersey was enough rail competition for this market. It is not. We have a substantial market for rail transportation within the boundaries of the City's five boroughs and to the east on Long Island. We saw immediately that a significant part of the industrial and consumer markets in the City would be left once again without meaningful competition for rail service because of the way CSXT and NS decided to divide up the assets of Conrail. Under their plan, shippers on the east side of the Hudson River still have only one choice, just as they have for the past 20 years.

This arrangement has produced a number of other, related problems as well. Intermodal traffic has grown substantially in the City, just as it has nationwide. Because all of the major intermodal rail terminals are on the west side of the Hudson and of the harbor, almost all traffic slated to move by rail to or from the east side of the River to points north and west must first move via truck. The City's congested streets and bridges are taking a beating from this and there is no room to expand. Not only is this worsening the congestion on roadways that New Yorkers use to reach work and the City's many other attractions, the trucks contribute heavily to increased air

pollution in this area.

Continuing this arrangement without change is unacceptable to the City of New York. Mayor Giuliani wrote to John Snow of CSXT on May 29, 1997 expressing his objection to the proposed restructuring of the network in the New York City region. I am attaching a copy of his letter to this Statement. While we now recognize that there are several carriers that could provide competition on the east side of the Hudson, I want to reiterate the basic point he made in his letter. For the City of New York, the proposal to restructure the Conrail network which allows only CSXT to operate on the line east of the Hudson River is unacceptable. The request we are making for trackage rights to a neutral third party carrier, together with the officials from the State will address that situation. Without approval of the proposed trackage rights, the transaction must not be approved.

Verification

City of New York

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SS:

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Randy L. Levine, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

BE

Randy L. Levine
Deputy Mayor of Economic Development,
Planning and Administration

Subscribed and sworn to
before me this 20th
day of October, 1997.

Cheryl A. Elmore
Notary Public

My commission expires:

9/28/29

CHERYL A. ELMORE
Notary Public, State of New York
No 41-4907365
Qualified in Queens County
Commission Expires Sept 28, 1997

ATTACHMENT 3

Public Version

Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Finance Docket No. 33388 (Sub-No. 54)

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

**Verified Statement of
Michael Canavan**

My name is Michael Canavan. I am Vice President of the New York City Economic Development Corporation ("NYCEDC"). I have been with NYCEDC since September, 1994, when I was hired as a project manager. I am a graduate of the Columbia University School of International and Public Affairs where I earned a Masters Degree in Public Administration in 1994. My primary day-to-day responsibilities include addressing issues affecting rail freight service to and from the New York City metropolitan area. I am submitting this verified statement in support of the Joint Responsive Application of NYCEDC, on behalf of the City of New York, together with the State of New York for trackage rights to be operated by a neutral third party carrier up the east side of the Hudson River from New York City to Albany, over lines described more fully in the Joint Responsive Application. Without these trackage rights, shippers and receivers in New York City and Long Island, which comprise the largest consumer market in the United States, will be without direct access to competitive rail service and will have no choice but to resort to trucks. This is a problem the City has faced since

the formation of Conrail in 1976, but which is aggravated immensely by the fact that increased competition will be brought by the proposed transaction only to select parts of the region, which do not include the City or Long Island.

NYCEDC is a private non-profit corporation created by the City of New York. Its mission is to serve as a catalyst for public and private investment to promote the long term viability of New York City, and to attract and provide opportunities to its businesses and citizens. As part of that mission, NYCEDC is responsible for securing transportation access to the region's markets and overseeing the City's freight transportation and distribution facilities.

A substantial segment of the region's markets has suffered from the lack of meaningful access to competitive rail freight service for a long time. This suffering essentially dates back to the formation of Conrail in 1976 and the removal of any real competition for rail freight service from the metropolitan area. Shippers and receivers in the City's five boroughs and on Long Island have had very limited choices, and increasingly unsatisfactory ones, for moving freight to and from their facilities.

This is not just a huge consumer market. There are still manufacturing facilities in the City and on Long Island. The construction industry remains strong, and lumber and other building materials must be delivered to these markets. Food and consumer products, of course, are a substantial part of this market. Furthermore, waste is among the largest commodities outbound from this market, and has been for some time. Transportation of waste as a freight commodity has increased steadily over the past several years growing to nearly 14 million tons per year in 1995. With the upcoming closing of the Arthur Kill landfill on Staten Island, transportation of waste beyond the

**Highly Confidential
Material Redacted**

City will become an even greater issue than in the past. Efficient and cost effective rail service must exist as the City moves forward with its plans to manage an additional 13,000 tons of municipal solid waste a day. Otherwise trucks will once again be depended on at the cost of increased congestion, expense and safety.

As noted earlier, we are already a huge consumer market and one expected to grow even more. As shown in a recent study conducted for us by Mercer Management Inc. ("Mercer"), the potential for rail oriented traffic -- commodities which would commonly move by rail to and from the nation's rail network -- in our region is expected to grow [] by the year 2020. Mercer Study at Task 1 Report, p. I-14. This means that there will be an even greater need than there is today for adequate, competitive rail service. The transaction will further reduce our chances of getting that competitive service and will aggravate the problems that we have today moving the substantial traffic that goes in and out of the City and Long Island.

Today, the Long Island Railroad is available to provide freight transportation services for interested shippers, but it too has been constrained in its ability to provide truly competitive access to the national freight network because of the lack of choices as to how to move the freight from the Island or from Brooklyn or from Queens at the end of its freight service route. Shippers have had limited choices. They could ship by rail over the LIRR to Brooklyn, where the New York Cross Harbor Railroad provides a connection for limited volumes to Conrail's Greenville Yard. Because of limited capacity and service problems with the Cross Harbor, this is not a viable competitive alternative for the majority of shippers and receivers in the City or Long Island.

Another option for shippers has been to use trucks to and from the intermodal or transloading facilities in New Jersey or elsewhere around the northeast. While we do not disagree that service from these facilities provides access to the rest of the national freight network, the increasing reliance on truck service has increased the congestion on the City's bridges and highways. This network, already crowded with car and bus commuter traffic, bears an increasing burden from the pounding it takes from increasing numbers of trucks that are required to serve the growing markets. Traffic overall on the cross-Harbor tunnels and bridges has increased significantly in the past decade with daily truck volumes reaching nearly 30,000 trips per day. These trucks take their toll on the road ways and on the bridges. They add congestion to overcrowded highways. Their emissions add to air pollution in a metropolitan area that needs to find ways to improve, not worsen, the quality of the air we breathe.

Separate and apart from the environmental implications of the use of trucks, which are great, the increased congestion caused by trucks interferes with the economic development of the businesses and industry located within the City. Congestion means delay, and delay means bad business. When traffic rises to an unacceptable level and businesses are given no alternative means of moving or receiving their goods, their businesses will be adversely impacted. If the problem is chronic -- as it is today and will be tomorrow after the transaction is consummated when there will be greater incentive to move via New Jersey where there is competition -- businesses may choose to relocate out of the City. This is obviously of great concern to the City and one of the most important reasons why competitive rail options are needed.

A third option has been movement of freight via Conrail's line from a point referred to as Fresh Pond in Queens via the Bronx, to the Conrail line on the east side

of the Hudson River to Albany, then back down the line on the west side to New Jersey for connection to the rest of the Conrail system. Conrail has allowed this movement to happen, but has not actively promoted this route. It is not an inexpensive alternative, and has not been competitive from the perspective of the time required to complete the circuitous route. In the face of continuing problems with the Cross Harbor, Conrail has worked with us to move some of the solid waste by this route. That traffic is not as time sensitive (as long as it does not sit for too long in any one location) as some other types of traffic such as perishables. But for shippers or receivers for whom time sensitivity is an issue, this route has not been an alternative.

The route from Albany could be an important transportation resource for us. For example, the Harlem River Yard is growing and plans to open a new intermodal facility in the Spring of next year and the Hunts Point Market is a good potential source of fresh produce traffic which currently moves via truck. Each of these entities has submitted a verified statement in this proceeding detailing the potential for use of rail service and the harm that occurs in the absence of competition. Our expert, Andrew C. Robertson of Atlantic Systems, Inc., has shown that movement by rail to Albany then down the River to the City or Long Island for distribution by either truck or rail is possible and viable if good, reliable and cost-competitive service were available.

Conrail has not promoted that route. As the only game in town, it has been in a position to use and promote the route on the west side of the Hudson at the expense of the other alternative that might otherwise have been preferred by the City and by many shippers. Conrail has done nothing to improve this service on the east side line, although it has been willing to provide the service when we have needed it especially for movement of waste. For the most part, however, it has favored its line on the west

side of the River, and has aggressively promoted the use of its intermodal facilities in New Jersey or elsewhere in the Northeast as the distribution point for goods reaching the New York City market. As the only carrier serving the City, it was in a position to dictate to us how and where service would be provided most effectively, without regard for our own or the shippers' own views about how or by what routes the best interests of the City's consumers of freight transportation would be served. The lack of competition also brought with it higher rates, even prohibitive ones, and a level of service that is unacceptable to most of our shippers and receivers, especially those in fresh produce where time is of the essence.

We had hoped that the realignment of Conrail's routes following the acquisition of the company by CSX Transportation, Inc. ("CSX") and Norfolk Southern Corporation ("NS") would change the options available to the shipping public. Competition would bring better rates, and perhaps even more importantly, better service to the region. This, in turn, would promote the use of rail as a viable alternative to trucks and support the economy and improve the environmental concerns of the City. To our surprise and dismay, NS and CSX decided to perpetuate the existing situation and even make it worse, by introducing competition on the west side of the River and leaving a monopoly on the east. CSX has been forthcoming with us and in a number of meetings to discuss the situation indicated that it will promote traffic along the line and work with us to provide meaningful rail freight service to and from the City and Long Island. However, in spite of these good intentions, the reality is clear that CSX, like Conrail before it, will focus its efforts on the west side of the Hudson. As Andrew Robertson indicates, CSX's market orientation coupled with competition on the west side mean that CSX will likely do even less than Conrail to promote the line. CSX's initial projections confirm that,

at least at the outset, CSX will move the same number of trains that Conrail did. Even if CSX were to improve service, this still is no replacement for meaningful competition, which will drive down rates and increase the level of service provided to our shippers and consumers.

As we see it, the transaction will worsen the competitive posture of the shippers and receivers on the east side of the Hudson. All shippers and receivers, such as food storage warehouses and other bulk distribution facilities in New Jersey, will, if the transaction is approved, have a choice available for goods moving west and south since both CSX and NS will reach the Shared Assets Operating Area and will be able to compete for traffic to and from there. Facilities in the City and on Long Island will be at a disadvantage, with access to only one carrier providing direct rail service, and at the mercy of the routings this carrier, CSX, will decide to favor. Think, for example, of the situation that will face a receiver of newsprint paper in the City. If the purchasing department wants to source its paper supply from New England or Canada, the transportation manager will turn to CSX for rail service. There, he or she will face the likelihood that CSX will give rates that favor its long haul from southern paper mills, rather than provide competitive costs to the shorter hauls that may be involved with moving the product the buyer wants from the mill in the Northeast. The paper consumer will have no real alternative available, unless there is a competing carrier that has direct access to the east side of the River and the ability to quote a competitive rate for service into the City from that paper mill.

As a result, we and our colleagues in the administration of New York State, have chosen to pursue acquisition of trackage rights over the east side line for an operator that we will select, and whose interests will lie in insuring the availability to our

markets of a competitive transportation alternative. NYCEDC sees this route via the line on the east side of the Hudson River as one way of improving access to the rail network for the City's shippers and receivers. We believe that, working with a motivated operator, we can see improved service times to Albany, where the line connects with not just CSX, but also Canadian Pacific, and now NS, as a result of its arrangement with CP for haulage services between Sunbury, Pennsylvania and Albany.

The relief NYCEDC is requesting here will ensure that competitive alternatives are available to all shippers and receivers in this region, not just those in New Jersey. Approving a transaction that preserves and in fact worsens an existing competitive disadvantage is not in the interests of the public of this region. Approving the trackage rights we seek would fix that problem, and would make the proposed realignment of the properties and operations of Conrail's system consistent with the public interest.

Verification

City of New York

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SS:

Michael Canavan, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Walter Brown

Subscribed and sworn to
before me this 15th
day of October, 1997.

Robert Amaze

Notary Public

My commission expires:

4/21/99

DEBORAH A. MCGOVERN
Notary Public, State of New York
No. 01MC5076459
Qualified in Queens County
Commission Expires April 21, 1999

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 1997, three copies of the foregoing **public version** of the Comments Of The New York City Economic Development Corporation (NYC-9) were 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

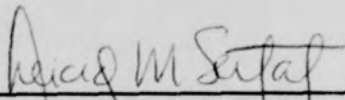
Samuel M. Sipe, Jr.
David A. Coburn
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, N.W.
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Richard A. Allen
John V. Edwards
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Dennis G. Lyons
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555 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 U.S. mail, postage prepaid upon all other Parties of Record in this proceeding.



Alicia M. Serfaty

STB

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10-21-97

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182909

182909

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2550 M STREET, N.W.
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October 21, 1997

By Hand

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

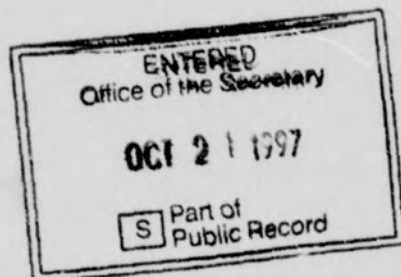


Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company --
Control and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail
Corporation

Dear Mr. Williams:

Enclosed for filing are an original and 25 copies of PA-8, the Comments of the Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation.

Also enclosed is a diskette containing the filing in WordPerfect 5.1.



Sincerely,

John L. Oberdorfer
John L. Oberdorfer

182909

PA-8

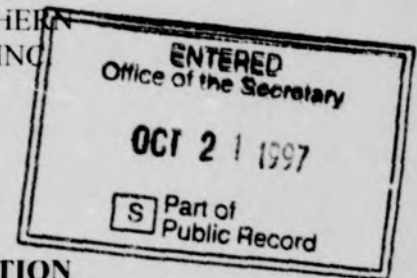
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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



COMMENTS OF
THE COMMONWEALTH OF PENNSYLVANIA,
GOVERNOR THOMAS J. RIDGE AND THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION



The Commonwealth of Pennsylvania, Governor Tom Ridge and the Pennsylvania Department of Transportation (collectively, "Pennsylvania") support of the Control Application and respectfully file these comments.

I. Introduction

Pennsylvania is railroads. Today, with 70 railroads, Pennsylvania ranks first in the nation in the number of operating railroads and with 5,400 miles of track, the state ranks fifth in track mileage. One-third of all U.S. rail traffic moves through Pennsylvania -- befitting our status as the Keystone State. Railroad employment totals nearly 13,000 workers in the Commonwealth, the third highest in the nation, and railroad workers live in 62 out of 67 counties in the state. These numbers tell the story of the role of railroads in Pennsylvania. The impact of the acquisition of Conrail will determine how railroads will operate well into the 21st Century -- not

just here in Pennsylvania, but ultimately in the entire country as well. We in Pennsylvania are confident that this acquisition is in the best interest of our economy, our workers, our shippers and our railroads.

Railroads have a rich heritage in leading the growth and development of the Commonwealth. In February 1854, the Pennsylvania Railroad began operating a through route between Philadelphia and Pittsburgh -- opening a new chapter in the nation's and the Commonwealth's transportation history. Trains were the workhorses in transporting coal, lumber, other raw materials and finished products to factories and the marketplace. Towns sprang up around the railroad. Businesses emerged. Jobs were created. Railroads were the economic lifeblood of the Commonwealth. While the glory days of railroading may be gone -- the working days of trains are not. Railroads will continue to play a key role in the economic well-being of Pennsylvania.

Governor Tom Ridge and the Department of Transportation are committed to working with the acquisition partners to protect Pennsylvania's interests in this transformation of the eastern rail industry. Many of our shippers including coal, chemicals and lumber, are dependent on our rail network to move their commodities. The state recognized the importance of rail by recently investing \$38 million in infrastructure improvements to permit doublestack container shipments across the Commonwealth, a crucial development to keep Pennsylvania and its employers competitive in the work marketplace. In addition, Pennsylvania was one of the first states in the country to formally establish a Rail Freight Advisory Committee (1984) which represents the rail freight industry on key rail freight issues. Pennsylvania has one of the most effective rail freight assistance programs in the nation and has provided an average over the past

five years of \$8-9 million to railroad operators and shippers on the lines. Without this support, many of our short lines would not be in business and would be unable to feed traffic to the Class I railroads. Pennsylvania's support has thus provided additional carloadings and revenues to the Class I railroads' systems at the same time it has enabled them to avoid the expenses of operating these light density lines.

The proposed Conrail transaction holds the promise of making the Commonwealth an even more competitive business location in the future, enhancing Pennsylvania's aggressive and successful industrial development program.

II. Discussion of Pennsylvania's Position

Pennsylvania believes that the proposed transaction will significantly benefit the Commonwealth and its citizens. Benefits include (1) increased competition between NS and CSX in the Philadelphia/South Jersey Shared Assets Area and in the Monongahela coal fields, (2) competition between NS and motor carriers for business throughout much of Pennsylvania and competition between CSX and NS for intermodal traffic in portions of eastern Pennsylvania, (3) the presence of two carriers in southwestern and southeastern Pennsylvania competing for traffic to and from the South, (4) construction, expansion or upgrading of repair shops, intermodal facilities, yards, dispatching offices, and an automotive loading and unloading facility, among other facilities, (5) new and more frequent service, (6) industrial development assistance from Applicants, (7) new access by the CP Rail system to Harrisburg, and (8) reduced truck traffic on Pennsylvania's highways as a result of greater rail penetration into the intermodal market.

Representatives of the Governor and the Pennsylvania Department of Transportation have had numerous meetings with the Applicants regarding the benefits of the transaction for Pennsylvania. During the course of these meetings and in their filing Applicants have made commitments regarding investments and other benefits to the Commonwealth. These include contributions to Pennsylvania's economic development efforts, important expansions of Conrail's Juniata locomotive repair shop and Hollidaysburg car repair shop near Altoona, construction, expansion or upgrading of several intermodal facilities, investment in an automotive loading and unloading facility in the Philadelphia area, establishment of a regional and divisional headquarters in Pittsburgh and a divisional headquarters and dispatching center in Harrisburg, several track relocation projects, and doublestack clearance projects. We expect the Applicants to adhere to all commitments made in the Control Application. For a partial list of these projects and facilities, see Attachment 1.

As part of our working partnership with Applicants to maintain and enhance transportation services in Pennsylvania, the Commonwealth expects NS and CSX to keep the Pennsylvania Department of Transportation apprised of significant actions that will affect Pennsylvania shortline and regional railroads. Pennsylvania has more railroads than any other state, and these smaller railroads are important links in the Commonwealth's transportation system. It is, therefore, important that NS and CSX work in good faith with Pennsylvania shortline and regional railroad carriers.

