I, Thomas M. Majcher, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 10th day of October, 1997.

Thomas M. Majcher

Exhibit TMM_1

Resume of
Thomas M. Maiher

Education

The Pennsylvania State University - Master of Science, Mineral Economics, 1977
The Pennsylvania State University - Bachelor of Science, Geological Sciences, 1975

Work Experience

Rochester & Pittsburgh Coal Company - 1990 to present
Vice President, Corporate Development: Responsible for business development and corporate marketing. Acquired Mine 84. Developed and implemented marketing program for new 7mmtpy mine.

British Petroleum Company - 1986 to 1990
Director, Planning/Development - BP Coal International (1989): Responsible for strategic and business planning for coal company operating in six countries.

Director, Business Planning - BP America (1988)
Manager, Acquisitions & Divestitures - BP America (1986 - 1987)

Standard Oil Company (Ohio) - 1977 to 1986
Business Manager, Indiana Division - Old Ben Coal Company (1985 - 1986)
Manager, Planning & Evaluation - Old Ben Coal Company (1981 - 1984)
Business Analyst - Old Ben Coal Company (1980)
Landman - Old Ben Coal Company (1979)
Economic Geologist, L-Bar Uranium Operations - Sohio Western Mining Co. (1977 - 1978)

Exhibit TMM_2

Eighty-Four Mining Company
Shipments of Coal to Electric Utility Companies, 1994 - 1996

Customer	Destination	Amount (Tons)	Existing Rail Carrier	Future Rail Carrier
Cleveland Elec. Ill.	Eastlake	919,000	CR	CSX
Delmarva P&L	Indian River	434,780	CR	NS
Detroit Edison	Harbor Beach	6,000	CR & vessel	CSX/NS & vessels
Detroit Edison	Monroe	913,000	CR, CSX/NS & CN	NS, CSX & CN
Holyoke Water	Mount Tom	35,220	CR/B&M*	CSX/B&M*
Metro Edison	Titus	22,000	CR	NS
Niagara Mohawk	Huntley	187,000	CR	CSX
N.Y. State E&G	Goudey	66,600	CR	NS
N.Y. State E&G	Greenidge	142,300	CR	NS
PECO Energy	Cromby	240,000	CR	NS
PECO Energy	Eddystone	895,000	CR	CSX & NS
Pennsylvania P&L	Martins Creek	90,000	CR	NS
P.S. New Hampshire	Merrimack	46,850	CR/B&M*	CSX/B&M*
Rochester G&E	Russell	10,100	CR	CSX

* Current connection from Conrail to Boston & Maine at Rotterdam Junction, NY to be held by CSX.

Source: Data obtained from FERC 423 reports.

Exhibit TMM_3

Pittsburgh Seam Mines (MGA Coal Region)
Mines Served By Conrail

Company	Mine Name	County, State	Current Rail Carrier	Future Rail Carrier	Average Btu/lb	Average lbs. SO2	1996 Production (000 Tons)
CONSOL	Bailey	Greene, PA	CR	NS & CSX	13,161	2.53	7,469
CONSOL	Enlow Fork	Greene, PA	CR	NS & CSX	13,161	2.53	8,724
Cyprus Amax	Emerald	Greene, PA	CR	NS & CSX	13,198	2.25	3,230
Eighty-Four	**Mine 84**	**Washington, PA**	**CR**	**NS**	**13,201**	**2.42**	**3,027**
CONSOL	Blacksville 2	Monongahela, WV	CR	NS & CSX	12,919	3.72	3,460
CONSOL	Loveridge	Marion, WV	CR	NS & CSX	13,196	3.66	3,074
Peabody Coal	Federal 2	Monongahela, WV	CR	NS & CSX	13,104	3.63	4,580
Total							**33,564**

Source: FERC 423 data, MSHA data, Fieldston Company, Inc. coal quality data based upon average of 1996 shipments, using FERC 423 data.

VERIFIED STATEMENT OF
MARK T. MOREY

I. Introduction, Purpose and Summary

My name is Mark T. Morey. I am a Director of Consulting Services for the Fieldston Company, Inc., a provider of energy and transportation consulting and information services. My business address is 1800 Massachusetts Avenue, NW, Suite 500, Washington, D.C. 20036. My resume is attached as Exhibit MTM_1.

I hold a M.S. degree in geography from the Pennsylvania State University and a B.A. degree in history from the College of Wooster (Ohio). I have over 15 years experience in the coal and coal transportation business. At Fieldston I advise a wide range of clients on a number of issues related to coal and coal transportation. Before entering my present position at Fieldston in 1995, I was Senior Coordinator of Strategic Studies at CONSOL, Inc., (1983-1991), and Vice President of Marketing and Development at AMVEST Coal Sales, Inc. (1991-1995).

I have an in-depth understanding of coal markets and coal transportation networks in the United States. My knowledge of rail movements of coal from Pittsburgh Seam mine origins, referred to as Monongahela coal region ("MGA"), into domestic and export markets is extensive. This background has come from my present work responsibilities, as well as from my work in

marketing and planning at CONSOL and AMVEST, two of the largest shippers of coal on the Conrail system. At CONSOL, which operates the large Bailey and Enlow Fork mines, I was actively involved in helping to expand the markets for MGA coals originating on Conrail by evaluating potential customer outlets in the United States, Europe and the Far East. At AMVEST, I worked with Conrail and CSX to develop a new shortline connection to both carriers, and was involved with marketing coal to customers with plants on both railroads.

In this proceeding I have been asked by Eighty Four Mining Company ("EFM") to evaluate the effect on EFM of the proposed division of Conrail between CSX and the Norfolk Southern Railway ("NS"). As detailed within this statement, I conclude that, unless the transaction is modified, EFM will suffer substantial harm by failing to receive the multiple access rail service at its Mine 84 coal mine operation that is being provided to all of its direct competitors in the marketplace. Presently, Conrail is the only provider of rail service in the MGA region.

In the control application, CSX and NS are proposing to offer mines located along the lines of the old, and now defunct, Monongahela Railway Company access to service on both the CSX and NS railroads. In stunning contrast, EFM' s Mine 84 complex is proposed to receive access to only the NS railroad. The NS has been designated as the sole provider of rail service to the Ellsworth Secondary, the line that serves Mine 84. The Ellsworth Secondary is located in the heart of the MGA coal region, and is an integral part of Conrail's network in originating and

transporting MGA coal. Exhibit MTM_2 shows the location of Conrail's lines within the MGA region.

The offering of multiple rail access to mines that are direct competitors to EFM will severely impact the ability of Mine 84 to successfully compete in the marketplace for MGA coal. It will do so by providing EFM's direct competitors with a significant advantage in bidding for business among existing and future customers. Those mines will have two railroads competing for their business, and will gain single-line access to more customers than before. EFM's Mine 84 will experience the opposite. It will lose single-line access to a number a customers that it currently serves directly on Conrail, and will not have two railroads competing for its business. Finally, Mine 84 will not gain access to new markets in the southeast United States, now served by CSX, as will its competitors. Mine 84 will gain access to NS-served markets in the southeast, as will EFM's direct competitors. However, the NS-served markets are viewed as being less attractive due to distance from the MGA region, producing a distant or more circuitous route structure to get to customer destinations.[1/]

The manner in which this access is being provided to its competitors and denied to EFM is distinctly unfair. It is not supported by any marketplace or rail operational factors, nor by any actions in previous railroad mergers. At the present time all of the rail-served mines in the MGA

1/ For example, the NS routing for MGA coal to Virginia Power's Clover plant, one of the proposed destinations on the NS for MGA coal, involves haul of over 700 miles, whereas coals from existing NS origins have a haul to Clover of less than 300 miles.

coal region, later identified as large underground mines in the Pittsburgh seam that produce coal of the same quality as that produced at Mine 84, are being served exclusively by Conrail.

In my testimony I will:

- Show that the production characteristics and markets for Pittsburgh seam or MGA coal are distinct within the United States coal industry.

- Illustrate that EFM's Mine 84 is an integral part of the MGA coal market, and that it participates equally and directly with the MGA mines targeted for receiving multiple rail access.

- Demonstrate the manner and extent to which EFM will be disadvantaged in the market in which it participates if Mine 84 does not receive multiple rail access as that being provided to its direct competitors in the MGA region.

- Identify actions that should be taken to remedy the harm to EFM that will result from the division of Conrail as presently proposed.

In summary, I will demonstrate that the proposed offering of multiple rail service to only those mines along the lines of the former Monongahela Railway will damage the current competitive structure of the MGA coal region. In addition to adversely affecting EFM it also

will negatively impact customers for MGA coal, who will be unnecessarily losing access to an important source of supply. With deregulation looming within the electric utility industry, and more stringent SO2 emission regulations scheduled to take effect in 2000, electric utility companies in the northeast and Midwest that burn MGA coal can ill afford to have their supply choices limited. The proposal by CSX and NS will do just that.

II. Description of the MGA Coal Region

A. Location and Production Characteristics

The MGA region is part of the Appalachian Basin, the largest coal producing field within the United States. The Appalachian Basin extends from Pennsylvania south to Alabama, and can be divided into three major districts: northern, central and southern. In a typical year, coal production within Appalachia is in excess of 440 million tons, or more than 40% of the United States total. Of that amount, about one-third is produced within the northern district, an area made-up of mines located in Pennsylvania, northern West Virginia, Maryland and Ohio. Located within the northern Appalachia district is the MGA coal region, which consists of a grouping of mines located in two counties in southwestern Pennsylvania (Greene and Washington) and two counties in northern West Virginia (Monongahela and Marion).[2/] Exhibit MTM_3 shows the location of the MGA region within the larger Appalachian Basin. Production within MGA

[2/] The MGA region consists of a group of mines producing a homogeneous quality of coal from the Pittsburgh seam and being in geographic proximity. There are other mines that work the Pittsburgh seam, but these produce coal with a higher sulfur content and a lower Btu content.

totaled 49 million tons in 1996, or slightly more than one-third of the total for all of northern Appalachia.

The coal industry in northern Appalachia has undergone significant changes over the past several years as older, less efficient mines have closed or have been replaced by new, highly productive operations. One of the most important changes has been the appearance of mines in the MGA region using longwall technology to mine the Pittsburgh seam. These high-volume, low-operating cost mines have captured greater market share, largely at the expense of higher cost operators outside of the MGA region. Longwall mining technology is well-suited to the flat-lying, Pittsburgh seam.

Mining within the MGA region is highly concentrated, as production from only 12 mines accounted for all of the 49.1 million tons of output in 1996. In contrast, it took more than 500 mines to produce the remaining 92 million tons that were mined in northern Appalachia that same year.[3/] Such a stark difference in individual mine capacity illustrates the distinct nature of the MGA coal region: that being made-up of large underground mines, using longwall mining technology and running at high productivity levels. Exhibit MTM_4 lists the twelve mines active in the MGA region.

3/ United States Department of Energy, 1995 Coal Industry Annual, p. 24 (1996).

CONSOL's Bailey/Enlow Fork complex is the most notable longwall operation in the Pittsburgh seam, achieving output of 16 million tons per year, and productivity levels not previously witnessed for underground mines within the northern Appalachia coal field. CONSOL also operates two other mines in the region that have increased output and labor productivity. They are the Blacksville 2 and Loveridge mines. In addition to the achievements by CONSOL, Cyprus Amax Coal's Emerald mine, the Federal 2 mine of Peabody Coal and EFM's Mine 84 all have reduced costs and increased output at mines in the Pittsburgh seam by employing advanced longwall mining and haulage technology. A shown in Exhibit MTM_4, 10 of the 12 active MGA operations each produced more than 3.0 million tons in 1996.

Of the twelve active mines in the MGA coal region, seven originate shipments exclusively by rail. The other five mines load coal into barges for delivery to customers with plants along the inland river system. It is the rail-served mines that are of consequence in this proceeding, as these are the only ones to be affected by the changes being proposed in rail access and service. The barge-served mines are distinct as they primarily serve customer outlets along the inland river system, and barge transportation rates generally are in the order of 60% lower than rail transport. Exhibit MTM_5 lists the MGA mines that are rail-served, which today are all served by Conrail.

Production from the rail-served mines has been growing at a faster rate in recent years than other mines in the region. This is due to the rail-served mines having become the focal point of customer demand, brought about by being able to serve a broader market and having the

greatest efficiency and largest capacity of mines in the region. Mines working reserves in the Pittsburgh seam in proximity to the Monongahela River, which therefore use barge transportation, are in decline. This is due to depleting reserves and higher-cost operation, such as at CONSOL's Humphrey mine, or the Maple Creek mine of Maple Creek Mining. These two factors have made the barge-served mines of declining importance in the overall market, and of limited consequence among customers served by rail transportation. Rail served mines currently account for 68% of MGA output, up from 56% in 1990. This trend is not only expected to continue, but to accelerate.

Mine 84 is one of the seven rail-served mines that produce coal from the Pittsburgh seam in the MGA region. As shown in Exhibit MTM_5, all seven of these mines produced more than 3.0 million tons in 1996. In addition, all of the mines are located within close proximity of one another in southwest Pennsylvania and northern West Virginia, and produce coal with generally the same quality characteristics. Of note, even though Mine 84 is located in Washington County, PA and the other mines identified as being in either Greene, Monongalia or Marion counties, a large share of the reserves being mined by CONSOL's Bailey/Enlow Fork complex are in Washington County.

B. Market Demand and Distribution of MGA Coal

Coals produced from mines in the MGA region typically are high-quality, high volatility, medium sulfur, steam and metallurgical coals. Heat content is generally in the range of 12,900 to

13,400 Btu/lb, while the sulfur content usually is within a range of 2.3 to 3.8 lbs SO2/mmBtu. MGA coal moves predominantly to electric utility companies and industrial facilities with coal-burning plants in the northeast and Midwest, as well as to export customers in Canada via the Great Lakes, and overseas through the Port of Baltimore.

The market for MGA coal steadily has expanded over the past several years, unlike the market for coal mined elsewhere in northern Appalachia. MGA producers have succeeded, where others have failed, because of the higher quality of its coals, the efficiency of its mines, and a location near the industrial centers in the northeast and Midwest. These factors have combined to make MGA coal a fuel of choice in meeting customer needs. As a result, the large Pittsburgh seam mines have become a force in establishing market share and driving prices in the northern Appalachia coal field.

Helping to accelerate growth in MGA coal production was Phase I of the 1990 Clean Air Act Amendments (CAAA), which took effect in 1995. This act resulted in a number of generating plants switching to lower sulfur, cleaner burning coals. The emission standard to which many of these plants had to meet under Phase I rules was 2.5 lbs SO2/mmBtu. Coals with less than 2.5 lbs SO2/mmBtu, such as from EFM's Mine 84 and the Bailey/Enlow Fork complex of CONSOL, witnessed increased demand as a result.

Because of its high quality and low delivered costs, MGA producers were able to penetrate numerous markets that before had been dominated by coals from other regions. One

example of several that have occurred since the early 1990's was at the Brunner Island generating station of Pennsylvania Power & Light (PP&L). As recently as 1991, this plant received all but 120,000 tons of its annual requirement of 3.4 million tons from mines in central Pennsylvania. Now, Brunner Island is receiving about 73% of its annual requirement for coal from the MGA region, the direct result of having to comply with Phase I of the CAAA, as well as the need to lower it's delivered cost of coal. The coal that PP&L is burning from the MGA region contains less than 2.5 lbs SO2/mmBtu and a heat content of greater than 13,000 Btu/lb. It also is being delivered at an average price of $1.49/mmBtu, whereas in 1991 the average delivered price for coal at Brunner Island was $1.90/mmBtu.[4/]

Slow coal demand growth during most of the 1980's was an important factor leading producers in the MGA region to increase longwall production. Mine operators were faced with the need to revamp operations in order to lower costs and jump-start demand. Given favorable geological conditions in the Pittsburgh seam, and improved operating experience with longwalls, most operators were successful in accomplishing the goal of achieving more competitive costs. This was combined with efforts, where possible, to mine reserves that contained lower sulfur coal, such as at CONSOL's Bailey/Enlow Fork complex, the Emerald mine of Cyprus Amax Coal, and at Mine 84. Coal from these mines typically have a sulfur content of less than 2.6 lbs. SO2/mmBtu. As a result of these efforts, shipments from MGA mines served by Conrail, including Mine 84, increased from 24 million tons in 1993 to 33 million tons in 1996. Conrail

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[4/] Data obtained from FERC Form 423, a record of coal receipts by electric utility companies.

estimates that in 1997 it will handle 38 million tons of MGA coal, rising to 43 million tons by 1998.[5/]

While customers have increasingly flocked to the MGA region for coal, there usually is no preference to any one of the individual suppliers within the region. This is due to each of the four major suppliers: CONSOL, Cyprus Amax, EFM and Peabody Coal, being able to produce coal of similar quality and cost. The one difference might be Peabody Coal, as its Federal 2 mine produces coal with a sulfur content in excess of 3.0 lbs SO2/mmBtu, thus limiting its market potential somewhat (see Exhibit MTM_5). (Federal 2 is similar to the two CONSOL West Virginia mines, but those represent less than 30% of CONSOL's 1996 production.) When soliciting for coal from the MGA region, customers routinely evaluate bids based solely on the competitive standing of each. This has to do with the price being bid, and the quality of coal to be shipped. In the bidding process, pricing can be sensitive down to approximately $0.25/ton, which translates to $0.01/mmBtu to utilities in energy production terms. Since Conrail is the only provider of rail service for these coals, transportation costs rarely figure into the decision to choose among MGA producers bidding for the business.

While the MGA market is actively competitive in every way among the four companies that have mines in the region, that structure is being threatened. By introducing uneven rail transportation access, as proposed in the control application, Mine 84 will become unable to

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5/ Conrail presentation: 1996 Investors' Train Trip, p. 14.

compete equally with the three other suppliers. This would result in EFM losing single-line access to several markets it now serves, and being placed at a competitive disadvantage in other markets versus the suppliers it competes with directly. The evolution of the MGA coal market has been years in the making, and is poised for further growth, all to the benefit of coal consumers in the eastern half of the United States. The proposed division of Conrail is likely to upset that growth, by resulting in uneven offering of rail service among the individual suppliers. Greater detail on the potential changes in the market are discussed later in this statement.

C. Rail Transportation

Coal from the MGA region that moves by rail is handled exclusively by Conrail, since it is the only major carrier with lines into the area. Also, it is the dominant rail carrier in the Northeast, where the majority of MGA customers are located. MGA coals have had difficulty penetrating markets in the southeast, due to distance and Conrail not serving that territory. In 1996, Conrail handled a total of 67 million tons of coal, of which 51 million tons originated at mines served by the railroad. MGA origins in southwest Pennsylvania and northern West Virginia accounted for 33 million tons, or roughly two-thirds of the coal originating on the carrier.

Conrail played an important role in expanding the market reach of MGA coals in territories being served, especially in 1995, following the effective date of Phase I of the CAAA.

Since many of the coal-fired plants affected by Phase I are served by Conrail, the MGA region became the logical and economic source of coal for compliance with the new regulations.

Coal has become an increasingly important source of revenue for the railroad since it gained complete control over the Monongahela Railway in 1992, and production was expanded at each of the MGA mines, including Mine 84. Coal from the region has provided the carrier with a large base of revenue generating traffic. In order to maximize that revenue, and provide the increasing level of service being requested, Conrail undertook a major capital program to expand and improve service on the Monongahela ("Mon") Branch line. This included a number of construction projects and track upgrades, aimed at handling more and larger trains carrying coal that was in increasing demand from the MGA region.

The focus of this effort was a $37 million renovation of the Shire Oaks Yard, located about 20 miles south of Pittsburgh. The objective was to have the new yard act as a staging and servicing area that would allow for maximum train carrying capacity on the Mon Branch line. With the work having been completed in mid 1997, Shire Oaks is now doing just that, receiving trains from every mine with rail access in the MGA region.[6/]

Work at Shire Oaks was joined by track upgrades to the Mon Branch line itself, as well as to the secondary lines that serve the mines. This included improvements made to the Ellsworth

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6/ Information on Shire Oaks Yard from Conrail.

Secondary, serving Mine 84, the East Branch of the former Monongahela Railway serving the Loveridge mine, the Waynesburg Southern line serving the Emeraid, Blacksville 2 and Federal 2 mines, and the Manor Branch serving the Bailey/Enlow Fork complex. All of this construction activity was undertaken to improve to flow of rail traffic (mostly coal) originating from mines in the MGA region moving north to the Shire Oaks Yard. From Shire Oaks, the trains are sent to various market destinations located north, east and west of this location. The objective of the program was to improve rail service for mines that ship coal from the region, not just those that happened to be on a line or branch of the former Monongahela Railway. Exhibit MTM_2 shows the location of Shire Oaks, and the Mon Branch line in relation to the MGA region.

In addition to upgrading the Mon Branch line, its feeder lines and the Shire Oaks Yard, Conrail was actively investigating the extension of track into other areas of the MGA region, where undeveloped reserves in the Pittsburgh seam are located. One project in particular was a now delayed effort to extend a rail line into the undeveloped Berkshire property owned by CONSOL. This property had been identified by CONSOL as the location of a new underground mine having similar coal quality and mining conditions as the Bailey/Enlow Fork complex. In the railroad control application submitted by CSX and NS, the two railroads pledged to jointly undertake an extension of rail lines into undeveloped reserves in the Pittsburgh seam, and that those lines would be joint served. While no routing or track alignment was specified, it is believed to involve gaining access to CONSOL's Berkshire property, the only reserve understood in the industry to be under consideration.

Based on the preceding discussion and upon established operating practices, Conrail considers the MGA region to consist of any mines producing coal situated on Conrail tracks south of the Shire Oaks Yard. This is the territory for which Conrail improved service, and aggressively marketed among coal burning customers on its system. The Control Application proposes to upset this structure, by only providing joint service to a portion of these lines, that of the former Monongahela Railway.

Even though mines located on the former Monongahela Railway Company (MRC) had access to multiple railroads during MRC's early years, there is no joint rail service today. Producers in the region have set-up their marketing plans and shipping arrangements around being served 100% by Conrail. These plans were strengthened based upon the capital improvement program put into place by Conrail in the mid 1990's.

D. Summary of MGA Region

In my testimony I have shown that the MGA is a distinct coal producing region in the United States. This is due to the existence of high capacity mines with low operating costs that serve an expanding market for the high quality coal produced here. Furthermore, I have shown that the region is made up of a number of underground mines working the Pittsburgh seam that have almost identical characteristics with regards to production capacity, mining equipment used, coal quality produced, and markets served.

In addition to characteristics related to coal production, growth in the region has been the result of an aggressive capital investment program undertaken by Conrail. That program has allowed for the increased delivery of MGA coal into numerous markets at low costs. And finally, I have shown that each of the mines located within the MGA region is dependent upon Conrail for the delivery of coal by rail to each of the major market destinations.

III. Description of EFM's Mine 84

EFM owns and operates the Mine 84 complex in Washington County, PA, located in the southwest portion of the state. The mine is working reserves in the Pittsburgh seam where reserves assigned to the mine are sufficient for mining through 2008. Additional reserves also are available in the same vicinity for mining activity in years beyond that time. Production at the mine, under EFM's ownership, began in 1994 and is gradually being expanded to its ultimate capacity of 7.0 million tons per year. In 1996, Mine 84 produced 3.0 million tons, and is expected to produce 4.8 million tons in 1997. The Verified Statement of Tom M. Majcher provides greater detail on the mine, its operations and markets.

Mine 84 is an integral part of the MGA coal region. It shares the same characteristics of each of the other mines active in this region, including those located along the lines of the former Monongahela Railway. These traits can be seen in the following points:

- Mine 84 is located in proximity to the other large mines in the Pittsburgh seam.
- Mine 84 works the Pittsburgh seam, as do all of the other MGA mines.
- Mine 84 uses the same mining technology as the other MGA mines.

- Mine 84 produces coal of a similar, almost exact quality of the other MGA mines.
- Mine 84 serves the same markets, and competes directly with the other MGA mines.
- Mine 84 is served exclusively by Conrail, as are the other MGA mines.

Exhibit MTM_2 illustrates that the MGA region extends beyond the reach of the former Monongahela Railway. Limiting dual rail access to only those mines located along that now defunct railroad makes for in an inappropriate market segmentation. The fact that Mine 84 is situated on a secondary line not previously associated with the former Monongahela Railway is immaterial. It is as though Mine 84 is on a different street off the main road being the Mon Branch, but within the same neighborhood. The fact that the Ellsworth Branch is a different street has no meaning, since the former Monongahela Railway consists of a number of different branches itself.

IV. Harm To EFM and Mine 84

From my perspective as a consultant to the coal and electric utility industries, it is my opinion that EFM's Mine 84 will be materially harmed from the proposed division of Conrail. This is based upon Mine 84 being excluded from receiving the joint access to CSX and NS railroads being accorded to its direct competitors. According to the railroad control application, Mine 84 only will be served by the NS. Failing to have joint access will place Mine 84 in an uncompetitive position in serving a number of existing and future markets. That harm is best summarized by the following:

- Mine 84 will lose single-line access to as many as six customers to which it currently has direct access via Conrail. These are among the 11 plants that CSX will be serving on an exclusive basis.

- Mine 84 will lose access to a number of existing customers served through connections with Conrail that will not have good connections with the NS after the division.

- Mine 84 will not have two railroads competing for its business at four of the six power plants to receive joint service, as well as at vessel-loading terminals, including export terminals that will have joint service.

- Mine 84 will not have the flexibility and access to a sufficient number of markets to compete effectively with its primary competitors.

The market for coal produced at the Conrail-served mines in the MGA region was estimated at 33.5 million tons in 1996, based on the amount of coal produced at the seven mines identified in Exhibit MTM_5. This involved shipments to a number of different destinations, ranging from plants served by Conrail or another rail carrier, to plants that receive coal via an intermediary facility, including terminals on the Great Lakes, the inland river system, or at tidewater. In each case, Conrail was the sole originating carrier of coal serving these markets. Furthermore, Conrail was expecting that originations of MGA coal would increase to 43 million tons in 1998 and 55 million tons by 2000.