In supporting this transaction, Pennsylvania is not unmindful of the safety, congestion and other issues that have developed following the recent merger between the Union Pacific and Southern Pacific railroads. We are confident that the Board will provide the guidance necessary

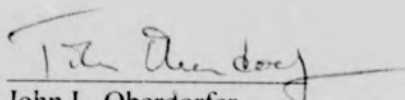
to address these issues, and that Applicants have every intention and incentive to implement their transaction in a manner that will, to borrow the words of NS Chairman Goode, be consistent with "the best standards of implementation of any acquisition in history."¹ Both Mr. Goode and CSX Chairman Snow are fully cognizant of the need to have labor agreements, training, and integration of necessary data systems in place prior to beginning operations over the integrated rail systems to ensure safe, high quality operations.² In addition, CSX and NS have stated that, prior to implementation, the Commonwealth and its local government units should be given the opportunity to provide comments to NS and CSX regarding their detailed operating plans, NS and CSX should make a determination of which Conrail employees need to be retained to provide at least the same level of service provided by Conrail, and the train schedules provided to the Surface Transportation Board should be ready to be implemented.

III. Conclusion

For reasons stated above, Pennsylvania is pleased to support the Control Application.

Respectfully submitted,

Paul A. Tufano, General Counsel
Commonwealth of Pennsylvania
Room 225, Main Capitol Building
Harrisburg, PA 17120
(717) 787-2551


John L. Oberdorfer
Patton Boggs, L.L.P.
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Dated: October 21, 1997

¹ Deposition testimony of Mr. Goode September 30, 1997, transcript page 12 lines 8-18.

² Deposition testimony of Mr. Goode September 30, 1997, transcript page 12 lines 8-18, page 14 line 20 through page 15 line 2; Snow deposition testimony September 18, 1997, page 18 line 25 through page 20 line 25.

CERTIFICATE OF SERVICE

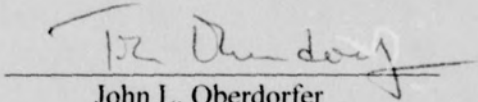
I hereby certify that I have, in accordance with the Board's Decision No. 2 in this proceeding, served copies of the foregoing comments this 21st day of October, 1997 by first class mail upon all parties of record and by hand upon the following:

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
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Washington, DC 20426

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John L. Oberdorfer

ATTACHMENT 1

Norfolk Southern Commitments:

Philadelphia: Establish Shared Asset Area in port and city with joint access by NS and CSX; establish \$10 million intermodal facilities at Ameriport; build \$4 million Triple Crown (RoadRailer) terminal; build new \$15 million auto facility; rehabilitate track and build \$1.4 million track connection at Zoo interlocking to bypass 30th Street Station.

Plans to spend about \$120 million in various acquisition related projects in Pennsylvania during the first three years after acquiring Conrail.

Intermodal Facilities: Expand intermodal facilities located in Allentown (\$5 million improvement), Harrisburg (Rutherford Yard - includes \$40 million facility) and Pittsburgh (Pitcairn - includes \$5 million expansion).

Repair Facilities: Retool the Altoona plant for locomotive truck overhaul and intermediate wheel replacement (\$60 million retooling), expand Juniata locomotive shop (\$3 million) and invest in Hollidaysburg car repair shop (\$4 million capital improvement). Locomotive maintenance shops in Pittsburgh and Harrisburg will be consolidated in Pittsburgh, at the Conway Yard, with a capital investment of \$30 million.

Region/Division Headquarters: Establish new regional and divisional headquarters at Pittsburgh and new divisional headquarters (including dispatching center) at Harrisburg.

Relocation of NS main line from 19th Street in Erie.

Establishment of haulage service by CP for NS between Harrisburg and Binghamton.

Granted North Shore Railroad the ability to connect their five disconnected railroads via overhead trackage rights between Sunbury and Lock Haven and the ability to connect with the Canadian Pacific at Sunbury for non-competitive traffic.

Provide Canadian Pacific trackage rights from Harrisburg to Reading.

Provide joint access area in the Monongahela coal fields.

Upgrade Harrisburg-Sunbury-Scranton-Binghamton line.

Support the grade-crossing projects in Chambersburg and Bethlehem.

New doublestack and intermodal freight services to the South and Midwest, including first single-line service between Philadelphia and Kansas City.

CSX Commitments:

Port of Philadelphia: build Grays Ferry Bridge - Eastwick connection (\$4 million investment); construct new state of the art intermodal facility at Greenwich Yard (\$15 million).

Plan on Conrail's vendor list to request bids for ongoing railroad work and purchases.

Expand intermodal service from Philadelphia to Boston, Florida, Atlanta and Memphis/Nashville.

Honor all Conrail contracts with SEPTA, Amtrak and short line railroads.

Partner in Conrail Inc. to manage joint shared asset company.

Equal access to Monongahela coal fields - invest \$2.9 million in Newell Yard at Brownsville.

Meadville to Cerry line sale will proceed, assisted by CSX loan to Northwest Pennsylvania Rail Authority.

Partnership with PIDC to enter into cooperative industrial development projects to expand industrial investment jobs.

STB

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Paris
Saint Paul
San Jose
Washington, D.C.

October 21, 1997

BY HAND DELIVERY

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

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 -- Transfer of Railroad Line by Norfolk Southern Railway
Company to CSX Transportation, Inc.**

Dear Secretary Williams:

Enclosed you will find the original and 25 copies of the Comments and Request for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation (NJT - 8), together with a 3.5-inch diskette containing the filing in WordPerfect 5.1.

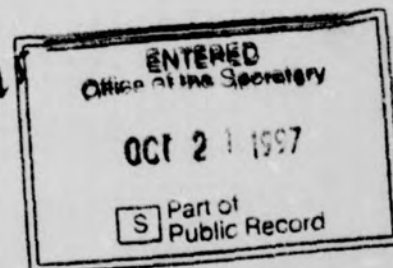
Please note that the original verification page for the Verified Statement of Frank M. Russo will be provided tomorrow.

Please stamp the extra copy of the foregoing and return it to our messenger.

Respectfully submitted,

Kevin M. Sheys

Enclosures



182907

NJT-8

BEFORE THE
SURFACE TRANSPORTATION BOARD

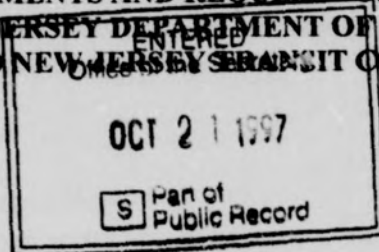
Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 38)

NEW JERSEY TRANSIT CORPORATION
-- OPERATING RIGHTS --
LINES OF CONSOLIDATED RAIL CORPORATION

COMMENTS AND REQUEST FOR CONDITIONS
OF NEW JERSEY DEPARTMENT OF TRANSPORTATION
AND NEW JERSEY TRANSIT CORPORATION



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Counsel for New Jersey Department of
Transportation and New Jersey Transit
Corporation

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

Finance Docket No. 33388 (Sub-No. 38)

NEW JERSEY TRANSIT CORPORATION
-- OPERATING RIGHTS --
LINES OF CONSOLIDATED RAIL CORPORATION

**COMMENTS AND REQUEST FOR CONDITIONS
OF NEW JERSEY DEPARTMENT OF TRANSPORTATION
AND NEW JERSEY TRANSIT CORPORATION**

I. COMMENTS

A. Introduction

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, New Jersey Department of Transportation ("NJDOT") and New Jersey Transit Corporation ("NJTC")¹ hereby submit their Comments and Request for Conditions regarding the proposed control of Consolidated Rail Corporation ("Conrail") by CSX Corporation and CSX Transportation, Inc. ("CSXT")(collectively "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR") (collectively "NS"); the division of Conrail's assets between CSX and NS; and the proposed joint

¹ For convenience, NJDOT and NJTC are sometimes collectively referred to herein as NJT. References herein to NJTC also include NJTC's rail operating subsidiary New Jersey Transit Rail Operations, Inc., which is separately referred to as "NJTRO."

operations of CSXT and NSR.

On August 22, 1997, NJT filed a Description of Anticipated Responsive Application indicating that it anticipated seeking operating rights over certain identified rail lines and that it also might seek certain other conditions.² In the interim between the filing of the Description of Anticipated Responsive Application and today's filing, NJT has continued to negotiate with the Primary Applicants in the hope that its remaining transaction-related concerns might be resolved in a settlement agreement. Although discussions continue and NJT still hopes to reach a satisfactory agreement with the Applicants, no such agreement has been reached as of this date. Therefore, NJT is submitting its Comments and Requests for Conditions.

As explained below, NJT is seeking six conditions related to the New Jersey Shared Assets Areas (collectively referred to herein as the "NJT Conditions"). The authority to condition the Primary Application (e.g., by imposing the conditions to be sought by NJT) is found in 49 U.S.C. § 11324(c). The statutory criteria for regulatory consideration of the proposed transaction are provided in 49 U.S.C. §§ 11323-25. Section 11324(d) states:

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that -

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and

² See NJT-3, Description of Anticipated Response Application, August 22, 1997.

- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

The Board interprets Section 11324(d) to require the imposition of conditions if (i) the subject transaction may produce effects harmful to the public interest, (ii) the conditions to be imposed will ameliorate or eliminate the harmful effects, (iii) the conditions will be operationally feasible and (iv) the conditions will produce public benefits (through reduction or elimination of the possible harm to the public interest) outweighing any reduction in the public benefits produced by the merger. Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982). This is a broad public interest test. Id.

NJT believes that the transactions contemplated by the Primary Application offer significant potential public benefits in the form of expanded rail freight competition for shippers in the State of New Jersey.³ However, NJT believes the operational changes and increased freight traffic densities associated with the transactions contemplated by the Application will significantly diminish the adequacy of passenger transportation to the public and, absent imposition of the NJT Conditions, the transactions would not be in the public interest. See 49 U.S.C. § 11324(b)(1).

In Decision No. 33, served September 17, 1997, the Board held that NJT was not required to file a Responsive Application as a requirement for seeking the conditions

³ NJT believes all shippers must be put on a level playing field in New Jersey, including shippers originating or terminating traffic on the rail lines of the Black River & Western Railroad, the Belvidere & Delaware River Railway and the Morristown & Erie Railroad. If those shortlines are unable to reach agreement with NS and CSX regarding dual Class I carrier access, NJT would strongly support any condition for such access sought on behalf of the shippers by those shortlines.

described herein. *Id.* at 2-3. However, because ordering the NJT Conditions would require the Board to exercise its conditioning authority, NJT is today submitting certain evidence in support of its proposed conditions and explaining why the conditions would not interfere with freight operations that are to be conducted over the relevant lines. In Decision No. 44, served October 15, 1997, the Board ordered Applicants, no later than October 29, 1997, to submit an operating plan or plans covering their operations in the North Jersey Shared Assets Area. The Board noted its statutory obligation to consider "the effect of the proposed transaction on the adequacy of transportation to the public," citing 49 U.S.C. §11324(b)(1), and stated that "[a]rrangements such as those affecting the North Jersey Shared Assets Area can have a significant impact on the adequacy of transportation." *Id.* at 4. The Board expects the Applicants' new operating plan or plans to demonstrate that the "North Jersey Shared Assets Area operating arrangements that Applicants have in mind will be feasible and will not unduly impact commuter and other rail operations in this densely populated, highly congested area." *Id.* (Emphasis added.) To the extent that NJT's concerns about the affects of the proposed transactions on the adequacy of the transportation system relate to the North Jersey Shared Assets Area, NJT anticipates filing comments on or before November 24, 1997, addressing its concerns and providing additional support for the conditions requested herein.

B. Identification of Commenting Parties

NJTC's commuter rail operating subsidiary, New Jersey Transit Rail Operations, Inc. ("NJTRO") is a Class I railroad created effective January 1, 1983 to take over commuter rail services in New Jersey, New York and Pennsylvania previously operated by

Conrail. NJTRO operates 591 trains each weekday on 972 track miles along 12 lines serving New York, NY, Newark, NJ, Atlantic City, NJ and Philadelphia, PA, from points in New Jersey. NJTRO operates service on lines it owns as well as on lines owned by Conrail (e.g. the Lehigh Line between NK and Aldene) and Amtrak (the Northeast Corridor between Trenton and New York). NJTRO also operates service under contract to Metro-North Railroad on its own lines as well as on lines owned by Conrail (Southern Tier between Port Jervis and Suffern, N.Y.).

NJTRO received \$215,700,000 in operating revenues against \$301,200,000 in operating expenses for the fiscal year ending June 30, 1997. For FY 1997, NJTRO carried 49,467,700 passengers - a record since its establishment in 1983 and some 43.3 percent above the 1982 Conrail service levels. Approximately 85,000 persons use its services each weekday.

NJTRO has an aggressive capital program to expand commuter rail services in New Jersey through capital grants and investments from the State of New Jersey Transportation Trust Fund Authority, Federal Transit Administration and New York Metropolitan Transportation Authority. Such service expansions are vital for New Jersey to increase commuter rail ridership and thereby reduce automobile trips and come into compliance with the Clean Air Act and other environmental laws. For the ten-year period ending June 30, 1997, NJTC has committed \$2,774,100,000 in capital monies for such rail service renewal, improvements and expansions.

C. Issues Not Requiring Conditions

As stated above, NJT's Description of Anticipated Responsive Application identified ten line segments on which NJT anticipated seeking Board-ordered operating rights. In the course of discussions with the Primary Applicants and from evaluating information made available by or obtained from the Applicants, NJT has determined that it has adequate contractual and other protections to satisfy its concerns with respect new start rail service on all but one of the rail lines identified in the Description. (See Section II.F, below.)

The Primary Application acknowledges that Applicants will, between them, be bound by all contracts between Conrail and third parties, as successors to Conrail. Application ("App."), Vol. 3A at 275; Vol. 3B at 307; Vol. 6A at 137. NJTC has numerous contracts with Conrail, many entered into pursuant to the Conrail Final System Plan and dating back to before the inception of NJTRO. Particularly important are NJT's contract rights related to start-up or expansion of passenger rail operations on Conrail lines.

NJTC has general contract rights for future service on Conrail lines. Under the Transfer Agreement between Conrail and NJTC, dated as of September 1, 1982, Conrail has an obligation, upon the request of NJTC, to grant trackage rights over Conrail's rail lines for NJTC commuter service not operated as of December 31, 1982, provided that NJTC is legally authorized to operate such commuter service at the time of the request. The terms for the use of any such newly granted trackage rights are the subject of the existing Trackage Rights Agreement between Conrail and NJTC. (Transfer Agreement,

Section 2.07(c)(i).)

NJTC also has specific rights on a number of Conrail lines. As examples, pursuant to the aforesaid Transfer Agreement, NJTC has retained perpetual, irrevocable, non-exclusive easements over the Delair Bridge; the Lehigh Line between Aldene and the present Conrail/Amtrak property line in Newark, NJ, and the New York Branch between West Trenton (M.P. 32.0) and Bound Brook (M.P. 58.4). Each such easement is (i) subject to the Trackage Rights Agreement; (ii) shall be exercised so as to not unreasonably interfere with freight service; (iii) assignable to NJTC's successors who operate commuter service; and (iv) terminable upon abandonment of commuter service.

D. Absent Conditions, The Operational Changes And Freight Traffic Densities Associated With The Conrail Transactions Will Have An Adverse Impact On The Adequacy Of Passenger Transportation To The Public In The State Of New Jersey

In the absence of the imposition of the conditions requested herein, the transactions contemplated by the Primary Application will have an adverse impact on the adequacy of transportation to the public in New Jersey.

The methodology CSX and NS used to arrive at projected freight train densities as a result of the transactions contemplated by the Primary Application was freight-driven and passenger-insensitive. McClellan Tr. 286-87; Orrison Tr. 534, 537. Existing passenger traffic was not factored into the density calculations, nor was any effort made to consider the potential impact of any future increases, however modest, in passenger operations. Orrison Tr. 537; Mohan Tr. 383. Improvements on shared freight-passenger lines were also driven by freight traffic factors only. McClellan Tr. 285-87 (acknowledging that projected densities and improvements on NK-Aldene line segment

were driven solely by freight considerations). In addition, the delay history of a particular line was not quantitatively factored into freight density calculations. Orrison Tr. 539-40; Mohan Tr. 360-61.

Consistent with basing their projected changes in freight train line density entirely on freight traffic considerations, Applicants have not attempted to address resulting freight-passenger conflicts through any "structural" undertakings specifically designed to ensure accommodation of passenger operations (for example, by reducing the number of freight trains because of existing passenger traffic, or by planning improvements to accommodate passenger traffic such as additional passing and cross-over tracks and improved signal systems).

The obvious deficiency in the Applicants' rationale -- that freight scheduling alone will avoid freight-passenger conflicts -- is that it presumes virtually perfect on-time performance every day. Such a projection is not realistic. For example, for the small segment of the Lehigh Line between NK and Aldene, which is owned and operated by Conrail, in 1996, 265 NJTRO trains experienced delays of more than five minutes due to Conrail dispatching, maintenance, or operating actions. Given this unrealistic assumption, particularly as applied to some of the most passenger intensive and congested lines in the entire NS/CSX/Conrail system, it is imperative that the Board grant the NJT Conditions to ensure that the transactions contemplated by the Primary Application do not cause a breakdown of safe and reliable commuter rail service in the state of New Jersey.⁴

⁴ The Applicants' forthcoming operating plan(s) for the North Jersey Shared Assets Area presumably will address commuter rail impacts.

II. REQUEST FOR CONDITIONS

What follows is a description of the conditions that NJT requests the Board impose on the Applicants as a condition of any approval of the transactions contemplated by the Primary Application:

A. Coordination with NJT in the Shared Assets Areas

NJT believes that the significant levels of commuter and freight rail operations in the densely populated, highly congested New Jersey Shared Asset Areas require that the Board put in place an effective mechanism for coordination and communication among NJT, the Conrail Shared Assets Operator ("CSAO"), NS and CSX. This mechanism should be strong enough to ensure that passenger services continue to operate safely, reliably and conveniently after the consummation of the transactions contemplated by the Primary Application. NS, CSX and CSAO should be required to meet regularly, in accordance with a schedule to be established by them and NJT, to together make the policy decisions necessary to ensure the smooth operations of both passenger and freight service within the New Jersey Shared Assets Areas. Present at these meetings should be the Commissioner of Transportation of NJDOT (or his designee(s)), the senior CSAO officials in charge of the New Jersey Shared Assets Areas, and the senior official of each of CSX and NS having responsibility for freight rail operations in New Jersey, including such operations in the New Jersey Shared Assets Areas. In the event that these persons are unable to agree on solutions to issues of concern to any party referenced above, the Board should require that the President or Chief Executive Officer of CSX and/or NS be available to meet and confer with the Commissioner.

In addition, the Board should require CSAO, NS and CSX to work with NJT to

establish similar arrangements for coordination and communication among operating level personnel in each of the entities.

B. Automatic Train Control/Positive Train Stop

NJTRO, like Conrail, CSX, and NS, has a strong belief in operating its service at the highest possible level of safety. Since 1983, NJTRO has invested \$187.7 million in improvements to its signal and communication systems alone to enhance safety, in addition to investments of larger amounts for rehabilitation of tracks, structures, and equipment. NJTRO has been recognized nationally for its efforts to improve safety, having received the 1996 E. H. Harriman Memorial Award - Gold Medal and 1995 E. H. Harriman Memorial Award - Gold Medal. For both 1996 and 1995, NJTRO also had the lowest FRA Equipment Accident Rate among all Class I railroads, lower than that for Conrail, CSX, and NS.

NJTRO currently relies upon a system of wayside signaling systems to ensure a fail-safe operation. Such systems inform the engine person of the safe speed for the movement of each train with opposing, following, and converging train movement being protected. Safe train operation depends on the engine person's compliance with the signal indication. NJTRO has initiated action to ensure safe train operations in the event there is a human failure which prevents an engine person to not comply with the signal indication under most if not all operating conditions.

Following the 1987 Chase, Maryland, collision between a Conrail freight train and an Amtrak passenger train, NJTC established the goal of equipping the entire NJTC rail system with Automatic Train Control ("ATC"). Automatic Train Control, supplemented

with cab signal systems, ensures a higher level of passenger safety by providing continuous in-cab information on conditions ahead and by providing a check on the engine person's operation of the train. ATC ensures that the engineperson is alert to each change in the displayed cab signal that requires a reduction in train speed. The person must acknowledge the change and also reduce speed. Failure to do so will cause an automatic brake application which will stop the train. Of the aforementioned 531 signaled track-miles, 196 miles currently have ATC with 423 miles to be equipped with ATC by December, 1998 and the entire 531 miles by December, 2002.

As a result of the review of events and causes for an NJTC accident in Secaucus, NJ, in 1996, it was decided to enhance the existing and planned ATC system with Positive Train Stop ("PTS"). PTS is a proven technology used by several European railroads and supplements the ATC protection. PTS does not rely on rail to complete the signal circuit, but uses on-board receivers and wayside transponders to provide automatic train stop. In addition to the safety features of ATC, PTS also provides train control capability for "civil-speed", and "temporary construction" speed restrictions together with positive assurance that trains will be stopped at required locations regardless of the engine person's actions. With the addition of PTS, the time schedules for installation of the ATC/PTS systems were also compressed to get each of NJTC's rail lines equipped with either technologically proven and reliable ATC (cab signals, speed control and train stop) or equally proven and reliable PTS within eighteen (18) months of the August 14, 1997 authorization by NJTC's Board of Directors, and both systems, ATC and PTS, in operation on all NJTC rail lines within five (5) years of such Board authorization. The

ATC and PTS on-board apparatus installed on NJTC equipment will, of course, be responsive to the roadway equipment installed on all or any part of Amtrak's Northeast Corridor as required by Federal Railroad Administration ("FRA") regulations. NJTC has been working closely with FRA on this important project. Moreover, NJTC has provided Conrail with its plans and technical specifications as it has proceed with these projects.

NS, CSX and CSAO should be required to install ATC and PTS systems on a sufficient number of locomotives so that each train of any of the aforementioned three entities operating on or over NJTC-owned properties be equipped with ATC/PTS. NS, CSX and CSAO should make the required system installations at their sole cost and expense on the time schedule NJTC has set. It would not be necessary for the Board to order NS, CSX and CSAO to install precisely the same system that will be selected by NJTC. However, the systems selected by NS, CSX and CSAO should be responsive to the roadway equipment in place on NJTC properties.

C. Northeast Operating Rules Advisory Committee Rules

The North Jersey Shared Assets Area will be operated so that trains can operate interchangeably throughout the entire area. The Applicants filing on October 29, 1997 presumably will detail the specific operating plans and service patterns. In order for train and engine crews to operate safely and efficiently between contiguous territories, the same operating rules and procedures should govern the entire area. For example, the Manville-Bound Brook-Pork Reading Jct. Area, consisting of portions of the Lehigh Line, Trenton Line, Raritan Valley Line, and Port Reading Secondary are now owned by two railroads, NJTC and Conrail, but are operationally governed by one set of Operating Rules -

NORAC. Following consummation of the transactions contemplated by the Primary Application, the same geographical area will have four operators: NJTC, CSAO, NS, and CSX. The only way operations can be conducted safely and without confusion in such an area is to continue the applicability of the NORAC rules. In addition, the cost of qualifying crews will be minimized with the retention of one set of operating rules. NJT will have to incur costs approximating \$300,000 per year to qualify its 950 conductors and engineers on a different Book of Rules if NORAC rules are not adopted.

NS, CSX, and CSAO should be required to adopt the NORAC operating rules in effect on Conrail lines on the day of consummation. For a period of three years after consummation of the transactions contemplated by the Primary Application, the Board should require that any proposed change in operating rules be approved in advance by the Board or by the FRA.

D. Adequacy Of Capital Expenditures On NK-Aldene Segment

The Aldene to NK line segment is a critically important link in NJTC's commuter operations, carrying 56 trains per day. Aldene-NK also "is a major access route for freight traffic from the West and South into the New York Metropolitan area." App., Vol. 3B at 303. This 5.5-mile segment, which is in the North Jersey Shared Assets Area, will be controlled by CSAO and will be used by both NS and CSX for through-freight traffic as well as for CSAO freight operations. App., Vol. 3B at 303.

NJTC operates passenger service through the joint operations area between Aldene and NK for access from Highbridge, NJ through Bound Brook, NJ, into Newark Penn Station, NJ and New York Penn Station in New York City. New Jersey has spent

\$84 million on the following projects in order to improve service in this area: \$2.8 million for signal system improvements on Conrail-owned tracks; \$16.3 million for signal system improvements on NJTC-owned tracks; \$28.9 million for track renewal and improvements; and \$36.0 million for Hunter Connection to improve operating speeds for NJTC train movements between the Lehigh Line and the Northeast Corridor. In addition, NJT in coordination with Conrail, is finalizing a design for a new station within the joint freight-passenger operation near CP Townley, in Union, NJ. Freight operations on Aldene-NK consist of service from the Lehigh Line, which is Conrail's and will be NS's major freight route through Pennsylvania, and from the Trenton Line, which is Conrail's and will be CSX's major North-South route for traffic coming into the North Jersey Shared Assets Area. The road access into the areas served by both of these lines is highly congested during peak commuter times.

CSX and NS have proposed operating plans that introduce the potential for significant adverse impacts to the operation of existing commuter service. The precise scope and extent of the potential adverse impact will not be known until the Primary Applicants supplement their Application with the North Jersey Shared Assets Area operating plan or plans, on or before October 29, 1997. NJT anticipates providing additional comments and support for this requested condition in its November 24, 1997 submission. To date, on the portion of the Lehigh Line in the North Jersey Shared Assets Area, the Applicants have not identified any capital investments.

Applicants project a decrease of about ten trains per day on NK-Aldene because of the shift of existing Conrail train operations by NS and CSX to other North Jersey lines.

App., Vol. 3A at 277; Vol. 3B at 303; Vol. 6A at 138-39. NS, in its Operating Plan, has acknowledged that “[a]lthough capacity issues are not yet critical, unanticipated freight traffic growth or increases in commuter train density may necessitate the addition of track capacity” on this line. App., Vol. 3B at 303. In his deposition, Mr. McClellan of NS testified that in the context of NS’s internal review of the “continual issues of access to intermodal terminals in Northern New Jersey,” the NK-Aldene line “came up in conversations time and time again.” McClellan Tr. at 290 (Emphasis added). He also testified that this line segment is “a very, very busy railroad.” McClellan Tr. at 290 (Emphasis added).

The importance and sensitivity of the NK-Aldene line was also clearly evidenced in the testimony of Mr. Mohan, who testified that “there was a concern on our part that we treat that line segment carefully for freight schedules, that we do everything we could ... to structure the schedules to avoid passenger train interference.” Mohan Tr. at 376.

While NS and CSX have developed proposed schedules for through-freight trains in each direction between Aldene Interlocking and NK Interlocking, they have not done a quantified analysis of the integration of those freight trains with the existing passenger service in the case of delays. With respect to the issue of passenger train delays, Mr. Mohan acknowledged that the analysis was “qualitative and experience based specifically on the judgment of our former Conrail consultants.” Mohan Tr. at 361-62. He identified William C. Wulforth as former Conrail employee who he consulted with on freight and passenger coordination. Mohan Tr. at 362. At present, there is not sufficient capacity to handle additional freights in the a.m. peak rush hour period.

Given the acknowledged importance of NK-Aldene and the obvious potential for congestion, NS, CSX and CSAO should be required by the Board to make a number of capital improvements on the rail line. While almost \$32 million is proposed to be spent by the Applicants on the Lehigh Line west of Aldene, none is identified east of that point in the area of joint passenger and freight operations. Trains entering Oak Island have difficulty clearing the interlocking due to the lack of remotely controlled lead switches. This capital investment should be required of Applicants so that road crews can line switches before clearing a mainline interlocking. In addition, Applicants should be required to make signal system upgrades and upgrade the Aldene interlocking.

An additional factor in NJTC's concern for the adequacy of this route is the strong potential for intermodal volumes above those forecasted in the Application and the possible assignment of those volumes to the NK-Aldene line. Applicants have acknowledged the likelihood of higher volumes of domestic and international intermodal traffic. Finkbiner Tr. at 50 (concurring in 3 to 6 percent annual growth projection of Port Authority of New York for international intermodal traffic through the Port of New York); and at 130 (domestic intermodal traffic from truck diversions could be greater than projected by Mr. Krick.) Finkbiner VS at 227-28. Since the Lehigh Line is NS's primary route into the North Jersey Terminal Area, it is reasonable to assume these increased volumes would result in increased trains on this Line.

The lack of capital investments in the NK-Aldene segment could result in significant risks to reliable service both for passenger and freight. The requested capital improvements from NK to Aldene would mitigate, not add to that risk. If those

investments are not made, there is the potential that both passenger and freight will experience service deterioration. If the trains are not operated to strict schedules, then the lack of capacity or reliability of the plant to accommodate trains will result in severe service deterioration. When freight service deteriorates, passenger service will also deteriorate.

E. Adequacy Of Dispatching And Maintenance Resources

NS, CSX and CSAO should be required to devote adequate human resources to dispatching and maintenance functions in the North Jersey Shared Assets Area. Currently, NJT (and other parties) are not able to determine whether CSX, NS and CSAO have provided adequate personnel to handle dispatching and maintenance functions in the North Jersey Shared Assets Area. Once Applicants have supplemented the Application by filing their North Jersey Shared Assets Area operating plan or plans, NJT will comment on the adequacy of the plan with respect to dispatching and maintenance.

F. South Jersey Light Rail Transit Project

NJT is designing and planning to construct and operate a new light rail transit service between Trenton and Camden along and in the right-of-way constituting Conrail's Bordentown Secondary (referred to herein as the "South Jersey LRT Project"). The Bordentown Secondary will be part of the South Jersey Shared Assets Area after consummation of the transactions contemplated by Application. NS and CSX should be required to meet and confer with NJT regarding this project. Specifically, NS and CSX should be required to work with NJT to examine, determine the flexibility of, and cooperate in the development of the South Jersey Light Rail Transit project. The South

Jersey Light Rail Transit project will be developed consistent with applicable federal railroad safety laws, regulations, rules and standards. It will be developed with recognition of the importance and necessity for growth of rail freight service on the Bordentown Secondary and in the State of New Jersey, but also will recognize the importance and necessity of rail passenger services as a tool to resolve mobility, transportation congestion and air quality problems. The condition requiring NS and CSX to meet and confer with NJT, as described above, will not extend to requiring NS or CSX to subsidize passenger rail operations on the Bordentown Secondary line and NJT would be obligated to provide NS and CSX with a level of tort liability indemnification reasonably acceptable to NS and CSX, consistent with federal and state law. The condition should provide that if, subject to the foregoing principles, the parties are unable to reach a satisfactory legally binding agreement regarding the South Jersey Light Rail Transit project, that the Board will decide unresolved issues.

As is explained in this section and more fully in the attached Verified Statement of Frank M. Russo, NJTC's planned South Jersey LRT Project is critical to passenger transportation mobility in the State of New Jersey; its implementation will offset transportation congestion problems caused by the transactions contemplated by Primary Application; the South Jersey LRT Project would be constructed and operated so as not to compromise the integrity of the Bordentown Secondary and therefore would not interfere with Applicants' operations or otherwise diminish the potential public benefits of the transactions contemplated by the Primary Application.

The proposed Southern New Jersey Light Rail Transit System would link Camden and Trenton, NJ. It would be constructed on a Conrail right-of-way known as the Bordentown Secondary, and would share a significant amount of trackage with Conrail. The Bordentown Secondary is used to provide freight service to on-line freight customers and customers located on contiguous branch lines. The South Jersey LRT Project would utilize equipment that does not meet Federal Railroad Administration ("FRA") standards for operation in mixed service with conventional rail freight. As a result, the South Jersey LRT Project would be operated with freight and passenger operations at separate times of the day. Freight service would be shifted, to the extent practicable, to night hours. Russo Verified Statement ("Russo VS") (Appendix A) at 1-2.

Burlington, Camden and Gloucester counties, which are in the immediate area to be served by the South Jersey LRT Project, are among the fastest growing counties in the nine-county Philadelphia Metropolitan Region. By 2010, population in this three county area is projected to increase 25 percent. Over the same period, the number of automobiles will expand by 50 percent and jobs will grow by 30 percent. Absent sound transportation planning and development, the continued dispersion of residential development, employment growth and increased auto ownership and automobile trips will together cause the regional network of highways to be burdened beyond capacity. The opportunities for highway expansion in this region are already limited by the current land use patterns. The South Jersey LRT Project also will aid the region's Clear Air Act mandates. The South Jersey LRT Project is in a non-attainment area for ozone and CO

(Carbon Monoxide). It is estimated that the system will reduce the amount of carbon monoxide emissions in the region by 23 tons per year. Russo VS at 3.

This project is estimated to attract over 16,000 daily trips by the year 2020. This will more than double the number of transit riders in the region. The direct transportation benefit of this project is estimated to be more that \$24 million annually by the above date. The system is also designed to provide access to a number of existing and projected activity centers, including the Camden waterfront entertainment center, the Camden aquarium, and Rutgers University. Additional public benefits from the project include annual savings of 265,000 hours of travel time the first five years of service, and annual savings of 600,000 hours of travel time by 2020; and improved mobility for economically or physically disadvantaged individuals and groups. The light rail vehicle, with its low floor and other ADA compliant features, coupled with NJTC's fare policy, will provide a fast and convenient method for disadvantaged groups to access jobs, cultural events, and local town centers. In addition, the intermodal connections at Trenton station and the Walter Rand Transportation center in Camden provide access to Philadelphia, Princeton, New Brunswick, Newark Airport, Newark, New York and corridor destinations beyond. Russo VS at 3-4.

While projected growth in intermodal and other freight rail traffic is of potential benefit to shippers and other businesses in the current Conrail service areas, such growth does not come free of significant negatives and trade-offs in New Jersey. Intermodal terminals in North Jersey require trucks to traverse congested local roadways at slow speeds to deliver to final destinations. The truck portion of intermodal traffic is contrasted

with the higher speed highway movements of a pure truck move over roadways such as I-95 and I-80. The truck densities on local roads (such as the Route 1 and 9 corridor) in the vicinity of New Jersey's numerous intermodal terminals (such as Little Ferry, South Kearny, E-Rail and Portside-TCS) will be formidable. Russo VS at 4.

The Verified Statement of Frank Russo explains why the South Jersey LRT Project will not reduce the benefits of the merger or interfere with freight railroad operations on the Bordentown Secondary. Russo VS at 6-10. During the 12 months ended March 1995, about 5,800 carloads originated or terminated to customers located on or accessed from the Bordentown Secondary. Operations on the Bordentown Secondary center around Pavonia Yard at Camden. Presently, Conrail uses two turns and two local switchers. Russo VS at 6.

After the South Jersey LRT start-up, CSAO could continue to employ four crews organized similarly to the present arrangement, but compressed into a narrow time frame. The only significant change would be to the customer service and crew operating hours. Russo VS at 7-9.

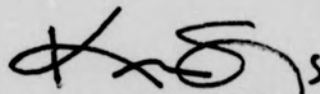
NJTC is prepared to adjust the South Jersey LRT service as well as provide capital improvements to the existing freight corridor and defray possible additional equipment or operating costs of CSAO in order to continue safe and effective freight service to both existing and possible new customers. This proposed operation will be developed so as to not cause any negative impact to the level of freight operations projected by the Applicants. Russo VS at 10.

The Verified Statement of Frank Russo explains that NJTC plans to make a number of capital improvements to the Bordentown Secondary in conjunction with the South Jersey LRT Project. Russo VS at 10-14.

In sum, the South Jersey LRT Project is critical to the State of New Jersey and will not interfere with the public benefits expected to be achieved by the Conrail transactions.

WHEREFORE, NJT respectfully requests that the Board grant the foregoing conditions in conjunction with any approval of the Primary Application.

Respectfully submitted,



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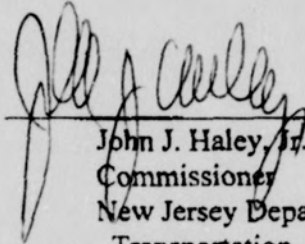
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Dated: October 21, 1997

Verification

I, John J. Haley, Jr., declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to make this Verification on behalf of New Jersey Transit Corporation and New Jersey Department of Transportation.

A handwritten signature in dark ink, appearing to read "John J. Haley, Jr.", is written over a horizontal line.

John J. Haley, Jr.
Commissioner
New Jersey Department of
Transportation, and
Chairperson
New Jersey Transit Corporation

Executed on: October 20, 1997.

**VERIFIED STATEMENT
OF
FRANK M. RUSSO**

I. Introduction and Purpose

My name is Frank M. Russo and I am the Senior Director -New Rail Construction for New Jersey Transit Corporation ("NJTC"). In that capacity, I am responsible for, among other things, all aspects of the proposed Southern New Jersey Light Rail Transit System (the "South Jersey LRT Project"). The South Jersey LRT Project is the subject of an important condition being sought by NJTC and the New Jersey Department of Transportation in connection with any STB approval of proposed control of Conrail by NS and CSX, the division of Conrail's assets between CSX and NS; and the proposed joint operations of CSX and NS. The purpose of my Verified Statement is to explain why the South Jersey LRT Project is critical to the State of New Jersey and why it will not interfere with the public benefits expected to be achieved by the Conrail transactions.