Mine 84 currently has access to 100% of the Conrail-served market for MGA coal, access that is considered as equal to its direct competitors on the basis of transportation. Following the division of Conrail as proposed, Mine 84 will lose single-line service to 20% of the current market, and be at a competitive disadvantage at another 58%. This will be the result of the present market being divided between CSX and NS. That division will work against Mine 84 since it will be served only by NS. The composition of the MGA coal market post control of Conrail, and based upon 1996 data is estimated by the following:

MGA Coal Market[7/]

Mine 84 to Maintain Single Line Access

Plants exclusively served by NS	22% of market

Mine 84 to Lose Single Line Access

Plants exclusively served by CSX	20% of market

Mine 84 to be Disadvantaged in the Market

Plants currently served by CSX with Conrail origin	3% of market
Plants to be jointly served by CSX and NS	4% of market
Plants to be served by an independent rail carrier[8/]	11% of market
Plants served by Great Lakes terminals	9% of market
Plants served by river terminals	10% of market
Export volume through Baltimore terminal	21% of market

The potential for changes to Mine 84's market also were illustrated in a highly confidential coal study by CSX.[9/] In that study, CSX outlines the amount of coal traffic it expects to handle by 2000 in the region in which MGA coal competes. The study analyzed the

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7/ Data based upon FERC 423 data and other documents on demand for MGA coal.

8/ Detroit Edison's Monroe plant is included in this group even though Mine 84 will have single-line access via NS. However, MGA producers proposed to receive CSX service also could access Monroe via a CSX and CN combination.

9/ CSX 21 HC 000829-000854.

MGA coal market and assessed the amount of coal traffic that CSX would handle following its control of certain of Conrail's assets.

The Traffic Study determined that CSX expects to handle up to tons per year of coal from MGA mines. This will go to a number of customers to which CSX either has access today, or will be gaining access following completion of the division. Since Mine 84 will not be receiving direct access to CSX, it will be at a competitive disadvantage in these markets. This includes tons of annual business at customers that will be served exclusively by CSX, and tons at destinations where multiple rail options will exist. Exhibit MTM_6 summarizes those customer accounts where Mine 84 will lose single-line access, and Exhibit MTM_7 lists the customers where Mine 84 will be at a competitive disadvantage versus MGA coal suppliers served by CSX.

In those cases where Mine 84 is at a competitive disadvantage, this will be due either to CSX having better connections with the delivering carrier than the NS, or where Mine 84 only will have one carrier bidding for its business, instead of two as will its competitors. Utility customers where Mine 84 will have poor connections by using NS service include the Mount Tom plant of Holyoke Water Power Co. and the Merrimack plant of Public Service New Hampshire, both listed in Exhibit MTM_7. This is because MGA coal destined for Mount Tom and Merrimack currently is interchanged between Conrail and the Boston & Maine Railroad (B&M) at Rotterdam Junction, NY. After the division, CSX — not NS — will have access to this interchange point. The NS will connect to the B&M via the Delaware & Hudson (at

Binghampton, NY), adding a third carrier to the route and circuity of 51 additional miles over the CSX/B&M route miles. Coal burning utility customers where Mine 84 will fail to have two railroads competing for its business include the England plant of Atlantic Electric, PECO Energy's Eddystone plant, and the River Rouge plant of Detroit Edison, all three of which are to receive joint service from CSX and NS. These plants are joined by vessel piers and terminals. The markets in which Mine 84 will be denied effective competitive access, competitive service that it is being provided to its direct competitors, is summarized in the following statement from the control application:

> 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 economically viable service to Ashtabula Harbor and provide a competing single-line option between the MGA coal fields and the east coast export coal piers.[10/]

V. Remedies Being Sought

In order to maintain the competitive balance that exists today in the MGA coal market, it is imperative that Mine 84 receive access to rail service that is equal to its direct competitors. As presently proposed, Mine 84 only will be served by the NS, which is to operate on the Ellsworth Secondary. The appropriate remedy would be for CSX to have trackage rights over NS lines to serve Mine 84, an arrangement that already is proposed to be provided to other shippers in the

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10/ Finance Docket No. 33388, Vol. 2A, V.S. of Raymond Sharp. p. 356.

MGA region. Language contained in Exhibit GG of the control application, the "Monongahela Usage Agreement," should be modified in order to extend CSX access to the Ellsworth Secondary and that portion of the Mon Branch line that serves it. At present, language in the Control Application only contains the following:

> WHEREAS, NS and CSX have agreed, subject to STB approval, that certain tracks comprising all of the rail facilities described in Section 2 of this Agreement (hereinafter Monongahela), shall be allocated to Pennsylvania Lines LLC (PRR) pursuant to the Transaction Agreement, and pursuant to the NS Operating Agreement, be operated by NS and NS shall control, operate and maintain the Monongahela under this agreement, provided, however, that CSX shall have equal access, pursuant to the terms of this Agreement.[11/]

CSX could gain access to the Ellsworth Secondary by connecting with the Mon Branch line at West Brownsville, PA or alternatively, at Homestead, PA. This would require that trackage rights be granted to CSX over approximately 32 miles of NS lines to either connecting point. Under the Control Application, trackage rights already are to be provided for CSX over the entire 162-mile Monongahela Railway line. The Ellsworth Secondary and the Mon Branch line well should be capable of handling CSX operation to serve some portion of Mine 84's traffic. Since Mine 84 is the primary shipper on the Ellsworth Secondary, CSX trackage rights would not increase operations over the line. Concerning the Mon Branch, that line today serves all of the MGA region coal. Not only would CSX operation not pose an increase, but a significant share of the Mon Branch traffic that exists today on Conrail will be shifted to CSX lines located on the east side of the Monongahela River.

11/ Finance Docket No. 33388, Vol. 8C, Monongahela Usage Agreement, pp. 715-716.

If CSX is not provided trackage rights to and on the Ellsworth Secondary, the same being provided to mine operators on the former MRC line, it would then be appropriate for access to be obtained via a switching arrangement provided by the NS. This would involve NS handling traffic from Mine 84 to connections with CSX either at West Brownsville or Homestead. The location of the suggested switching points are shown in Exhibit MTM_2. This would allow NS to manage rail movements on the Mon Branch while allowing CSX to handle line haul service from Mine 84 to MGA coal market destinations in full competition with the other Monongahela area mines.

I, Mark Morey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 15 day of October, 1997.

Mark Morey

Mark Morey

Exhibit MTM_1

RESUME OF
MARK T. MOREY

Education

The Pennsylvania State University - Master of Science, Geography -1982

The College of Wooster - Bachelor of Arts, History & Geology - 1977

Work Experience

July 1995 — **Fieldston Company, Inc.** - Director. Responsible for assisting clients with coal and rail procurement and sales, evaluation of existing contracts, and development of purchasing and marketing strategies.

1991- 1995 — **AMVEST Coal Sales** - Vice President of Marketing & Development. Responsible for identifying customer prospects and developing sales strategy for a Company with annual revenues of $135 million. Participates in the process of preparing bids to customers. Involved in the negotiation of term sales agreements. Follows and prepares reviews of actions by competitors. Responsible for planning functions related to the development of Company operations and sales activities; Identifies property acquisition candidates. Plays major role in evaluating coal properties, sales contracts, and assessing market potential.

1983-1991 — **CONSOL Inc.** - Senior Coordinator Strategic Studies. Served as a member of the Corporate Planning Department, with direct contact with the Sales and Marketing Department of a company with $2 billion in annual revenue. Responsible for preparing market studies for all customer sectors: electric utilities, steel companies and industrial firms. Involved in the analysis of numerous property acquisitions: Sierra Coal Company, Inland Steel and Quarto Mining Co.

1981-1983 — **Benatec Associates** - Geologist. Worked on permit applications for deep and surface mines at sites in Appalachian coal fields. Prepared consultant reports on reserve analysis, mining prospects and customer identification.

1977-1978 — **Garrett County Development Corp.** - Project Manager. Completed a study and financial analysis for the construction of a centrally located coal preparation plant in Garrett County, Maryland.

Publications

"Production Trends in the U.S. Coal Industry" presentation at **The Americas Coal Conference,** Cartagena, Colombia, April 1995.

"Price Forecasting in the Appalachia Coal Market" presentation at **Coal Marketing Days,** Pittsburgh, PA September 1993.

"Export Market Potential for U.S. Coal Producers" presentation at **CoalTrans International,** Berlin, Germany, October 1991.

Exhibit MTM_2: MGA Coal Region

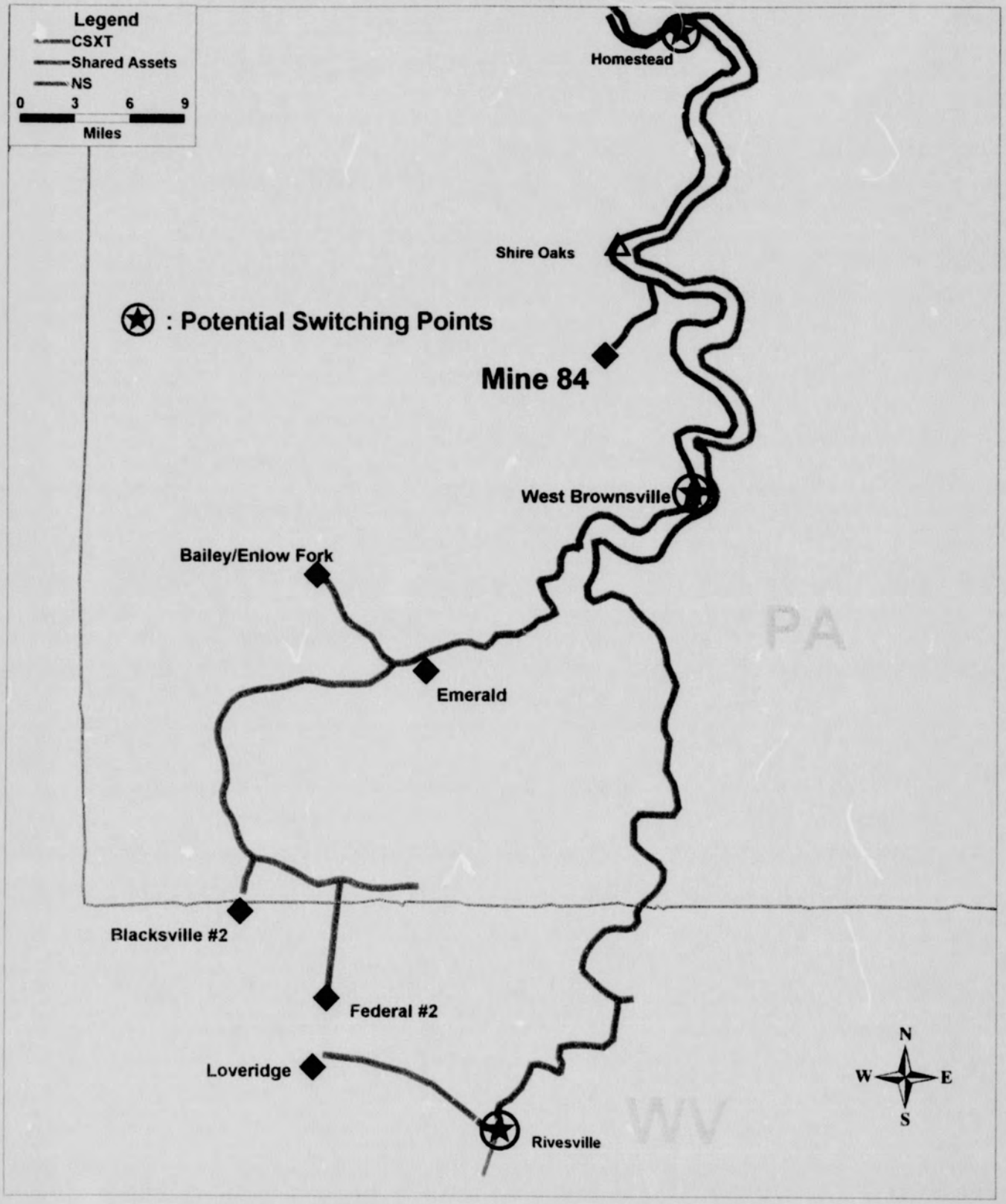

Exhibit MTM_3: Eastern Coal Supply Regions

Counties with Production Greater Than 1.5MMT in 1996

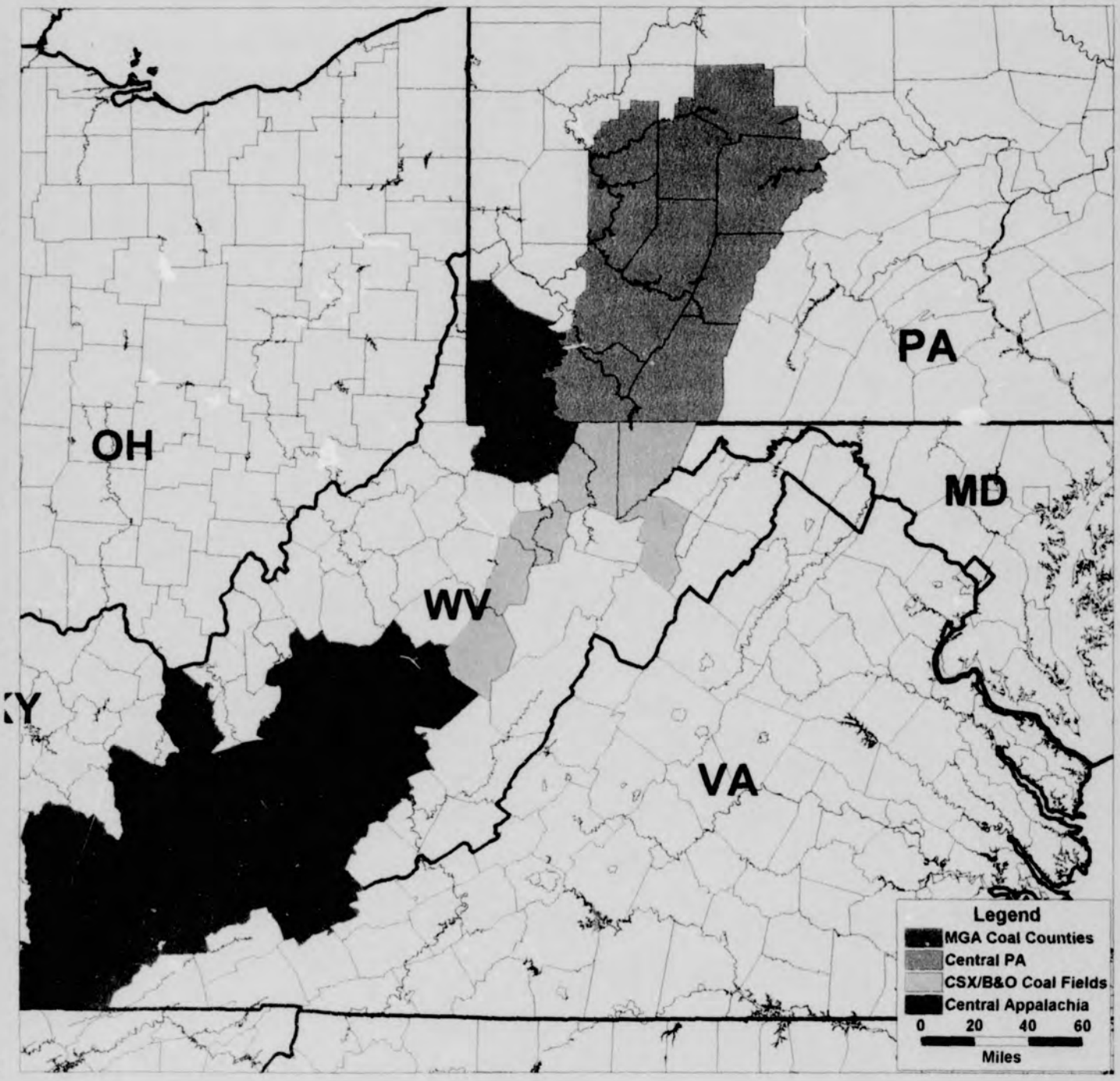

Exhibit MTM_4
Pittsburgh Seam Mines (MGA Coal)

Region Company	Mine Name	County	Primary Transport	Avg. Btu/lb	Avg. Lb. SO2	1996 Production
Southwest Pennsylvania						
CONSOL, Inc.	Bailey	Greene	rail	13,161	2.53	7,469,255
CONSOL, Inc.	Enlow Fork	Greene	rail	13,161	2.53	8,723,644
CONSOL, Inc.	Dilworth	Greene	barge	12,880	2.74	3,632,018
Cyprus Amax Coal	Cumberland	Greene	barge	12,958	3.28	5,327,908
Cyprus Amax Coal	Emerald	Greene	rail	13,198	2.25	3,230,186
Eighty-Four Mining	Mine 84	Washington	rail	13,201	2.42	3,026,551
Maple Creek Mining	Maple Creek	Washington	barge*	13,254	2.08	2,240,811
Mon-View Mining	Mathies	Washington	barge	13,150	1.95	1,071,218
Northern West Virginia Panhandle						34,721,591
CONSOL, Inc.	Blacksville 2	Monongalia	rail	12,919	3.72	3,459,798
CONSOL, Inc.	Humphrey	Monongalia	barge	12,970	3.35	3,245,745
CONSOL, Inc.	Loveridge	Marion	rail	13,196	3.66	3,073,835
Peabody Coal	Federal 2	Monongalia	rail	13,104	3.63	4,580,429
						14,359,807
Total						**49,081,398**

* limited rail loading capabilities
Source: FERC 423 data, MSHA data, Fieldston Company, Inc.
Coal quality data based upon average of 1996 shipments from FERC 423.

Exhibit MTM_5
Pittsburgh Seam Mines (MGA Coal)

Subregion Company	Mine Name	County	Current Rail Carrier	Proposed Rail Carrier	Avg. Btu/lb	Avg. Lb SOs	1996 Production
Southwest Pennsylvania							
CONSOL Inc.	Bailey	Greene	Conrail	NS & CSX	13,161	2.53	7,469,255
CONSOL Inc.	Enlow Fork	Greene	Conrail	NS & CSX	13,161	2.53	8,723,644
Cyprus Amax	Emerald	Greene	Conrail	NS & CSX	13,198	2.25	3,230,186
Eighty Four Mining	**Mine 84**	**Washington**	**Conrail**	**NS**	**13,201**	**2.42**	**3,026,551**
							22,449,636
Northern West Virginia Panhandle							
CONSOL Inc.	Blacksville 2	Monongalia	Conrail	NS & CSX	12,919	3.72	3,459,798
CONSOL Inc.	Loveridge	Marion	Conrail	NS & CSX	13,196	3.66	3,073,835
Peabody Coal	Federal 2	Monongalia	Conrail	NS & CSX	13,104	3.63	4,580,429
							11,114,062
Total MGA Region							**33,563,698**

Source: FERC 423 data, MSHA data, Fieldston Company, Inc.
Coal quality data based upon average of 1996 shipments from FERC 423.

Highly Confidential

Exhibit MTM_6
Market For MGA Coals, 2000

To Be Served Exclusively By CSX

Customer / Destination	CSX Coal Origin Location		
	MGA Coal	Other	Total
Total			

Source: CSX, Conrail Traffic Study

Highly Confidential

Exhibit MTM_7
Market For MGA Coals, 2000

To Be Served By Multiple Rail Carrier, Including CSX

Customer / Destination	CSX Coal Origin Location		
	MGA Coal	Other	Total
Total			

Source: CSX 21 HC 000829-000854.

VERIFIED STATEMENT OF RICHARD L. GORDON

My name is Richard L. Gordon. I am Professor Emeritus of Mineral Economics and Micasu Faculty Endowed Scholar Emeritus in the College of Earth and Mineral Sciences, The Pennsylvania State University. I am acting as an independent consultant, and my business address as a consultant is 429 Kemmerer Road, State College, PA 16801.

I hold an A.B. Degree in economics from Dartmouth College and a Ph.D Degree in industrial economics from the Massachusetts Institute of Technology. I have been engaged in research on coal and related markets for almost forty years, starting with research on my Ph.D thesis. Most of that work was undertaken as a faculty member at The Pennsylvania State University starting in July 1964. Over this period, I have undertaken numerous in depth studies of coal problems in the United States, Western Europe, Canada, Australia, and South Africa. As part of this research, I have interviewed officials of leading coal producers in the United States, Europe, South Africa, and Australia and spoken with executives of many electric utilities in the United States and in Germany. In the course of this work, I have assembled extensive overview data on the production and use of coal around the world. My curriculum vitae is attached.

This experience relates to basic, general, overriding principles of coal economics rather than to the details of individual operations. I have independently examined U.S. Government data on coal production and sale but have no access to detailed data relating to individual coal producers and consumers. Thus, I rely on the verified statements of Mr. Thomas M. Majcher and Mr. Mark T.

Morey for detailed information about the Monongahela coal region (MGA) which includes coal produced by Mine 84.

In this proceeding, I have been asked by Eighty-Four Mining Company (EFM) to comment on the basis of my knowledge and the statements of Messrs. Majcher and Morey on the effect on EFM from denial of the same treatment by CSX Transportation (CSXT) and Norfolk Southern (NS) being given its closest competitors in the MGA. CSX and NS agreed that both would directly serve these other mines but only NS will directly serve EFM's Mine 84.

In my statement, I review the key characteristics of markets for coal, discuss their implications for the competitive position of EFM, and indicate why this suggests that failure to secure direct access to both CSXT and NS will harm EFM.

Continuity and Change in U.S. Coal Markets

Since World War II, the U.S. coal market has changed drastically. These changes, however, reflect the workings of basically unchanged forces that govern coal economics. These include the heterogeneity of coal, the importance of transportation costs, the differences in the nature of transportation options, and the importance of large scale use in coal consumption.

Coal has many components but stress (in, for example, U.S. Government reports on electric utility coal purchases) is typically on three readily measured key characteristics — heat content

(measured in the United States in British thermal units per pound), sulfur content (measured by percent weight or pounds per million Btu), and ash (measured by percent of weight). High Btu content and low sulfur and ash are desirable. Coals differ radically from region to region in these characteristics.

Coal resources are found in states throughout the United States. A basic distinction is between East and West with the Mississippi River the usual dividing line. Eastern production generally is subdivided between Appalachia — a band of producing states stretching from Pennsylvania to Alabama and the Illinois or Midwestern basin consisting of western Kentucky and all mining areas in Illinois and Indiana. No uniform subdivision of western production has arisen.

Appalachian coal generally has a higher Btu and lower ash content than either Illinois basin or western coals. The sulfur situation is more variable. In 1996, shipments to utilities (as reported by the U.S. Energy Information Administration in its internet report *Cost and Quality of Fuels for Electric Utilities*) from Ohio had the highest sulfur content (over 3.5%) than any state but Missouri (which shipped only 500,000 tons). Illinois basin sulfur levels were around 2.5 percent. Those from Pennsylvania and West Virginia were around 1% (with important differences within West Virginia, mines in the southern part of the state have substantially lower sulfur levels than those in the north). Western sub-bituminous (mainly from Wyoming and Montana) in contrast has sulfur of .5% or less.

As noted, transportation is another key influence. Typically, transportation costs are a large component of the cost to consumers. All the methods of freight transportation used in the United

States are employed in coal distribution. The dominant mode is rail transportation (63 percent of 1995 domestic shipments were all rail according to EIA's *Coal Industry Annual*).[1/] Water transportation, if available, is the most economical transportation mode. Barges can be used to move coal from mine to riverside powerplants. The inland waterway network of the U.S., particularly the Mississippi River and its tributaries — most notably the Ohio, are heavily used for coal shipping. Powerplants and mines are located on the waterways to take advantage of the economics. Some dual mode movement arises from rail shipments to piers on the Atlantic Coast (predominantly for export), the Great Lakes, and inland waterways. Some mines are built close to powerplants and transfer coal by conveyer belt. The domination of all-rail shipment arises because of the absence of water links between so many low cost suppliers and feasible sites for powerplants. Rail transportation is generally more economic if conducted over the lines of a single railroad. Extra costs often are imposed if transfer is required.

Large scale production and use improves the economics of coal use in numerous ways. (Scale in mining is dependent on resource availability, but within the limits of existing technology customers can build whatever size facility is economic to build and operate.) Generally, a large, shallow, even deposit is preferable. Historically, the advantage of such deposits in the eastern United States was that, rather than installing expensive support systems such as employed in thin seams in Europe, coal could be left standing to provide support. However, efforts in Europe to improve the economics of mining under supports known as longwalls produced highly mechanized systems. The mechanized

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1/ While the table headings do not make clear that categories encompass multiple models, the data make this apparent. Water movements are reported from land-locked locations. Obviously, a land portion must have arisen and it is likely to be by rail.

system also proved most attractive to use in thick even seams, indeed proving lower cost than traditional methods of mining such seams. Thus, the most productive underground mines in the United States used mechanized longwall mining. These mines operate at large scales.

Transportation by rail or water is more economic at large scales. A single freight train can be devoted to shuttling between mine and power plant avoiding the expense of transfers from train to train. Similarly, a train of barges is more economic to operate.

Up to the limits of available technology, larger facilities for coal use also have an advantage. Unit costs of construction and operation tend to fall with large scale. The simplest possible example is that the number of employees needed does not increase in proportion to capacity. Economies of scale also prevail up to a point in the construction of power plant and its pollution control equipment.

Another critical consideration is that the boiler design differs with the quality of the coal being burned. Customers, of course, will design boilers for the type of coals that they expect to use. Shifting to radically different coals can have undesirable effects on performance and, therefore, costs. Customers thus are cautious about selecting and changing suppliers.

Overall, the U.S. coal industry has shifted since the end of World War II from having substantial markets in every consuming sector to large powerplants to the dominance of powerplants as users. Major changes have occurred in the locus of coal production and consumption. In both cases, the greatest growth has occurred west of the Mississippi. Coal produced west of the

Mississippi also is used largely west of the Mississippi. However, these western users often are much further away from the mines than is typically the case in Appalachia and significant use has arisen east of the Mississippi, most notably in Illinois, Indiana, Wisconsin, and Michigan.