II. Overview of South Jersey Light Rail Transit Project

The proposed Southern New Jersey Light Rail Transit System would link Camden and Trenton, NJ. It would be constructed on a Conrail right-of-way known as the Bordentown Secondary, and would share a significant amount of trackage with Conrail. The Bordentown Secondary is used to provide freight service to on-line freight customers and customers located on contiguous branch lines. The South Jersey LRT Project would utilize equipment that does not meet Federal Railroad Administration ("FRA") standards for operation in mixed service with conventional rail freight. As a result, the South Jersey LRT Project would be operated with

freight and passenger operations at separate times of the day. The movement of freight trains along the Bordentown Secondary would be shifted, to the extent practicable, to night hours. The movement of freight trains along some portions of the branch would be restricted to nights. However, most customers would continue to receive the same day time delivery schedule they presently have.

III. Public Benefits of the South Jersey LRT Project

A. Reduced Highway Congestion and Reduced Air Pollution, With Minimum Community Disruption and Better Urban/Suburban Development

The integration of passenger rail with freight on existing rights-of-way offers a multifaceted public benefit. Shared usage is a cost-effective means to reduce auto traffic on roadways by attracting riders from single passenger automobiles. It can be introduced into a region without disrupting communities or adversely altering existing land use patterns.

Burlington, Camden and Gloucester counties, which are in the immediate area to be served by the South Jersey LRT Project, are among the fastest growing counties in the nine-county Philadelphia Metropolitan Region. By 2010, population in this three county area is projected to increase 25 percent. Over the same period, the number of automobiles will expand by 50 percent and jobs will grow by 30 percent.¹ Absent sound transportation planning and development, the continued dispersion of residential development, employment growth and increased auto ownership and automobile trips will together cause the regional network of highways to be burdened beyond capacity. The opportunities for highway expansion in this

¹ The above growth statistics are as reported by the Delaware Valley Regional Planning Authority, the municipal planning organization for this region.

region are already limited by the current land use patterns. The South Jersey LRT Project will also aid the region's Clear Air Act mandates. The South Jersey LRT Project is in a non-attainment area for ozone and CO (Carbon Monoxide). It is estimated that the system will reduce the amount of carbon monoxide emissions in the region by 23 tons per year.

The project will encourage the re-development of compact town centers along the rail line rather than the suburban sprawl that likely would otherwise occur. Suburban sprawl does not allow for the efficient use of mass transit, thus perpetuating the increase in single occupancy vehicles. By providing efficient mobility on the rail line, both residents and businesses tend to concentrate around station areas.

B. Ridership Projections and Additional Important Public Benefits

This project is estimated to attract over 16,000 daily trips by the year 2020. This will more than double the number of transit riders in the region. The direct transportation benefit of this project is estimated to be more than \$24 million annually by the above date. The system is also designed to provide access to a number of existing and projected activity centers, including the Camden waterfront entertainment center, the Camden aquarium, and Rutgers University. Additional public benefits from the project include annual savings of 265,000 hours of travel time the first five years of service, and annual savings of 600,000 hours of travel time by 2020; and improved mobility for economically or physically disadvantaged individuals and groups. The light rail vehicle with its low floor and other ADA compliant features, coupled with NJTC's fare policy, will provide a fast and convenient method for disadvantaged groups to access jobs, cultural events, and local town centers. In addition, the intermodal connections at Trenton's

Northeast Corridor station and the Walter Rand Transportation Center in Camden will provide access to Philadelphia, Princeton, New Brunswick, Newark Airport, Newark, New York and corridor destinations beyond.

The proposed project will replace existing jointed track (with its attendant noise and vibration impacts on surrounding communities) with continually-welded rail.

The South Jersey LRT Project will also provide a net energy savings of over 33,526 million BTU's per year by 2020.

IV. The South Jersey LRT Project Would Mitigate The Adverse Impacts of the Conrail Transactions

While projected growth in intermodal and other freight rail traffic is of potential benefit to shippers and other businesses in the current Conrail service areas, such growth does not come free of significant negatives and trade-offs in New Jersey. Intermodal terminals in North Jersey require trucks to traverse congested local roadways at slow speeds to deliver to final destinations. The truck portion of intermodal traffic is contrasted with the higher speed highway movements of pure truck moves over roadways such as I-95 and I-80. Therefore, the truck densities on local roads (such as the Route 1 and 9 corridor) in the vicinity of New Jersey's numerous intermodal terminals (such as Little Ferry, South Kearny, E-Rail and Portside-TCS) will be formidable.

A more advanced example of the utility of a rail project as a congestion reducer is the Hudson-Bergen light rail project. Hudson-Bergen was developed in coordination with Conrail and is presently under construction. In the case of Hudson-Bergen, the State of New Jersey made certain improvements to Conrail rights-of-way in exchange for access to other corridors.

The timetable for these projects is such that negotiations and development must be pursued concurrently if the projects are to be advanced in a timely manner. In the case of the Hudson Bergen Light Rail project, that strategy has allowed for a more timely construction. In pursuing the same strategy with the South Jersey Light Rail project, NJTC has been coordinating with Conrail in order to advance the project as outlined above and accommodate the existing freight operations. Those discussions are ongoing. However, the pending transaction introduces unknowns into this project that must be resolved in order to allow the project to move ahead in a responsible way.

The State of New Jersey has spent \$17.7 million as of September 26, 1997 on the South Jersey LRT Project. To timely advance this project we have recognized that these monies are developmental monies and may not result in a final project. We have received indications from Conrail that a reasonable accommodation, in light of the existing freight operation and the potential for future freight service on the line, could be made, and the proposed project with its attendant benefits described above implemented.

V. The South Jersey LRT Project will not Reduce the Benefits of the Merger

A. Current Freight Operations

Traffic data for a 12 month period ending in March 1995 provided by Conrail in 1996 to bidders on the "Camden Cluster" indicated that about 5,800 annual carloads originated or terminated on customers located on or accessed from the proposed LRT trackage. Pavonia Yard at Camden is the primary facility for freight service on the Bordentown Secondary and branch lines served by the line (which branch lines are incorporated without further reference in this

discussion). Two of the four crews serving customers on the Bordentown Secondary are based at Pavonia. (See Table 1, below.) Carloads to or from Bordentown are handled at Pavonia Yard. A Pavonia-based crew shuttles cars to and from the two crews which report for duty elsewhere (one at Morrisville and one at Burlington).

Table 1 Current Conrail Freight Crews Camden – Trenton					
Crew Designation	Reporting Location	Days Operated	Locos	Start Time	Duties
WPCA29	Pavonia Yard (Camden)	6	2	2200	Transfer cars Camden-Fieldsboro, Camden area industries
WPM20	Morrisville	5	1	0700	Trenton and Bordentown industries
WPBU29	Burlington	6	2	0630	Burlington area industries
YPCA60	Pavonia Yard	5	1	2300	Pennsauken Industrial Track industries

In addition to the crews described above, another Conrail crew serves customers on the Pemberton IT (currently the WPCA20 crew). This crew only crosses the Bordentown Secondary at Delair.

B. Freight Operations After Start-Up of South Jersey LRT will be Changed but not Adversely Affected

Obviously, NS and CSX will decide precisely how freight will operate after start-up of the South Jersey LRT. My purpose here is to show one way that it might be arranged. After

South Jersey LRT start-up, CSOA could continue to employ four crews organized similarly to the present arrangement, but compressed into a narrower time frame. Anticipated crews and activities are summarized below. (see Table 2)

<p>Table 2 Anticipated Freight Service Crews Camden - Trenton</p>					
Crew Designation	Reporting Location	Days Operated	Locos	Start Time	Duties
Transfer Crew	Pavonia Yard (Camden)	6	2	2200	Transfer cars Camden-Fieldsboro, Delanco area industries
Bordentown Crew	Bordentown (Robbinsville IT)	5	2	2245	Trenton and Bordentown industries
Florence Crew	Florence	6	1	2330	Florence and Burlington area industries
Pavonia Crew	Pavonia Yard	5	1	2200	Pennsauken Industrial Track industries

The Transfer Crew would deliver cars for both the Florence and Bordentown crews to Florence, and pick up outbound cars would be from the same two crews. Expedited movement of the Transfer Crew to Florence to exchange cars would be critical to the successful operations. Any industrial work would be performed on the way back to Pavonia after exchanging cars. Additional support or re-ordering of priorities of other Pavonia crews may be needed to assemble the outbound train from Pavonia and have it ready to go on time every night. The train consist

would be pre-blocked: cars for the Bordentown Crew, cars from the Florence Crew, and Delanco and other industry cars to be delivered on the return trip to Pavonia.

The Bordentown Crew would start work at Bordentown on the Robbinsville IT early enough to bring outbound cars to Florence, add them to the outbound cars already there, and move into the clear before arrival of the Transfer Crew. Once the Transfer Crew departed Florence, the Bordentown Crew would get its cars, work to Trenton serving customers as needed, and then return to Bordentown and enter the Robbinsville IT. There the crew would continue to switch customers, even after the start of LRT operations. The crew would assemble all outbound cars and secure the locomotive and cars on the Robbinsville IT near the junction at MP 26.8 before going off duty.

The Florence Crew would go on duty at Florence early enough to provide any assistance needed by the Transfer Crew at Florence in the course of setting off and picking up cars for the other two crews at Florence. Upon departure of the Transfer Crew, the Florence Crew would assemble the cars for industries other than those accessed from Florence siding, and would serve customers as far west as necessary and return to Florence. It would switch Occidental Chemical and other customers accessible from the Florence siding, continuing to work after LRT operations commenced. Upon completion of customer switching, outbound cars for the next night's Transfer Crew would be assembled on the Florence siding and/or the Occidental lead, and the locomotive would be secured.

A Pavonia crew would continue to serve Pennsauken IT customers, much the same as at present. As with all crews, it would be important for that crew to be ready to enter LRT trackage

as soon as permission was received. Should the Transfer crew have consistent difficulty in completing its assigned switching during the freight window, the Pavonia crew which serves the Pennsauken IT could also switch American Float Class, thus lightening the Transfer Crew's workload.

The Pemberton IT could be served at CSAO's convenience, since the crew would only need to cross, rather than use, proposed LRT trackage near Delair.

C. Operational Impacts

Primary impacts of the plan described above include changing the Bordentown and Florence crews' operating hours and the time that their customers are served from daytime to late night, changing the Bordentown Crew's reporting point from Morrisville to Bordentown, and "stranding" the Bordentown Crew's locomotive on the Robbinsville IT when it is not in use. The same number of crews as at present would be employed to serve customers on or connecting to the LRT.

NJTC projects that the same number of locomotives would be required as at present; absent field evaluation, it would not be prudent to suggest reductions from present assignments. However, the Burlington Crew's need for two locomotives would be worth reconsidering, as it may be related to the number of cars on hand and handled at Occidental Chemical. As noted, the Bordentown Crew's locomotive would be stranded on the Robbinsville IT and not available for other use during the other 12-16 hours per day as at present.

Some additional support may be needed from other Conrail crews, such as Pavonia Yard crews, in order that all crews on LRT trackage be on schedule every night.

D. Accommodation of freight operation

NJTC is prepared to adjust the South Jersey LRT service as well as provide both capital improvements to the existing freight corridor and defray possible additional equipment or operating costs of CSAO in order to continue safe and effective freight service to existing customers. We are also prepared to offer accommodation for new freight customers as the need arises. To accommodate freight emergencies such as a loss of the Northeast Corridor, NJTC is willing to provide substitute bus transportation for rail customers and allow freight trains to operate on the Bordentown Secondary during daytime hours. In general, this service will be developed so as to not cause any negative impact to the level of freight operations projected by the Applicants.

E. Project Improvements to Existing Freight Corridor

More than 18 months of general negotiation with Conrail have resulted in NJTC proposals designed to improve the efficiency and safety of the existing corridor. Project investments to date include reconstruction of all of the track work using CWR, replacement of the swing bridge over Rancocas Creek with a new fixed span, the installation of a new state of the art signal system, and installation of grade crossing protection at all of the existing road crossings.

Conrail is developing business plans for the area based on the project. The project will also improve the physical condition of the right-of-way infrastructure. For example, the

Crosswicks and Rancocas Creek Bridges are in dire need of replacement which would be accomplished under the South Jersey LRT Project. In addition, the existing jointed track causes noise and vibration in the surrounding communities, which will be eliminated when continuous welded rail is installed by NJTC. Also most of the existing freight line is without signals and 54+ grade crossings are commonly without gates. NJTC will install a signaling system throughout the line and upgrade the crossings to include the latest technological features as well as gates, bells and flashers.

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1. Recommended Track Enhancements

The following track enhancements are recommended in order to either: (1) improve the freight operator's ability to complete customer switching during the freight operating window, or (2) allow for more extensive switching during LRT operating hours on tracks separated from LRT trackage.

a. Delanco: Triangle Pacific Crossover

The Triangle Pacific main track switch (MP 13) opens facing west, so service generally would be provided by eastbound trains. After LRT implementation, Triangle Pacific would be served by the Transfer Crew which works between Pavonia and Florence. It is imperative that the Transfer Crew make its eastbound trip to Florence without delay in order to deliver cars to the other two crews as early as possible. Thus, it would be preferable for the Transfer Crew to switch Triangle Pacific on its westward return trip to Pavonia after exchanging cars with the other crews. For a westward train to serve Triangle Pacific, some means of running around cars

would be necessary. This could be accomplished by building a short run-around track near the Triangle Pacific switch or by installing a crossover from the existing freight main track to the proposed new passenger track at about MP 12.9. A run-around track would be created using this crossover at MP 12.9 and the switch at about MP 13.7, which would connect the new passenger track and the existing freight main track. NJTC believes that a new crossover would be the appropriate improvement here, and that hand-throw switches would be adequate at this crossover.

b. Burlington: New Tenneco Chemical Crossover

A crossover would be needed between the existing main track and the proposed LRT track near MP 16.3 so that upon completing switching at Tenneco, the Florence Crew could run around its train and return east to Florence. Hand-throw switches would be adequate at this crossover.

c. Florence-Stevens: Extended Siding/Switching Lead, Part 1

The existing siding at Florence could be extended from its west switch (about MP 21.3 west to about MP 20.3) so that the switches leading to Wood Treating and Liquid Carbonic would be accessed from a side track rather than from LRT trackage. This would enable the proposed Florence Crew to switch these industries as well as Occidental Chemical and National Gypsum at Florence, all without using LRT trackage. This would permit these industries to be switched during LRT service. In the context of the proposed operating plan described in Subsection B these industries would be served at the end of the Florence Crew's shift, reducing

the amount of work which would have to be performed during the freight window and thereby increasing confidence that the work could be completed. As a result, the Florence Crew would be able to serve Tenneco at MP 16, and the only major customers switched by the time-critical Transfer Crew would be Triangle Pacific and American Float Glass.

d. Bordentown: Connect Run-around Track with Robbinsville IT

Connecting the existing run-around track with the Robbinsville IT track at MP 26.8 would be operationally convenient in several respects. It would provide additional car storage accessible without using LRT trackage, it would allow a late-running Bordentown Crew which had left cars on the run around while switching Trenton industries to clear up on the run-around for the initiation of LRT operations and still access cars left there and move onto the Robbinsville IT for continued switching, and it would provide a place for the Bordentown Crew to secure its train during the day.

e. Yardville: Run-around Track on Robbinsville IT

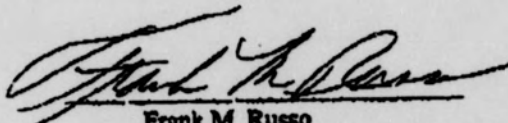
Regarding the connection described immediately above, a run-around track would have to be installed on the Robbinsville IT so that a crew could run-around cars without using LRT trackage. One good location would be the existing stub spur near Yardville Supply at MP 30, which could be turned into a run-around by installation of a second switch. Other acceptable locations probably would be available. Because industry switches on the branch face both ways, a run-around would be essential to efficient switching without using LRT trackage.

VI. Conclusion

The South Jersey LRT Project is the subject of an important condition being sought by NJTC and the New Jersey Department of Transportation in connection with approval of the Conrail transaction. As explained above, the South Jersey LRT Project is critical to the State of New Jersey and will not interfere with the public benefits expected to be achieved by the Conrail transactions.

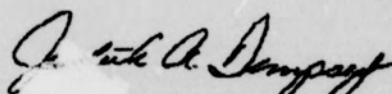
Verification

I, Frank Russo, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further I certify that I am qualified and authorized to file this Verified Statement.



Frank M Russo
Senior Director -New Rail
Construction

Executed on: October 20, 1997.

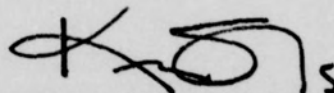


J. A. DEMPSEY 10/20/97
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 22, 2001



CERTIFICATE OF SERVICE

I certify that I have served a conformed copy of the foregoing **Comments and Request for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation** in Finance Docket No. 33388, by first class mail properly addressed, with postage pre-paid or by more expeditious manner of delivery upon Administrative Law Judge Jacob Leventhal and All Parties of Record on the Service List.

A handwritten signature in black ink, appearing to read 'K. Sheys', is written over a horizontal line.

Kevin M. Sheys

Dated: October 21, 1997.

STB

FD

33388

10-21-97

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182904

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

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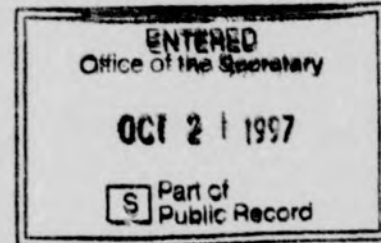


ERIC M. HOCKY

October 21, 1997

HAND DELIVERY

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



Re: Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Company
--Control and Operating Leases/Agreements--
Conrail Inc. and Consolidated Rail Corporation
**COMMENTS OF BUFFALO & PITTSBURGH RAILROAD,
INC., ALLEGHENY & EASTERN RAILROAD, INC.,
ROCHESTER & SOUTHERN RAILROAD, INC. AND
PITTSBURG & SHAWMUT RAILROAD, INC.
(BPRR-7/ALY-7/RSR-7/PSRR-4)**

Dear Sir or Madam:

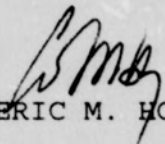
Enclosed for filing in the above referenced proceeding are
an original and 25 copies of Comments of Buffalo & Pittsburgh
Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester &
Southern Railroad, Inc. and Pittsburg & Shawmut Railroad, Inc.
(BPRR-7/ALY-7/RSR-7/PSRR-4), along with a diskette containing the

Office of the Secretary
Case Control Unit
October 21, 1997
Page 2

document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

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

Respectfully,


ERIC M. HOCKY

Enclosures



182904

BPRR-7
ALY-7
RSR-7
PSRR-4

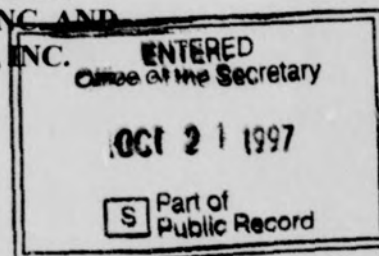
BEFORE THE

STB FINANCE DOCKET NO. 33388

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

**COMMENTS OF
BUFFALO & PITTSBURGH RAILROAD, INC.,
ALLEGHENY & EASTERN RAILROAD, INC.,
ROCHESTER & SOUTHERN RAILROAD, INC. AND
PITTSBURG & SHAWMUT RAILROAD, INC.**

(Sub Docket Nos. 43 -51, 52 and 56)



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

Dated: October 21, 1997

Attorneys for Buffalo & Pittsburgh Railroad, Inc.,
Allegheny & Eastern Railroad, Inc.,
Rochester & Southern Railroad, Inc. and
Pittsburg & Shawmut Railroad, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388

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

**COMMENTS OF
BUFFALO & PITTSBURGH RAILROAD, INC.
ALLEGHENY & EASTERN RAILROAD, INC.,
ROCHESTER & SOUTHERN RAILROAD, INC. AND
PITTSBURG & SHAWMUT RAILROAD, INC.**

(Sub Docket Nos. 43 -51, 52 and 56)

In accordance with Decision No. 12 in this proceeding, affiliated railroads Buffalo & Pittsburgh Railroad, Inc. ("BPRR"), Allegheny & Eastern Railroad, Inc. ("ALY"), Rochester & Southern Railroad, Inc. ("RSR") and Pittsburg & Shawmut Railroad, Inc. ("PSRR") file these Comments with respect to the proposed acquisition of control of Conrail¹ by CSX and NS, and the subsequent division of Conrail's assets by and between, and for the benefit of, CSX and NS.

BPRR is a class II carrier that operates lines of railroad in southwestern New York and northwestern Pennsylvania. BPRR's offices are located at 201 N. Penn Street, Punxsutawney,

¹ "Conrail" refers to Conrail, Inc. and Consolidated Rail Corporation and their wholly-owned subsidiaries. "CSX" refers to CSX Corporation and CSX Transportation, Inc. and their wholly-owned subsidiaries. "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company and their wholly-owned subsidiaries.

PA 15767; telephone no. (814) 938-5500. ALY and PSRR are class III carriers that operate lines of railroad in northwestern Pennsylvania. They also have offices at 201 N. Penn Street, Punxsutawney, PA 15767; telephone no. (814) 938-5500. RSR is a class III carrier operating in western New York with offices at 3 Parkway, Leicester, NY 14481-0247; telephone no. 716-382-2200. BPRR, ALY, RSR and PSRR are all wholly-owned subsidiaries of Genesee & Wyoming Inc. ("GWI").

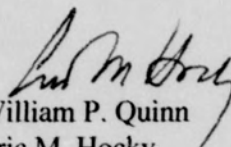
The primary application indicates that a substantial amount of freight revenue will be diverted from BPRR as a result of the proposed transaction. In their description of anticipated responsive applications (BPRR-2/ALY-2) filed August 21, 1997, BPRR and ALY indicated that because of these losses they would either (1) seek to have BPRR included in the CSX or NS systems, or (2) seek conditions allowing them to reconfigure their operations to allow them to continue operating profitably. RSR also filed a description of anticipated responsive applications (RSR-2).

As noted in the attached letter from GWI to the Board, the potential impact on GWI's subsidiaries and customers has been addressed, and therefore, BPRR, ALY or RSR will *not* be filing any of the responsive applications they had previously anticipated.² The sub-dockets reserved by BPRR/ALY and RSR (Sub Docket Nos. 43-51, 52 and 56) may be closed.

² To the extent any of the specific arrangements (such as trackage rights) require authorization from the Board, the affected carriers will seek the necessary authority through separate individual filings when appropriate.

Based on the arrangements that have been reached, BPRR, ALY, RSR and PSRR support the transaction as proposed by NS and CSX.

Respectfully submitted,



William P. Quinn
Eric M. Hocky
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West Chester, PA 19381-0796
(610) 692-9116

Dated: October 21, 1997

Attorneys for Buffalo & Pittsburgh Railroad, Inc.,
Allegheny & Eastern Railroad, Inc.,
Rochester & Southern Railroad, Inc. and
Pittsburg & Shawmut Railroad, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following by the method indicated:

By Federal Express delivery:

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

Dennis G. Lyons, Esq.
Arnold & Porter
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Steptoe & Johnson LLP
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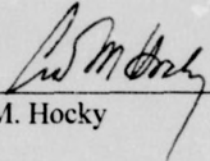
By United States First Class Mail:

Secretary of Transportation
c/o Paul Samuel Smith
US Department of Transportation
400 7th Street SW, Room 4102 C-30
Washington, DC 20590

US Attorney General
c/o Michael P. Harmonis
US Department of Justice
325 7th Street, Suite 500
Washington, DC 20530

All Other Parties of Record

Dated: October 21, 1997


Eric M. Hocky

VIA FEDERAL EXPRESS



Mortimer B. Fuller, III
Chairman and
Chief Executive Officer

October 20, 1997

Hon. Vernon A. Williams
Secretary
SURFACE TRANSPORTATION BOARD
Mercury Building, #711
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

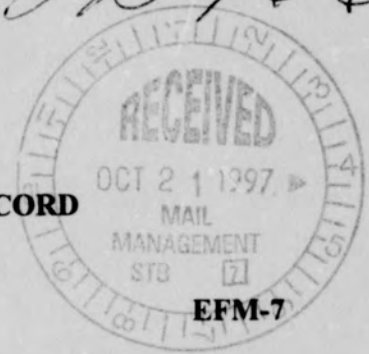
On behalf of Genesee & Wyoming Inc., a non-carrier holding company, and its rail subsidiaries including Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc. and Pittsburg & Shawmut Railroad, Inc. (together "GWI"), I am pleased to advise the Surface Transportation Board of GWI's support for the acquisition of Conrail described in the above referenced proceeding. CSX and NS have addressed the impact of the transaction on GWI and its customers, and CSX has entered into a definitive agreement with GWI embodying these understandings. The agreement enables the rail carrier subsidiaries of GWI to notify the Board that no responsive applications will be made on their behalf. In the event the final settlement agreement involves matters requiring STB approval, the appropriate filing(s) will of course be made with the Board.

Very truly yours,

Mortimer B. Fuller, III

MBF:vmr/97168

182966



REDACTED - TO BE FILED ON THE PUBLIC RECORD

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

D

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

STB FINANCE DOCKET NO. 33388

**COMMENTS AND REQUEST FOR CONDITIONS
OF
EIGHTY-FOUR MINING COMPANY**

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



Attorney for Eighty-Four Mining Company

October 21, 1997

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

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

STB FINANCE DOCKET NO. 33388

**COMMENTS AND REQUEST FOR CONDITIONS
OF
EIGHTY-FOUR MINING COMPANY**

Eighty-Four Mining Company (also sometimes hereafter referred to as "Mine 84"), by and through its undersigned counsel, submits the following Comments and Request for Conditions concerning the proposed acquisition and Division of Consolidated Rail Corporation ("Conrail") by CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS") (Conrail, CSX and NS collectively sometimes referred to as "Applicants").

The facts relied upon by Mine 84 in its Comments and Request for Conditions are those presented (i) by the witnesses for Mine 84, comprised of Thomas M. Majcher, Vice President of Corporate Development for Mine 84 and its parent, the Rochester & Pittsburgh Coal Company, Mark T. Morey, Director of Consulting Services for the Fieldston Company, Inc., and Dr. Richard L. Gordon, Professor Emeritus of Mineral Economics and Micasu Faculty Endowed

Scholar Emeritus in the College of Earth and Mineral Sciences, Pennsylvania State University, whose affidavits are associated herewith as Attachment I (cited as "[name of witness] V.S. at _____"), (ii) in the application submitted June 23, 1997 by Applicants seeking approval of this transaction, (iii) in the deposition testimony of Applicants' witnesses, extracts of which are associated herewith as Attachment II (referred to as "[name of witness] Dep. at _____"), and (iv) in the documentary evidence developed through discovery, associated in Attachment III, (cited as "Exhibit [Number]" and thereafter by document number). The complete version of these Comments is identified as "Highly Confidential" in order to protect the confidentiality of certain commercial information and evidence, and a public version from which the confidential information has been redacted is submitted for the Board's public records.

I. Introduction

In two notable areas the acquisition and division of Conrail by CSX and NS is a unique transaction within the annals of rail consolidation in the United States. Historically, railroad consolidations have entailed the merger of two carriers, both operating within the same region or railroad operating district; and each consolidation has served to increase market penetration and extend route structures within the combining carriers' operating territory. In contrast, the transaction pending before the Board entails the joint application of the two Class I carriers operating in the Southeastern region of the United States to acquire the dominant Class I carrier in the Northeast — Conrail, and to divide Conrail's route structure between them. Substantively, CSX and NS are engaging in a division of the Northeastern rail territory. Moreover, in dividing

Conrail and the markets it serves, where CSX and NS could not agree to allow the other carrier to succeed to Conrail's routes and control of certain major markets for rail transportation service, Applicants have agreed that CSX and NS will share access to those major markets. This will be accomplished either by establishing shared operating areas or pursuant to trackage rights arrangements. This opening of closed or captive points to competitive rail service is the opposite of the customary concern in rail mergers, i.e., elimination of competition. In some regions, as Applicants vigorously assert, the proposed transaction will create competitive rail service where none currently exists.

Eighty-Four Mining Company is the operator of a coal mine known as Mine 84 in Washington County, Pennsylvania, within the region in Northern Appalachia known as the Monongahela coal region. It is one of the newest and, with upgrading installed in 1997, one of the largest deep mines in the country. Mine 84's interest in the Conrail acquisition is that the proposed division of Conrail's routes would open to *all* of Mine 84's existing and future directly competing mine operators dual-carrier access by CSX and NS while leaving Mine 84 captive to single-carrier rail service — to be provided by NS as the successor to Conrail's "Pennsylvania Railroad" lines. This division effectively forecloses Mine 84 from current Conrail served utility plants and industrial customers which will be served exclusively by CSX post-transaction, and further prejudices Mine 84 in competing to supply coal to jointly-served destinations. Together, these two categories of disadvantaged customers constitute 78% of Mine 84's primary market. It is the division and reconstitution of the market for the quality of coal produced by Mine 84, with the omission of Mine 84 from the benefits touted for all of its competitors, that

compels Eighty-Four Mining Company to ask the Surface Transportation Board for relief in this proceeding. The relief requested is to afford Mine 84 the same joint access as Applicants are conferring upon the other Monongahela coal region producers which directly compete with Mine 84, or alternatively to direct that NS provide switching service to CSX for the movement of coal produced by Mine 84, under terms and conditions comparable to other switching service to be provided between Applicants to this proceeding. Mine 84 believes that it is in a unique position in this proceeding, in that all of its direct competitors, which currently are exclusively served by Conrail in the same fashion that Mine 84 is served only by Conrail, would be afforded competitive rail service opportunities while Mine 84 remains captive to single-rail carrier service.

II. Statement of Facts

A. Mine 84 and the Monongahela Coal Region Market

Eighty-Four Mining Company, a wholly-owned subsidiary of the Rochester & Pittsburgh Coal Company, owns Mine 84 located in Washington County, Pennsylvania. Mine 84 is a significant coal producer, with Mine 84 and its associated reserves estimated to contain approximately 175 million tons of coal. *See Majcher V.S. at 6.* Mine 84 receives rail service via the Ellsworth Secondary line, which intersects with the Conrail Monongahela Branch line ("the Mon Branch"), running on the west side of the Monongahela River, at Monongahela City, Pennsylvania. *See Majcher at 7; Morey V.S. at 16-17 and Exhibit MTM_2.* Mine 84 lies within

the Pittsburgh coal seam (also sometimes called the "Pittsburgh-8 seam"), which runs through Southern Pennsylvania and Northern West Virginia. Mine 84 produces a high Btu content ($\pm 13,000$ Btu) and medium sulphur content (2.5 to 3.0 pounds SO_2 /MMBtu) coal which directly competes with six other rail-served mines in the Pittsburgh seam, which are located in Southwest Pennsylvania and the bordering Northern West Virginia Panhandle. *See* Majcher V.S. at 11; Morey V.S. at 5-8, 10-11. This homogeneous group of producers constitutes a distinct market group. *See* Gordon V.S. at 10. The combination of the heat and sulphur content of this coal, and the application of longwall mining techniques for efficient, low cost production, makes this coal highly attractive in the pre-January 1, 2000 market (Clean Air Act, Phase I) without SO_2 allowances, and with allowances in the Phase II market at utility plants which are not equipped with flue gas desulphurization ("FGD" or "scrubber") units. *See* Morey V.S. at 8-9.

The foregoing facts are not in contention. Mine 84 and Applicants similarly view the identification of the high Btu/medium sulphur quality coal as a distinct submarket, the role of Mine 84 in this market, and Mine 84's competitive relationship with other producers mining Pittsburgh seam coal. *See* Sansom V.S. at 335-336;^{1/} Sansom Dep. at 55-62; Sharp Dep. at 162-166; Fox Dep. at 14-18. The other rail-served producers of this high Btu/medium sulphur content Monongahela region coal are CONSOL, with four mines (Bailey, Enlow Fork,

^{1/} Applicants' primary witnesses testifying on coal and utility market effects of the proposed transaction are Raymond L. Sharp and Robert L. Sansom for CSX and John William Fox and Barry C. Harris for NS. The CSX testimony is found in CSX/NS-19, Vol. 2A, and the NS testimony at CSX/NS 19, Vol. 2B.

Blacksville and Loveridge); Cyprus Amax with one mine (Emerald); and Peabody Coal Company with one mine (Federal 2). *Id.*^{2/}

The ready availability of this coal, and its heat and sulphur characteristics, makes this coal particularly attractive to electric utilities for blending purposes. *See* Gordon V.S. at 14-15; Majcher V.S. at 10; Sansom V.S. at 337-338. Coals from other fields with lower heat content and/or higher sulphur content may be substituted, but often at a higher net-delivered cost to the utility for the production of electrical energy. The utility customer, in any event, specifies the coal quality it desires to purchase; and when the high Btu/medium sulphur content coal is specified, Mine 84 must be in a position to be competitively supply the utility customer. Relevant to this proceeding, rail transportation is a significant component of the delivered cost of coal; and market competition is measured at a level of \$0.25/ton or \$0.01/MMBtu. *See* Morey V.S. at 11.^{3/}

The primary markets for Monongahela region coal are utility plants in the Northeast and Midwest. *See* Majcher V.S. at 12; Gordon V.S. at 10-13; Morey V.S. at 8-9. The proximity to coal sources, and the need to maintain low transportation rates, has led to a reliance

^{2/} *See also* Exhibit 1 (Attachment III), a graph forecasting Monongahela ("MGA") coal region production from Conrail's 9th Annual Pittsburgh Seam Coal Conference, held June 11, 1997, in which Conrail defines this market.

^{3/} These relationships are illustrated by a CSX

See Exhibit 2 at CSX 39 HC 000108-110.

upon Monongahela region coal, with utility boiler configuration and Clean Air Act compliance being designed around the qualities of local coal supplies. See Morey V.S. at 8-12; Gordon V.S. at 14. Accordingly, the primary market for Mine 84's coal is Conrail territory, with most of the coal destined for utility plants and some destined for export.

B. Conrail Service to Monongahela Coal Region

All high Btu/medium sulphur Monongahela coal region producers which are rail-served currently receive that service from Conrail. Conrail serves CONSOL, Cyprus Amax and Peabody mines via the former Monongahela Railway Company (MRC); and it serves Mine 84 via the Ellsworth Secondary off the Mon Branch line, which runs from the West Brownsville junction with the former MRC north to Pittsburgh, and beyond. See Morey V.S. at 12-15 and Exhibit MTM_2. Conrail's control of the Monongahela coal region, including the former Monongahela Railway lines, is acknowledged in each of the four verified statements tendered by Applicants which address Applicants' proposed service to the Monongahela region coal fields. See Sharp V.S. at 350; Fox V.S. at 267, 274; Sansom V.S. at 316, 336; Harris V.S. at 5 ("both Norfolk Southern and CSX will also serve shippers in the Monongahela coal fields in Southwestern Pennsylvania and Northern West Virginia. These shippers are currently served only by Conrail.").^{4/}

^{4/} Conrail's exercise of control over the lines of the former Monongahela Railway has occurred notwithstanding that, in purchasing the interests of the Pittsburgh & Lake Erie Railroad ("P.L.E.") and CSX in the MRC, Conrail committed to exchange traffic with both carriers on a
(continued...)

Conrail has enjoyed exclusive service to the Monongahela coal region since prior to Rochester & Pittsburgh's acquisition of Mine 84. The competitive position of Mine 84 was a factor considered in purchasing the mine and developing its production potential, an investment of more than \$150 million. See Majcher V.S. at 6-9.

C. Division of Conrail's Coal and Utility Customers

The division of Conrail necessarily entails the division between CSX and NS of service to Conrail's customers, and these include 38 coal-fired electric utility plants. These plants serve as the primary market for Monongahela region coal. The division of Conrail's route authority will transfer Conrail's exclusive access over 21 coal-fired utility plants from Conrail to

⁴(...continued)

non-discriminatory basis *vis-a-vis* Conrail's own line-haul movements. See Consolidated Rail Corp. — Control — Monongahela Ry. Co., F.D. No. 31630 at p. 5 (Aug. 14, 1990). Notably, the P.L.E. opposed Conrail's subsequent application to merge the Monongahela Railway into Conrail, on the basis that continuation of the MRC *qua* MRC was essential to enforcement of P.L.E.'s rights to originate traffic on a non-discriminatory basis. Consolidated Rail Corp. — Merger — Monongahela Ry. Co., F.D. No. 31875 at p. 3 (Oct. 4, 1991). The ICC denied the P.L.E.'s objections and granted the merger application. The P.L.E. was quite prescient, as Conrail in fact refused to honor the "neutrality agreements" entered into in its purchase of the MRC.

See Sharp Dep. at 240-247 and Dep. Exhibit 22; see also Exhibit 3 (Attachment III), CSX-24 HC 000213-214. Accordingly, notwithstanding agreements to the contrary, Conrail has exercised a *de facto* monopoly over the Monongahela region coal fields served by the former Monongahela Railway since 1990. Again, this is fully consistent with CSX and NS testimony and descriptions of the effects and benefits of the pending transaction.

NS, and will transfer Conrail's exclusive access over 11 coal-fired utility plants from Conrail to CSX. Six utility plants will receive dual service from both CSX and NS. *See* Fox V.S. at 274.