U.S. Coal Consumption by Sector Selected Years 1949-1996 (million tons)						
YEAR	Coal Consumed by the Electric Power Industry	Coal Consumed by Coke Plants	Coal Consumed by Other Industry and Miscellaneous	Coal Consumed by the Residential and Commercial Sectors	Coal Consumed by the Transportation Sector	Total Coal Consumption
1949	84.0	91.4	121.2	116.5	70.2	483.2
1960	176.7	81.4	96.0	40.9	3.0	398.1
1970	320.2	96.5	90.2	16.1	0.3	523.2
1980	569.3	66.7	60.3	6.5	0.0	702.7
1990	773.5	38.9	76.3	6.7	0.0	895.5
1996	897.7	31.3	71.3	6.0	0.0	1,006.2
1949	17.4%	18.9%	25.1%	24.1%	14.5%	100.0%
1960	44.4%	20.4%	24.1%	10.3%	0.8%	100.0%
1970	61.2%	18.4%	17.2%	3.1%	0.1%	100.0%
1980	81.0%	9.5%	8.6%	0.9%	0.0%	100.0%
1990	86.4%	4.3%	8.5%	0.8%	0.0%	100.0%
1996	89.2%	3.1%	7.1%	0.6%	0.0%	100.0%
Source: U.S. Energy Information Administration, *Annual Energy Review*						

In contrast, coal production and consumption East of the Mississippi has had limited growth (and that growth has been unevenly spread both over time and among the producing states). In

particular, two of the leading eastern producing states, Pennsylvania and Ohio, have endured persistent output declines. Eastern Kentucky has displayed growth. West Virginia had a period of decline starting in the late 1960s; by the late seventies, rises in West Virginia output returned so that the ground lost in the earlier decade was regained.

Often changing government regulations have been major influences on past developments and prospects in the coal industry. Mining has been subjected to controls under the 1969 Coal Mine Health and Safety Act and the 1977 Surface Mining Control and Reclamation Act. Coincident with the implementation of the Safety Act, underground output per man day went through a long decline. This was reversed by the early 1980s. Coincident with the surface mining act, Appalachian and Middle Western surface mining declined. (While the two laws undoubtedly contributed to the declines, available data are inadequate to determine the exact role.)

On the consumption side, the main direct regulatory influence has been the Clean Air Act and its amendments. The Act and its amendments have concentrated on several critical pollutants, three of which — particulates (a catch all for all solid material emitted as small particles), sulfur oxides (produced by the combustion of sulfur, a natural component of fossil fuels), and nitrogen oxides (created by heating) — are produced by the combustion of coal and other fossil fuels. Until the 1990 amendments, a two pronged attack on emissions of each pollutant was undertaken. First, basic rules were set for limiting the concentration of the pollutant in the atmosphere. Each state was supposed to devise an implementation plan to attain these goals by whatever combination of rules seemed most

appropriate. Second, on the assumption that new sources were easier to control, special new source performance standards were set to limit emissions from new sources.

The original rules only regulated how much could be emitted. Concerns over the move to use of low sulfur coals from Rocky Mountain states caused introduction in the 1977 Clean Air Act Amendments of best available control technology requirements that favored use of devices to remove pollution after combustion and before discharge of waste. During the 1980s, extensive debate arose over acid rain. Briefly, acid rain is a short hand for various impacts of the long distance transport of sulfur oxide and nitrogen oxide emissions. The 1990 Clean Air Act Amendments set up an elaborate two phase program for radically reducing sulfur oxide and nitrogen oxide pollution at the existing powerplants that were the leading contributors to emissions.

From the time the laws were proposed, great uncertainty prevailed about the impacts. Sulfur oxide emissions can be reduced by using a lower sulfur coal, installing devices called scrubbers to remove the sulfur after combustion, or both. Uncertainties about the supply of low sulfur coal and about the ability of plants to burn different kinds of coal and to install scrubbers produced many different estimates about how the rules would affect the competitive position of coal suppliers in different regions. Among the outcomes predicted were massive shifts to western coal, substantial use of low sulfur coal from Southern West Virginia and Eastern Kentucky, and primary reliance on scrubbers.

Another problem is the cessation of completion of coal fired powerplants in the United States and particularly in the Northeast and North Central regions that are key markets for MGA coal.

Finally, public utility commissions around the country are encouraging changes in the operation of electric utilities in a fashion that will alter how they secure and sell electricity.

Implications for MGA Coal

MGA coal has prospered to date by displacing older suppliers in the face of stagnant consumption in the markets most readily served. This has involved a combination of attractive production and transportation economics and special market needs. Examination limited to the data tabulated in U.S. Energy Information Administration (EIA) reports indicate that MGA coal is marketed very differently from coal in other parts of Northern Appalachia such as, for example, Central Pennsylvania.

The bulk of all Pennsylvania coal is consumed within the state, and other sales are scattered among several other states. (This is equally true of total shipments and those to electric utilities on which more detailed data are available.) EIA data break down the receipts of coal by individual powerplants by county of origin. By tabulating the figures for Greene and Washington Counties, we get a picture of how the distribution of the Pennsylvania portion of MGA differs markedly from that of the mines in the rest of the state (central Pennsylvania).

In 1996, 61.5% of Pennsylvania MGA coal was sold out of the state and comprised about 88 percent of interstate shipments to electric utilities by Pennsylvania coal mines. In contrast, only seven percent of the sales of Central Pennsylvania mines were interstate.

1996 utility receipts from Monongahela County, the principal source of rail delivered West Virginia MGA coal, were also dominantly interstate (although only slightly more so than the state of West Virginia as a whole). The county accounts for most of receipts of West Virginia coal by New York and New Hampshire utilities. New York was the largest single destination for Monongahela county coal.

Coal Shipments	1995 000 Tons	%
Pennsylvania Bituminous Total	50,464	100.0%
Pennsylvania	33,379	66.1%
New York	3,675	7.3%
Ohio	2,707	5.4%
Michigan	2,650	5.3%
Maryland	1,741	3.4%
West Virginia	1,157	2.3%
Wisconsin	1,103	2.2%
Tennessee	675	1.3%
New Jersey	558	1.1%
Connecticut	516	1.0%
New Hampshire	458	0.9%
Delaware	452	0.9%
Kentucky	363	0.7%
Iowa	227	0.4%
Indiana	222	0.4%

Coal Shipments (continued)	1995 000 Tons	%
Utah	215	0.4%
Alabama	39	0.1%
Maine	32	0.1%
Virginia	20	0.0%
South Carolina	6	0.0%
Texas	6	0.0%
Massachusetts	4	0.0%
Missouri	1	0.0%

(Figures in 000 Tons)					
Electric Utility Coal Receipts from Pennsylvania 1996	All Origins	Greene County	Washington County	Greene and Washington Counties	Other Counties
Total	47,203	18,729	3,384	22,113	25,090
Intrastate	31,811	7,003	1,500	8,503	23,308
Interstate	15,392	11,726	1,884	13,610	1,782
Shares of Area in Total					
Total	100.0%	39.7%	7.2%	46.8%	53.2%
Intrastate	100.0%	22.0%	4.7%	26.7%	73.3%
Interstate	100.0%	76.2%	12.2%	88.4%	11.6%
Share of Interstate in Region	32.6%	62.6%	55.7%	61.5%	7.1%

(Figures in 000 Tons)					
Electric Utility Coal Receipts from Pennsylvania 1996	All Origins	Green County	Washington County	Greene and Washington Counties	Share
Role of Interstate Markets					
Ohio	3,410	2,597	793	3,390	99.4%
New York	3,144	2,756	149	2,905	92.4%
Michigan	1,932	1,386	546	1,932	100.0%
Maryland	1,435	28	0	28	2.0%
Wisconsin	1,317	1,317	0	1,317	100.0%
West Virginia	1,082	1,047	0	1,047	96.8%
New Hampshire	759	722	10	732	96.4%
Indiana	586	581	5	586	100.0%
Kentucky	396	396	0	396	100.0%
Delaware	391	30	354	384	98.2%
Tennessee	360	331	0	331	91.9%
Alabama	333	333	0	333	100.0%
Massachusetts	225	190	27	217	96.4%
Minnesota	23	23	0	23	100.0%
Total	15,393	11,737	1,884	13,621	88.5%

1996 Utility Sales of Monongahela County West Virginia					
	Thousand Tons	Percent of Total	State of West Virginia	Share of State	Monongahela as percent of West Virginia Shipments
Total	8,472	100.0%	101,828	100.0%	8.3%
New York	2,981	35.2%	3,539	3.5%	84.2%
West Virginia	2,057	24.3%	26,665	26.2%	7.7%
Pennsylvania	1,159	13.7%	8,216	8.1%	14.1%
Ohio	590	7.0%	19,292	18.9%	3.1%
Kentucky	421	5.0%	5,629	5.5%	7.5%
Maryland	397	4.7%	7,894	7.8%	5.0%
Alabama	394	4.7%	2,541	2.5%	15.5%
New Hampshire	238	2.8%	379	0.4%	62.8%
Louisiana (terminal of Tampa Electric)	158	1.9%			
New Jersey	42	0.5%	1,603	1.6%	2.6%
Indiana	21	0.2%	1,049	1.0%	2.0%
Tennessee	11	0.1%	11	0.0%	100.0%
Michigan	3	0.0%	5,025	4.9%	0.1%
Massachusetts			2,243	2.2%	
Delaware			1,077	1.1%	
Florida			1,768	1.7%	
Georgia			4,090	4.0%	
North Carolina			8,611	8.5%	
Virginia			2,195	2.2%	

Two basic often interacting forces have fostered expansion of MGA coal. First, it is the low cost supplier in Northern Appalachia. Second, it is a source of a medium sulfur high Btu that is attractive to customers in the area with special coal needs. Some utilities seeking to meet sulfur dioxide emission control requirements without building scrubbers have turned to using a blend of western and Appalachian coal. This choice arose because boilers built for eastern coals may lose efficiency when burning coals with lower Btu content and blending cuts this loss. The cost and heat and sulfur contents of MGA coal make it the most economic source of coals for such blends at powerplants well served by rail links to MGA. The lower cost of MGA coal also makes it attractive for use in blends with Central Appalachian coal. Similarly, the combination of high Btu content and medium sulfur content levels also makes MGA coal an attractive fuel for plants with similar rail access to MGA that are using scrubbers. Prospects arise that other users of Northern Appalachian coal will shift to MGA coal on a cost basis. The data, as presented in Morey's verified statement, indicate that a limited number of outlets are available. The mines will be competing for a share of business at the plants that are rail served (or served by rail transfers to lake carriers) and are seeking a high Btu medium sulfur coal.

EIA data suggest that 1996 sales to Ohio, Michigan, and Wisconsin were mainly for use in blends. For example, three plants, owned by three separate utilities — Eastlake of Cleveland Electric Illuminating (a plant whose units were identified for emission reductions in the 1990 Clean Air Act Amendments, a phase I plant), Kyger Creek of Ohio Valley Electric (also phase I), and Sammis

(phase I) of Ohio Edison — accounted for most of the MGA sales in Ohio.[2/] At each of these three Ohio plants, MGA coal is part of a blend used. It is blended with Ohio coal at Eastlake and with Central Appalachian coal at the other two plants. Most of the MGA coal use in Michigan, 1.7 of 1.9 million tons, is at the Monroe plant of Detroit Edison where 13,000 Btu per pound MGA coal is blended with 8,776 per pound Wyoming and 12,761 Btu per pound eastern Kentucky coal. Similarly Wisconsin use is at three plants of Wisconsin Electric that blend with Western coal (with one plant — Valley, however, using mostly MGA coal to which a small amount of Colorado coal is added). Smaller uses with similar association with coal blending prevailed in Indiana, Kentucky, and Tennessee.

Intrastate sales of MGA coal have two main elements. One is in the part of sales, barge shipments, in which EFM is not currently competitive. The other is rail shipment. The strongest position here is with plants in the eastern part of Pennsylvania belonging to Peco Energy[3/] and Pennsylvania Power and Light. Both companies (and the other Pennsylvania utilities) rely mainly on medium sulfur Northern Appalachian coal. The position of MGA coal compared to central Pennsylvania coal is best in the Pennsylvania plants *furthest* from the MGA. Peco is almost totally dependent on MGA coal. At the five Pennsylvania Power and Light plants at which EIA reports 1996

2/ Note Cleveland is now a unit of Centerior and Centerior has a merger in progress with Ohio Edison. Ohio Valley is a joint venture in which Ohio Edison and Toledo Edison, the other Centerior company, are partners.

3/ Peco Energy was formerly called Philadelphia Electric and is still reported as such in the EIA fuel receipts report.

coal receipts, the role of MGA coal ranges from dominant to nonexistent; about 36 percent of the company total is MGA coal.

The key probably is that central Pennsylvania mines better compete at plants nearer the central Pennsylvania mines because these plants can be served by truck (and in the case of the three large plants originally built to secure coal from adjacent coal mines, also by conveyor belt for the business still served by these mines). The cost advantage of MGA coals apparently outweighs the effects of a longer rail haul in determining MGA's ability to compete with Pennsylvania customers best served by rail.

The dominance of MGA coal in upstate New York similar reflects its attractiveness as a source of medium sulfur coal by rail shipment. All three of the main utilities involved — Niagara Mohawk, New York State Gas and Electric, and Rochester Gas and Electric — depend entirely on MGA coal. Niagara gets the majority of its coal from Greene County while New York State and Rochester get the majority of their coal from Monongahela county in West Virginia. Shipments to Massachusetts and New Hampshire are again to plants getting medium sulfur coal by rail.

In 1997, EFM secured another new customer, Potomac Electric Power, that used medium sulfur Northern Appalachian coal in 1996 and plans to use more MGA coal (Majcher, p. 13).

MGA rail-shipped coal then comprises of a homogeneous subsector of the coal industry. Lack of proximity to water limits the mines' ability to compete at powerplants on the Ohio served by other

MGA mines. The ability to provide low cost high Btu, medium sulfur coal to coal consumers in the region in which MGA sells best served by rail makes such consumers the primary prospects.

Implications for EFM

All this suggests that the past and future development of MGA coal sales by rail depend upon capitalizing upon special, difficult to anticipate specific opportunities that may be limited in number to sell high Btu medium sulfur by rail. Given this situation, equality of competitive ability requires that all producers have joint access to CSXT and NS.

EFM will not have that access. Mr. Morey's verified statement identifies the utility plants, all but one of which was formerly served by exclusively by Conrail, that will be exclusive customers of CSX. They include EFM's largest customer over the period 1994-1996, the Eastlake plant of Cleveland Electric Illuminating, and two plants of Potomac Electric Power, a company that became an EFM customer in 1997. CSXT also will be preferred connection to some customers served by MGA on current two line hauls. These include two existing EFM customers — Mt. Tom plant of Holyoke Water Power and Merrimack of the Public Service Co. of New Hampshire (both companies are subsidiaries of Northeast Utilities).

As Messrs. Majcher and Morey also noted, EFM will have only one railroad to ship to those customers that it can serve on a one line haul. CSXT and NS are stressing the advantages of dual suppliers. These premises clearly imply that, as EFM argues, the railroads will be rivals and those

who can be direct beneficiaries of the rivalry will have the most favorable rail situation. As an economist, I interpret this to mean that lower rates will be given customers for which both railroads compete than to nearby competitors captive to one of the two railroads. Economic analysis makes the ability competitively to supply products to the same customers the benchmark by which similar firms are identified. Thus, the MGA rail mines are economically similar firms. If the distinction between EFM and the other MGA firms is based on historic rail service patterns, this has no economic significance. Obviously, customers decide on the basis of current conditions. Customers do not know or care about prior service; they need current service.

Economic analysis of markets emphasizes economic efficiency — essentially that goods should go to the customers who value them most highly and that each customer be supplied by those possible suppliers with the lowest costs. Under this criterion, EFM should have the ability to get direct access to CSXT as well as NS.

Such access insures that EFM get the same more favorable rates that CSXT and NS imply will be available to other MGA mines. The prior indicates that two types of favoritism will arise. First, EFM will lose single line rates to a significant number of present and potential customers. Second, it will not get the better single line rates CSXT and NS imply will be given shippers with dual access.

Applied economics overwhelmingly concludes that private decisions should be designed to promote economic efficiency. Thus, the CSXT-NS assertions about the desirability of multiple suppliers leads to the conclusion that EFM should receive the joint access given its rivals so all will be

able to compete solely only their cost, quality, and inherent locational advantages and not on the basis of differential treatment by railroads.

In summary, the loss of equal access to all potential users of MGA coal will materially lessen EFM's competitive position and limiting rail access to NS will cause loss of whatever benefits arise from the direct competition of two carriers.

I, Richard Lewis Gordon, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement, executed on this 13th day of October, 1997.

Richard Lewis Gordon

10/97

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COLLEGES ATTENDED:

Dartmouth, A.B., 1956

Major: Economics
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FIELDS OF CONCENTRATION:

Industrial Economics and International Trade
Work on International Markets for Specific Industries

THESIS: Coal Pricing and the Energy Problem in the European Community, June 1960

PRIMARY TEACHING FIELDS:

Resource Economics - particularly energy
Industrial Organization
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TEACHING EXPERIENCE:

Teaching assistant and instructor (MIT 1958-60)
Assistant Professor, 1964-1966,
Associate Professor, 1966-1970,
Professor, 1970-1996; Director, Center for Energy and Mineral Policy Research, 1987-1996; 1990-1996 MICASU University Endowed Fellow (all at The Pennsylvania State University, Department of Mineral Economics)
Developed and taught six graduate and undergraduate courses in the application of economic analysis to minerals problems. These courses include those in general principles of mineral economics and in the economics of energy.

OTHER POSITIONS HELD:

Assistant Economist, Research Department, New England Mutual Life Insurance Company, Boston, Massachusetts for the Summers of 1957 and 1958, part-time Winter of 1957-58.

Economic Analyst, Economist's Office, Union Carbide Corporation, New York, New York, Summer 1959, June 1960-January 1964.

Assistant Economist, First National City Bank of New York, February-August 1964.

HONORS AND AWARDS:

The Pennsylvania State University, Faculty Scholar Medal for Outstanding Achievement (Social Sciences), 1989.

Government of Venezuela, Decoration of Andres Bello (in grade of honor first class) for significant contributions to the field of energy economics and for high quality academic guidance to Venezuelan graduate students, 1989.

Outstanding Contribution to the Profession Award of the International Association for Energy Economics, 1992.

MAJOR PUBLICATIONS:

Books and Monographs:

The Evolution of Energy Policy in Western Europe: the Reluctant Retreat from Coal, New York: Praeger Special Studies in International Economics and Development, 1970, 331 p.

The Steel Industry and U.S. Business Cycles, University Park, PA: Penn State Studies, 1971, 108 p. (with Philip A. Klein).

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*Omits over 50 book reviews, brief pieces for nontechnical publications, and coauthorship of articles based on student theses.

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"Energy, Exhaustion, Environmentalism, and Etatism," The Energy Journal 15(1): 1-16 (1993).

OTHER EXPERIENCE:

Public Consulting and Advising:

U.S. Public Land Law Review Commission, 1967-1969
Resources for the Future, study of energy research needs, 1971.
Consultant to the Rand Corp., study of energy forecasts relevant to the TransAlaska pipeline, 1972.
Consumer Power Association, advice on study of Appalachian coal supply, 1972.
Science and Management Research, designed, organized, and chaired seminars on energy problems, 1972.
Resources for the Future, supply forecast study for Ford Foundation Energy Policy Project, 1972-73.
U.S. Department of Justice, expert witness on tax case, 1973-1974.
MIT Energy Lab, advice on critique of Project Independence, 1974.
HRB Singer, advice on study for Appalachian Regional Commission, 1974.
U.S. Council on Wages and Price Stability, review of coal price study, 1975.
W.R. Grace, advice on coal projects, 1975.
Canadian American Committee, U.S.-Canadian Coal Trade, 1975-1976.
Continental Oil, report on effects of oil company participation in coal, 1976.
Sohio, advice on coal projects, 1976.
Alaska Pipeline, advice on coal prospects, 1976.
Resources for the Future, participant in NSF funded conference on Energy Modeling, 1976
Resources for the Future, advice on coal for Ford Foundation funded study of nuclear power, 1976
Donovan, Hanister and Rattien, advice on a coal model review, 1976.
Bureau of Indian Affairs, advice on a Crow Nation coal lease, 1977.
Office of Technology Assessment, review of report on coal slurry pipeline, 1977-1978.
Charles River Associates, assistance on coal supply project, 1977-1978.
Argonne National Laboratories, advice on coal studies, 1977.
Library of Congress, report on power plant construction, 1978.
Argonne National Laboratories, review of its coal model, 1978.
Smithsonian Science Information Exchange, advised and wrote executive summary for coal research abstract service, 1978.
Thompson and Mitchell (Lawyers), work on coal contract litigation, 1978.
F. R. Schwab, advice on coal market study, 1978.
U.S. Department of Energy, participated on coal data need seminar, 1978.
MIT (for EPRI), assistance of in-depth evaluation of ICF, Inc.'s Coal and Electric Utility Model, 1978-1979.

Paid Consulting and Advising (continued):

ICF, Inc. comparison of its model to other work, 1978.
Skelly & Loy, advice on survey of world coal, 1978
Exxon, assisted in appraisal of a business venture, 1978.
Management Analysis Center, assisted in helping Union Pacific Railroad subsidiary respond to Justice Department proposal to ban leasing of coal by railroad subsidiaries, 1978-1979.
Conference Board (under EPRI contract), panelist in conference on coal labor problems and reviewer of manuscript, 1979.
ICF, Inc., panelist in its study for the Department of the Interior on fair market value of coal leases, 1979.
ICF, Inc. (on EPRI contract), assisted with study of trends in coal markets, 1979-1981.
Sutherland, Asbill and Brennan (for General Motors and the American Iron & Steel Institute), cooperated in preparation of critique of Department of Energy rules to enforce the Powerplant and Industrial Fuel Use Act, 1979.
Congressional Budget Office, review of manuscript, 1979.
Exxon, reviews of studies on competition in U.S. economy commissioned by the Business Round Table, 1979.
Exxon, preparation of study on coal leasing, 1980.
Electric Power Research Institute, preparation of study on coal industry problems, 1980.
Coal Research Group, International Energy Administration, preparation of Coal Supply Forecast, 1980.
NERCO (a wholly owned subsidiary of Pacific Power and Light--now Pacificorp), briefing on coal market problems, 1980.
Charles River Associates, assistance on coal research activities, 1980.
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A major electric utility and its uranium supplier, arbitrator of contract clause on prevailing market price, 1981.
Arco and Gulf, briefings on prospects for coal, 1981.
Federal Energy Administration, attempted to help improve its first Electric Power Annual, 1982.
Chase Econometrics, consulted on its World Coal Model, 1982.
Phoenix Associates, advised on a mineral data gathering project for the Bureau of Mines, 1982.
Oak Ridge National Laboratory for DOE, reviewed DOE reports for quality, 1983.
U.S. Commission on Fair Market Value Policy for Federal Coal Leasing, member, 1983-1984.
State of Kentucky, advised on review of Data Resources material presented to Kentucky Coal Summit, 1985.
Data Resources, Inc., prepared a review of coal information sources as part of report to State of Pennsylvania on coal prospects, 1985.
Resources for the Future, assisted on project on impact on coal of selected public policies, 1985.
Energy Ventures Analysis (Electric Power Research Institute), comparisons between a new EPRI sponsored work and prior coal market models, 1985-1986.
Charles River Associates, advised on work for Bureau of Land Management, 1986.
Resources for the Future, consultant on study of impact of public policy on coal markets, 1986.
A Law Firm, confidential advice on a tax court case involving a challenged deal in coal leases, 1986.
Another Law Firm, assistance of a client's claim for lower coal prices on basis of a market price adjustment clause in a contract, 1986-1987.
NERCO, consultation on my views about the future of coal, 1986.
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National Coal Association, American Mining Congress, and Edison Electric Institute appraisal of Department of Energy coal leasing royalty rules.
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Unpaid Consulting and Advising:

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National Research Council, review of USBM report on minerals extraction, 1973.
U.S. House of Representatives, Committee on the Judiciary, off the record energy policy seminar, 1975.
U.S. Federal Energy Administration, briefing on coal model, 1976.
National Research Council, panel on role of electricity in coal, 1976.
Federal Energy Administration, energy research advice, 1976.
Federal Trade Commission, advice on competition in coal, 1976.
Argonne National Laboratory, Advisory Board Regional Studies Program, 1976.
Stanford University Energy Modelling Forum, forum on coal models, 1977.
U. of New Mexico, energy taxation study, advisory committee, 1977.
U.S. Department of Energy, Anthracite Commission, 1977-1978.
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President's Coal Commission, participated in panel discussion on analysis of coal mine productivity, 1979.
American Enterprise Institute, participant in panel discussions for the press on the President's Energy Program, 1979.
U.S. Department of Energy, discussant in coal resource data need symposium, 1979.
National Research Council Committee on Known Geological Structure for Oil and Gas, member, 1985-1986.
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AIME, Pittsburgh, Talk on Coal Demand, 1970.
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Organization for Economic Co-operation and Development, 1973.*
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University of Kentucky, 1975.
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University of West Virginia, 1975.
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U.S. Department of Energy, Conference on Energy Modeling, 1982.*
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The Pennsylvania State University Departments Addressed:

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Chemical Engineering
Nuclear Engineering
IEEE Student Group
Geosciences
Alumni Institute
Agricultural Economics
Mineral Preparation

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Water Resources Research
Science*
MIT Press*
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Land Economics*
Economic Inquiry
Canada Council*
Bell Journal of Economics
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West Virginia University

Editorial Board Membership 1995:

The Energy Journal (Book Review Editor since 1984)
Resource and Energy Economics

Professional Societies:

American Institute of Mining and Metallurgical and Petroleum Engineers, Council of Economics, Program Chairman and Proceedings Editor, 1970; Vice Chairman-Chairman Elect, 1972; Chairman, 1973; Award Committee, 1975-1979; Mineral Economics Award, 1981.
International Association of Energy Economists, member Editorial Board, 1979 to date; Book Review Editor since 1984; member Executive Committee, 1979-1980.
American Economic Association
Royal Economic Society
Econometric Society

US OFFICE PRODUCTS

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, August 25, 1997

Deposition of JOHN WILLIAM FOX, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, D.C., 20006-3959, at 10:05 a.m., Monday, August 25, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

Mr. Prillaman?

A. Yes, he is knowledgeable about the interdepartmental processes.

Q. He is knowledgeable, was that your answer?

A. He is knowledgeable, he knows what's going on in our group.

Q. You referenced, when I asked you about your familiarity with Mine 84, that there is a Pittsburgh 8 seam mine. Can you describe what you mean by a Pittsburgh 8 seam mine?

A. My general knowledge is that that's a seam of coal in the southwestern Pennsylvania area, that several mine operators have significant operations in that seam of coal. I'm not a geologist, I don't know that much about the geology of the area, but I understand it's a very productive and potentially expanding reserve of coal, mostly utility type, mid sulfur steam coal.

Q. Does Pittsburgh 8 describe particular characteristics, is that a shorthand version of describing coal mines with similar characteristics?

A. I don't know. I'm not sure that they

do have similar characteristics. I'm sure there are different methods of mining and different specific locations. But I think that general seam maybe describes a group of operators that operate in that seam of coal.

Q. Would those mines have similar Btu content?

A. I think they do.

Q. Would they have a similar level of sulfur?

A. I've heard a range of sulfurs reported so I'm not sure that they all do have. I mean I think it's within a percent one way or another. You know, that's a pretty big spread. I think to some extent that has to do with the method of processing and different mines would have different processing methods.

Q. Can you identify for us the producers and the mines that you understand constitute Pittsburgh 8 seam producers?

A. I don't think I could do it and not leave any out.

Q. Can you tell us those that you are familiar with. We won't hold you to representation that it is a complete list.

A. Well, I think Consolidation Coal Company has some mines in that area and I think Peabody does and I think Massey has some mines or has some potential mining operations in that area and Eighty-Four.

Q. I'm sorry, and what?

A. And Eighty-Four.

Q. That's Eighty-Four Mining Company?

A. Yes.

Q. Are Pittsburgh 8 seam producers to your understanding generally competitive with one another?

A. We're trying to understand the market dynamics, but I don't know that much about their individual, you know, efficiency factors, mining costs, and loadout capabilities and geographic locations. I really don't know what their relative standing is with respect to mining efficiency.

Q. Does Norfolk Southern currently serve any Pittsburgh 8 seam mines to your knowledge?

A. I don't think so.

Q. Post-transaction Norfolk Southern will serve the Pittsburgh seam region; is that correct?

A. Yes, sir.

Q. Do you have an understanding of the volume of rail shipments from these mines that's available?

A. I think it's in the 35 million ton range annually.

Q. Is that a significant volume of coal?

A. Yes.

Q. I assume from your answer that the acquisition of these lines in this transaction is important to Norfolk Southern?

A. Yes.

Q. Do you discuss the service to this region in your verified statement?

A. I don't think specifically we discuss the service. I'm not sure at the time the statement was taken that we had begun to consider the service implications.

Q. Page 267 of the volume, I will refer to the page of the volume rather than the page in your stand-alone statement for reference purposes, in the second paragraph, you state, beginning with the second sentence, many of our utility customers would like to be able to blend lower priced but higher sulfur, parentheses, and

often higher Btu, close parentheses, coals with lower sulfur coals from NS origins. The coal fields served by Conrail have the East's largest concentration of medium sulfur steam quality coal.

Does this have reference to the Pittsburgh 8 seam?

A. In general, yes.

Q. Did somebody provide you with this description, Mr. Fox, or is this based upon your general knowledge and understanding?

A. It's based on my general knowledge and understanding.

Q. So from that can we conclude that your understanding is that the Pittsburgh 8 seam coals have a higher Btu content and a higher but more or less consistent sulfur content than other coals that are on NS lines?

A. Often higher. I think NS coals have -- NS origin coals -- certain NS origin coals have equal Btu content. Some of the Pittsburgh 8 I think are higher than some of the NS origin coals. And most of the Pittsburgh 8 coals have a higher sulfur content, but that's not -- there are exceptions.

delivered costs of coal in those general geographic areas must remain competitive or that particular utility won't generate electricity.

And the competition that NS and CSX provide in that general regional area will open up that type of competition for this market that has not been available before the NS/CSX acquisition of Conrail.

Q. So, even though Mine 84 will not have competitive rail service, they will have the same rates available to them as any of the competitively served mines; is that what you're stating?

A. I don't know that they will -- that Mine 84 will negotiate any transportation rates.

Q. Well, if they were to negotiate transportation rates, would they have the same rates available to them as the competitively served lines on the former Monongahela Railway?

A. I don't know. I don't know the particulars of the geographic area that we serve. Generally NS establishes rate districts that include a group of mines in a geographic area. And then utilities requesting transportation rates are provided those on that

price its service in joint-line service with Norfolk Southern from Mine 84 competitively with single-line service from one of the comparable mines?

A. I really don't know. I mean that's -- that would be very speculative on my part. I don't know what they would do.

Q. Let me put the shoe on the other foot. If CSX served a mine exclusively and Norfolk Southern served mines producing competitive coal, in offering the coal-fired utility a transportation contract, would you price on a basis to encourage the single-line move or would you price the single-line move and the joint-line move competitively?

A. There are really just too many factors to consider. I mean I don't know that I could generalize on that. I mean there's factors of productivity and, you know, location and the quality of coal and mine price.

And the biggest factor is what that particular utility -- what type of coal that utility wants and the producer that utility wants to deal with and what price of coal that utility is able to negotiate. I mean those are big

factors and a lot of variables. So I wouldn't say that one would exclude the other absolutely.

Q. Given that there are no absolutes in this world, Mr. Fox, could you say on a general basis that you would price -- and further assuming as I did in the question that the coal quality is the same and the utility can deal with either producer, generally speaking isn't it a fact that your pricing would be such as to favor your single-line haul over a joint-line movement with CSX?

A. If you look at the entire movement, it's likely that either could compete effectively depending on, you know, how it's set up, proportional or a joint line, joint-line rates. I mean it's possible that it could be competitive.

Generally the single-line movement would be more efficient and, therefore, generally have a more favorable price. But that's not absolute. Other factors can determine the competitive nature of those type arrangements.

Q. But you stated previously that you prefer generally a longer haul?

A. We prefer the arrangement that produces

the best revenue for Norfolk Southern.

Q. And wouldn't that arrangement generally be a single-line haul?

A. I would say generally it would, all things be equal, destinations, equal mileage, it would be the most efficient one -- it would be the most efficient move and would be the one selected.

Q. And it would be priced in a more favorable manner than the joint-line move; isn't that true?

A. In a general sense. But there again I don't think that's an absolute.

Q. If I can refer you to page 272 of your statement, the paragraph at the top of the page, the carryover from the prior page, you state after the transaction is approved, these facilities will be served by two railroads with access to high quality coal. You do have reference to shippers of metallurgical coal and coke in the beginning of that paragraph. Shippers will benefit from the presence of balanced competition by two financially stable comparably sized rail systems able to offer cost-efficient single-line service to these

shippers. Moreover, these same shippers will have greater leverage than they do now to spur the railroads to compete for their business.

Does this also apply to utility coal, the same statement?

A. Yes.

Q. What do you mean by shippers having greater leverage to spur the railroads to compete for their business?

A. The Conrail territory will have a competitive balance -- you're talking about utilities specifically?

Q. Let's talk specifically utilities.

A. A competitive balance that they have not -- that has not been present in that market for sometime. And CSX and NS will compete for the utility power generation market in that vicinity, much in the same way CSX and NS compete in the Southeast.

Q. Does having competing rail carriers serving the routes provide a lower rate generally than a captive situation?

A. That's been our experience.

Q. Is this leverage to spur the railroads to compete for business a benefit of the

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Tuesday, September 23, 1997

Deposition of BARRY C. HARRIS, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Tuesday, September 23, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

the shared assets. I looked at two of the three, I did not look at CSX overlap with Conrail.

Q. Why is the transaction in your view strongly procompetitive?

A. Again I'm just repeating what's in the volume.

Q. Please summarize for us.

A. There's two basic reasons, maybe three. One is that there is minimum overlaps between NS and Conrail. And those overlaps involve very small numbers of situations and a small amount of traffic.

By contrast the joint operation of the shared asset area will create competition where currently there's only one provider of service, creating two providers of service. Those are the principal reasons.

I suppose the third reason is there's a lot of testimony from operational people that discuss how this will make both CSX and NS after the transaction more efficient providers of the service. And, you know, cost savings and efficiencies are part of competition.

Q. The fact that there is minimum overlap between Norfolk Southern and Conrail, does that

result in the transaction being procompetitive or only in the transaction having little or no anticompetitive effect?

A. The lack of overlap in and of itself basically says that there's no competitive problems. Of course, when you look at the detail and you see why there's no overlap, it makes much more plausible the notions of cost savings. But, in and of itself, that simply says there's no real problems there.

Q. What are the benefits flowing from the competition created in the shared asset areas?

A. Simply under current circumstances shippers in that area have one railroad to turn to and after it they'll have two. So it creates competition in the area.

Q. Then how does that benefit the shippers?

A. Well, the way competition works is, if you want to get business, you have to strive to provide the highest quality service you can at the lowest possible price, otherwise your competitor is going to get it. That's the ideal of competition.

Q. Do you believe that there are any

I don't recall any other than the few places in Indiana where there was a lessening of competition.

Q. When we're talking about negative effects, is your sole criteria for negative effects being a lessening of competition for railroad transportation service?

A. That's what I examined, yes.

Q. Could there be negative effects other than a lessening of competition for railroad transportation service?

A. What I examined was the competition. So I'm not quite sure what you're getting at. I mean I looked at competition. So my analysis addressed whether or not there was a lessening of competition or, alternatively, in other areas whether there was an increase in competition.

Q. Could shippers be harmed by factors other than simply the equation of whether or not the transportation service or transportation options increased or decreased?

A. Could an individual shipper be harmed?

Q. Yes.

A. I suppose an individual shipper could be harmed.

Q. Would it be advantageous from your perspective if the transaction were to be structured so that there were no adverse effects upon shippers?

A. I mean we might disagree whether there are no adverse effects. But, if you can -- I mean just purely hypothetical, if you can retain all the advantages of the transaction and not create any other disadvantages and get rid of your hypothetical disadvantages, I suppose the answer is yes. But there's a huge number of assumptions in your question unstated.

Q. Did you look at all at the markets served by the customers served by Conrail in your analysis?

A. Could you repeat that, please.

THE REPORTER: "Question: Did you look at all at the markets served by the customers served by Conrail in your analysis?"

THE WITNESS: In some sense, yes. But the computer programs that looked at traffic volume looked at everything on Conrail. But there was an essence of sorting to look for areas in which Conrail -- two different situations, either Conrail and NS were current competitors

itself. Prior to the transaction, its local competitors didn't have any competition. To the extent that that shipper currently continues to be served by a single railroad, that railroad has incentives to try to help its customer be able to compete in its end market. So, to the extent that there is source competition of that type, that shipper can benefit as well.

Q. Can that shipper also be disadvantaged by the fact that its competitors receive dual-railroad service and it does not?

A. It's possible they're disadvantaged. Again it's a factual inquiry.

Q. Did you find any of those types of circumstances when you examined the records?

A. I did not, because I don't consider that to be a harm to competition. That at most is one particular entity that was harmed. But the process of competition is improved. So I did not examine those sorts of things.

Q. So you weren't looking for that kind of situation; is that right?

A. That's what I just answered.

Q. On page 5 of the volume, you make reference to the Monongahela coal fields, the

A. Yes.

Q. Is it fair to say then that a coal producer which is subject to joint-line access in reaching a utility plant may be at a disadvantage in serving that utility plant customer as compared with its competitors which have single-line access to that utility plant?

A. Well, the key to answer your question is the use of the word may. And the answer is yes, they may be at a disadvantage. But it's a factual inquiry and the extent of that disadvantage may not be great. It depends.

Q. And it may be great, is that correct, it may be great or it may not be great; is that what you're saying?

A. I haven't undertaken a factual inquiry of that with regard to coal customers. So I can't answer the extent of that.

Q. But, if it may not be great, it also may be great; is that a fair conclusion, depending upon the facts?

A. It completely depends on the facts.

Q. And it could be either a great disadvantage or perhaps not a great disadvantage?

A. The answer is I don't know. I would

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, August 27, 1997

Deposition of ROBERT L. SANSOM, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:05 a.m., Wednesday, August 27, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

REDACTED

Q. In your testimony, I'd like you to refer to your testimony at this point, if you would, please. Looking at page 335 of the application, under the heading Acquisition of Conrail by CSX and NS Will Improve Access to MGA Coal and Benefit Producers by Opening Up New Markets, you talk about the revitalization of MGA coal production, you say the causes are threefold, and first you identify the application of longwall mining techniques to the geology of Southwest Pennsylvania, Greene and Washington Counties, eight mines. Can you identify those eight mines for us, please.

A. The Bailey and Enlo Fork mines of CONSOL, the Emerald mine of Cyprus AMAX, the Eighty-Four mine, Maple Creek mine, the Federal No. 2 mine, the Humphrey mine, and Blacksville.

Q. I'm sorry, the last one?

A. Blacksville. I get confused about Loveridge and Blacksville and which one is south of the Pennsylvania border in West Virginia and which one is north. With that uncertainty which applies to one of those mines, that Loveridge could go north of the Pennsylvania border, that would be my answer without looking specifically at other data.

Q. How do you classify the Dilworth mine operated by CONSOL?

A. Okay. That could be. I'm not sure where Dilworth is located, but that may also be located in Pennsylvania.

Q. Is Blacksville in Pennsylvania or is Blacksville actually in Northern West Virginia?

A. That's what I said, that would be the one without looking at a list that I don't know.

Q. How about Humphrey?

A. I can think in Pennsylvania, but I could be wrong.

Q. And Federal 2?

A. I think that's in Pennsylvania, yes.

Q. Are you familiar with the Mathies mine?

A. The Mathies mine is the metallurgical

coal mine in the Pittsburgh seam that's located near Mine Eighty-Four.

Q. So that would be a Southwest Pennsylvania mine?

A. Yes.

Q. How about Cumberland?

A. Cumberland is further south. Again whether that's in Northwestern -- Northern West Virginia or Pennsylvania I'm not sure without looking at a list.

Q. Can you tell us then what the eight mines are that you identify in the West Virginia panhandle?

A. Not without looking at a specific list.

Q. Is Windsor one of those?

A. No. Windsor would be -- Windsor is on the Ohio River. Yeah, it is in West Virginia.

Q. Loveridge?

A. Again, without looking at a list, I think Loveridge is not on my list for Pennsylvania so that means it's West Virginia.

Q. McElroy, would that be a West Virginia mine?

A. I don't know.

Q. Robinson Run?

A. Robinson Run is definitely in Harrison County, West Virginia.

Q. Shoemaker?

A. It's West Virginia.

Q. Let's try a shorter list, how about the Ohio mines, you identify two?

A. Quarto and Ohio Valley.

Q. Quarto, is that Powhatan No. 4?

A. Yes.

Q. On page 341 of your statement, you have a map. And the darkest shaded color is identified in the legend as MGA coal counties. Would those include the Greene and Washington Counties?

A. Yes, of Pennsylvania.

Q. With regard to the eight mines in Greene and Washington Counties, are those all Pittsburgh 8 seam mines?

A. Yes.

Q. Does that Pittsburgh 8 seam identification designate characteristics of the coal in those mines?

A. What do you mean by characteristics?

Q. Do those coals have common

characteristics with regard to heat content and sulfur content?

A. No.

Q. I'm talking specifically of the eight mines that we've been talking about in Southwest Pennsylvania?

A. No.

Q. You discuss on page 336 relatively high heat content, around 13,200 Btu and otner Eastern coals that have a heat content of 12,000 to 12,500 Btu. Do these eight mines in Southwest Pennsylvania fall within either of those designations?

A. Well, they have the higher Btu content.

Q. They would all have the higher Btu content?

A. Yes.

Q. On page 336 you further talk about sulfur content distinguished between high sulfur content, 4 to 6 SO2 per MMBtu, and Southwest Pennsylvania medium sulfur, 2.5 to 3.0 pounds SO2 per MMBtu. Do the Southwest Pennsylvania mines fall into one of those two categories?

A. Yes, some of them do.

Q. Some of them do?

A. I mean they fall under those two categories.

Q. Do all of them generally fall into one of those categories or the other category?

A. With regard to sulfur content?

Q. With regard to sulfur content.

A. Yes.

Q. Which category do they fall into?

A. Which category does each fall into?

Q. Well, let's start with the group. Does the group have a common characteristic of medium sulfur content?

A. Some have high and some have -- as you get down toward the West Virginia border, the sulfur increases, the Northern West Virginia border.

Q. The Bailey mine, would you consider that a medium or a high sulfur content?

A. It's a medium sulfur content mine.

Q. Enlo Fork?

A. Medium sulfur.

Q. Emerald?

A. Medium sulfur content.

Q. Mine Eighty-Four?

A. Medium.

Q. Maple Creek?
A. Medium to low.
Q. Mathies?
A. Medium to low.
Q. You identified Blacksville as possibly being in Southwest Pennsylvania and possibly in West Virginia. How would you describe the sulfur content?
A. That's a higher sulfur mine.
Q. Humphrey?
A. Higher sulfur.
Q. And Federal 2?
A. Higher sulfur.
Q. When looking at the sulfur content and the heat content, are those characteristics generally specified by utilities when they purchase coal?
A. There's usually a heat content specification and a sulfur specification, yes.
Q. And will the utility specify a range within each that they're looking for?
A. Usually, in the case of the heat content, a floor, a minimum. And, in the case of the sulfur content, a pounds of SO2 per MMBtu maximum which is a function of the sulfur and the

heat content.

Q. You identified Bailey and Enlo Fork, Emerald, Mine Eighty-Four, Maple Creek, and Mathies as all high heat content and medium sulfur content. Would you characterize those mines as being competitive with one another in the supply of coal to electric utilities?

A. Yes. I mean some of them have higher costs than others. But, in terms of the quality of the coal produced, yes.

Q. Would those mines generally compete with the Windsor mine?

A. They would have better sulfur.

Q. So, if a utility were specifying a medium sulfur content, that Windsor may not qualify for that procurement; is that correct?

A. Yes.

Q. Are the Southwest Pennsylvania mines that we've been discussing that are high heat content and medium sulfur, are they all rail served today?

MS. TAYLOR: Would it be helpful if you specified the mines again.

BY MR. BERCOVICI:

Q. Yeah. Is Bailey rail served?

yesterday. And I didn't ask him what the intent was, I asked him what it could mean in his. understanding.

MS. TAYLOR: You can give your understanding, if you know.

THE WITNESS: I think the interpretation I would put on it is that this is a market for B&O coal which he refers to as the CCBU coal. I refer to it as B&O coal.

BY MR. BERCOVICI:

Q Do you know what CCBU stands for?

A. I can get three of the words. I think it's the Cumberland Business Unit, but what the other C is I don't know.

Q. In the next paragraph, he states CSX-CCBU originated 1.0 million tons which delivered to Conrail destinations that become exclusive NS. These markets, Delmarva and BG&E, will almost certainly be lost to NS origins. Why would these markets be lost to NS origins?

MR. ROSEN: If you know.

THE WITNESS: I think what he's saying here, if I can interpret it, is that the NS destinations will only be reachable by CSX originated coal by a two-line haul.

So they won't be lost, but they will have the economic disadvantage of a two-line haul as opposed to a single-line haul, which does not mean they're lost. In fact, they're already moving by two-line haul to these destinations today.

BY MR. BERCOVICI:

Q. Can Conrail deliver Conrail-originated coal to these destinations of the same quality that NS can originate?

A. Conrail does have several mines that have comparable quality to the NS, but they have a circuitous transportation route to get there. But some of that coal does get delivered.

Q. But, if the routes are comparable, is it fair to say that the rail carrier will price in a way to prefer its own single-line movement as contrasted with a joint-line movement?

A. All other things assumed away, yes.

Q. Looking at the summary by destination chart on page 000184, do you have an understanding of the line which reads joint CSX, NS access?

MS. TAYLOR: What do you mean by have an understanding of?

BEFORE THE

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NORFOLK SOUTHERN CORPORATION AND

NORFOLK SOUTHERN RAILWAY COMPANY

-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, August 21, 1997

Deposition of RAYMOND L. SHARP, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:00 a.m., Thursday, August 21, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

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Q. Okay. Now, do you remember the two of us being in a meeting together in the L'Enfant Plaza Hotel on December 20, 1996, with a lot of other people?

A. Can you be more specific why we were there. Was that a conference?

Q. Conrail at the time and you were trying to merge. And Conrail asked me to set up a meeting with the utility industry so that you and Mr. Dwyer could make a presentation.

A. Now I remember being there.

Q. And do you remember some 20 or 25 utility representatives present at the meeting?

A. I remember a large group.

Q. And do you remember saying to the group that it was your job to charge them the highest rate that you could without losing their

with regard to Mr. Murray's traffic.

Q. Well, I'm sorry if I didn't make that clear, but I'll do it now. I thought you said you were not willing to give Norfolk Southern trackage rights into the Eastlake and Ashtabula plants?

A. Right.

Q. And I'm just asking you why you're not willing to do that?

A. Because I don't want to.

MR. ROSEN: He personally as opposed to the corporation?

BY MR. McBRIDE:

Q. Right.

A. Because I don't want to.

Q. But why don't you want to?

A. Because I prefer to handle traffic to a point that I serve in a revenue haul as opposed to other conveniences.

Q. Suppose the revenues to CSX were the same either way. Would you still not be willing to provide the trackage rights?

A. That's a question that I can't answer because that's -- the question doesn't make sense. You don't have line haul revenues equal

after board approval CSXT will offer single-line service from multiple coal sources including MGA coal to Centerior.

And I'm just trying to find out purely as a factual matter whether your calculation of benefits to CSX of the transaction included some increase in coal from the Monongahela region and reduction of coal from Ohio Valley into those plants?

A. My recollection is as I told you before, we anticipate offering to Centerior single-line rates from a number of origin sources that we will serve after the acquisition including Monongahela but not limited to Monongahela, also lower sulfur coal sources on the former L&N Railroad, on the former C&O Railroad, on the former B&O Railroad.

And I also stated before, in answer to your questions, that we anticipated a reduction in our traffic analysis based on conversations with Centerior that led us to believe that Ohio Valley's coal might very well be trucked. We're aware that they are trucking some of that coal today, some of their Ohio origin coal today into Centerior, and we were led to believe that in the

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important in the eyes of the ratepayer. And I think it is a logical leap that single-line service is an improvement over joint-line service. So I would answer your question yes.

In fact, counsel points out to me that the paragraph on 354 appears to be a prelude to a description of benefits of better service, some of which are as outlined on page 355, more single-line service, shorter, more effective routes, and so on.

Q. And, Mr. Sharp, there is more single-line service in substitution for joint-line service; is that not correct?

A. Yes.

Q. You state on page 353, in the first full paragraph, you state third, coal producers will also benefit by gaining access to new customers, Conrail served Midwest and Northeast destinations. What coal producers do you have reference to?

A. The reference to coal producers who will gain access to new destinations would be a reference to coal producers served by CSX in the preacquisition stage.

Q. And why will they gain access to new

customers?

A. Because they could substantially not access those Conrail served Midwest and Northeast destinations because of joint-line pricing putting those customers out of their reach.

Q. So it's important for a producer to have single-line access to its customer base if its competitors have single-line access to the customer; is that a fair conclusion from your statement?

A. I don't know if that's a fair conclusion from my statement. I didn't say that. I said what I said in my statement.

Q. What is it about joint-line pricing that could put CSX served mines currently out of reach of Conrail customers?

A. The fact that Conrail serves the destination and also serves coal producing origins and has the ability and the practice of pricing single-line movements more -- pricing single-line movements lower than Conrail's participation in joint-line movements resulting in a lower single-line rate for the most part than is applicable on a joint-line move for similar distances.

Q. So in essence Conrail will prefer in terms of its rate policies routes where it can provide single-line service over providing joint-line service; is that a fair summary of what you said?

A. That's a fair summary of my impression. As far as what they actually do, you'll have to ask Conrail.

Q. Do you have any experience with Conrail?

A. Lots.

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Q. Would that be handled in a joint-line movement with NS?

A. That's one way that it could be originated or that's one way that that type of movement could take place.

Q. Is there another way that that type of movement could take place?

A. It's conceivable that a switching arrangement might be negotiated. We will certainly ask about a switching arrangement to be able to get Mine 84 coal accessible to CSX.

Q. Have you had such conversations with Norfolk Southern?

A. No, we haven't yet.

Q. Is that on your agenda, to have such discussions?

A. Yes, it is.

Q. Do you have a time frame for those discussions?

A. I have lots of things on my agenda to discuss with Norfolk Southern. They're not in any particular order. And my ability to have discussions with Norfolk Southern appear to be fairly infrequent. And so I continue to try to raise a number of subjects that are important to

me.

And NS, when we have an opportunity to talk, certainly has their agenda that they want to raise issues of importance to them. And potential switching charge for Mine 84 hasn't hit the table yet.

MR. BERCOVICI: Off the record, please.

(Discussion off the record.)

MR. BERCOVICI: Back on the record, Jan.

BY MR. BERCOVICI:

Q. What would be the incentive for NS to enter into a switching arrangement that would allow you to price Mine 84 coal competitively with single-line Pittsburgh seam coal that you can originate off the MGA?

A. I can't answer that question.

MR. ROSEN: I was going to object to speculation.

THE WITNESS: He ought to be willing to do it because I'm a nice guy. But I don't think that's going to work.

BY MR. BERCOVICI:

Q. If you can't negotiate such a switching

plants that you have reference to in this sentence?

A. I think so, yes.

Q. Today can Conrail serve each of those 11 we just had reference to in single-line service from Mine 84?

A. Yes.

Q. And, therefore, postacquisition CSX will not be able to provide single-line service to those plants from Mine 84; is that correct?

A. That's correct.

Q. On page 361 of your statement, you state that, today Conrail directly serves four electric utility plants in the Buffalo region, you identify the plants, and then you go on to state after the acquisition CSXT expects to move coal from the MGA coal fields to all four of these plants in a single-line haul. Isn't it true that today Conrail can move coal from the MGA fields to those plants in a single-line haul?

A. Yes.

Q. So, in terms of the MGA coal, those plants don't receive any service benefit from this transaction; isn't that correct?

A. Say that again, please.

Q. These plants will not receive a service benefit from this transaction in terms of MGA coal?

A. In terms of MGA coal, that's correct.

Q. And, in fact, these plants will receive a disadvantage to the extent that, if they want to have Mine 84 compete with the MGA origins, they will not be able to receive Mine 84 coal in single-line service?

A. That is correct.

(Witness confers with counsel.)

BY MR. BERCOVICI:

Q. On page 350 of your statement, you state in the middle of the page the proposed acquisition gives CSXT direct shared access with NS to all current and future facilities located on or accessed from the former Monongahela railroad lines. To what properties do you have reference when you talk about future facilities?