In the division of Conrail, NS will acquire both the lines of the former Monongahela Railway as well as the Mon Branch line and the Ellsworth Secondary line which serve Mine 84. However, the agreement for the division of Conrail provides that NS will grant CSX joint use of the former Monongahela Railway lines, with perpetual access to all current and future customers. *See, e.g.,* Harris V.S. at 5; Monongahela Usage Agreement, CSX/NS-25 at 715-757. Applicants tout the benefits to the producers on the lines of the former Monongahela Railway, including single-line hauls to utility plants located on the respective lines of CSX and NS and increased competition. *See* Sharp V.S. at 352-355; Fox V.S. at 263-64, 272. Mine 84, which will be left with single-line service, will not receive such benefits. *See* Sharp Dep. at 185-186.

The agreement to share access to the Monongahela lines was based upon negotiations involving the division of Conrail. Neither CSX nor NS, either individually or together, applied "any specific criteria in determining that the Monongahela Agreement Area should be served by both CSX and NS." *See* Exhibit 4 at Response to Interrogatory No. 10.

In addition to CSX and NS agreeing to share access to the lines of the former Monongahela Railway, they also have agreed to extend their shared access to any extension of the MRC lines to serve any new operating area. This agreement pertains specifically to a new

CONSOL mine known as "Berkshire." *See* Morey V.S. at 14. The Berkshire mine is of the same mid-sulphur, high Btu content as produced by Mine 84 and the other Monongahela coal region mines discussed herein. *Id.*; *see also* Exhibit 3.

^{2/} *See* Exhibit 3, CSX 24 HC 000213-215; Sharp Dep. at 186-190.

Taken together, the joint CSX/NS access to the former Monongahela Railway served mines and the agreement to jointly extend rail service to the Berkshire area leave Mine 84 isolated within its coal market as the only rail-served mine which is served by only one of the two post-acquisition major Eastern railroads.

III. Injury

As recounted by Applicants, establishing competitive rail service for the coal mines formerly served by the Monongahela Railway, and for new Pittsburgh seam coal production which may be established, promises substantial benefits. Those benefits, including the opportunity to obtain rate and service improvements, will inure to all direct competitors of

^{2/}

See Exhibit 3 at CSX 24 HC 000213. With CSX being able to access Bailey and Enlow Fork via its Conrail acquisition agreement,

Mine 84. Being relegated to single-carrier service, Mine 84 will not share those benefits, Sharp Dep. at 185-186; and consequently, Mine 84 will be materially disadvantaged in the marketplace.

A. Mine 84 Will Be Effectively Foreclosed from Serving Destinations To Be Served Post-Acquisition Exclusively By CSX

Eleven of the 38 Conrail-served utility plants plus industrial coal customers will, post-merger, be served exclusively by CSX. These plants represent approximately 20% of Monongahela region coal consumption. *See* Morey V.S. at 18-20 and Exhibit MTM_6. This foreclosure effect on Mine 84 is recognized by Applicants as a matter of record in this proceeding. There is no argument but that Applicants prefer single-line movements over provision of joint-line service or through granting trackage rights to a competitive railroad. Therefore, each railroad will husband for itself, through its pricing practices, the single-line movement where the railroad can deliver coal meeting the specifications of the utility or industrial customer. *See* Sharp Dep. at 57. Without question, joint-line movements will be priced higher than single-line movements, and single-line service will be superior to joint-line service. *See* Sharp Dep. at 41-43, 286, 296. In effect, there will be no joint-line access available, inasmuch as the railroads will "protect" their single-line served markets. *See* Sharp Dep. at 169-175, 177-178; *see also* Exhibit 5, CSX 16 HC 000181, 187.

CSX's Vice President, Coal Sales and Marketing, Raymond L. Sharp, candidly acknowledged that CSX is at a material disadvantage in its ability to haul coal from Mine 84. Recognizing that joint-line rates would not be competitive, Sharp stated that CSX could

effectively serve Mine 84 if NS would provide switching for CSX. When pressed as to what incentive NS would have to provide such switching service, Sharp responded, "[NS] ought to be willing to do it because I'm a nice guy. But I don't think that's going to work." *See* Sharp Dep. at 181. Accordingly, Sharp acknowledged that the proposed division of the Monongahela region coal fields between CSX and NS would leave Mine 84 without effective access to the Conrail plants going to CSX. *See* Sharp Dep. at 193-194.

The record further provides a dramatic illustration that CSX anticipates diverting utility coal deliveries from sources which NS will receive to sources which CSX will be able to serve, in order to capture the single-line haul, rather than provide joint-line service as would be required if the current supply arrangements were to continue.^{6/} *See* Exhibit 2, CSX 39 HC 000103-110.

^{6/} Mine 84 acknowledges that Applicants have committed to honoring existing contracts. Many contracts for supply of Monongahela region coal are year-to-year. In any event, the injury to Mine 84 will occur at such time as the contracts expire and the customer seeks a new supply arrangement, and further with regard to Mine 84's ability to compete for any future procurement from CSX-served utility or industrial plants which it may not currently supply with coal.

The foregoing not only is a possible scenario; it is the intended scenario,

. See Sharp Dep. at 77.

The position that Applicants will prefer their single-line service over joint-line hauls is shared by John William Fox, Vice-President of Coal Marketing of Norfolk Southern, and by the two economists sponsored by CSX and NS, Robert L. Sansom and Barry C. Harris. See Fox Dep. at 32-35; Sansom Dep. at 66-67 and Harris Dep. at 26, 31. Accordingly, there is no question but that Mine 84 will be foreclosed from approximately 20% of its primary utility market due to CSX succeeding to the rights to serve eleven Conrail-served utility plants and also industrial coal customers on an exclusive basis and not receiving rights to serve Mine 84.

B. Mine 84 Will Be Disadvantaged in Serving Customers at Jointly-Served Destinations

Mine 84 further will be disadvantaged in serving approximately 58% of the markets where its competitors will have access to both CSX and NS. See Morey V.S. at 18-21. These include service to export, Great Lake and river terminals, service to plants through connection with the delivering carrier, and service to the utility plants which will be dual served by CSX and NS. As cited before, Applicants have acknowledged that rail competition provides leverage with regard to both price and service. See also Sharp V.S. at 353, Sharp Dep. at 211-212; Fox Dep. at 35; Harris V.S. at 5 and Harris Dep. 18-19. NS's witness Fox, while asserting that the rail service competition to be received by Mine 84's competitors will have a

flow-through benefit to Mine 84, candidly acknowledged that, "I don't know" if Mine 84 will realize the same rates as available to the competitively-served Monongahela region coal mines. See Fox Dep. at 37. Obviously, Mine 84 and the Board can only interpret this evasive response in the negative. In fact, from an economic analytical standpoint, Mine 84 is not in a position to receive those benefits. See Gordon V.S. at 17-18.

As detailed in the memorandum identified as Exhibit 2 to these Comments, transportation is a significant component in the delivered cost of coal. According to CSX's coal analysis, transportation amounted to of the delivered cost of Monongahela region coal, and almost of the total cost of energy production analyzed. See Exhibit 2 at CSX 39 HC 000110. Rail captivity, as demonstrated by Conrail in the UP/SP merger, can bear a 50% rate penalty.^{7/} Thus, in the utility markets, whether directly dual served by CSX and NS or served via connection with a third carrier or via a water connection, for CSX and NS to share access to the former Monongahela Railway served mines while leaving Mine 84 captive could cost Mine 84 as much as +¢/MMBtu in a market where 1¢/MMBtu can shift procurement decisions. Consequently, while not subject to a *per se* foreclosure, as with the CSX exclusively-served plants, Mine 84 will be at a *severe* disadvantage in serving as a source of coal for these markets.

^{7/} See Brief for Consolidated Rail Corp., Union Pacific Corp. — Control and Merger — Southern Pacific Rail Corp., F.D. No. 32760 at 11, n.20 (June 3, 1996), extracted at Exhibit 6.

C. Access to NS Southeastern Utility Customer Base Will Not Compensate for Mine 84's Loss of Northeastern Market Opportunities

As established by Professor Gordon and Mark Morey in their verified statements, the market for Monongahela region coal lies primarily in the Northeast and Midwest. *Supra* at 6-7. This is further illustrated in a CSX memorandum

See Exhibit 7, CSX 24 HC

000281. Applicants nonetheless tout that NS-served coal producers will realize a benefit by having access to the extended reach of the Norfolk Southern system. This, however, does not offset the foreclosure and disadvantage suffered by Mine 84 with regard to approximately half of its market. The Southeastern utility plants served by NS require a substantially greater length of haul than the coal currently being purchased by those plants. *See Morey V.S.* at 3. These are difficult barriers to overcome in competition with central Appalachia coal sources currently relied upon by Southeastern utilities. *Id.*

Finally, the numbers provided by NS itself bely its contention of an extended market for Mine 84. Witness Fox testifies that of 125,000,000 tons of coal handled by NS in 1995, only 5,000,000 tons were interchanged with Conrail, but that NS expects this tonnage to increase to 12,000,000 tons as a result of the Conrail acquisition. *See Fox V.S.* at 266-267. This is a 7,000,000 ton increase, out of a total combined NS market of more than 160,000,000 tons, including the coal market NS will acquire from Conrail. This estimated 7,000,000 ton increase

in traffic exchanged between NS and Conrail routes represents production not only from the Monongahela region coal mines, but also coal production which NS otherwise will acquire from Conrail, as well as coal from current NS sources in the Southeast potentially moving into Conrail territory, and it is this latter coal which represents the overwhelming majority of the current 5 million tons interchanged between NS and Conrail.^{8/} It is abundantly clear that there is no material market opportunity available to Mine 84 to offset the Conrail-to-CSX markets which it will be foreclosed from, or disadvantaged in, serving.

IV. The Board Must Order that CSX Be Given Access to Mine 84

A. Legal Standard

Railroad acquisition and control applications are evaluated under the "Public Interest" standard. 49 U.S.C. § 11324(c). Burlington Northern, Inc. — Control and Merger — Santa Fe Pacific Corp., F.D. No. 32549, Decision No. 38, at 50-51 (August 23, 1995) (hereinafter, "BN/SF"); Union Pacific Corp. — Control and Merger — Southern Pacific Rail Corp., F.D. No. 32760, Decision No. 44 at 98 (August 12, 1996) (hereinafter, "UP/SP"); Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 395 (5th Cir. 1980), *cert. denied* 451 U.S. 1017 (1981), Penn Central Merger Cases, 389 U.S. 486, 498-97 (1968). The statute enumerates five factors which the Board must consider, including (i) the effect of the proposed

^{8/} Similarly, CSX also forecasts that its current coal producer customers will gain access to Conrail-served utilities. *See Sharp Dep.* at 169.

transaction on the adequacy of transportation to the public, (ii) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction, (iii) the total fixed charges that will result from the proposed transaction, (iv) the interest of rail carrier employees, and (v) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. 49 U.S.C. § 11324(b). These factors are not the exhaustive elements in evaluating the public interest, nor are these factors to be read in a narrow, literal and pedantic fashion.

As to not being exclusive, the direction to consider the five enumerated factors is preceded by the instruction: "the Board shall consider *at least*" the enumerated factors. *Id.* (emphasis added). The Board so recognizes, inasmuch as the General Policy Statement for Merger or Control of At Least Two Class I Railroads states, "In examining a proposed transaction, the Board must consider, *at a minimum*: [the factors enumerated in the statute]." 49 C.F.R. § 1180.1(b)(1). With regard to whether the "public interest" test and the enumerated factors should be construed in broad or narrow fashion, one need only to recall the genesis of this application, *i.e.*, the agreement of merger announced October 15, 1996 between CSX and Conrail. In forging that agreement, which would have resulted in the dominant carrier in the East being twice the size of the second carrier, the parties apparently believed that the UP/SP merger decision provided the script, and that they only needed to maintain competition at "2-to-1" points in order to secure agency approval. The public outcry evidenced that a dominant carrier in the East would not be acceptable to the shipping public, and the Chairman of the Board recognized that a major issue in the case would entail the principles of balanced competition. *See Decision*

No. 35 (September 17, 1997). Indeed, the Interstate Commerce Commission stated in evaluating the predecessor to Section 11324:

In evaluating "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region," 49 U.S.C. §11344(b)(1)(E), we do not limit our consideration of competition to rail carriers alone, but examine the total transportation market.

UP/SP at 99.

In evaluating the application before the Board and the positions of Mine 84 and other parties, the Board must keep in mind that this transaction is unique among consolidation of rail carriers. As discussed in the Introduction to these Comments, this transaction does not merely involve the end-to-end consolidation of two railroads, nor does it entail consolidation within a region which may raise competitive concerns related to commonly-served points and parallel route structures. Rather, the distinguishing nature of this proceeding is that two railroads are acquiring a third railroad and dividing its markets between them. In doing so, this transaction raises issues far broader than rail transportation service in its purest form. In application of the "public interest" test, the Board must consider whether this market division may have an adverse effect upon the markets being served by the carrier to be acquired, and whether participants in those markets may be injured as a function of the manner of division of those markets. NS' economic witness Dr. Harris recognized that shippers may suffer harm from factors other than simply whether transportation options increase or decrease. *See Harris Dep.* at 21. Moreover, in applying the "public interest" standard to this unique transaction, it is particularly important that the Board look to antitrust principles. As the Supreme Court has observed, the antitrust laws

give "understandable context to the broad statutory concept of 'the public interest,'" FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 244 (1968).

Under the antitrust laws, agreements between competitors to divide geographic markets or allocate customers are viewed as naked restraints of trade and are condemned as unlawful *per se*. Palmer v. Palmer BRG of Georgia, Inc., 498 U.S. 46 (1990) (*per curiam*). See also Timken Roller Bearing Co. v. United States, 341 U.S. 593, 598 (1951); Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 240-41 (1899). Market division agreements among potential, as well as actual, competitors are equally unlawful; and both are conclusively presumed to have anticompetitive effects. See Palmer, 498 U.S. at 49-50 (market allocation "agreements are anticompetitive regardless of whether the parties split the market within which they both do business or whether they merely reserve one market for one and another for the other"). Given the general condemnation accorded to market division agreements, it is extremely important for the Board to assure in the division of Conrail that CSX and NS do no injury to markets they will serve.

B. The Injury to Eighty-Four Mining Company Requires Redress

Not only does Eighty-Four Mining Company contend that the division of Conrail with joint service being accorded to all of Mine 84's direct competitors but not to Mine 84, and the division of Conrail's utility and other coal markets between CSX and NS. will injure Mine 84 from a competitive standpoint, but also Applicants CSX and NS readily have so acknowledged

as detailed in Section III above. NS' economic witness, Dr. Harris, conceded in his deposition that a shipper which does not receive dual service when its competitors do so is subject to a market disadvantage. *See Harris Dep.* at 26, 31. And what was the reason for subjecting Mine 84 to this market disadvantage? As hereinbefore quoted from Applicants' responses to interrogatories, the agreement to share access along the lines of the former Monongahela Railway was a matter of agreement; and there was no "specific criteria" or principle applied to bestow competitive rail service upon substantially all of the Monongahela coal region but deny the benefits of the Conrail acquisition to Mine 84.^{9/}

In essence, the competitive situation of Mine 84 and its role in the Monongahela coal region market likely were ignored when the deal was struck; and once the map lines were drawn and the division agreed upon, the deal was sealed and Applicants are unwilling to change the agreed-upon map.^{10/} These same Applicants, however, claim enormous benefits from this transaction, in excess of \$650 million for CSX and nearly \$800 million for NS. *See CSX/NS-18* at 123-127. To hold fast to the "deal," and therefore to isolate Mine 84 within its marketplace, is unconscionable. NS' own economic witness, Dr. Harris, admitted that it would be advantageous

^{9/} The historical fact of competitive service to the Monongahela Railway mines, if that was the basis for the market division, is irrelevant from an economic standpoint. *See Gordon V.S.* at 18.

^{10/} *See Verified Statement of David R. Goode, Chairman of the Board, President and Chief Executive Officer of Norfolk Southern Corporation:* "It is simply not possible to structure a transaction that would satisfy everyone and still provide the competition, efficiency and other benefits of this transaction." *CSX/NS-18* at 334-335. There is no explanation, however, anywhere in the 14,800 pages of the application, why extending the benefits of dual service to Mine 84 would preclude the "competition, efficiency and other benefits of this transaction."

to structure the transaction to avoid inflicting injury on individual shippers such as Mine 84. *See* Harris Dep. at 22.

The Board in evaluating rail consolidation further is guided by the Rail Transportation Policy, 49 U.S.C. § 10101. *See* Norfolk Southern Corp. — Control — Norfolk & W. Ry. Co., 366 I.C.C. 171, 190 (1992); BN/SF at 52. The first subparagraph under the Rail Transportation Policy is "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail." The fourth stated policy is "to insure the development and continuation of a strong rail transportation system with effective competition among rail carriers..., to meet the needs of the public... ." Applicants cite the opening of previously-closed Conrail points to competitive service by CSX and NS as a benefit of the transaction. Mine 84 simply seeks that it be accorded those same benefits, consistent with the Rail Transportation Policy, in order that it will not needlessly be sacrificed at the alters of oversight and intransigence.

Furthermore, the factors applied in evaluating rail consolidation proceedings, when looked at beyond the narrow context of the rail applicants themselves, as is warranted by the scope and unique nature of this transaction, certainly apply to support a remedy for Mine 84. The second factor commanded by Congress to the Board under Section 11324(b) is "the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction." This factor looks beyond the totality of the market to the effect on individual market participants who may not be a beneficiary of the transaction. This factor

recognizes that "markets" are not amorphous concepts which have application only in theoretical economics; rather, markets are comprised of individual suppliers and individual customers. The principle underlying this factor — the public interest in assuring fully functioning and competitive markets and in avoiding undue consequences on participants in those markets — is the very consideration being brought to the Board by Mine 84.

The fifth factor commanded to the Board to evaluate in Section 11324(b) addresses the effect on competition. Again, this is the very element being raised by Mine 84.^{11/} By analogy, the Board in the UP/SP merger decision stated that it is "disinclined to impose conditions that would broadly restructure the competitive balance among railroads with unpredictable effects." UP/SP at 144. In the instant proceeding, the division of the Monongahela coal region market between CSX and NS will serve to "broadly restructure the competitive balance" among coal producers. The one distinguishing factor between this situation and the caveat expressed by the Board in UP/SP is that the results here are predictable, namely the extreme prejudice to Mine 84 in the marketplace. As a matter of rail transportation policy and the public interest, just as the Board seeks to avoid arbitrarily imposing restructuring of competitive balance, so should the Board in its oversight of railroad consolidation proceedings protect the marketplace against the railroads arbitrarily doing so themselves. Markets should

^{11/} The ICC has defined competitive harm resulting from a merger as the ability to gain sufficient market power to raise rates or reduce service (or both), and to do so profitably relative to pre-merger levels. BN/SE at 54. In the context of Mine 84's situation, the exclusion of Mine 84 from the competitive transportation market being extended to its direct competitors subjects Mine 84 to that very risk, at least from a relative perspective, *supra* at 11-14; see *Gordon V.S.* at 17-19.

function based on principles of economic efficiencies, *see* Gordon V.S. at 18-19, and should not be undermined due to arbitrary and artificial influences.

The relief Mine 84 seeks further is consistent with NS' "Principles of Balanced Rail Competition." *See* Exhibit 8. NS asserts that "Mergers should result in balance within regions, not dominance." But in the Monongahela coal region, Applicants propose to upset the current balanced competition among the producers through arbitrarily extending competitive rail service unequally within the region. NS further states that "The Largest Markets Must be Served by (at least) Two Large Railroads." Again, the proposed structuring within the Monongahela coal region only partially implements this Principle, to the detriment of Mine 84. Norfolk Southern, having striven for a competitive rail market in the East, now should not be permitted arbitrarily to abandon those principles, upsetting the competitive balance in an important market to the extreme prejudice of one of the main participants.

Mine 84 is fully cognizant that the Interstate Commerce Commission in the BN/Santa Fe merger proceeding declined to condition the transaction on Bunge Corporation, a soybean processor, receiving competitive rail service. Two of Bunge's competitors did receive competitive rail service through trackage rights granted to the Southern Pacific. The situation of Mine 84 is clearly distinguishable. First, Bunge was impacted due to rights granted the SP intended to solve other competitive problems. Here, CSX and NS are engaged in a market division; and in agreeing upon shared access to the market, they have omitted one of the principal participants. Mine 84's problem is the direct effect of the acquisition and division of

Conrail, not a collateral effect flowing from settlement of other competitive problems. Secondly, it appears that Bunge was impacted with regard to only a portion of its market. Certain of its competitors were receiving dual rail service, while others apparently did not.^{12/} By contrast, Mine 84 and all of its direct competitors currently are served by a single railroad, while under the proposed transaction *all* of those competitors would receive dual rail service, leaving Mine 84 with single railroad service. While it may be, as stated by the Commission in BN/SF, that the agency "*typically* do[es] not use our conditioning power to preserve the competitive balance among the industry served by rail carriers," BN/SF at 99 (emphasis added), the circumstances involving Mine 84 do not present the *typical* situation. In no current or other prior circumstance known to Mine 84 does the entire industry, but for one participant, benefit from the extension of competitive rail service as a direct consequence of the consolidation transaction.

C. Remedy Requested

Mine 84 respectfully requests that the Surface Transportation Board condition any approval of the acquisition and division of Conrail^{13/} upon CSX securing trackage rights over the Ellsworth Secondary with the right to serve Mine 84, and with associated rights of access along the Mon Branch line. The total route miles involved are approximately 32. See *Morey V.S.* at 22, a 20% extension over the 162 miles of trackage rights NS is granting CSX over the former

^{12/} See Brief of Bunge Corp., BUNG-4, Finance Docket No. 32549, at 5 (June 29, 1995).

^{13/} Without question, the Board enjoys broad conditioning power in approval of railroad control transactions. 49 U.S.C. § 11324(c); UP/SP at 144.

MRC lines.^{14/} The trackage rights should be available to CSX on same basis as otherwise provided along the lines of the former Monongahela Railway which NS will operate and over which CSX will have trackage rights. The lines involved serve the Monongahela coal region, and there should be no substantive difference operationally between CSX operating along the lines necessary to serve Mine 84 and those available under the agreement to serve the other Monongahela coal region producers. There further is no practical barrier to granting this remedy in that the Ellsworth Secondary and the Mon Branch currently, and under the Conrail division will continue to, handle Mine 84's coal movements. Moreover, post-transaction (if approved), there will be no burden on the Mon Branch since CSX's access to the former MRC lines will divert traffic at West Brownsville off the Mon Branch to the CSX line on the East side of the Monongahela River. *See* Morey V.S. at 22.

Alternatively, Mine 84 respectfully requests that Norfolk Southern be ordered to establish arrangements for switching of Mine 84 traffic to CSX. This would be the functional equivalent of direct access via trackage rights in that CSX would enjoy the same long-haul movement of Mine 84 coal as for coal from the former Monongahela Railway, and CSX thereby would be able to serve Mine 84 on the same basis as it serves the other Monongahela coal region producers. *See* Sharp Dep. at 180. Thus, there would be no foreclosure or other prejudice to Mine 84. The cars could be interchanged either at Homestead, at the North end of the Mon Branch line, or at West Brownsville, the junction point between the CSX line and the lines of the

^{14/} *See Consolidated Rail Corp. — Control — Monongahela Ry. Co., supra* at 2.

former Monongahela Railway.^{15/} Switching is provided elsewhere in the transaction, *e.g.*, Indianapolis;^{16/} and the same terms and conditions governing the switching service as applied in Indianapolis, or elsewhere, should apply to this alternative remedy. Reciprocal switching is a common feature in rail transportation service: it is not intrusive, and there is no practical barrier to establishment of reciprocal switching in these circumstances, as well.

V. A Responsive Application Is Not Required In Order for A Non-Railroad to Seek A Trackage Rights or Equivalent Condition

Under the Railroad Consolidation Procedures, 49 C.F.R. Part 1180, a request for trackage rights may be properly maintained as a request for protective conditions and need not be asserted in a responsive application. The procedure for filing responsive applications, and any other application related to the Railroad Consolidation Procedures, applies only to railroads and not to shippers or members of the general public who may comment or seek protective conditions as a result of a proposed merger. The statutory authority for the Railroad Consolidation Procedures arises from Sections 11323-11328 of the ICC Termination Act of 1995. *See* 49 U.S.C. §§ 11323-11328. These provisions pertain only to railroads and not to shippers. Indeed, the Railroad Consolidation Rules specifically provide a procedure for non-railroad parties to respond to merger applications by permitting such parties to file written comments, which shall contain "[a]n initial list of specific protective conditions" if the proceeding involved a major or

^{15/} The switch should be that which is most practical, operationally, to the involved carriers.

^{16/} *See CSX/NS-25 at 501, et.seq.*

significant transaction. 49 C.F.R. § 1180.4(d)(1)(iii)(H). The Commission's rules do not define or limit what may be requested as a protective condition.

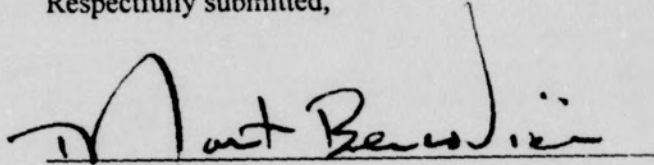
Accordingly, based upon the ICC Termination Act and the Railroad Consolidation Procedures, and based upon precedent such as the recent UP/SP and BN/SF merger decisions, it is clear that a non-railroad party need not file a responsive application in order to request trackage rights, but may assert such a request as a protective condition.

VI. Conclusion

If the Board grants approval to the proposed acquisition of Conrail by CSX and Norfolk Southern, Eighty-Four Mining Company will be subject to substantial market foreclosure and disadvantage affecting approximately 78% of its total market. This injury will flow due to the arbitrary exclusion of Mine 84 from the agreement to provide joint service to Monongahela region coal, which joint service will extend to all of Mine 84's present and future direct competitors. Accordingly, Eighty-Four Mining Company respectfully requests the Surface Transportation Board, if it approves the transaction, to impose the following as a condition on the joint acquisition and division of Conrail: (a) Norfolk Southern must grant CSX trackage rights to serve Mine 84, along the Ellsworth Secondary and such portion of the Mon Branch line as necessary to access the Ellsworth Secondary, under terms and conditions consistent with those provided for trackage rights along the lines of the former Monongahela Railway; or, in the alternative, (b) Norfolk Southern must provide switching of Mine 84 coal traffic to CSX, at

either Homestead or West Brownsville, as may be determined by the carriers (or in the absence of agreement, at a point of interchange to be determined by the Board), under the terms and conditions otherwise provided for reciprocal switching in the Control application.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Martin W. Bercovici", is written over a horizontal line.

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Attorney for Eighty-Four Mining Company

Date: October 21, 1997

**VERIFIED STATEMENT OF
THOMAS M. MAJCHER**

I. Introduction, Purpose and Summary

My name is Thomas M. Majcher. I am Vice President of Corporate Development for Rochester & Pittsburgh Coal Company (R&P), a producer and seller of bituminous coal with operations in the Commonwealth of Pennsylvania. My business address is 655 Church Street, Indiana PA 15701. My resume is attached as Exhibit TMM_1.

I hold a M.S. degree in Mineral Economics and a B.S. degree in Geological Sciences from the Pennsylvania State University. I have over 15 years experience in the U.S. and international coal industry. In my present position I am responsible for business development and corporate marketing, including having the charge of implementing a program to market and sell coal for the Eighty Four Mining Company ("EFM"), the operator of Mine 84 in the Pittsburgh seam. Before entering my present position at R&P in 1990, I was Director of Planning and Development at BP Coal, a subsidiary of the British Petroleum Company, where I was responsible for strategic and business planning for a coal producing company active in six countries. Previous to that, I held a number of positions within Old Ben Coal Co., a subsidiary of

The Standard Oil Company (Ohio), which was a producer of 20 million tons per year of coal from mines in Illinois, Indiana and West Virginia.

My experience in the coal industry is extensive, where I have worked on a large number and wide range of projects, many of which I have directed. At EFM, I am in-charge of developing and executing a marketing strategy for placing 100% of the coal output from Mine 84. This has required that I have a complete and up-to-date understanding of demand for Pittsburgh seam coal in the market. For the most part this includes knowledge of specific needs of utility and industrial consumers with coal-fired boilers, the amount and extent of competition provided by other suppliers of Pittsburgh seam coal, and the manner in which this coal is transported to customer locations. Because of my day-to-day involvement in the business, I am keenly aware of the elements that are of critical importance in executing a successful sales strategy in a competitive market.

In this proceeding I am representing EFM and intend to describe the manner in which EFM's Mine 84 will be harmed by the division of Conrail between the CSX and Norfolk Southern (NS) railroads as presently proposed. In particular, I will demonstrate how Mine 84 will be put at a great disadvantage in the market versus its direct competitors if elements contained in the Control Application of Conrail are not modified. The disadvantage to which I am referring is the proposed granting of multiple rail access to certain mines in the Monongahela coal region (MGA), but not to Mine 84. The MGA region consists of mines that, like Mine 84, produce high quality coal from the Pittsburgh coal seam in southwestern Pennsylvania and

northern West Virginia. It includes, but is not limited to, mines located along lines of the former Monongahela Railway, now part of Conrail. Mines within the MGA region, including Mine 84, are direct and fierce competitors among one another. Greater detail on the MGA coal region, its markets and rail transportation, is presented in a Verified Statement prepared by Mark T. Morey, made in support of EFM's position.

At the present time, Conrail is the only provider of rail service to coal mines in the MGA region, and has been since 1992. Even before that time, Conrail was far and away the primary rail carrier for the region, handling the bulk of the tonnage being shipped. Now, with the proposal to have the CSX and NS railroads serve the region, the manner in which rail service is to be provided in the future will change significantly. The major component of that change is the joint rail access to be provided to mines on the former Monongahela Railway. The proposal is detailed throughout the control filing, and is perhaps best described in the following statement made by Barry C. Harris representing the NS in his verified statement:

Both NS and CSX will also serve shippers in the Monongahela coal fields in southwestern Pennsylvania and northern West Virginia. These shippers are currently served only by Conrail. NS will operate, dispatch and maintain facilities of the former Monongahela Railway. NS and CSX will enter into a joint use agreement that provides CSX with equal and perpetual access to all current and future customers. NS and CSX will share the operating expenses on a usage basis. Consequently, the Monongahela coal mines will be served by two competitive railroads, where they are currently served only by Conrail.^{1/}

Six MGA mines serving five loadouts are located on the former Monongahela Railway, with these operated by three different companies. These are the same mines and companies that

^{1/} Finance Docket No. 33388, Vol. 2B, V.S. of Barry C. Harris, p. 4.

represent the direct competitors for coal produced from EFM's Mine 84. By receiving joint access to both the CSX and NS railroads, these six mines will be able to serve a larger and more broadly based market, as well as being able to enjoy the benefits of having two railroads compete for their business. In contrast, Mine 84 will be served only by one railroad, the NS. Being restricted to one carrier, Mine 84 will witness a decline in its market reach, and in its competitive standing versus its direct competitors, those mines located along the lines of the former Monongahela Railway. The proposed arrangement will make for a starkly different environment than that in effect today, where Conrail provides equal market access to all mines that ship coal from the Pittsburgh seam by rail.

The granting of multiple rail access to all of the MGA mines except Mine 84 will be an unfair result of the division on Conrail. Mine 84 is in every way equal to the six mines on the former Monongahela Railway, in terms of mining operations, coal quality, and market reach, as well as having single rail service on Conrail today. The granting of multiple rail access to the mines on the former Monongahela line represents a radical change to the present composition of the transportation network for MGA coal, a change that will result in serious harm to Mine 84 if it too does not receive joint access.

In my testimony I will:

- describe EFM Company and its Mine 84; the coal markets that it serves, and the competition it encounters from other MGA mines in serving those markets.

- show the importance of rail transportation in the marketing and sale of coal from Mine 84 and other mines in the Pittsburgh seam, and the critical role Conrail currently fills in this process.
- demonstrate how EFM will be harmed by the division of Conrail as proposed in the control proceeding, if it does not receive multiple rail access, as will its primary competitors.

In summary, my testimony will show that the competitive structure of the market for MGA coal will change substantially from its current standing because of the offering of multiple rail service to only those mines on the former Monongahela Railway. Because of that change, this testimony also will explain why EFM's Mine 84 is entitled to receive relief from the Surface Transportation Board (STB) in the form of being granted access to the CSX railroad, in addition to its proposed service on the NS. This access could come in the form of CSX serving Mine 84 directly, or via a switching arrangement where the NS is to carry trains loaded at Mine 84 to CSX lines.

II. Description of Eighty Four Mining Company

A. Purchase and Development

EFM is a wholly-owned subsidiary of Rochester & Pittsburgh Coal Company (R&P). It was formed in 1992 following the purchase of the Mine 84 underground mine and associated coal reserves in the Pittsburgh seam from the Bethlehem Steel Corporation. The properties, located in Washington County, PA, are estimated to contain approximately 175 million tons of high quality steam and metallurgical coal entirely within the Pittsburgh seam. Of this amount, approximately 80 million tons are within the current mine plan of Mine 84, which provides for mining through 2008. The property was purchased with the intent of developing a state-of-the-art underground coal mine in the Pittsburgh seam, and participating in the market for that coal. Known for its premium quality and excellent mining conditions, the latter owing to being a flat-lying seam with low in-seam dilution, the Pittsburgh seam is viewed as a unique coal in the utility fuel market.

Following the purchase of the existing mine and reserves, EFM undertook an extensive program to renovate, rehabilitate and replace key operating systems at Mine 84. This included the installation of a new five-mile long, 6,700 ton per hour underground belt conveyor system, a new portal and ventilating shaft, construction of new above-ground coal storage and the most modern unit-train loadout facility on the Conrail system, upgraded coal handling and preparation facilities and development work to accommodate two longwall mining units. The first longwall

unit commenced operations in the third quarter of 1995, and the second followed in the third quarter of 1997. When full capacity is reached in 1998, facilities at EFM's Mine 84 will permit production of more than 7.0 million tons per year of coal. In connection with the development of the mine, EFM produced 3.0 million tons of coal in 1996, and is expected to produce 4.8 million tons in 1997.

The objective of the renovation and expansion program was to make the mine capable of producing coal of the quality and at the costs necessary to compete with other mines in the Pittsburgh seam. Underground mines in the Pittsburgh seam are among the most productive and efficient underground coal mines in the world, due to application of advanced mining and haulage equipment that work well in the seam. Only by making a substantial investment in advanced equipment can a mine in the Pittsburgh seam successfully participate in the market for this coal. To-date, EFM's parent, R&P Coal has invested in excess of \$150 million in Mine 84 and its associated reserves.

Mine 84 is located on the Ellsworth Secondary line, which connects with the Conrail main line at Monongahela, PA. The Ellsworth Secondary is located roughly 20 miles north of the northern terminus of the former Monongahela Railway at West Brownsville, PA. A Map, appended as Exhibit MTM_2 in the Verified Statement of Mark T. Morey, shows the location of each of the major rail lines that make-up the MGA coal region, as well as the relative proximity of each.

Prior to purchasing Mine 84 from Bethlehem Steel, EFM's parent company conducted extensive due diligence investigations into all aspects of the mine's operations including the status and prospects of its markets. Included in the investigation on markets were a number of meetings with sales and operating personnel at Conrail. Based on these discussions it was concluded that Conrail expected continued growth in shipments of Pittsburgh seam coal from the MGA region and had made a significant commitment to upgrade its facilities and service from the region.

Prior to its acquisition by EFM in 1992, Mine 84 had been producing coal in much smaller amounts, usually less than 2 million tons per year. The lower level of operation was due to the mine having older and less efficient mining and material handling equipment, and to the fact that the former owner, Bethlehem Steel, was not an active participant in the commercial market for steam coal produced from the Pittsburgh seam. Being a consumer of metallurgical grade coal itself, Bethlehem Steel took delivery of most of the coal produced at Mine 84 for use in its coke making facilities. As a consequence Bethlehem Steel did not employ the same high capacity mining equipment and efficient facilities for the handling of coal and rapid loading of railroad hoppers as has been recently installed by EFM. Without these facilities, Mine 84, under Bethlehem Steel's direction, was unable to successfully compete in markets for MGA steam coal.

When R&P purchased Mine 84 in 1992 and formed EFM it did so with every intention of turning the operation into as efficient a mine as any other in the region. Much of that intention was drawn from the understanding that all mines in the region were served by Conrail, thus

providing for a level playing field for transportation. With the division of Conrail as proposed, that equal standing will be destroyed, despite all of the efforts and money expended by EFM since taking control of the property.

B. Coal Distribution & Marketing Plans

Coincident with the rehabilitation and expansion of the mine, which began in 1993, EFM undertook an intensive effort to market the coal to utility and industrial end users. Efforts to-date have included developing relationships with customers capable of burning coal from the Pittsburgh seam in the northeast and Midwest U.S. served by Conrail, and then actively bidding for their business. As a result of these efforts, EFM expects to sell 4.8 million tons in 1997 to traditional MGA coal customers. This represents an increase from sales of 3.0 million tons in 1996. A list of the major electric utility customers served by EFM since 1994 is shown in Attachment TMM_2. This includes customers that, following the division of Conrail, will be served by CSX, NS, or a third carrier.

The roster of utility customers shown in Exhibit TMM_2 is only a partial list of customers for Pittsburgh seam coal. Composition of the list changes from year to year. This is true for each of the companies that sell Pittsburgh seam coal, as the roster varies due to a number of considerations. Given this situation, the critical aspect in the marketing of coal from any mine is to maintain access to the market that is at least equal to its competitors. Mine 84's largest customer in 1997 was secured through a competitive bidding process among MGA market

participants, as was it's largest customer for business in 1998. Obtaining these accounts would not have been possible without rail access to the market that was, at a minimum, comparable to that of our competitors.