A. I'm talking about future facilities that might be built on the so-called MGA lines or origins that might come into being and be served by a new rail spur that would connect to the MGA lines.

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possibility and that language has been put in the agreement to cover such a possibility.

Q. Are you aware of whether or not there is any further agreement with regard to whether, if rail service is extended to Berkshire, that that would be done off the MGA?

A. You'll have to help me with that question.

Q. Let me try and rephrase it. You said there had been discussions with regard to extension to I take it Berkshire is one of the properties you mentioned. Are you aware of whether or not it's gone beyond the discussion stage into the agreement stage?

A. No.

Q. You're not aware of whether or not there has been one way or the other?

A. As I stated before, language has been put in the definitive agreement between us and NS, in the acquisition agreement, that contemplates the possibility of a new mine including but not limited to Berkshire being served. I am not aware of any furtherance of discussions beyond the discussions that led to that language.

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I'm sorry, I did not bring extra copies of this, but let me read you an answer out of an interrogatory that was posed by Chemical Manufacturers Association and CSX's response.

Interrogatory No. 5 states, for each shared access area identified in the application as well as the former Monongahela Railroad, and

REDACTED

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Eastern Seaboard area generally.

Q. Have you examined the Norfolk Southern route structure --

A. No.

Q. -- that would serve those plants?

A. No. I don't know what you mean by studied it. I'm generally familiar with Norfolk Southern's route structure.

Q. Have you evaluated the efficiency of the haul to those plants that you just described from Mine 84 as compared with the route efficiency from other mines that may sell competitive coal?

A. I have not studied the opportunities, route structure, distances, or made any specific evaluation with regard to Eighty-Four Mining's access to NS plants.

Q. You stated that you couldn't evaluate whether the net effect would be beneficial or not; is that a fair characterization of your testimony?

A. Correct.

Q. On the detriment side, is there not the distinct potential that Mine 84 could lose effective access to current Conrail-served

customers to which CSX will gain exclusive access as a result of this transaction?

A. That is certainly a potential.

MR. BERCOVICI: Thank you. I appreciate your time and your candor.

(Discussion off the record.)

EXAMINATION BY COUNSEL FOR THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

BY MR. STEEL:

Q. Mr. Sharp, my name is Adrian Steel, and I represent The Burlington Northern and Santa Fe Railway Company, and I have just a short set of questions concerning your traffic diversion analysis.

As I understand from Mr. Rosen's testimony last week and from your statement, two different coal, coke, and iron ore studies were conducted; is that correct?

A. By CSX do you mean?

Q. By CSX or on behalf of CSX.

A. My testimony contains only one study. And parts that led up to that may be considered two. But we got information from sources, we analyzed that information, and produced one diversion study is all I'm aware of.

A. These customers will benefit because in the past they have had CSX single-line service metallurgical coal from origins to destinations. In the past they had joint-line NS/Conrail delivery. And, as a result of the transaction, they will have single-line CSX metallurgical coal opportunities and they will have NS single-line direct opportunities. And yes, I think they have a great benefit from that as stated here.

Q. Back on page 356, you have a statement which I think previous counsel may have inquired about, six plants that because of the transaction will now receive joint service from CSX and NS. Do you see that statement?

A. Yes.

Q. Will the companies operating those generating stations receive the same kinds of benefits that you refer to later in your statement that are going to receive metallurgical coal?

A. The market characteristics are different, steam coal versus met, the variety of producers obviously is much greater for steam coal. Nevertheless, the customers who have access to a much broader array of coal producers

and joint service -- excuse me, service either by NS and all the mines they serve as well as CSX and all the mines they serve would appear to have an advantage.

Q. Among the 17 former Conrail-served utility power plants that you refer to, are any of them what are referred to as cogeneration facilities?

A. I would have to see the list. The statement here is utility power plants. I assume that that's an accurate reflection. Again I would have to see the list and tick off the names in order to categorically say one way or the other.

Q. Do you have a work paper that shows the list of those 17 utility power plants? Frankly I don't think we found one in the work papers, among the work papers. Or did you have some other source that you referred to?

A. We handed out copies to all manner of folks which had both a map and a listing of those power plants. But I don't have one with me here. NS has put out a similar document.

MR. WOOD: Would you read that back.

THE REPORTER: "Answer: We handed out

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what's the breakdown on that distinction?

A. Again I won't do well guessing. But, to give you an order of magnitude, I would say that 60 to 70 percent of the coal we haul to utility customers is in CSXT owned or leased cars and 30 to 40 percent, therefore, the minority of total coal we haul to utility customers is in private cars. So we do have a good amount of both.

Q. Okay. I would now like to turn, if we could please, more specifically to Centerior. You testified a short time ago in speaking with Mr. Mullins that, as a general matter, joint service will exceed in both rate level and service difficulties single-line service. Perhaps I haven't stated that very clearly.

There will be generally rate and service disadvantages that accompany joint-line service relative to single-line service; is that a correct statement?

A. Yes, that is my understanding, yes.

Q. Are you aware of any reason why that general principle would not apply with respect to the movement of coal from Ohio Valley Coal Company's Powhatan No. 6 mine to Centerior's

COAL
BUSINESS UNIT
CSX Transportation

February 8, 1994

Ms. Monica R. Clark
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202

Dear Ms. Clark:

Enclosed is CSXT's proposal for transportation of coal to either Dunkirk or Huntley. The first group of rates are for coal to Conneaut and include CSXT and the BLE's portion plus dump. The rate from the SP at Chicago doesn't include their portion.

The second group of rates is for movement to CSXT's interchange at Youngstown for a rail direct move. These rates don't include CR's requirement.

The third group are rates to Toledo which also include dump.

CSXT takes several exceptions to the model contract which have been noted. If you require any further information or clarification, please call me at 301-759-2168.

Sincerely,

John R. Couch
Market Manager

Enclosure

cc: H. W. Foster, Jr.
H. E. Connors

./11/94 NIMO BID SOLICITATION

RATES TO CONNEAUT**	THROUGH RATE	INTERCHANGE
MOUNTAIN	$12.25	BESSEMER
GRAFTON	$11.36	BESSEMER
GAULEY N.	$12.51	BESSEMER
GAULEY S	$13.76	BESSEMER
ELK RIVER S	$13.85	BESSEMER
FEDERAL #2 *	$8.48	BESSEMER
BAILEY *	$8.25	BESSEMER
BLACKSVILLE #2 *	$8.35	BESSEMER
CHGO FROM SP*	$14.50	SHENANGO

CONDITIONS

* RATES ARE FOR 75 CAR TRAINS
* 95% PER CAR MINIMUM LADING
* 1 YEAR DEAL
* MINIMUM 500,000 TONS
* NOT CANCELLABLE AFTER SIGNING
* SCHEDULES DONE MONTHLY
* LOADING AND UNLOADING PER CSXT 8200
* ALL RATES ARE STRICTLY CONFIDENTIAL
* 4 HOUR LOADS RECEIVE $.10 DISCOUNT
* TOLEDO RATES INCLUDE WEIGHING
* TOLEDO RATES INCLUDE DUMP AT #4 MACHINE

RATES TO YOUNGSTOWN	PROPORTIONAL RATE
MOUNTAIN	$8.23
GRAFTON	$6.66
GAULEY N.	$8.10
GAULEY S	$9.94
ELK RIVER S	$11.89
KANAWHA	$10.04
CLINCHFIELD	$10.90
BIG SANDY	$10.38
ELKHORN	$10.66
HARLAN	$12.21
HAZARD	$11.87
JELLICO-MIDDLESBORO	$11.35

RATES TO TOLEDO**	75 CARS	90 CARS
KANAWHA	$12.70	$12.60
BIG SANDY	$12.70	$12.60
EK1	$13.00	$12.90
EK11/CV1	$13.25	$13.15
CVII	$13.35	$13.25
CHICAGO TO TOLEDO*	$7.60	$7.50

* 105 CAR TRAINS
** INCLUDES DUMP

NIAGARA MOHAWK
Electric Supply & Delivery
NIAGARA MOHAWK POWER CORPORATION / 300 ERIE BOULEVARD WEST, SYRACUSE, N.Y. 13202 / TEL. (315) 474-1511

March 7, 1994

Mr. John Couch
Market Manager
CSX Transportation
Cumberland Coal Business Unit
722 Virginia Avenue
Cumberland, MD 21502-4595

Re: **OFFER TO TRANSPORT COAL FOR NIAGARA MOHAWK**

Dear Mr. Couch:

Thank you for presenting us with your offer to provide transportation services to Niagara Mohawk Power Corporation ("Niagara Mohawk") through March 31, 1995.

An analysis of various transportation offers and alternatives has been conducted. As a result of this analysis, we at Niagara Mohawk hereby inform you that CSXT's offer, as submitted by your letter dated February 8, 1994, to provide transportation services to Niagara Mohawk has been accepted.

We at Niagara Mohawk look forward to a very successful and rewarding business relationship with everyone in your Cumberland Coal Business Unit. Thank you again and congratulations.

Sincerely,

David E. Underwood
Director - Fuel Supply

WJZ/

CUMBERLAND

CSX Transportation

March 17, 1994

Mr. James Bonnie
Director of Fuel Procurement
Niagara Mohawk Power Company
300 Erie Boulevard West
Syracuse, NY 13202

Dear Jim:

As of this moment, we are unable to confirm with certainty that on or about April 1, 1994 we will be in a position to commence performance on the proposal submitted to you February 8, 1994.

Our inability to perform is based on our not being able to resolve a dispute with our connections in the time frame you requested.

If it is necessary for you to make other arrangements to ensure orderly fuel supply for your stations, we certainly understand.

Sincerely yours,

H. Wayne Foster, Jr.

H. Wayne Foster
Director Sales & Marketing

cc: J. R. Couch
L. Mayloff

LIM

CSX Transportation

March 18, 1994
Cumberland, Md

Mr. James Bonnie
Director of Fuel Procurement
Niagara Mohawk Power Co.
300 Erie Boulevard West
Syracuse, New York 13202

Dear Jim:

This letter is a follow up to my letter to you of March 17, 1994 formally advising Niagara Mohawk that we would be unable to perform on offers made to you to transport coal to Conneaut, Ohio routed via MGA-Brownsville-TERRY(Former P&LE)-Demmler-CSXT-Bessemer-B&LE.

We continue to be unable to perform on our previous offer when coal traffic originates on the Monongahela Railway (MGA) and all previous offers involving the MGA are withdrawn.

We are now able to provide Niagara Mohawk with the Following Offer from MGA Origins and hold the concurrence of all participating carriers:

Origin:	Federal #2	Bailey	Blacksville#2
Rate:	$11.89	$11.85	$11.86

Train Size: 10,000 Ton Trains

Term: One Year, Commencing April 1, 1994

Rate Adjustment: Rates firm for one year

Volume: 1 Million Tons

Other Services: Rates include Transfer of Coal at Conneaut Dock and weights from inbound belt scales at Conneaut

Route: MGA-Brownsville-TERRY (successor to P&LE)-Demmler-CSXT-Bessemer-B&LE

Expiration: This offer expires on March 31, 1994

If you have a desire to pursue this new proposal, we will do all possible to accommodate your desired shipping schedules.

Sincerely,

H. Wayne Foster, Jr.

CC: Mr. Tim Howerter, Director of Marketing, Bessemer & Lake Erie

Electric Supply & Delivery
NIAGARA MOHAWK POWER CORPORATION / 300 ERIE BOULEVARD WEST, SYRACUSE N.Y. 13202 / TEL (315) 474-1511

March 18, 1994

Mr. H. Wayne Foster
Director, Sales & Marketing
Cumberland Coal Business Unit
CSX Transportation
722 Virginia Avenue
Cumberland, MD 21502-4595

Dear Wayne:

I am in receipt of your letter of March 17, 1994. It is unfortunate that CSX cannot live up to its agreement with Niagara Mohawk to move coal via MGA origin mines.

As you are well aware, Niagara Mohawk's critical inventory situation requires that we start moving coal on or about April 1, 1994, to meet our generation station needs which will be critically low by that time. Further, the contract year is from April 1, 1994, through March 31, 1995. Equally important, all supply and transportation offers received by us expire today.

This is the situation as Niagara Mohawk sees it. On March 7th Niagara Mohawk accepted CSX's offer including all contract exceptions. A written notice of contract award and acceptance was faxed and mailed to CSX that same day. On March 10th CSX was told by James H. Bonnie that the Company had to have assurances of performance by Monday March 14, 1994, so we could finalize supply and other transportation agreements with our suppliers and other transportation vendors. CSX failed to provide the assurances requested by that deadline. On March 15th Lawrence I. Maloff advised CSX that Niagara Mohawk would have to know CSX's intentions whether to honor our agreement no later than March 16th. On March 16th you advised Niagara Mohawk in a conference call with Vice President Thomas H. Baron that we should have an answer shortly after noon since it was believed your connection would be contacting you at noon. No assurances were received by CSX by the end of March 16th and, in fact, no assurances could be provided to Niagara Mohawk even by the close of business March 17th.

In light of the above, it is clear to Niagara Mohawk that CSX is not capable of fulfilling its agreement nor was CSX ever able to give due performance under the offer it submitted on February 8th. Moreover, it would be unreasonable to expect Niagara Mohawk to wait until the Company has almost run out of coal and all supply offers expire when a solution to CSX's problem is nowhere in sight. Such a course of conduct would be inconsistent with New York law relative to mitigation of damages.

As we have conveyed to you throughout our discussions, it is extremely important that we commence moving coal on or about April 1, 1994 to meet our coal needs at the Dunkirk and Huntley Steam Stations. It is Niagara Mohawk's intention to make alternate arrangements to meet these critical needs. Hopefully, these alternative arrangements will be as economically advantageous as the agreement with CSX. If not ... well, we will cross that bridge when we come to it.

Yours truly,

David E. Underwood
Director, Fuel Supply

cc: James H. Bonnie
A. Scott Cauger, Esq.
Lawrence I. Maloff

~~22~~ 3/25/94

FAX 315-428-3453

TO: Lawrence Maloff

FROM: John Couch

RE:

3 pages including cover sheet

Following are two offers:

1) An amendment to our offer from your bid solicitation

2) An unsolicited new offer

CUMBERLAND

CSX Transportation

March 25, 1994

Mr. Lawrence I. Maloff
Niagara Mohawk Power Company
300 Erie Boulevard West
Syracuse, NY 13202

Dear Lawrence:

Following is a new offer. With your direction, we have found an old PLE tariff that would be applicable. The Tariff is PLE 4357-N, Items 250 and 300.

We are now able to provide Niagara Mohawk with the following offer from MGA Origins:

Origin:	Federal #2	Bailey	Blacksville #2
Tariff Rate:			
Huntley	$12.15	$11.54	$12.15
Dunkirk	14.60	14.04	14.60
Refunds:			
Huntley	3.33	2.85	3.33
Dunkirk	5.15	4.71	5.15

We hold the concurrence of the BLE, concurrence from CONRAIL is not needed.

Train Size:	10,000 Ton Trains
Term:	One Year, Commencing April 1, 1994
Rate Adjustment:	Rates firm for one year
Volume:	1 Million Tons
Other Services:	Rates include Transfer of Coal at Conneaut Dock and weights from inbound belt scales at Conneaut.
Route:	MGA-Brownsville-TRRY (successor to P&LE)-Shenango-B&LE
Expiration:	This offer expires on March 31, 1994

If you would like to pursue this proposal, we will do all possible to accommodate your desired shipping schedules.

Sincerely,

John R. Couch
Market Manager

cc: Mr. Tim Howerter
Director Marketing
Bessemer & Lake Erie

CUMBERLAND

CSX Transportation

March 25, 1994

Mr. Lawrence I. Maloff
Niagara Mohawk Power Company
300 Erie Boulevard West
Syracuse, NY 13202

Dear Larry:

CONRAIL has informed us that they didn't adopt PLE-4357-N and that the Monongahela Railway Company no longer exists. CONRAIL has informed us that the tariff is not applicable from MGA origins.

Given the above, we must withdraw our offers dated 3/25/94. If we can determine CONRAIL's interpretation is incorrect and get their concurrence, we will resubmit our offer. This confirms my telephone conversation with your office today.

Sincerely,

John R. Couch
Market Manager

LIM file

CUMBERLAND BUSINESS UNIT
CSX Transportation

March 30, 1994

Mr. James H. Bonnie
Director of Fuel Procurement
Niagara Mohawk Power Company
300 Erie Boulevard West
Syracuse, NY 13202

Dear Jim:

CSXT looks forward to working with you and your company in the future. We sincerely hope that our previous offers and correspondence have not hurt CSXT's relationship with Niagara Mohawk.

We worked very hard, at all levels in our organization, to provide Niagara Mohawk with competitive transportation options. Specifically, Ray Sharp, John Couch and I tried every avenue possible to give Niagara Mohawk competitive rates.

We plan to continue to compete for your business and we apologize for any inconvenience that may have resulted from our efforts in your most recent solicitation.

Sincerely,

Wayne Foster

H. Wayne Foster, Jr.
Director Sales & Marketing

cc: R. L. Sharp
J. R. Couch

CUMBERLAND
CSX Transportation

March 30, 1994

Mr. Lawrence I. Mayloff
Niagara Mohawk Power Company
300 Erie Boulevard West
Syracuse, NY 13202

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Sincerely,

Wayne Foster

H. Wayne Foster, Jr.
Director Sales & Marketing

cc: R. L. Sharp
J. R. Couch

US OFFICE PRODUCTS

EXHIBIT 1

[REDACTED]

EXHIBIT 2

[REDACTED]

EXHIBIT 3

[REDACTED]

EXHIBIT 4

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

STB FINANCE DOCKET NO. 33388

APPLICANTS' RESPONSES TO
FIRST SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS OF
ERIE-NIAGARA RAIL STEERING COMMITTEE
TO APPLICANTS (ENRS-2)

Applicants[1/] hereby respond to the first set of discovery requests to Applicants served by Erie-Niagara Rail Steering Committee ("ENRS" or "Requester").

GENERAL RESPONSES

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

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

C Open station on another carrier(s) than CRN (if in the CRN column) or on another carrier(s) than CRC (if in the CRC column);

O Open to CRN (if in the CRN column) or to CRC (if in the CRC column) and to other carriers;

U Unknown; not on CRN network (if in the CRN column) or not on CRC (if in the CRC column).

The above codes for each Conrail station are set forth in the "CRC" and "CRN" columns under headings representing the following facility codes:

F General Freight
T Intermodal
L Auto Loading
U Auto Unloading
R Rebills

Interrogatory No. 10: State what criteria were used by the Applicants in determining that the Monongahela Agreement Area should be served by both CSX and NS.

10. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

CSX and NS did not apply any specific criteria in determining that the Monongahela Agreement Area should be served by both CSX and NS. The determination that the Monongahela Agreement Area should be served by both CSX and NS was the culmination of an arms length bargaining process over the division of Conrail assets and was only one aspect of the negotiation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities.

Interrogatory No. 11: Identify and describe all documents which relate to or were used in the selection and determination of the Monongahela Agreement Area.

11. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

EXHIBIT 5

[REDACTED]

EXHIBIT 6

REDACTED -- To Be Filed in Public File

CR-40

Before The
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

BRIEF FOR CONSOLIDATED RAIL CORPORATION

Bruce B. Wilson
Constance L. Abrams
Jonathan M. Broder
Anne E. Treadway
CONSOLIDATED RAIL CORPORATION
2001 Market Street
Philadelphia, PA 19101
(215) 209-2000

Daniel K. Mayers
William J. Kolasky, Jr.
A. Stephen Hut, Jr.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for Consolidated Rail Corporation

June 3, 1996

McHugh, Ex. 2). IP concludes that "the merger would eliminate the SP as a price leader."[18]

Applicants attempt to rebut this detailed testimony with two carefully constructed, but unpersuasive, studies comparing UP revenues at points where it competes with SP with its revenues where it competes with other carriers. (R.V.S. Bernheim at 13-21; R.V.S. Peterson at 90-93.) But by examining only UP revenues, the studies fail to examine the through rate actually paid by shippers. UP's ability to force an interline partner to lower its price to meet SP hardly refutes SP's price leadership.[19] By contrast, Conrail compared through rail rates for polyethylene plastics traffic moving from origins in Texas to points in New Jersey via Conrail. The rates are substantially lower whenever SP is a competitive option.[20]

In short, SP plays a unique price-constraining role -- a role no one claims BNSF would replicate. Indeed, IP notes that

---

[18] Id. at 34; see also WSC-11, V.S. Vainetti at 27-31 ("document[ing] 16 instances in which SP's aggressive pricing policy has been very successful in competing with UP").

[19] In addition, the Bernheim study focuses solely on automotive traffic, and a study limited to such traffic could not refute SP's price-constraining role. As the testimony of SP's John Gray reflects (V.S. Gray at 203), Applicants compete for such traffic overwhelmingly on the basis of service quality, not price; and SP's share of automotive traffic is, according to Applicants, "very small" -- less than [redacted] (V.S. Peterson at 107).

[20] The weighted average price when UP and BNSF are the only rail competitors was 30% higher than when UP and SP are rivals and 48% higher than when all three carriers compete. The average price where UP is the only rail competitor was 51% higher than when UP competes with SP. (Bernheim Dep. Tr. Proposed Exh. 1, p. CR610183.)

EXHIBIT 7

[REDACTED]

EXHIBIT 8

NORFOLK SOUTHERN

Date: Tuesday, October 29, 1996 Time: 06:39:01 PM Number of Pages: 6

To:

From: **Chairman, President & Chief Executive Officer**

Name: David R. Goode
Company: Norfolk Southern Corporation
Fax Number: (757) 533-4884
Voice Number:

Note:

Norfolk Southern's Principles of Balanced Rail Competition follow. We are committed to these principles and seek your support for them.

David R. Goode

Principles of Balanced Rail Competition

Norfolk Southern's Commitment to NS/CR Customers

1. Competition Requires Rail Systems of Comparable Size and Scope

Railroads compete with each other, not just trucks
Balance between railroads must not be eliminated by mergers
Customers demand full rail route networks
Mergers should result in balance within regions, not dominance

2. The Largest Markets Must be Served by (at least) Two Large Railroads

Major markets require competitive service
Rail mergers should not be an excuse to control a market
Competition at ports is especially important
Lack of competition has disadvantaged Northeastern markets
Routes and terminals must be adequate to protect competition

3. Owned Routes are Essential to Competition

Railroads need to control their major trunk-line routes
Route ownership enables competition on safety, price and service
Competition on major corridors, such as New York/Philadelphia - Chicago, should be over owned routes
Trackage rights do work for short-distance industrial access, and as shortcuts between owned lines

4. Competition Depends on Effective Terminal Access

The rail network is anchored by terminals and yards
Terminals are just as important to competition as routes
Competitors must have the right to buy or build their own terminal facilities

5. Competition is Not Free

Competitors must make a commitment to owning lines and terminals
NS/CR will not subsidize its competitors
Competitors must pay a fair portion of the overall purchase price

182898

JACK REED
RHODE ISLAND

COMMITTEES:
BANKING
LABOR AND HUMAN RESOURCES
AGING

United States Senate

WASHINGTON, DC 20510-3903

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October 21, 1997

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Mr. Vernon A. Williams
Surface Transportation Board
Mercury Building
1925 K Street, NW
Washington, D.C. 20423-3000

Finance Docket No. 33388

Dear Mr. Secretary:

As a Senator from Rhode Island and the New England region, I write to comment on the Surface Transportation Board's (STB) ongoing review of the proposed Conrail - CSX - Norfolk Southern railroad merger. By its very size and nature, the proposed Conrail acquisition will have serious impacts on my region's economic livelihood, and, as such, I believe that I have an obligation to formally voice my concerns on this matter. I have also discussed my concerns with the Chairmen of CSX and Norfolk Southern.

While my detailed comments on this proposed transaction are outlined below, my utmost concern remains the quality, scheduling, and cost of freight service in the New England region. Since the announcement of this proposal, I have notified CSX, Norfolk Southern, and other interested parties that my sole interest is protecting the competitiveness of New England's businesses as well as Rhode Island's significant investment to improve freight rail service and develop a modern port facility in my state. If New England is not assured of comparable freight service based on these factors under an STB sanctioned transaction, then I will vigorously resist it, and any issue related to the parties, in my role as a United States Senator.

Freight rail service is an essential component of our nation's transportation infrastructure and economy. Indeed, the state of Rhode Island, in conjunction with the Federal Railroad Administration, is investing over $100 million to modernize my state's freight rail system and develop the former Quonset Point/Davisville Navy base as a world class port facility. The state's ability to capitalize on this substantial investment and attract major shippers to the port is contingent upon competitively priced freight service. This is particularly true in the automobile carrier market, which is an identified growth sector for the port of Quonset Point/Davisville.

While my state's businesses and Quonset Point/Davisville are not directly served by Conrail, they are dependent on Conrail's services via the Providence and Worcester Railroad (P&W), a short line operation which connects to Conrail's Boston-Albany line. When I first heard of the possible sale of Conrail, I was immediately concerned that it could jeopardize vital freight rail service for Rhode Island companies on the Boston-Albany line. Although the proposed transaction does not eliminate service on the Boston-Albany line, I remain concerned that my state's shippers and others in my region may face competitive disadvantages in the future due to the potential enhancement of freight

service competition in almost every area on the East Coast, except for New England. Indeed, the New York/New Jersey area, which currently has only Conrail service, will now benefit from two Class I railroads.

My preference is for New England to have the same form of competition between two Class I railroads as the New York/New Jersey area is expected to receive under the acquisition proposal. I am hard pressed to explain to some of my constituents why certain areas of the East will benefit from increased competition and lower costs, but Rhode Island and New England may not. It is also possible that the lack of direct Class I competition in New England may permit higher prices in my region and subsidize lower tariffs in other areas of the nation. Therefore, I would urge the Surface Transportation Board to consider all avenues to ensure that a strong level of competition exists in New England. In particular, the STB should seriously consider the comments of the Rhode Island Department of Transportation (RIDOT) regarding competitive access by a second Class I railroad into New England, as well as the establishment of a reasonable rate structure in New England to mitigate any disparities between it and newly competitive regions. In addition, the STB should take steps to ensure that planned infrastructure improvements to the Boston-Albany line continue so that New England shippers can benefit from modern freight rail services such as double stack and tri-level carrier clearances.

I also believe that the STB has an obligation to play an active supervisory role over the implementation of any Conrail - CSX - Norfolk Southern acquisition. Congress granted the STB broad authority to foster competition and ensure that the public continues to receive adequate and quality service. I would urge the STB to utilize this authority to create a mechanism to continuously review the impacts of this transaction and take steps when necessary to ensure nationally competitive rail service in terms of cost and quality for New England's ports and businesses.

The outcome of your deliberations are sure to have an impact on my state and the federal government's significant investment in modern freight service and the port of Quonset Point/Davisville as well as the cost and quality of transportation services available in my region. You can be assured that I will continue to follow the STB's review of this proposal closely, and I look forward to the STB's approval of a transaction which improves both the quality and competition of rail service in my state and region.

Sincerely,

Jack Reed

Jack Reed
United States Senator

STB FD 33388 10-21-97 D 182893

182893

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[illegible], PA 19063
(610) 565-6040

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 BETHLEHEM STEEL CORPORATION AND ITS SUBSIDIARY RAILROADS (BSCX-8)

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Comments of Bethlehem Steel Corporation and its Subsidiary Railroads (BSCX-8), along with a diskette containing the document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

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H:\WPDATA\TRANS\BETHLEHE\CR-MERGE\STB02.WPD

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

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182893

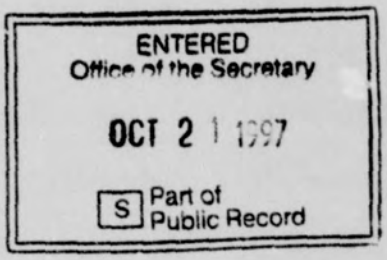
BSCX-8

BSCX-8
ORIGINAL

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
BETHLEHEM STEEL CORPORATION
AND ITS SUBSIDIARY RAILROADS



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 Bethlehem Steel Corporation
and its subsidiary railroads

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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
BETHLEHEM STEEL CORPORATION
AND ITS SUBSIDIARY RAILROADS

Bethlehem Steel Corporation and its subsidiary railroads ("Bethlehem") hereby file their Comments concerning the Application of CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") with respect to the proposed control and disposition of the assets of Consolidated Rail Corporation ("Conrail").

Bethlehem is headquartered in Bethlehem, PA, and is this country's second largest integrated steel producer. Currently, Bethlehem operates three major steel divisions - Burns Harbor, IN; Sparrows Point, MD; and Pennsylvania Steel Technologies, Steelton, PA. In addition, Bethlehem operates stand alone coke oven facilities at Bethlehem, PA, and Lackawanna, NY, and has large sheet coating and galvanizing lines in Walbridge, OH, Lackawanna, NY, and Jackson, MS.

In 1996 Bethlehem shipped over 8.7 million tons of steel products to customers, mainly in Conrail's territory. Approximately 4.6 million tons of those products were shipped by rail to

Bethlehem's customers and processors and between its facilities. In addition, our facilities received nearly 6 million tons of coal, 2 million tons of coke, over 1 million tons of ferrous scrap and 350,000 tons of limestone.

Most of Bethlehem's facilities are served by Conrail. Consequently, Bethlehem is one of Conrail's 10 largest customers. It is also a significant customer of CSX and NS and other major railroads in the United States.

Bethlehem supports the application of CSX and NS to acquire control of Conrail and to divide its assets between them as described in the Application. This support is based on our belief that there is a distinct need for two competing railroads in the Northeast, each having comparable size, financial strength and geographical coverage. The Application appears designed to provide such a rail structure, and therefore should offer Bethlehem significant opportunities for improved transportation service, including in most cases better and more reliable transit times and more efficient equipment utilization. In addition to providing new rail service efficiencies for our facilities, the expanded availability of single line service should provide the opportunity for increased market penetration for Bethlehem's products.

Bethlehem's support for the Application is premised upon consummation and implementation of the CSX and NS proposal as it is described in the Application. If any conditions

to approval of the Application or other changed circumstances affect Bethlehem's interests, Bethlehem would expect to have the right to participate in subsequent related proceedings of the Board or to proceed in such other manner as may be appropriate.

Respectfully submitted,

Dated: October 21, 1997

William P. Quinn
Eric M. Hocky
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P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Attorneys for Bethlehem Steel Corporation
and its subsidiary railroads

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.
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Washington, DC 20004-1202

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

Samuel M. Sipe, Jr.
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

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

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STB FD 33388 10-21-97 D 182892

18892

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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 READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY (RBMN-5)

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 25 copies of Comments of Reading Blue Mountain & Northern Railroad Company (RBMN-5), along with a diskette containing the document in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

Also enclosed in a separate envelope are 26 copies of Highly Confidential Appendices containing highly confidential documents

EMH/bah
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that are being submitted subject to the protective order entered in this proceeding. To the extent available these documents are contained on the diskette in the format indicated above.

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

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182892

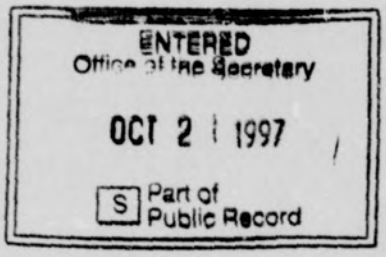
RBMN-5

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 READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY



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213 West Miner Street
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West Chester, PA 19381-0796
(610) 692-9116

Dated: October 21, 1997

Attorneys for Reading Blue Mountain & Northern Railroad Company

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 READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

Reading Blue Mountain & Northern Railroad Company ("RBMN") files these Comments with respect to the proposed acquisition of control of Conrail by CSX and NS, and the subsequent division of Conrail's assets by and between, and for the benefit of, CSX and NS.[1]

Introduction

These Comments on the proposed transaction provide the information required by Decision No. 12 and the Board's regulations for major transactions at 49 C.F.R. 1180.4(d). Decision No. 12 provides for the inclusion of requests for conditions (not requiring responsive or inconsistent applications) and "analysis" in Comments as well as for the eventual filing of briefs. Therefore, these Comments include such requests and analysis supporting the position of RBMN,

---

[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.

reserving full argument for the brief to be filed after the complete factual record has been developed.

The following evidence and supporting statements accompany these Comments:

Verified Statement of RBMN Witness:

Andrew M. Muller, Jr.[2]

Supporting Statements:

World Resources Company

Reading Anthracite Company

Lehigh Coal and Navigation Company

Pennsylvania Anthracite Council

QIT-Fer et Titane Inc.

AEP Industries Inc.

Alumax Materials Management, Inc.

Commenting Party

RBMN is a class III railroad operating approximately 280 miles of owned rail lines in eight counties in northeastern Pennsylvania. A map showing its lines, and those of connecting

---

[2] The verified statement of Mr. Muller includes two sets of appendices -- one set immediately following his statement with public documents, and a separate set of highly confidential documents. The highly confidential ("HC") appendices have been marked and filed with the Board under separate cover subject to the protective order in this proceeding. They are being served on Applicants' counsel who have previously supplied an executed highly confidential undertaking, but on no other parties of record. Copies will be supplied to any party of record upon request and upon delivery of a copy of a signed highly confidential undertaking.

carriers, is attached to the Muller V.S. RBMN's offices are located at 1 Railroad Avenue, Port Clinton, PA; telephone (610) 562-2100.

Position of Commenting Party

While RBMN acknowledges that the proposed transaction may benefit the public in many areas of the northeastern and midwestern United States, it does not believe that the region it serves will enjoy those same benefits. Thus, to extend the benefits, and to ameliorate harm that may be caused by the proposed transaction, RBMN is requesting that the Board condition any approval of the proposed transaction on the conditions described below. The conditions are consistent with the policy considerations of 49 U.S.C. 11324 and antitrust policy.

Requested Conditions

RBMN requests that the Board impose the following conditions on the approval of the proposed transaction:

(1) that the Purchase and Sale Agreement dated August 19. 1996 (the "Purchase Agreement"), between Conrail and RBMN for the purchase of the Lehigh Division, and the related deed, be amended so as to remove or modify the "penalties" imposed on RBMN for traffic interlined with carriers other than Conrail which effectively preclude RBMN from handling such traffic;[3] and

---

[3] RBMN believes that, because of the way the applicants have structured this transaction, the penalties which are imposed on traffic that "Conrail/Grantor" can commercially handle, may no longer be applicable since Conrail can no longer handle traffic off of the Lehigh Division. However, this is a matter of state contract and real property law that is not for the Board to determine. If the Board grants the requested conditions, the state law issues will become moot.

(2) that Delaware & Hudson Railway Company, Inc. ("DHRC") be permitted to access its existing trackage rights from the lines of RBMN in Reading, Pennsylvania, subject to an agreement being reached between DHRC and RBMN to allow DHRC to operate over RBMN's Reading Division.

Analysis

In broad terms, the issue arising from the position of RBMN in this proceeding is whether, in the light of the unique redrawing of the competitive rail map in the northeastern United States that will result from the proposed transaction, the relief requested by RBMN will serve the public's interest in adequate transportation service by extending competition to northeastern Pennsylvania that otherwise will be faced with a rail service monopoly. Because the proposed transaction will have adverse effects on RBMN and its shippers, RBMN is proposing conditions that address these effects, but will not detract from the public benefits of the proposed transaction.

The following criteria specified in 49 U.S.C. §11324 will be relevant to the Board's consideration of the relief requested by RBMN:

(1) The effect of the proposed transaction on the adequacy of transportation service to the public.

(2) Whether the proposed transaction would have an adverse effect on competition among rail carriers in northeastern Pennsylvania.

In the eyes of Applicants, a major selling point for the enormous consolidation of rail services they propose is its asserted positive effect on competition, and particularly intramodal competition. NS and CSX see their transaction as extending the aggressive competition they

competition. NS and CSX see their transaction as extending the aggressive competition they provide each other in the southeastern United States into the northeast that has been lacking such competition since Congress statutorily created Conrail and presented it with a virtual monopoly on rail service in the region. Applicants spare no praise in extolling the benefits of such competition, to wit -

> The agreement [among NS, CSX and Conrail] will result in a rail transaction that is truly unprecedented in the long history of railroad consolidations in terms of its benefits to shippers, the parties and the public. The transaction will ensure that they both remain fully competitive and, at the same time, will open up large and vital areas of the country to rail competition they did not previously have.

Goode V.S., Application, vol.1 at 331. *See also* Snow V.S., Application, vol. 1 at 314 ("The creation of strong rail-to-rail competition in the northeast is a major public benefit.") Because the justification of this transaction (which is in reality two transactions) is the re-introduction of competition to an area previously subject to a Conrail monopoly, the Board should pay special attention to those areas where the justification falls flat. This includes the area served by RBMN where NS will be operating all of the Conrail connecting lines and where CSX will have no direct service capability.

Applicants suggest that the continuation of a monopoly outside of "major metropolitan areas" is a small price to pay when so many will enjoy enhanced competition. However, this would leave most short lines which tend to serve less densely populated areas on the sidelines. This contrasts with the general policy over the past decade or more of the Board and its predecessor the Interstate Commerce Commission, with the support of Congress, of encouraging the growth of small railroads and recognizing their role in preserving and improving rail service

in many areas of the United States, especially areas where light density lines define the outer limits of the nation's rail network. In this case, the Board should be aware that, at least in northeastern Pennsylvania, it is entirely possible to reconcile this conflict by creating such competition without detracting from the enormous benefits Applicants will reap from the proposed transaction. Indeed, NS, when it was fighting CSX for a piece of the Conrail pie, extolled the creation of competition and indicated it would allow RBMN the access to an additional line haul carrier that RBMN is now seeking. Muller V.S. at 8.

In evaluating whether access to an additional line-haul carrier is justified, the Board should not limit itself to looking solely to whether the transaction will have the effect of reducing the number of carriers currently serving a region. After all, Conrail's monopoly is not the result of natural consolidations, but rather was the defaulting result of the final system planning process. *See* Hoppe V.S., Application, vol. 1 at 341 *et seq*. Indeed, the primary justification of the proposed transaction is the creation of competition between NS and CSX where previously only Conrail provided service. The public interest in, and the benefits of, new rail competition to all regions should be the Board's primary focus.

Addressing the Harmful Effects of the Proposed Transaction

As set forth more fully in the attached Verified Statement of Andrew M. Muller, Jr., there are a number of adverse effects that will result from an unconditioned approval of the proposed transaction. The conditions requested by RBMN are designed to address such effects as discussed below.

(a) Public interest addressed by elimination of penalties

The most direct effect is the potential loss of a movement of fly ash (with approximate annual revenue of $400,000) from New England to a shipper on RBMN. Conrail can now move this traffic in single line service between New England and RBMN; however, because of the way the Applicants propose to divide Conrail's assets Conrail's single line service will be lost and so may the traffic.

Additionally, the transaction may have the effect of limiting the public's competitive options by expanding the penalty provisions that Conrail required in RBMN's purchase of the Lehigh Division under the Purchase Agreement. These provisions essentially provide that RBMN must pay a penalty if it interchanges with any carrier other than Conrail any traffic that originates, terminates or otherwise moves over the Lehigh Division and that could "commercially be interchanged" with Conrail. *See* deed attached to Muller V.S. as Appendix 2. *See also*, Purchase Agreement, §10, included in Appendix HC-1. The prohibitive nature of the penalties is clear from the chart included in Appendix HC-2. Certainly, if the combined NS/Conrail is substituted for Conrail, the scope of what can "commercially be interchanged" could be substantially greater.[4]

The effects of expansion of the penalties goes beyond the discouragement of new routings for traffic. It serves to perpetuate the inefficient routings that Conrail's previous monopoly generated. Thus, there are moves to the Buffalo gateway to Canada from RBMN that could move in DHRC service directly from Taylor Yard (near Scranton) to Canada, that instead are

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[4] At its most ridiculous interpretation, the provision could be read as requiring RBMN to pay a penalty on every carload of traffic interchanged with NS (a carrier other than Conrail) -- RBMN's sole remaining outlet.

currently being moved by Conrail (and that after the transaction would be moved by NS) south to Allentown, then west to Harrisburg and Pittsburgh before moving north to Ashtabula, Erie and Buffalo -- approximately 250 miles more. *See* supporting statement of World Resources Company. Other customers on RBMN also ship to and from Canada and could possibly benefit from a direct route over DHRC. *See* statements of Pennsylvania Anthracite Council, Lehigh Coal and Navigation, AEP and Alumax.

NS is very frank in admitting that new businesses are much more likely to locate where competitive rail service is available. *See* Cox V.S., Application, vol. 2B at 349, 355; Prillaman V.S., Application, vol. 2B at 198, 202. Thus, by continuing to deny RBMN access to a second line-haul carrier when other parts of the northeast are obtaining such access, the transaction puts the region RBMN serves at a distinct disadvantage in its ability to attract new industries.

Service by a second line haul carrier is consistent with the goal of restoring competition to Conrail's region that NS has espoused, especially when it was fighting the proposed CSX-Conrail merger for its own access, and with the actions of NS at that time offering RBMN access to DHRC if RBMN would support NS's counterproposal to merge with Conrail. *See* Muller V.S. at 8. Unrestricted access in the RBMN region is also consistent with Applicants' historical justification that this transaction will recreate the competition that existed before, and should have been preserved by, the Final System Plan ("FSP"). *See* Hoppe V.S., Application, vol. 1 at 341 *et seq.* As retold by Mr. Hoppe, the FSP's preference was to have two or three carrier competition. *Id.* at 348-49, 354-55. Recreation of the pre-Conrail competitive situation in RBMN's region would surely allow access to a second line haul carrier given the number of carriers that used to operate there. *See* Muller V.S. at 6.

Elimination of the penalties as proposed by RBMN would prevent the exacerbation of the anticompetitive effects of the penalties placed on RBMN interchanging with other carriers by eliminating the source of the harm and would enable RBMN to preserve traffic that might otherwise be lost. It would also give other shippers the opportunity to reap the advantages of single line service touted by the Applicants, and eliminate longer and more congested routes.

(b) Public interest addressed by DHRC access at Reading

As part of the structuring of the transaction, NS has entered into an agreement with Canadian Pacific ("CP") that includes the right for CP's subsidiary DHRC to operate under trackage rights from Harrisburg to Reading to Philadelphia. Application, vol. 3B at 121-122. The effect of these rights will be to induce DHRC to shift traffic moving between Scranton and points north and Philadelphia and points south, from its current route over RBMN's Lehigh Division to Allentown, Reading and Philadelphia to an alternative route. This shift is expected to cost RBMN up to $40,000 per month in trackage fees. *See* Muller V.S. at 9. While this will not directly impact shippers (DHRC has overhead rights only that cannot be changed because of the penalties discussed above), it could impact RBMN's ability to continue to provide the same level of service to its online customers.

One way to give RBMN the opportunity to try to keep the DHRC traffic on its lines would be to grant DHRC access to its trackage rights at the intermediate point of Reading. DHRC could therefore, subject to an agreement between RBMN and DHRC, route its traffic from Scranton over RBMN's Lehigh Division to a connection with the Reading Division, and then from Reading to Philadelphia over NS. This would also enable DHRC to avoid use of the a

major section of NS's "Penn Route"[5] between Harrisburg and Reading (under its new rights) or Allentown and Reading (under its existing rights). This line is heavily used and in many sections will see substantial increases in traffic. Application, vol. 3B at 459. Thus, allowing DHRC access at Reading will promote safety and efficiency by reducing the congestion that will result from the transaction.

(c) Lack of effect of conditions on proposed transaction

The conditions that RBMN is requesting address the effects of the transaction described herein in a way that will, at worst, only minimally impose on the Applicants.

RBMN estimates that it will lose $400,000 of business as a result of the way the Applicants are proposing to divide the assets of Conrail. Additionally, while not measurable, RBMN will lose additional revenues from foregone traffic opportunities with the expansion of the scope of the contractual restrictions on RBMN's ability to interchange with carriers other than NS. Although the revenue losses RBMN can measure may be small in the context of a transaction that Applicants expect will provide benefits valued at almost $1 billion, they are nonetheless quite serious for RBMN.

None of the conditions RBMN is requesting would burden any facilities or operations of the Applicants, or impact on the feasibility of their proposed operations. Any interchange between RBMN and carriers other than NS would occur on facilities of RBMN or the other carrier. Allowing DHRC access to its trackage rights at Reading would eliminate DHRC

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[5] This route is one of two major routes NS will operate between Chicago and northern New Jersey. *See* McClellan V.S., Application, vol. 1 at 530-31.

operations through the congested corridor between Harrisburg and Allentown, and would in fact benefit NS's operations.

Conclusion

The proposed transaction is heralded by its participants as a competitive ideal. RBMN has shown that this ideal is not going to be realized in the region of northeastern Pennsylvania that it serves, and that there will be harm to the public, as well as to RBMN. This harm is easily preventible with the aid of the Board. The proposed conditions are a reasonable means of ameliorating the harm that will not produce any noticeable change in the public benefits the Applicants claim.

Respectfully submitted,

Dated: October 21, 1997

William P. Quinn
Eric M. Hocky
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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
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Washington, DC 20426

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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

VERIFIED STATEMENT
OF
ANDREW M. MULLER, JR.

My name is Andrew M. Muller, Jr. I am President of Reading Blue Mountain & Northern Railroad Company ("RBMN"). My business address is 1 Railroad Boulevard, Port Clinton, PA 19549.

After graduating from East Stroudsburg College in 1969, I engaged in various business ventures unrelated to the railroad industry. I first began in the railroad business in 1983 with the Blue Mountain & Reading Railroad Company that I formed for the purpose of running passenger excursion trains and which provided freight service on several lines of railroad owned by the Commonwealth of Pennsylvania. Blue Mountain & Reading operated under modified certificates until 1995. I organized RBMN in December, 1990, to explore more substantial freight opportunities.

This statement will first describe RBMN's operations and business, and the transportation market it serves in northeastern Pennsylvania. I will then describe how the proposed transaction will affect RBMN, and the manner in which we are requesting that the Board condition approval of the transaction.

Description of RBMN

RBMN was formed to purchase approximately 141 miles of railroad from Conrail in Schuylkill, Berks, Northumberland, Carbon and Columbia Counties. The railroad grew in July, 1992 with the acquisition by the related East Mahanoy & Hazelton Railroad Company ("EM&H")

of approximately 10 miles of rail line in Luzerne County.[1] In August 1992, RBMN expanded further through its purchase from the Schuylkill County Rail Transport Authority of 25 additional miles in Carbon, Luzerne and Schuylkill Counties. These rail lines currently comprise RBMN's "Reading Division."

In August 1996, RBMN purchased approximately 104 more miles of rail line from Conrail located in Carbon, Lackawanna, Luzerne and Wyoming Counties. These lines are known as RBMN's "Lehigh Division."

A map showing the location of RBMN's lines is attached to this statement as Appendix 1.

In connection with the purchase of the Lehigh Division, RBMN also obtained trackage rights from another short line carrier, C&S Railroad Corporation, which served to connect the Reading Division and the Lehigh Division at Packerton Junction.[2]

From initial carloadings of 5,900 in 1991, its first year of operation, carloadings grew to approximately 14,000 in 1996. Freight revenues have grown from approximately $2 million to over $6 million during the same period. For the first eight months of 1997, freight revenues are already over $4.8 million. At present, RBMN has approximately 80 employees. RBMN has been able to

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[1] EM&H has since been merged into RBMN. *See* STB Finance Docket No.33335 (served January 23, 1997).

[2] The actual connection is currently made over incidental trackage rights granted by Conrail in connection with the Lehigh Division purchase. Conrail has the right to determine what revenue traffic may move under those trackage rights. RBMN is in the process of obtaining rights to nearby property which would allow it to construct a connecting track over property formerly owned by Central Railroad of New Jersey ("CNJ") and would avoid the need for the Conrail trackage rights to connect the Divisions.

accomplish this through efficient attentive service to its customers' needs and its willingness to invest its own funds in facilities and cars, as well as through the purchase of additional lines.

Markets Served by RBMN

A. Reading Division

RBMN serves approximately 45 customers on its Reading Division. The Reading Division is largely dependent on the movement of anthracite coal. Almost 100% of all the anthracite coal mined in the United States originates in the area served by the Reading Division and moves over RBMN. After many years of lean demand, anthracite is now becoming more desirable (especially in certain export markets). All of the coal now moves from RBMN to Conrail at Reading for further handling to a variety of customers throughout the United States and Canada, and to Baltimore for export. Up until 1991, Conrail moved all of the export coal through its ore pier in Philadelphia.[3] RBMN expects to handle approximately 8,000 carloads of anthracite coal in 1997, and more in succeeding years. These estimates are supported by the verified statements of the Anthracite Council, Lehigh Coal and Navigation, and Reading Anthracite which I understand are being submitted together with RBMN's Comments. RBMN participates in the pricing, acts as a line haul carrier in the contracts covering coal moves and receives an agreed-upon division.

RBMN also expects to handle an additional 6,000 carloads of other merchandise on the Reading Division. All of the traffic currently moves through Reading to or from Conrail. RBMN receives allowances from Conrail for its portion of the move.

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[3] In the Application, the ore pier, which is located in Greenwich Yard (the Philadelphia Shared Asset Area), would continue to be operated. As far as I know, it is not now used, and there are no plans to use it, for the export of anthracite coal.

B. Lehigh Division

The Lehigh Division connects with Conrail at its southern terminus in Lehighton, and in the Scranton area with Delaware & Hudson Railroad Company ("DHRC"), Luzerne & Susquehanna Railroad ("LS") and Delaware-Lackawanna Railroad ("DL").[4] However, as described more fully below, RBMN's right to connect with carriers other than Conrail is severely restricted. The Lehigh Division is not dependent on the transportation of anthracite coal. Instead, this Division is expected to provide services to approximately 15 shippers in 1997 handling approximately 4,000 carloads of miscellaneous types of merchandise. Additionally, RBMN will handle over the Lehigh Division approximately 2,000 carloads of overhead traffic moving between Conrail at its southern end and two short lines, LS and DL, at its northern end, for which it is paid a haulage fee by Conrail.

As a requirement of the purchase of the Lehigh Division, Conrail required RBMN to agree to pay a substantial penalty for each carload of traffic handled by RBMN to/from or over the Lehigh Division "which could commercially be interchanged with [Conrail]" but is interchanged with a carrier other than Conrail. *See* the deed attached as Appendix 2. A copy of the related provisions of the purchase and sale agreement dated August 19, 1996 is included in Appendix HC-1.[5] The prohibitive nature of these penalties is shown in the chart I have prepared and placed in Appendix HC-2 comparing the allowances that RBMN is paid by Conrail on traffic and the penalties that would apply for handling the traffic with another carrier.

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[4] NS also currently provides intermodal service in the Scranton area through a haulage arrangement with DHRC which brings NS trains into Taylor Yard.

[5] "Appendix HC-__" refers to the separate appendix of highly confidential documents that are being filed together with RBMN's Comments.

Conrail currently quotes all of the rates for customers on the Lehigh Division and pays RBMN allowances depending on the commodity that is moved. In the absence of the contractual restrictions, RBMN would be in a position to offer rates directly with DHRC to points in the southeast via DHRC's connections with CSX and in single-line service with DHRC to New England and to Canadian points through either Buffalo or Montreal. Such routes northward substantially reduce the circuity of movements that otherwise currently must move over Conrail to Buffalo through Allentown, Reading, Harrisburg, Pittsburgh, Ashtabula and Erie, or to New England and Montreal through Allentown, Oak Island, New York and Albany. By my estimates, routings over DHRC are 250 miles shorter to Buffalo and 50 miles shorter to Albany for service to New England and Montreal. I believe these DHRC routes are also more efficient because they avoid substantially congested Conrail main lines, major reclassification yards, and on the way to Albany, the New York metropolitan area.

Because of the contractual restrictions, it is difficult to estimate what the distribution of RBMN's interline traffic would have been in a free market. I believe Conrail's competitors and shippers are aware of our limited ability to participate in that traffic, and therefore RBMN has generally not been asked for its revenue requirements.

C. Relationship with Conrail

RBMN is a member of "Conrail Express," a program started by Conrail to improve the seamless nature of the service provided between Conrail and its short line connections. This reflects the ongoing working relationship that we have developed with Conrail over the past seven years. As part of this relationship, Conrail has provided many discounts which enable RBMN to reduce the costs of its services to customers. We understand that NS will no longer be continuing the Conrail

Express program and will handle its short line relationships otherwise. While we do not doubt that NS will be able to provide efficient line haul service to RBMN and its customers, we do not know how our relationship may change, and whether the changes will mean increased costs to us and to our customers.