The coal from Mine 84 is of such quality to position EFM to respond to the increased demand for coal that meets the air quality standards under Phase I of the 1990 Clean Air Act Amendments (CAAA). EFM has been successful in addressing demand requirements by electric utilities in Phase I by providing a high quality coal that can be burned directly in the boiler as a medium sulfur coal, or as a blender with lower sulfur, lower Btu coals from mines in the West. We find that the high quality of the Pittsburgh seam coal, and its ability to provide utilities with operating flexibility, makes it a distinctive product for the U.S. coal market. Even though many of these same customers may burn coal from other regions, the Pittsburgh seam coal is an essential ingredient in the overall fuel mix.

Long-term demand for Pittsburgh seam coal, including that from Mine 84, should remain strong after Phase II of the CAAA. This will be due to the coal remaining a cost-effective product for electric generating stations utilizing flue gas scrubbers, or those applying SO₂ emission credits obtained from other sources, or those blending Pittsburgh seam coal with other coals. Additionally, a significant portion of the coal from Mine 84 may be sold as a steam and metallurgical coal to non-utility domestic and international accounts. The latter would be for coal being transported to coal exporting terminals on the east coast served today by Conrail, and by CSX and NS in the future.

Marketing activities undertaken by EFM have been directed to a diverse geographic customer base, thus reducing reliance upon a single customer, group of customers, or type of market. This has enabled EFM to partially hedge market risks due to establishment of a variety of contract structures. Such flexibility is essential if profitable operation of a mine with a large capital investment, such as Mine 84, is to be achieved.

In serving the market for Pittsburgh seam coal delivered by Conrail, EFM competes directly with the three other companies active in the MGA region. They include: CONSOL (four mines), and Cyprus Amax and Peabody Coal (one mine each). A list of the rail-served mines, and typical specifications for the coal being produced at each operation is shown in Attachment TMM_3. In competing against the other sources of MGA coal, EFM must provide a comparable quality product (which it can and does), and offer prices that are attractive to the customer. For the most part, this involves utility consumers located in the northeast and Midwest served directly by Conrail that have coal requirements and price concerns suited to the specifications and costs of MGA coal. While the bidding process used by the current customer base in selecting coals for purchase involves the examination of a variety of coal types, in those instances where MGA can be used, its economics are compelling.

In addition to the rail-served market, Pittsburgh seam coals are used extensively by electric utilities with generating plants located along the inland river system. For these customers, transportation primarily is handled by river barge, with only a select few of these plants having access to railroad delivery of coal. To-date, most of this coal originates from

mines located along the inland river system, with they themselves not having access to railroad transportation. As a result, this market is fairly distinct from that involving transportation by Conrail. However, as many of the barge-served mines in the Pittsburgh seam close, due to depleting reserves, EFM expects to gain a portion of this market by using rail transportation of coal to barge loading terminals. In fact, EFM currently ships small amounts of coal to customers on the inland river system.

MGA coal typically contains a heat content in excess of 13,000 Btu and an ash content of less than 8%. Steam coals produced in most other regions usually contain a lower heat content and an ash content above these amounts. While the MGA coal usually contains a higher sulfur content than that in some other regions, ranging between 1.4% and 2.6%, it still is able to command significant market share owing to the low operating costs of the mines within the region and proximity to many markets in the northeast and Midwest U.S. The latter results in relatively low transportation costs for the movement of coal on Conrail. Because of these characteristics, a number of customers have begun blending the MGA coal with lower sulfur coals from the Powder River Basin (PRB) in Wyoming. Leading the way in this area has been Detroit Edison, a large consumer of both MGA and PRB coals.

Since beginning the active marketing of this coal on a large scale in 1994, EFM has been able to secure business for Mine 84 with a number of customers that are traditional purchasers of MGA coal. This was achieved by going head-to-head with other producers in the MGA region to serve customers served by Conrail. In 1995, EFM landed a 500,000 ton per year contract with

Detroit Edison to meet a portion of that utility's requirement for MGA coal. Prior to this time, CONSOL's Bailey/Enlow Fork mine complex had been the sole contract supplier for medium sulfur MGA coal at the Michigan utility. This success was followed by the signing of a new term agreement with PECO Energy in 1996, which along with Cyprus Amax Coal, another MGA producer of coal from its Emerald mine, will meet the entire coal requirements of that large Philadelphia-based electric utility.^{2/} And most recently, EFM secured a contract to meet the full burn requirement at the Portland and Titus generating stations of Metropolitan Edison starting in 1998 for five years. Previously, this Pennsylvania utility had been purchasing most of its coal from CONSOL's Bailey/Enlow Fork and Blacksville mines.^{3/}

In addition to the signing of new contracts, EFM also has obtained business with a number of customers for coal on a short-term or spot basis. An important spot coal customer in 1995 and 1996 was the Eastlake plant of Cleveland Electric Illuminating (CEI), which has taken over 900,000 tons of coal from Mine 84. In 1997, Potomac Electric Power (PEPCO) has purchased coal from Mine 84 for use at its Chalk Point and Morgantown plants.^{4/} Other spot sales have been made to Niagara Mohawk Power. Following the division of Conrail, plants of these three customers will be exclusively served by CSX. If Mine 84 fails to receive access to

^{2/} *Coal Outlook*, April 22, 1996, p. 6. (Newsletter articles are provided for information purposes, to show a public record of the sale.)

^{3/} *Coal Daily*, Fieldston Publications, Inc., September 11, 1997, p. 1.

^{4/} *Coal Daily*, Fieldston Publications, Inc., September 9, 1997, p. 1.

CSX, EFM will be unable to compete economically with it's direct competitors in serving plants operated by CEI, PEPCO and Niagara Mohawk.

In order to continue with its current marketing strategy, which is to be expanded as Mine 84 moves toward its ultimate production capacity of 7.0 million tons, the operation must be able to stay on an equal footing with its competitors. Up until this time, EFM has been able to secure the business listed above by being able to compete evenly and directly with other producers of MGA coal. This was made possible by Conrail being the sole provider of rail service, thus making for a level playing field for each of the MGA mines. Obtaining business has been based strictly on the price being offered f.o.b. mine and for the quality of coal to be shipped. The granting of multiple rail access to all of the MGA mines except for Mine 84 will destroy the level playing field that currently exists. Mine 84, and only Mine 84, will be put at a significant disadvantage in serving the market, as the equal footing will have been compromised.

III. Transportation of Coal

In addition to the premium quality and low production costs of coal from the MGA region, another important commercial feature is the efficient service and competitive rates offered by Conrail. Conrail is the dominant transporter of MGA coal into the market, and currently the sole provider of rail service into the region. In addition, since Conrail sources coal from relatively few other sources outside the MGA region, the carrier has been aggressive in expanding the market reach of MGA coal wherever possible. For the most part this involves

customer outlets in the northeastern and midwest U.S, eastern Canada (via the Great lakes) and overseas (via the Port of Baltimore). As have other suppliers of MGA coal, EFM relies heavily upon Conrail to provide efficient service for shipments of coal into the market.

A. Infrastructure Improvements

The most significant steps taken by Conrail to expand the commercial reach of coal from Mine 84 and from the MGA region overall has been to increase handling capacity and improve service efficiency on its rail lines. A number of programs to do this were begun shortly after Conrail acquired 100% ownership of the Monongahela Railway in 1992. Our purchase of Mine 84 and the intention to develop this property in the same year also were instrumental in directing Conrail's plans. Conrail's construction programs were aimed at upgrading the haulage capacity on all lines in the MGA region, not just those that made-up the former Monongahela Railway. Emphasis was placed upon the Monongahela (Mon.) Branch line that runs south from Pittsburgh into the MGA coal field. Also receiving attention were the feeder lines to the Mon Branch, including the lines of the former Monongahela Railway, and the Ellsworth Secondary that serves Mine 84.^{2/}

^{2/} Conrail has described its rehabilitation efforts on the Mon Branch line in a variety of presentations, both to Pittsburgh seam producer conferences and individually, for example by correspondence from J. Pierce Avant (June 6, 1995 letter).

The focus of the construction effort was a \$37 million renovation of the Shire Oaks Yard, located on the Mon Branch line between the MGA region and Pittsburgh. Beginning in 1994 and ending in 1997, construction was undertaken to enlarge and modernize the yard to better handle more and larger trains carrying coal from the MGA region. The objective is to have Shire Oaks service and stage trains for the Mon Branch line, allowing for more efficient operation and movement of equipment into and out of the MGA region. Since much of the Mon Branch line is single track, the establishment of this expanded, more capable yard was critical.^{6/}

Without the renovation of Shire Oaks and the accompanying line upgrades, Conrail likely would not be able to handle all of the business offered by this region's coal producers. Now, with Shire Oaks, and upgrades on the entire Mon Branch line, Conrail is positioned to handle increasing traffic volumes forecast for the region. The upgrades also will improve equipment utilization and productivity, and reduce train operating expense. As a result, Conrail is expected to handle 38 million tons of MGA coal on the Mon Branch line in 1997, up from 33 million tons in 1996 and 27 million tons in 1994. According to projections made to EFM by Conrail in 1996, the carrier was planning to handle 55 million tons of MGA coal on the Mon Branch line by 2000.^{7/} This represents a doubling of traffic from the MGA region in only six years, which only would be possible with an upgrading and expansion of the entire Mon Branch system. A diagram

^{6/} Information provided to EFM by Conrail on February 15, 1995.

^{7/} Conrail presentation: 1996 Investors Train Trip, p. 14.

showing the Mon Branch line, and the feeder lines serving it is shown in the verified statement of Mark T. Morey, in Exhibit MTM_2.

Mine 84 was and continues to be an integral part of the modernization plan undertaken by Conrail. Loaded trains from Mine 84 exiting the Ellsworth Secondary move through Shire Oaks, as do trains from each of the mines on the former Monongahela Railway. In devising the expansion program, Conrail took into account EFM's plan to ramp-up coal production capacity to 7.0 million tons per year. The projections of 38 million tons being handled in 1997 and 55 million tons in 2000 were strongly influenced by the plans at Mine 84.

B. Marketing & Promotion of MGA Coal By Conrail

In addition to making physical upgrades to its track and yard infrastructure from the southern terminus of the former Monongahela Railway line to Shire Oak Yard and beyond, Conrail also had been promoting the virtues of MGA coal throughout its service territory. On the basis of conversations and meetings with Conrail personnel, it was made clear to EFM that all of the mines in the MGA region were being treated equally in terms of rail service and marketing promotion by Conrail.

The coordinated marketing effort by the railroad made utility and industrial coal consumers even more aware of the premium quality and competitive pricing available for MGA coal. This effort was aimed at promoting all MGA coal, not just for that originating along the

lines of the former Monongahela Railway. The importance of keeping the MGA coal region intact from a competitive standpoint could be seen in a letter from Detroit Edison that was included in the control application. In that letter, Norman H. Bartholow, Manager of Fuel Supply at Detroit Edison, stated his support for the proposed division of Conrail. However, that support was provided on a conditional basis, with the utility's reluctance stemming from two issues, one of which had to do with MGA coal. That one condition was stated as follows:

Allow joint CSX and NS access to all former Conrail coal producers south of Shire Oaks Yard. The current proposal will reduce the competition between coal producers in the region. Include Eighty-four Mining Company's mine 84 of Washington County, PA in the joint-access plan.^{8/}

The request made by Detroit Edison is believed to be based upon that utility wanting single-line access to each of the large, efficient mines in the MGA region, as it has today. Exclusion of the Mine 84 from the control plan as proposed would affect the utility's ability to purchase this coal economically. Conversations with other electric utility companies, such as New York State Electric & Gas, PEPCO and Niagara Mohawk Power, have raised similar concerns about maintaining one-line access to Mine 84. Exhibit TMM_2 shows that all of these utilities have received coal from Mine 84.

^{8/} Letter from Norman Bartholow of Detroit Edison in the control application, Vol. 4C, p. 56.

IV. Competitive Harm For Mine 84

A. Unequal Establishment of Rail Access

The offering of multiple rail service to mines on the former Monongahela Railway, though seemingly well-intentioned, is disaster in the making for Mine 84, if 84 is excluded. While the control document is full of phrases touting the benefits of more single line service and increased competition between CSX and NS, the opposite will be true for Mine 84. Such a division will result in Mine 84 losing single-line access to a number of existing and future customers, as well as failing to receive competitive bidding among the two major carriers in moving its coal. This will be the case since the NS will be the only carrier serving the mine. Because of Mine 84's potential position, I find a statement made by L.I. (Ike) Prillaman of the NS as being incomplete in its assessment on the division of Conrail:

The standard merger benefit for coal — more single line service — will certainly occur from this transaction. For example, cheaper, hotter Conrail-served coals will, for the first time, have single line service to the utilities of the South. Also, compliance coals from central Appalachia will have single line service to the Northeast. There will be increased rail-to-rail competition in the Monongahela coal district, which will be served by both NS and CSX.^{2/}

While EFM would expect to receive excellent rail service from the NS, and effective reach into those markets served by that railroad, it would not at the same time be receiving the benefits going to its direct competitors. Those competitors would gain access to all of the markets served by CSX and the NS, as well as having both bid for their business. Some of the

^{2/} Finance Docket 33388, V.S. of L.I. (Ike) Prillaman, Vol. 2B, p. 201.

benefits likely to accrue to the six MGA mines receiving multiple rail service are summarized in the following statement from the CSX Operating Plan in the control application:

Another way the coal network will benefit from the Acquisition is that CSX (along with NS) will serve Monongahela coal fields (MGA) and will be able to offer single line service from those mines as well. CSX will be able to move MGA coal either north to Brownsville, PA via Pittsburgh to Ashtabula and other Northeastern utilities, or south via Rivesville and Grafton, directly to Baltimore for delivery to the Curtis Bay Pier, Bayside Terminal, and the Consolidation Coal Company (Consol) piers. Single line service to the MGA coal fields will give coal consumers broader -- and more competitive source options. CSX will also be able to provide single-line delivery of MGA coal to Florida utilities, which currently find purchase of that coal unattractive because of the inefficiencies of joint-line service.^{10/}

While the preceding two statements make for good text in promoting the proposed division of Conrail, the language is hollow with regard to EFM's Mine 84. By failing to provide joint rail access to a mine that is in every way an equal to the six mines on the former Monongahela Railway, Mine 84 will not only fail to be a beneficiary of the proposed division of Conrail, but will become a casualty of it. The failure of providing joint access to Mine 84 runs counter to the overall premise of the transaction, that being increasing the amount of single line service, and providing for more efficient movement of goods by rail. As a result, the following statement made by Barry C. Harris representing the NS, while accurate for Mine 84's competitors, does not apply for Mine 84:

After the transaction, NS will be able to offer single line service from and to locations throughout the East. In addition, the joint NS/CSX restructuring will make CSX a second rail system that can also offer single line service and other service improvements from and to locations throughout the East.^{11/}

^{10/} Finance Docket No. 33388, Vol. 3A, CSX Operating Plan, p. 51.

^{11/} Finance Docket No. 33388, Vol. 2B, V.S. of Barry C. Harris, p. 5.

The value of single line service is well-established, especially in the coal business where the use of unit-trains with dedicated equipment is extremely important. With growing competitiveness in the electric power market, utility coal consumers are requiring lower costs, and even more efficient service from rail carriers. This can only be accomplished through the efficient cycling of loads and empties between the mine and the generating station. EFM has responded to this requirement by installing one of the most efficient coal loadout facilities in the U.S., which can load a 100 car train in less than three hours. While EFM and Conrail have been streamlining this concept over the past years, this important aspect of competitiveness in the market will be destroyed in the future if the division proceeds as proposed.

B. Loss of Single-line Access to Markets

The most damaging aspect of the proposed division of Conrail is that Mine 84 will no longer be able to serve a large share of its existing customer base, except by using a two-line haul arrangement with NS and CSX. EFM will lose single-line access to five electric generating plants currently served by Conrail and that burn Pittsburgh seam coal almost exclusively, as well as to two other plants that plan on using larger amounts of this coal in the future. Three of the seven plants mentioned above have received coal from Mine 84 at one time, while two others will have taken delivery in 1997. In addition to the loss of single-line service, EFM will not have competitive access to two other power plants that are served by rail carriers through connections now with Conrail and in the future with CSX and NS. Of concern to EFM is that CSX will have the best connections to the terminating carriers at these two locations in New England.

While loss of single-line access is critical, another troubling aspect is that EFM will not have two railroads bidding for its business at numerous other customer destinations, such as at the plants to be jointly-served and at vessel loading piers on the Great Lakes and East Coast. With CSX and NS seeking to transport large amounts of MGA coal, the six mines receiving joint access will benefit from this competitive bidding. As a result, I find great horror when I read the following statement by Raymond L. Sharp, knowing that it does not apply to my company (EFM), but does to all of my direct competitors:

With the allocation of Conrail lines, CSX will be able to offer single-line service to 17 former Conrail-served utility power plants, including six plants that will be jointly served by CSX and NS. These new customers will represent approximately 16 million tons of potential coal business for CSX. In addition, the allocation of Conrail lines will enable CSX to offer an economically viable service to Ashtabula Harbor and provide a competing single-line option between the MGA coal fields and the east coast export piers.^{12/}

Thus, Mine 84 effectively becomes the step-child, as dual-served facilities always are favored in terms of rates and service treatment.

C. Summary

Mine 84 currently accounts for 9% of the total market for Pittsburgh seam coal that originates by Conrail from southwest Pennsylvania and northern West Virginia. On the basis of our plans to expand annual production to 7.0 million tons, we see that share expanding to at least 13% in the future. The extent to which that occurs will depend upon its treatment in the division

^{12/} Finance Docket No. 33388, Vol. 2A, V.S. of Raymond Sharp, p. 356.

of Conrail. If EFM is not provided access to the substantial market for MGA coal that is to be served either by CSX or jointly with NS, then the expansion to 7.0 million tons could be jeopardized. It should be noted that the money to expand to 7.0 million tons largely has been spent; only remaining is the actual production of that coal in subsequent years. A decision or an ability to do so will depend upon whether EFM is granted equal and effective access to each of the markets available to its direct competitors. If the parent company of EFM had known that the transportation landscape would change as precipitously as is now being proposed, that investment may not have occurred.

In summary, we see the proposed division of Conrail to be of great harm to EFM and Mine 84. Also, we see it as being patently unfair to our operation, in terms of having our markets diminished at the same time the markets for our competitors are expanded. Since Mine 84 is on an absolute par with the other mines in the Pittsburgh seam, all we ask is treatment that is equal to that being provided to our competitors. As a result, we request that Mine 84 be provided with access to the CSX railroad in the same form being offered to mines on the former Monongahela Railway. Such a remedial action will maintain the competitive position we currently have in the market.