Effects of Proposed Transaction

Although RBMN has had a good working relationship with Conrail, we subscribe to the position NS took in opposing the proposed merger between CSX and Conrail that there is a "need for rail competition in the [Conrail] system." However, we believe that the need is not limited to shippers in the large metropolitan areas such as Philadelphia, New York and Boston, and is just as great in the area of Pennsylvania that RBMN serves (and that is left solely to NS by the proposed transaction). There is no rational justification for glossing over the competitive needs of shippers outside key metropolitan areas.

The existence of a competitive alternative line haul carrier benefits the public, of course, by encouraging each competitor to match the pricing and service of the other in order to maintain market share. Short lines such as RBMN can offer competitive alternatives to their online customers only through their connecting trunk lines. In this sense, a short line stands in the same relationship to its line haul connections as a shipper.

Prior to the formation of Conrail in 1976, rail customers in the Lehigh, Wyoming and Susquehanna Valleys now served by RBMN's Lehigh Division enjoyed the benefits of competitive rail service provided by many significant railroads, including, the Pennsylvania Railroad, Reading Railroad, Erie-Lackawanna Railroad, Lehigh Valley Railroad and in earlier times, the CNJ.

Cost-cutting measures implemented by the then-fledgling Conrail resulted in many miles of redundant, but important, rail being torn up. This not only forced certain customers to abandon rail service entirely; it also created an unchallenged monopoly for Conrail that continues today.

Not only does a competitive alternative line haul access benefit existing shippers, but it helps to attract new businesses to the region. In fact, NS's Vice President-Properties David Alan Cox indicates in his verified statement that "one of the key variables driving the selection of sites for new industries, such as factories, auto assembly plants and steel mini-mills, is the existence of at least two financially strong railroads in the region" and that NS's experience is that "customers want two railroads in any region before they will consider locating there." Application, Vol. 2B at 349, 355. Of course, the converse is also true, that it is very difficult to attract such industries where alternative service cannot be provided. Based on the way the Applicants have carved up the market served by Conrail, leaving NS as the sole outlet for RBMN and the region of Pennsylvania it serves, industries will be attracted to other areas other than this region of Pennsylvania. Accordingly, the economy of this region will be adversely affected by the carve-up.

The substitution of NS as the operator for Conrail of course expands greatly the potential of the restrictions. (Although Conrail can "commercially handle" traffic off of the Lehigh Division to many points in the northeast and midwest, the Conrail lines that will become part of the NS system greatly expand the potential reach of the restriction to areas of the midwest, southwest and southeast.)

The restrictive provisions of the Purchase and Sale Agreement may not be unique to RBMN. However, the scope of this restriction seems to go beyond what is necessary for Conrail to have protected existing traffic that it was handling over the line, and expands the reach to cover almost

all traffic that could ever have moved over the line. And this would even be more expanded through NS's operation of the line.

The ability of RBMN to interchange with DHRC without penalty is generally consistent with the policies espoused by NS, especially when it was fighting the proposed CSX/Conrail merger. Indeed, seeking support for NS's position, its representative indicated to RBMN that if RBMN would support NS's alternative bid for Conrail then NS would agree to termination of the penalty provisions. *See* draft letter of NS's Pennsylvania representative, included as Appendix HC-3, ¶ 3. Shortly thereafter, NS and CSX announced their agreement to jointly acquire and carve up Conrail, and the proposal from NS to RBMN was never completed.

An unrestricted interchange with DHRC would allow shippers on RBMN to take advantage of shorter, more efficient routes that will allow for single line service and the avoidance of congested lines and yards of Conrail. *See* the supporting letter from World Resources being submitted with RBMN's Comments.

There are other harms which may be caused by the merger. Specifically, RBMN now participates in a move of fly ash that originates in Vermont on the New England Central Railroad, and then moves in single-line service over Conrail to Reading for delivery by RBMN to its destination. RBMN expects to handle approximately 1,300 carloads of this traffic in 1997, representing almost $400,000 in freight revenues. (The traffic is expected to increase to almost 1,500 carloads in 1998.) However, because of the allocation of assets between NS and CSX, the Conrail single-line portion of the service will now be split between NS and CSX. We do not know where the interchange point will be, how transit times will be affected, or how NS and CSX will

handle the traffic; however, we expect that this rail movement will be lost if there are any adverse changes in pricing or handling efficiencies.

Without the restrictive provisions, the traffic could be handled by DHRC in single-line service between New England Central Railroad and RBMN. As NS and CSX repeatedly confirm, single line service is more efficient and is at an advantage when competing with joint routes. With an unrestricted DHRC connection, RBMN may be able to preserve the service for its customer.

RBMN will also be adversely affected by the CP/NS settlement agreement that has been reported. As I understand the settlement, CP (through its subsidiary DHRC) will be granted trackage rights by NS from Harrisburg to Reading to Philadelphia. The effect of these rights will be to cause DHRC to ship some of the traffic that currently moves on trackage rights over the Lehigh Division between Scranton-Allentown-Reading-Philadelphia to a route between Scranton-Harrisburg-Reading-Philadelphia. Based on my discussions with DHRC, the segment of this traffic that moves via Philadelphia, as contrasted with the traffic that does not reach Philadelphia, would be lost. The estimated effect of this will be to move approximately half of the current DHRC trackage traffic off of the Lehigh Division. This would reduce RBMN's monthly fees from such traffic from approximately $85,000 per month to $40,000 per month.[6] While service to customers would not

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[6] DHRC has challenged the acquisition by RBMN of the Lehigh Division, questioning the maintenance standards to be applied there. RBMN and DHRC have been having discussions which would have the result, if finalized, of protecting against some of these losses by providing RBMN with a minimum amount of monthly revenues. However, the reduction in revenues would still be substantial.

directly be affected, the loss of revenues will make it more difficult for RBMN to maintain its tracks to the current level.[7]

Whether DHRC continues to move over the Lehigh Division through Allentown and Reading to Philadelphia, or uses the new route it will be getting through Harrisburg and Reading to Philadelphia, its trains must pass through and over what will be major NS lines and through major NS yards. The line between Harrisburg and Allentown and the yards at Harrisburg, Reading and Allentown are all substantially congested and will become even more so with the proposed operations by NS. *See* Application, Vol. 3B at 459 (increases of 7 to 13 trains daily on some sections; volumes over 40 trains daily on some sections after the transaction).

Some of this congestion could be reduced if NS were required to allow DHRC to access its existing trackage rights from Reading to Philadelphia over and through the tracks of the Reading Division. RBMN proposes, subject to reaching an agreement with DHRC, to allow DHRC to move its trains from the Lehigh Division over the Reading Division in order to gain access to its existing trackage rights at Reading. This would promote efficiencies and safety by not requiring DHRC trains to move over the line between Harrisburg and Reading or between Reading and Allentown and would avoid the need for DHRC to move its trains through yards in either Harrisburg or Allentown.[8]

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[7] While there will be some reduction in the need for maintenance over the line, Conrail deferred so much maintenance that in the initial years RBMN will still need to spend substantial amounts in upgrading and maintaining the lines.

[8] The yard in Harrisburg will double its volume under NS's operating plan. Allentown Yard will see a substantial increase in intermodal traffic. Application, Vol. 3B at 454.

Conclusion

RBMN believes that short line railroads play an important role in the rail industry, and can help to bring competitive alternatives to their customers if given the ability to have unrestricted access to the line-haul carriers with which they connect. The success of short lines in providing these alternatives is essential to their ability, and that of the rail industry as a whole, to attract business and to be successful in the marketplace. Accordingly, RBMN is asking that the Board review the restrictions placed on RBMN's ability to interchange with other carriers in light of the effects of the proposed transaction, and find that they should be eliminated as a condition of any approval of the transaction. Additionally, the Board should promote efficient and safe operations by conditioning any approval on DHRC being allowed access to its existing trackage rights at Reading, PA.

READING & NORTHERN RAILROAD COMPANY

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PORT CLINTON, PA 19549
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|X| FREIGHT DIVISION - P.O. BOX 218 | | PASSENGER DIVISION - P.O. BOX 215

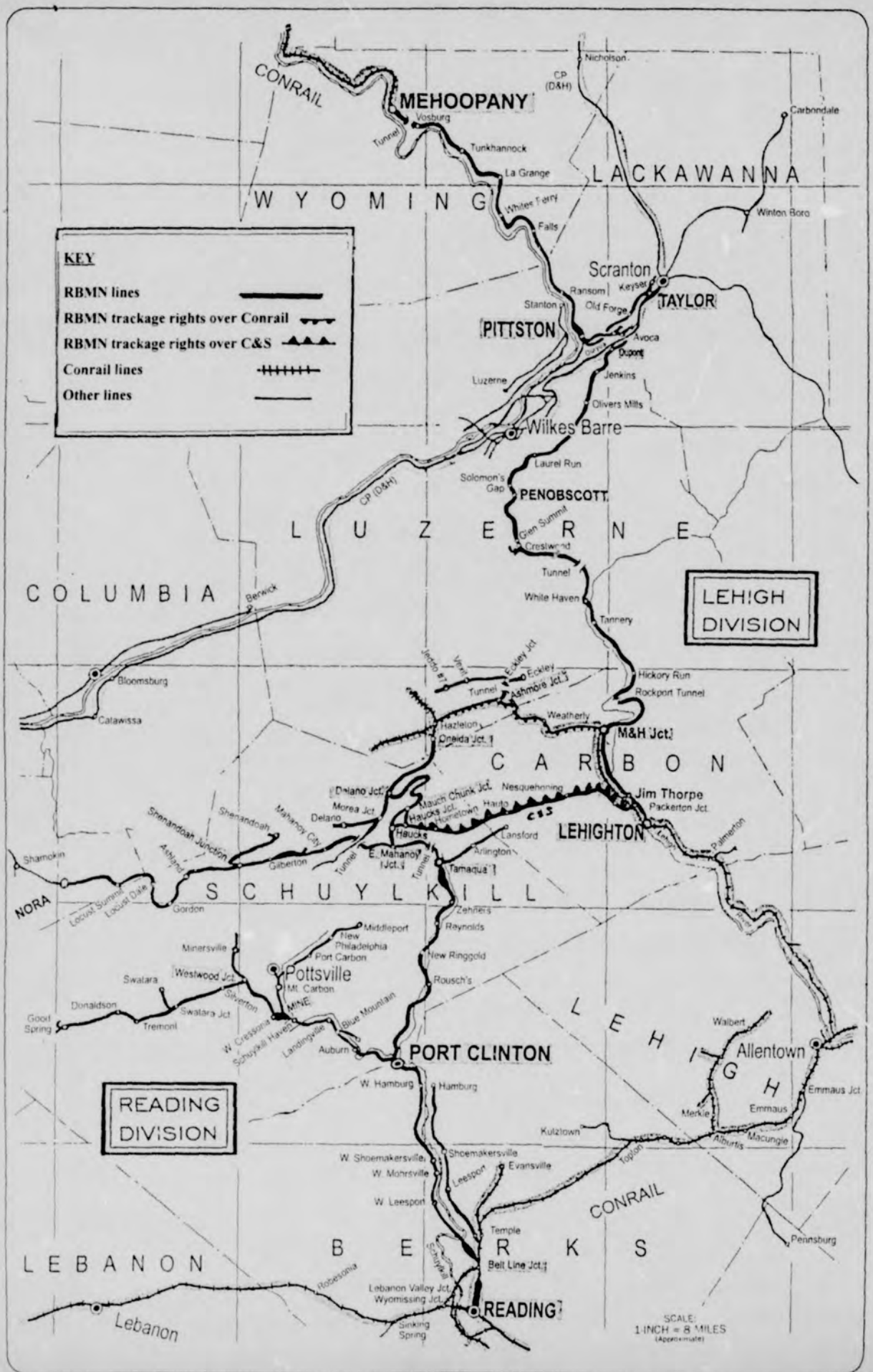
VERIFICATION

I, Andrew M. Muller, Jr., President of Reading Blue Mountain & Northern Railroad Company, verify under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this Verification.

Executed on October 20, 1997.

Andrew M. Muller, Jr.

APPENDIX 1


KEY
RBMN lines
RBMN trackage rights over Conrail
RBMN trackage rights over C&S
Conrail lines
Other lines
CONRAIL
MEHOOPANY
Vosburg
Tunnel
Tunkhannock
La Grange
WYOMING
LACKAWANNA
Whites Ferry
Falls
Nicholson
CP (D&H)
Carbondale
Winton Boro
Scranton
Keyser
Ransom
Stanton Jct.
Old Forge
TAYLOR
PITTSTON
Avoca
Dupont
Jenkins
Luzerne
Olivers Mills
Wilkes Barre
Laurel Run
Solomon's Gap
PENOBSCOTT
CP (D&H)
LUZERNE
Glen Summit
Crestwood
Tunnel
White Haven
Tannery
LEHIGH DIVISION
COLUMBIA
Berwick
Bloomsburg
Catawissa
Jeddo
Vintz
Eckley Jct.
Eckley
Ashmore Jct.
Hickory Run
Rockport Tunnel
Weatherly
Hazleton
Oneida Jct.
M&H Jct.
CARBON
Delano Jct.
Mauch Chunk Jct.
Nesquehoning
Jim Thorpe
Packerton Jct.
Morea Jct.
Delano
Shenandoah
Mahanoy City
Shenandoah Junction
Ashland
Giberton
Hauto
Hazleton
Haucks
Lansford
LEHIGHTON
C&S
Sharnokin
E. Mahanoy Jct.
Tunnel
Arlington
Tamaqua
Palmerton
NORA
SCHUYLKILL
Locust Summit
Locust Dale
Gordon
Zehners
Reynolds
Middleport
New Philadelphia
Port Carbon
New Ringgold
Minersville
Pottsville
Mt. Carbon
Rausch's
Swatara
Westwood Jct.
Silverton
Donaldson
Swatara Jct.
Goort Spring
Tremont
W. Cressona
Schuylkill Haven
Landingville
Blue Mountain
Auburn
PORT CLINTON
LEHIGH
Walbert
Allentown
W. Hamburg
Hamburg
Emmaus Jct.
Emmaus
Merkle
Kutztown
Macungie
Alburtis
Topton
READING DIVISION
W. Shoemakersville
Shoemakersville
W. Mohrsville
Leesport
Evansville
W. Leesport
CONRAIL
Temple
Pennsburg
BERKS
LEBANON
Belt Line Jct.
Schuylkill
Robesonia
Lebanon Valley Jct.
Wyomissing Jct.
READING
Lebanon
Sinking Spring
SCALE:
1 INCH = 8 MILES
(Approximate)

APPENDIX 2

THIS INDENTURE, made the 19th day of August in the year of our Lord One Thousand Nine Hundred and Ninety-six (A.D. 1996)

BETWEEN **CONSOLIDATED RAIL CORPORATION**, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and **READING, BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY**, a Corporation of the Commonwealth of Pennsylvania, having a mailing address of P.O. Box 218, Port Clinton, Pennsylvania 19549, hereinafter referred to as the Grantee;

WITNESSETH: That the said Grantor, for and in consideration of the sum of ONE DOLLAR ($1.00) lawful money of the United States of America, and other good and valuable consideration, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor has remised, released and quitclaimed and by these presents does remise, release and quitclaim unto the said Grantee, the successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the following described Premises.

ALL THAT CERTAIN property of the Grantor, together with all of the improvements and their appurtenances thereon, being a portion of the line of railroad known as the Lehigh Middle Cluster, situate in the Counties of Carbon, Luzerne, Lackawanna and Wyoming, in the Commonwealth of Pennsylvania, generally indicated in Exhibit "A", generally described in Exhibit "B", and indicated by "PS" on Grantor's Case Plan Number 72010, sheets 1 through 108, dated August 2, 1996, revised August 16, 1996, which are attached hereto in Exhibit "C" hereof, hereinafter referred to as "Premises".

EXCEPTING AND RESERVING, thereout and therefrom and unto the said Grantor, a permanent, perpetual, exclusive, assignable and unrestricted sub-surface and surface easement for existing and future fiber optic cables, telecommunication lines, including bu. not limited to metallic cables, PCS antennas and all their appurtenances, collectively hereinafter referred to as "Facilities", and for all the rights and privileges to lay, erect, construct, install, use, operate, maintain, repair, renew,

replace and remove said Facilities, within, along, below, through and across the limits of the entire Premises; together with the unobstructed right of ingress and egress on, over, across and through the Premises for the exercise of the aforesaid rights; and further together with such surface easements necessary for the appurtenances of said Facilities; subject to the conditions set forth in the Agreement Relating to Acquisition and Operation of Rail Lines dated August 19, 1996 between Grantor and Grantee (the "P&S Agreement"); and further

THAT GRANTEE, in order to protect the depth of any Facilities that may now or in the future be installed within the Premises, Grantee shall first obtain the written approval of Grantor's Engineering Department or its successor, prior to land regrading, removal or recontouring of ballast, or any removal or contouring of any other soil or fill material on the Premises, such written approval shall not be unreasonably withheld.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the Commonwealth of Pennsylvania now or hereafter in force with respect to the covenants set forth below.

(1) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2) Except as set forth in the P&S Agreement, should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

(3) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on, over or under the Premises; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossings and their appurtenances.

(4) Grantor shall not be liable or obligated to provide for or supply directly or indirectly, for money or otherwise, any type of utility service to Grantee, even if the Premises are supplied utility service or services from or through Grantor owned or Grantor retained utility service facilities at the time said Premises are conveyed to Grantee; and that if Grantor at its sole discretion elects to provide any utility service or services for money or otherwise to said Premises during the period during which Grantee is arranging at Grantee's own expense for provision of utility service or services direct from public utilities, Grantee shall have no continuing right to use such service or expectation that Grantor must continue to provide it. It is further understood that Grantee's use of any utilities that are supplied through Grantor's utilities or billed to Grantor by any public utility for Grantee's use shall be at the sole cost and expense of Grantee and if Grantee fails to relocate or arrange for a separation of utility services, Grantor may arrange for a separation of the utility services at Grantee's sole cost and expense.

(5) The property hereby conveyed is subject to the terms of a certain purchase and sale agreement between the parties hereto dated August 19, 1996 which constitute a material term and part of the consideration for the purchase of the property, and which the parties intend to be a covenant running with the land and binding on all successors, assigns and grantees of Grantee hereunder, providing, inter alia, for the payment to Grantor, its successors or assigns, of certain specified amounts for any rail traffic handled by Grantee, or Grantee's successors, assigns or grantees of Grantee, which originates, terminates or otherwise moves over the property, and which could commercially be interchanged with Grantor, its successors or assigns, but is interchanged

with another rail carrier by Grantee, or Grantee's successors, assigns or grantees.

TOGETHER with all and singular the track, bridges, tenements, hereditaments, improvements and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever, of, in and to the same and every part thereof, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD all and singular the said Premises, together with the track, bridges, improvements and their appurtenances, unto the Grantee, the successors and assigns of the said Grantee forever, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

AND the said GRANTOR, for the aforesaid consideration, does also GRANT unto the said GRANTEE, a non-exclusive surface access easement in the County of Carbon, to be used in common with Grantor, for ingress and egress purposes on, over, across and through Grantor's existing access roadway running along Grantor's Ashmore Line between M & H Junction and Weatherly, for pedestrian and vehicular traffic by Grantee to allow Grantee access to and from the hereinbefore described Premises to be conveyed.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the said Grantor has caused this

Indenture to be signed in its name and behalf by its Director-Asset Utilization duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

SEALED and DELIVERED in the presence of us:

CONSOLIDATED RAIL CORPORATION
By:

Nancy B. Reynolds
NANCY B. REYNOLDS

James W. Hartman, Jr.,
Director-Asset Utilization

Attest:

Nancy B. Reynolds
NANCY B. REYNOLDS

Wilberta C. Jackson
Assistant Secretary
WILBERTA C. JACKSON

COMMONWEALTH OF PENNSYLVANIA)
: SS
COUNTY OF PHILADELPHIA)

On this 16th day of August A.D. 1996, before me, the subscriber, the undersigned officer, personally appeared James W. Hartman, Jr., who acknowledged himself to be the Director-Asset Utilization of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such Director-Asset Utilization, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Director-Asset Utilization.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Elizabeth C. Gallagher
Notary Public

NOTARIAL SEAL
ELIZABETH C. GALLAGHER, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 31, 1999

I HEREBY CERTIFY that the correct address of the within-named Grantee is:

_____

_____

on behalf of Grantee.

THIS INSTRUMENT PREPARED BY:

Nancy B. Reynolds
Consolidated Rail Corporation
19-B, Two Commerce Square
2001 Market Street
Philadelphia, Pennsylvania 19101-1419
:nls

WORLD RESOURCES COMPANY

Walnut Lane
R.D.#5, Box 5553
Pottsville, PA 17901

Tel: 717.622.4747
Fax: 717.622.7369

October 14, 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 Leases/Agreements-
Conrail Inc. and Consolidated Railway Corporation

Dear Secretary Williams:

As Director of Transportation for World Resources Company (WRC) since June 1995, I, David C. Torrey, am responsible for inbound and outbound transportation operations at the Pottsville, PA. facility. This facility produces ore concentrates which are shipped in bulk.

World Resources Company established a rail car loading facility on the Reading and Northern Railroad (R+N) at West Cressona, PA. in 1994 to handle this traffic formerly transported by truck. Rail tonnage has steadily increased since that time as trucks are not practical due to the distance and the dense nature of the bulk concentrates. The increased traffic has resulted from the excellent switch service and dedicated gondola car fleet provided by the Reading and Northern. It should be noted that Class 1 railroads are not interested in supplying cars for this traffic.

WRC supports the application of the R+N RR to establish a direct connection, without penalty, with the Delaware and Hudson Railway Company (DHRC) as one hundred per cent of our outbound rail traffic is destined to Canada. The Canadian portion of the move is transported by the Canadian Pacific, as line haul or delivering carrier. Therefore, WRC would gain, in effect, single line service beyond the Taylor interchange on certain moves.

A direct connection at Taylor would eliminate congestion delays at Conrail yards such as Reading, Buffalo, or Niagara Falls. Furthermore, the Taylor connection provides a more direct and efficient route to Niagara Falls than the present CR or future NS route through Harrisburg, Pittsburgh, Ashtabula, and Erie to the Canadian gateway at Niagara Falls.

Both CSX and Norfolk Southern have emphasized the advantages of a single line carrier from a service and cost perspective in the CR acquisition proceedings. Penalty free interchange at Taylor Yard to the DHRC-CP System would provide industries, such as World Resources on the Reading and Northern, the advantages beyond the interchange, of single line service to points on the CP System. Further the DHRC- CP connection will provide a second rail carrier option for R+N served industries similar to the carrier options available for industries in the Erie, Philadelphia, Pittsburgh, and the Wilkes Barre/Scranton areas.

World Resources respectively requests that the Surface Transportation Board grant a penalty free interchange between the DHRC and Reading and Northern at Taylor Yard. Thank you for your consideration.

VERIFICATION

I, David C. Torrey, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this 14th day of October, 1997.

David C. Torrey

Very truly yours,

World Resources Company

David C. Torrey
Director of Transportation

READING ANTHRACITE COMPANY
200 MAHANTONGO STREET
P.O. BOX 1200
POTTSVILLE, PA 17901-7200
TELEPHONE: (717) 622-5150 FAX: (717) 622-2612

October 17, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building #711
1925 K Street, NW
Washington, D.C. 20433-0001

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

Dear Secretary Williams:

This "Verified Statement" is being submitted in the interest of the Reading Anthracite Company of Pottsville, PA. Reading Anthracite is a producer of Anthracite Coal, and has been in business for over 125 years. Reading Anthracite employs approximately 240 United Mine Workers and 75 salaried employees.

My name is Rick Gladwell, and I'm employed by Reading Anthracite as a Senior Systems Analyst - Transportation. I've been with Reading Anthracite for over two years now and my duties include maintaining our rail sidings and load-out areas at the New St. Nicholas Breaker, as well as obtaining reasonable transportation rates and service.

Reading Anthracite ships approximately 3,000+ railcar loads per year at present, with forecasts of 4,000 railcar loads by 1999. As the aforementioned volume of railcar loads suggest, rail transportation is more than just an issue -- it's an absolute necessity in order for the Anthracite Region to continue to commercially exist.

It is with great conviction that I submit this "Verified Statement" in support of the Reading, Blue Mountain & Northern Railroad acquiring the right to interchange with the Delaware, Hudson Railroad Corporation -- without penalty -- at Taylor, Pennsylvania, and to allow the Delaware, Hudson Railroad Corporation over Reading Division and out at Reading without penalty.

An advantage to a second rail carrier is vital to the future Industrial and Commercial growth of the central-northeast region of Pennsylvania. Industries in this region, for the first time, will have a competitive rail system. No longer will the shippers of this region be considered "captive shippers, with little or no control of rail transportation costs". Granting the Reading, Blue Mountain & Northern Railroad and the Delaware, Hudson Railroad Corporation this right of interchange at Taylor, PA, is the single largest improvement that can be made to this region's rail infrastructure that will insure industrial development and economic growth, in an economically distressed region, for many years to come. What a welcome change this would be to this region.

Speaking of change, never before has there been a more opportune time for change. With Conrail being acquired by Norfolk Southern and CSX, the time of change, and the time for change in the rail industry, is now. The Surface Transportation Board has the opportunity to make sure that when all the dust has settled from the Conrail acquisition that every shortline, (in the spirit of competition), should have an interchange right with at least two rail carriers. This is the only opportunity we will ever have to institute this type of change in the rail industry.

In closing, I strongly urge the Surface Transportation Board to grant the Reading, Blue Mountain & Northern Railroad this interchange with the Delaware, Hudson Railroad Corporation without penalty. It would be a huge step towards disassociating words like "captive shipper" and "monopoly" with the rail service in central-northeastern Pennsylvania, and the northeastern United States. This can only spur industrial development and commercial growth, thus resulting in new jobs and a better standard of life for the residents and voters of the included regions.

I, Rick L. Gladwell, declare under penalty of perjury that the foregoing is true and correct. I certify that I am qualified and authorized to file this verified statement. Executed this 16th day of October, 1997.

Rick L. Gladwell

Very truly yours,

READING ANTHRACITE COMPANY

Rick L. Gladwell
Senior Systems Analyst
Transportation

RLG/dp

Where it's RED at Reading

READING & NORTHERN RAILROAD COMPANY
1 RAILROAD BOULEVARD
PORT CLINTON, PA 19549
(610) 562-2100

[ ] FREIGHT DIVISION - P.O. BOX 218 [ ] PASSENGER DIVISION - P.O. BOX 215 RO50

FAX TRANSMISSION COVER SHEET

DATE: 10/16/97 # OF PAGES: 3
Including this page

TO: Eric Yackey FAX ( ) 692-9177

COMPANY:

FROM: John Waters

I can be reached by telephone at 610-562-2100 or by fax at the following number:

[X] Port Clinton Office Fax 610-562-0596

[ ] Port Clinton Coal Fax 610-562-3641

[ ] _____

NOTES:

I sent letter.

OLD COMPANY'S LEHIGH

Lehigh Coal and Navigation Company

SALES
(717) 628-0654
FAX (717) 628-0793

101 N. CENTRE STREET
P.O. BOX 1020
POTTSVILLE, PA 17901

ACCOUNTING
(717) 628-5020
FAX (717) 628-0793

October 16, 1997

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, D.C. 20423-001

Subject: Finance Docket No. 33388

Dear Secretary Williams:

My name is Erwin Beck, Vice President of Sales since March, 1989, representing the above indicated company, Lehigh Coal & Navigation Company. I am responsible for the domestic and overseas international sales and for the transportation of the company products by rail, truck or sea.

Lehigh Coal & Navigation Company is a premium anthracite producer, the owner of 9,000 acres of anthracite land and employees approximately 240 people. The location of our facility will be served by the RBMN Railroad under the name of Greenwood Breaker. The commodities shipped by rail are all sizes of anthracite serving the markets of calciners, steel mills, ore reduction facilities and residential/dealer facilities and the sea terminal for overseas shipment.

The rail service used by Lehigh Coal & Navigation Company is for destinations such as Baltimore, MD, LaPlace, LA, Mol-Dok, Pittsburgh, PA, McCoy, OR, Portland, OR, Minnequa, CO, St. Paul, MN, Amherstburg, Ontario, CANADA, Chicoutini, Quebec, CANADA, etc. by RBMN for a yearly tonnage of approximately 240,000 tons or 2,500 railcars.

Motor carriers are not economical in comparison with railcars due to the fact that large shipments require twice the amount of motor carriers than one railcar and, accordingly, will back up the loading areas and the expedient dispatch of the carrier.

RBMN's access to rail carriers other than those listed above will be most beneficial in the performance of our shipping destinations making use of other carriers.

Therefore, I am in support of the Reading, Blue Mountain & Northern Railroad acquiring the right to interchange with the Delaware, Hudson Railroad Corporation -- without penalty -- at Taylor, Pennsylvania, and to allow the Delaware, Hudson Railroad Corporation over Reading Division and out at Reading without penalty.

VERIFICATION

I, Erwin O. Beck, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this 16th day of October, 1997.

Lehigh Coal and Navigation Company

Erwin O. Beck

Very Truly Yours,

LEHIGH COAL & NAVIGATION CO.

Erwin O. Beck

EOB/bam

PENNSYLVANIA ANTHRACITE COUNCIL
P.O. Box 138
Pottsville, PA 17901
Phone (717) 622-6843
FAX: (717) 622-2612

October 14, 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 Lease/Agreements--
Contrail Inc. and Consolidated Rail Corporation

Dear Secretary Williams:

My name is Duane C. Feagley and I am the Executive Director of the Pennsylvania Anthracite Council. I represent nearly 60 shippers, suppliers and financial institutions employing over 2,000 people in the Anthracite mining industry. I have been with the industry for nearly three years.

I represent a small coal mining industry that ships between 400,000 to 600,000 tons annually by rail. Most of our product is shipped to markets outside the region in the Mid-West, South and Canada. Our region is primarily serviced by the short line rail carrier, Reading, Northern & Blue Mountain Railroad and the Class I rail carrier Conrail.

Over the past five years, Anthracite rail shipments have nearly doubled from 3,921 cars in 1991 to 7317 in 1996. This represents over $45 million in annual mining and preparation production. Further, the increase in coal shipments has also contributed to significant growth in other products being shipped by rail. The Reading & Northern Railroad has reported an overall increase from 5,000 cars to 12,000 from 1991 to 1996.

Currently, there exists in Taylor, Pennsylvania a direct linkage between the short line Reading & Northern Railroad and the DHRC. However, because of deed restrictions, the linkage can only be accessed if the shipper is will to pay a significant penalty. This penalty has made it cost prohibitive to make the transfer from the Reading and Northern onto the DHRC.

If Anthracite shippers are able to have access to this connection in a more cost effective manner, this will give them a choice between two Class I railroad carriers and allow them to ship their product directly into Canada and all points going west avoiding many costly handling stops along the way. For example, in 1995, Conrail was charging one Anthracite shipper $77.55 per ton to ship its product to Alta Steel in Edmondton, Canada. At that rate, the company found it less expensive to truck its product overland 50 miles to Allentown, Pennsylvania to a Canadian Pacific loading site and ship on the C&P. In response, Conrail lowered it price by $22 per ton to meet this new competitive threat.

We believe that any solution that is to be reached in this merger must provide for the equitable access to gateways and facilitate broader opportunities to market our coal. Clearly any solution that allows Anthracite producers access to the Canadian and Pacific railroad and any other Class I railroad like CSX is in the best interest of the Anthracite industry and Pennsylvania.

Therefore, we request that you find in favor of the Reading, Northern & Blue Mountain Railroad's request to interchange with the DHRC from the Lehigh Line without penalty. We further request that the DHRC be given the right to move over the Reading Division and out of Reading without penalty.

Thank you for taking the time to consider my request.

I, Duane C. Feagley, verify under the penalty of perjury that the foregoing is true and correct. Executed on October 14, 1997.

Duane C. Feagley

Duane C. Feagley, Executive Director

October 15th, 1997

Hon. Vernon A. Williams, Secretary
Surface Transporation Board
Mercury Building #711
1925 K. Street, N.W.
Washington, DC
20423-0001, U.S.A.

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

Dear Secretary Williams:

QIT-Fer et Titane Inc. is the world's leading producer of titanium dioxide and a market leader with its mining and smelting complex located in Quebec, Canada. Other products produced are a high purity pig iron, steel billets and metal powders. Along with its feedstock ilmenite ore, QIT uses approximately 400,000 M.T. of anthracite coal (over 4000 carloads/year) as a reducing agent in its smelting furnaces. This anthracite is mined in the Pennsylvania coal region and railed to Baltimore for furtherance to our plant via self-unloading vessel.

As Traffic Manager for QIT over the last 10 years, it has been my mandate to find the timely and efficient transportation of this key ingredient for our plant, a challenging task that has been compounded by the restricted shipping season due to harsh winters in our area.

It is imperative that we and our dedicated carrier, the RBMN, have flexibility in terms of choice of rail carriers in case of disruption in service and in keeping us competitive in the marketplace. Towards that end, we would like to support RBMN's request for direct access to the DHRC from the Lehigh Line without penalty, and to allow the DHRC over Reading Division and out at Reading.

.../2

QIT-Fer et Titane Inc.

1625, Marie-Victorin
Tracy (Quebec) Canada J3R 1M6
Tél : (514) 746-3266
Fax: (514) 746-3351

Should you require additional information or clarification regarding the above, please contact the undersigned at 514-746-3266.

Yours truly,

George De Santi
Traffic Manager

VERIFICATION

I, George De Santi, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed this 15th day of October, 1997.

George De Santi

GDS/cdf
(97GD0048)

QIT-Fer et Titane Inc.

1825, Marie-Victorin
Tracy (Québec) Canada J3R 1M6
Tél.: (514) 746-3266
Fax: (514) 746-3351

AEP
INDUSTRIES INC.

15 October 1997

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
Mercury Building, #711
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 Secretary Williams:

My name is Danna Mariconda and I have been employed with AEP Industries for eighteen years, 15 of which has been in the capacity of ordering and maintaining inventory of, all raw material into our manufacturing facilities. The company has expanded over the years from 3 manufacturing facilities to worldlwide plants, with our acquisition of Borden Global Packaging in October 1996. I am currently responsible for the raw material supply to our eight continental facilities.

Our line of business is the manufacture of polyethylene film and packaging, for which we purchase resin from approximately ten major suppliers in railcar quantities. I would estimate I purchase 2-300 railcars per month. As you can imagine, timely delivery of the many types of resins required to operate our lines at maximum efficiency is of utmost importance, and this responsibility rests solely with me. It is paramount that our shippers use rail routes that can deliver the product in a timely manner.

Our stateside manufacturing plants are located in Matthews, NC; Griffin, GA; Alsip, IL; Waxahachie, TX; Gainesville, TX; Chino, CA; North Andover, MA; and Mountaintop, PA, which is the facility serviced by RBMN. The Mountaintop location receives an average of 38 railcars per month. Most of this resin originates from the Houston area, with smaller amounts shipping from Indiana and Canada. We would definitely support the ability of the RBMN to interchange with the DHRC from the Lehigh Line without penalty and the right to allow DHRC over Reading Division and out at Reading.

Corporate Headquarters
125 Phillips Avenue
South Hackensack, New Jersey 07606
(201) 641-6600 · (800) 938-AEPI (2374) · FAX (201) 807-2489
http://www.aepind.com

I, Danna Mariconda, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this 15th day of October, 1997.

Danna Mariconda
Corporate Purchasing Manager
for Manufacturing

AEP

ALUMAX
MATERIALS
MANAGEMENT, INC.

6825 The Corners Parkway, Suite 500
Norcross, GA 30092
Phone 770-447-3849
Fax 770-368-2273
E-Mail merrifield.bob@pr.alumax.com

October 13, 1997

VERIFIED STATEMENT OF
Robert L. Merrifield
on behalf of
Alumax Materials Management, Inc.
Finance Docket No. 33388
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Corporation
–Control and Operating Lease/Agreements–
Conrail Inc. and Consolidated Rail Corporation

Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, DC 20423

Dear Secretary Williams:

My name is Robert L. Merrifield and I am the Director of Transportation for Alumax Materials Management, Inc. located at 6825 The Corners Parkway, Suite 500, Norcross, Georgia 30092. I have been in this position for eleven (11) months, which is a newly created position. I am responsible for overseeing all transportation related activities to and from the various Alumax subsidiary locations throughout North America. Previously I was employed by Intalco Aluminum Corporation, an Alumax Primary Aluminum manufacturing subsidiary facility located at Ferndale, Washington. While there I held the positions of Assistant Traffic Manager for thirteen (13) years and Traffic Manager for twelve (12) years.

Alumax, Inc., a Fortune 200 corporation, is the nation's third largest integrated aluminum producer with five (5) primary aluminum smelters in North America producing aluminum ingot, billet, and slab to support subsidiary fabricating and customer facilities for their production of value-added aluminum products for the transportation, building and construction, packaging and consumer durable markets throughout North America.

Alumax, Inc. has subsidiary fabricating facilities through North America at the following locations.

* Alumax Primary Aluminum Corporation
  Products: Aluminum Ingots
  Locations: Intalco aluminum Corporation, Ferndale, Washington
  Eastalco Aluminum Corporation, Frederick, Maryland
  Alumax of South Carolina, Goose Creek, South Carolina
  Aluminerie Lauralco, Inc., Deschambault, Québec
  Aluminerie de Bécancour, Québec

* Alumax Mill Products, Inc.
  Products: Aluminum Coil, Sheet, and Plate
  Locations: Lancaster, Pennsylvania
  Texarkana, Texas

* Alumax Extrusions, Inc.
  Products: Multi-Port Hollow Shape Extrusions, Thin Wall Tubing, Specialty Extruded Profiles
  Locations: Magnolia, Arkansas
  Plant City, Florida
  Fairburn, Georgia
  West Chicago, Illinois
  Monterey, Mexico
  Hernando, Mississippi
  Catawba, North Carolina
  Cressona, Pennsylvania
  Yankton, South Dakota
  Elizabethton, Tennessee
  Spanish Fork, Utah

* Alumax Foils, Inc.
  Products: Aluminum Composition Foils
  Locations: Russellville, Arkansas
  St. Louis, Missouri

* Alumax Engineered Metal Processes, Inc.
  Products: Near Net-Shape Semi-Solid Aluminum Forgings
  Locations: Bentonville, Arkansas
  Jackson, Tennessee

* Kawneer Company, Inc.
  Products: Architectural Aluminum Products, Commercial Store Fronts, Curtain Wall, Window Systems
  Locations: Lethbridge, Alberta
  Springdale, Arkansas
  Jonesboro, Georgia
  Bristol, Indiana
  Franklin, Indiana
  Eau Claire, Michigan
  Scarborough, Ontario
  Bloomsburg, Pennsylvania
  Johnson City, Tennessee

This statement is in support of conditions to be requested by the (RBMN) Reading Blue Mountain Northern Railroad for the ability to interchange with the DHRC at Taylor, Pennsylvania without penalty.

These conditions to be requested are of particular interest to us as the RBMN provides service for the delivery of aluminum ingots from our primary aluminum smelters in Québec to our aluminum extrusion facility in Cressona, Pennsylvania. The Cressona, Pennsylvania facility has annualized demand of 100,000 short tons, or the equivalent of 1,100 boxcars.

For these reasons Alumax Materials Management, Inc. strongly endorses the request of the RBMN for interchange without penalty to the DHRC at Taylor, Pennsylvania.

I, Robert L. Merrifield, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed this fourteenth day of October, 1997.

Robert L. Merrifield
Director of Transportation

Post-it® Fax Note 7671	Date 10/14/97	# of pages ▶ 1
To Jake Waters	From Bob Merrifield	
Co./Dept. RBMN	Co. Alumax	
Phone # 610-562-2100	Phone # 770-447-3649	
Fax # 610-562-0596	Fax # 770-368-2273	

182889

LAW OFFICE OF SEATON & HUSK, L.P.

2029 Natl. Press Bldg.
Washington, DC 20045
(202) 347-8962
Fax (202) 347-5986

144 Second Ave. North
Suite 100
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Henry E. Seaton, Esq.*
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October 21, 1997

Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC

RE: F. D. 33388-CSX Corp & CSX Transportation, Inc. Norfolk Southern Corp., Norfolk Southern Railway Company - Control and Operating Lease Agreement - Conrail Inc. and Consolidated Rail Corporation

Dear Secretary,

Enclosed please find an original and twenty five copies of the comments submitted on behalf of J. B. Hunt Transport, in the above described preceding. Also enclosed is a 3.5 disk with the material contained thereon.

Yours truly,

Henry E. Seaton
Attorney for J. B. Hunt Transport, Inc.

P.S. Please add my name to the service list in the above-described matter.

cc: All parties of record

182889

BEFORE THE
SURFACE TRANSPORTATION BOARD

IN RE:

CSX CORP & CSX TRANSPORTATION, INC.)	Docket Number F.D. 33388
NORFOLK SOUTHERN CORP.,)	
NORFOLK SOUTHERN RAILWAY CO.,)	
CONTROL AND OPERATING LEASE)	
AGREEMENT - CONRAIL INC. AND)	
CONSOLIDATED RAIL CORPORATION)	

COMMENTS
ON BEHALF OF J.B. HUNT TRANSPORT, INC.

My name is Paul R. Bergant. I am Executive Vice President and General Counsel of J.B. Hunt Transport, 615 J.B Hunt Corporate Boulevard, Lowell, Arkansas 72745. I am authorized by my company to make this Comment in the above-described proceeding and I have previously offered a similarly Verified Statement which is supportive of the proposed transaction.

J.B. Hunt is one of the nation's largest truckload motor carriers. Hunt operates a fleet of over 7,000 power units. We have converted our van fleet to include 19,200 chassis and 20,000 intermodal containers and have reconfigured our operations to maximize the use of economical and fuel efficient intermodal rail service where possible.

We currently have in place a contract with Conrail which moved 130,000 containers in 1996. That contract, which is assignable at our option, was not negotiated in anticipation that the services of Conrail would be divided among multiple rail carriers. To date, no provision has been made by either CSX or Norfolk Southern for assumption of their relevant portions of the contract or for continuation of services with Hunt under

similar terms and conditions.

In this regard, the National Rail Transportation policy is intended:

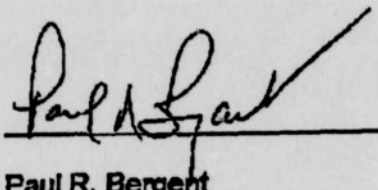
> (1) to allow, to the maximum extent possible, for competition to establish reasonable rates;
>
> (2) to ensure con.. uation of a sound rail system with effective competition among rail carriers and with other modes;
>
> (3) to ensure effective competition coordination between rail carriers and other modes [emphasis added]; and
>
> (4) to ensure and promote energy conservation. (See 49 U.S.C. Section 10101.)

The 4 portions of the National Transportation Policy for Railroads cited above each militate in favor of continuation of the substantial J.B. Hunt intermodal service heretofore rendered over the lines of Conrail.

In addition to the substantial investment made by Hunt, the shipping public has come to rely upon the services provided by Hunt and any disruption of this service would have an adverse impact on the development of intermodal transportation and on highway congestion in the heavily populated Northeastern corridor of the U.S.

These premises considered, Hunt asks that the STB carefully weigh the effect of the proposed transaction on the existing truck/rail services rendered by Conrail and require the acquiring rail carriers to provide intermodal transportation services in conjunction with Hunt and other regulated motor carriers under terms and conditions which are no less favorable than the current contractual obligations of Conrail.

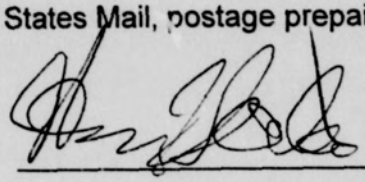
I, Paul R. Bergant, have read the foregoing and it is true and accurate to the best of my knowledge and belief.



Paul R. Bergent
Executive Vice President and
General Counsel

CERTIFICATE OF SERVICE

A copy of the foregoing Comments have been served this 21st day of October, 1997, on all parties of record by United States Mail, postage prepaid.



Henry E. Seaton

Attorney for J.B. Hunt Transport, Inc.

STB FD 33388 10-21-97 D 182847

182847

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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

AMERICAN FARM BUREAU FEDERATION

Contact Person: Barbara R. Spangler

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October 21, 1997

Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, DC 20423

Dear Madam Chairwoman:

The American Farm Bureau Federation appreciates the opportunity to file comments with the Surface Transportation Board with regards to the proposed joint acquisition of Conrail by CSX Corporation and Norfolk Southern Corp. The proposed merger and the resulting rail systems are critically important to American agriculture.

Three factors make the proposed merger critical for agriculture. The first is the importance of the region currently served by Conrail, CSX and NS railroads. This region Includes some 32 states with 179 million people, and accounts for a huge share of the national grain and oilseed production (70%), movements to export terminals and ports and net movements (domestic in- and out-shipments) in support of livestock, poultry and dairy production, especially in the southeastern United States. The region also includes a large percentage of the nation's production of fruit and vegetables, lumber and wood products.

Second, the nation's sophisticated agricultural production and marketing system depends upon effective, low-cost transportation facilities and services which only result from truly competitive enterprise. For example, agricultural and related product movement is about 34% of the total US economy's transportation requirement. Within agriculture, farm products account for 35% of total transportation needs (1993 data), while food and kindred products account for 34%. Lumber, pulp and paper, textiles, leather and other products make up the balance.

Farm products are heavily dependent upon rail services (46% of the total ton miles). Another 28% moves on our inland waterways, while 20% moves by truck. By contrast, food and related products move primarily by truck (72% by truck, or by combinations of truck, rail and water) while 27% is by rail. Lumber and wood products also tend to move primarily by truck, with just over one-fourth of the movement by rail in 1993.

Not only are railroads important to agriculture, especially grains, but agriculture is an important source of business for the railroads. Farm products are the second most important commodity

(behind coal) in terms of tonnage, while food products are fifth. Access to efficient transportation services at competitive rates is vitally important to our members throughout the affected region, and nationwide.

Third, it appears unlikely that Conrail would continue as a separate rail company in the absence of the merger proposed. Thus, our concern is not whether the merger is, by itself, good or bad, but whether it is better or worse than the purchase of Conrail by a single railroad, and how any merger agreement of the magnitude of that proposed would be implemented. We are extremely concerned about fair and competitive rates and access to efficient and timely service resulting from any form of merger.

Merger Objectives

It appears that the objectives of the proposed merger are highly positive. This transaction promises to increase the level of competition between railroads, giving many shippers a choice between two competing Class I railroads, each of which is willing to exert strong efforts to win business away from its rival, as well as from other systems. Key elements of the proposal for agriculture include:

- **Better Service**: By integrating certain Conrail routes and facilities into their existing rail networks, CSX and NS propose to be able to provide better service to their existing customers, and to use improved service to attract new customers. The creation of new single-line routes and the coordination of Conrail assets with existing CSX and NS assets promises to allow both rail systems to provide faster and more responsive service. Improved equipment utilization should improve and customers' costs should decline.

- **Operating Savings and Other Cost Reductions**: CSX and NS expect to realize operating cost savings by providing more efficient rail transportation. Operating costs are expected to decline as a result of shorter transit times, more direct routes, improved equipment utilization and increased traffic densities. In addition, CSX and NS should realize cost savings by eliminating substantial portions of the general and administrative costs currently incurred by Conrail. These savings also should benefit the public because CSX and NS should consume fewer resources on a per unit basis to produce transportation services than they currently do.

- **Increased Competition**: The merger is expected to strengthen and greatly extend the reach of two strong rail systems, likely ensuring that they both remain fully competitive and, at the same time, open up large and vital areas of the country to rail competition they did not previously have. This includes:

    - **Rail to Rail Competition**: Currently, CSX and NS compete throughout the Southeast and Midwest. Conrail, on the other hand, faces only limited rail competition in some parts of its service territory. The transaction is designed to

eliminate this anomaly, allowing CSX and NS to expand the scope of their competitive efforts into important new commercial areas.

- **Competition with Trucks**: The competitive benefits of the transaction could put the railroads in a position to compete with trucks for eastern traffic and reduce traffic on the highway system, both in the near term and on a long-term basis.

- **Traffic Diversions on Other Rail Carriers**: The transaction could lead to a significant increase in competition between railroads. While Conrail has revitalized rail service in the Northeast, it has not faced this sort of intense competition from a strong Class I rival in much of its territory, including the important Greater New York/New Jersey Port area.

Other proposed beneficial changes include:

- More single-line service.
- New and improved routes.
- More reliable service.
- Improved equipment utilization and availability.
- Reduced terminal delay.

Implementation

While it is impossible to know how the implementation of the proposed CSX-NS-Conrail merger will proceed, the publicly-stated plans of the parties to the proposed merger very clearly imply a new system with improved rail access between extremely important agricultural markets. They imply better services, significantly more competition between well balanced competing railroads, increased investment in facilities and equipment to serve agriculture, and greater access to large, important markets and to commodities and other raw materials. The cases where competition likely will be diminished are small in number, and the parties to the agreement have stated their intentions to take important steps to guarantee service to these in the future.

Overall, the proposed investments should benefit agriculture. They should mean greater access to more efficient and competitive rail transportation resulting in greater returns to agricultural investment and more competitive positions for U.S. agricultural products in both domestic and export markets.

Recommendation

While the proposed merger promises to provide significantly more benefits than costs for agriculture, there should be no misunderstanding that a restructuring of this magnitude will be neither easy nor simple. The potential for future conflict in interpretation of the agreement in terms of route and other allocations, shared facilities, expected investments and other

commitments is real and critical to realizing the proposed benefits of the merger.

Recent examples involving other railroad mergers suggest that the implementation of the restructuring is critical to the outcome as it affects all parties.. The agriculture sector has not fared well with previous rail restructuring which also have promised potentially large benefits.

We propose that the Board be actively involved from the beginning of the implementation process to ensure that the proposed operating plan is carried out as promised. More specifically, we propose that the Board create an oversight schedule for each phase of the merger proposal and that the Board conduct periodic public hearings and require an annual public report that evaluates how well the transition is proceeding, especially as it relates to agriculture.

We suggest that the report be organized generally as follows:

I. General Overview.

This section would describe actions taken during the year, with comparisons between plans and accomplishments. It would focus on management and operations, including the integration of each railroad with the Conrail facilities (including computers, personnel, etc.).

II. Service.

This section would focus on the new routes proposed by each carrier, and describe in detail whether each is operational, the new services provided and rate changes for selected commodities (grain and oilseeds, especially) relative to those of a historical base period, for example, 1995-97. Also, the degree to which expected equipment utilization is realized should be described relative to the baseline period.

III. Operating Savings and Other Cost Reductions.

This section would give a thorough review of the effect on customers resulting from abandoned lines, changed scheduling patterns, and other changes in equipment and services to create savings in operating costs. Also for each carrier, the report would cover to what degree these have been realized relative to those expected, and relative to the baseline period.

IV. Increased Competition.

Using selected measures, how competitive is the new system relative to expectations, and relative to the baseline period? This should be described in terms of tonnage by selected routes, especially relative to the baseline period and all changes in price structure for agriculture shipments.

V. Other Impacts.

This section would include descriptions of changes in specific characteristics of the system, and compare current operations relative to the baseline for (among others):

- single-line operations;
- new and improved routes;
- service reliability;
- equipment utilization and availability;
- terminal delays; and
- capital investment.

VII. Increased Services for Agriculture.

The parties to the merger claim a number of expected, specific benefits to agriculture. This section would focus specifically on the extent to which these have been accomplished, including:

- Improved management of, and greater investment in, hopper cars, unit trains and other types of large-scale agricultural services (including greater availability of cars and unit trains);
- Better access to key processing facilities, including feed mills, oilseed processing plants and grain elevators; and
- Better rail access at stable or declining costs.

VII. Conclusions.

We believe greater Board oversight and the proposed report, prepared annually, would serve to build farmer and agribusiness confidence in the merger progress and growth of the national transportation system, as well as the effectiveness of the Board's willingness to seriously address the concerns of the nation's largest business - agriculture.

Thank you very much for your consideration of our comments. We look forward to working with you in the future on issues.

Sincerely,

Richard W. Newpher
Executive Director
Washington Office