October 21, 1997

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

Dear Secretary Williams:

I write to provide the comments of the American Public Transit Association (APTA) regarding STB Finance Docket No. 33188, 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. Many of the Association's commuter rail members are submitting their own comments directly to the STB or comments are being made on their behalf by their respective state governments. The views presented here do not necessarily represent those of the individual transit agencies or the government of states in which they are located.

Overview

The relationship of a commuter railroad to a freight railroad is that of a captive shipper - a purchaser of service who frequently pays a higher price and gets inferior service. As outlined below, APTA is concerned that the pending acquisition will perpetuate this unequal relationship, further degrading the service and economics of America's current and future publicly owned commuter railroads. Our concerns are based upon the applicants' representations in their filing, prior commuter railroad experience with the applicants, and prior commuter rail-experience with large-scale freight railroad mergers.

We urge the STB to put into place, as a stipulation to this acquisition, a process that will provide a means to resolve future disputes between freight and commuter railroads, and safeguard the public's interest in and investment in passenger rail service.
Background

About APTA

The American Public Transit Association is a private, nonprofit trade association that represents the North American transit industry. Established in 1882, APTA has more than 1,100 members including local mass transit systems, manufacturers and suppliers, and consultants to the transit industry. More specifically, APTA includes among its members approximately 400 American public and private mass transit systems, which carry over 95 percent of those using public transit in the United States.

APTA’s Commuter Rail Members. APTA’s fourteen U.S. commuter rail members include the eleven commuter railroads that will be affected by the pending acquisition, railroads that carry over 352 million passengers a year and over 1.2 million passengers every weekday. A list of APTA’s commuter railroad members is attached.

Our commuter railroad members who are affected by the acquisition are located along the length of the East Coast – from Massachusetts south through Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and Florida; as well as in the center of the nation, in Indiana and Illinois. In these corridors, commuter railroads play a central role in assuring mobility in the nation’s largest and most densely populated urban areas, areas that also suffer from some of the worst traffic congestion and poorest air quality in the United States.

Significant Growth in Commuter Rail. The demand for commuter rail service is growing across the nation; indeed, ridership has increased 8.8% between 1992 and 1996. Established transit systems have gained 26 million new passenger trips a year during this period and new commuter rail operations that have recently become operational have experienced a 27% growth in ridership during the period.

Playing a role in the growth of commuter rail ridership has been the fact that since 1983 commuter railroads have invested billions of public tax dollars to improve their systems. These improvements have included investments in equipment and service, as well as investments in track and track structures. It is important to note that improvements to track and track structures have benefited both the commuter railroads and freight railroads. While a significant amount of the financing for these improvements has come from local, county and state resources, federal investments have clearly been the key element in the revival of commuter rail passenger service.
In a recently released report entitled *Commuter Rail: Serving America’s Emerging Suburban/Urban Economy*, the economic benefits that commuter rail operations provide to the public were estimated to be $5.2 billion a year. The report also noted that over 180 of the Fortune 500 companies are headquartered in areas served by the nation’s commuter rail systems. These employers, as well as businesses of all sizes, rely upon the availability of efficient and effective commuter rail service to get workers to their jobs, on time, every day.

Without a doubt, the continued success and the future growth of commuter rail service is central to both regional and national economic strength, and the attainment of key national objectives. It is in this context that APTA provides comments about the proposed acquisition, an action that must be considered in light of both its current and future impact on commuter rail operators.

**Comments**

**Transportation System Access**

The most critical area of concern to commuter railroads regarding the proposed acquisition is the impact that it will have upon their ability to access railroad rights-of-way (ROW) in their service areas. While some commuter railroads own their own ROW and receive rents from freight railroads for the right to operate over commuter lines to reach freight customers and terminals, many more make rent payments to freight railroads for the right to operate over freight lines in providing commuter rail service.

All three of the freight railroads involved in this action – Conrail, CSX and NS – have existing operating agreements with commuter railroads. In a very real sense, commuter and freight rail operations are interconnected and interdependent, each having the ability to affect the economics and operating success of the other. The complexities of this relationship and the potential limitations that the acquisition could place on the ability of commuter railroads to provide passenger service at current levels, as well as to grow in the future, cannot be casually dismissed -- as has been done in the current application to the STB.

The interrelationship of the freight and commuter railroads is further complicated by the way capital investments supporting commuter rail operations have been financed. It is important to understand that improvements made to upgrade freight tracks to permit passenger rail operations are generally carried out with public funds. In financing track, signal and related improvements to increase speeds to the level needed for efficient commuter rail operations or to achieve ride conditions appropriate for passenger operations, commuter railroads use public funds. In some cases these funds are federal grant receipts and in others they involve the use of state or local funds, including proceeds from long term debt.
The freight railroads, and specifically CSX, NS and Conrail, have benefited significantly from the investment of public funds, investments that have helped them obtain additional capacity and improve their private sector operations. These investments of public funds makes it even more imperative that commuter rail interests in and access to the freight railroads be protected.

In looking at the proposal at hand, the STB has established a three-year period in which to assess the implications and impacts associated with the acquisition. Unfortunately, that timeframe does not cover the period when any existing operating agreements expire and when the issue of trackage rights governing future commuter rail operations will be reexamined. By focusing on such short term, three-year projections of freight traffic, the STB will not be able to ensure that existing and future commuter rail operators receive fair or even reasonable treatment from CSX and NS beyond that period.

Based upon past experience, we fully expect that commuter railroads that current access to the trackage of or rights from CSX and NS will be faced with projections of increased freight traffic in their next round of negotiations. This increase in freight traffic wills, in all likelihood, result in demands that commuter rail service be reduced or that the commuter rail operators finance additional capital improvements to accommodate the increased traffic. A close examination of the renegotiated operating rights agreements that have been approved to date will reveal that reductions have already been made in commuter rail service in order to accommodate increased freight traffic. While these reductions may have been made in light of other gains by our members, this is a one-time situation brought on by the need for CSX and NS to receive support for this merger. APTA is concerned that this will not be true in the future.

**Existing service.** The CSX and NS application identifies freight traffic increases that are expected to occur in the corridors that are shared with commuter rail operators. However, the application fails to demonstrate that the shared track/capacity issue has been considered in detail and that commuter rail systems can be assured that their operations will not be affected. Among the freight traffic increases that are cited in the application are seven additional trains a day in VRE's Fredericksburg corridor (a 40% increase) and seven to eight trains a day in MARC's Brunswick corridor. While some might not perceive these to be major increases, they are when considered in light of current traffic in the corridors. We expect that increases such as these could have a significant impact on commuter rail operations.

**System expansions.** Also of great concern is the impact of the proposed acquisition on plans that commuter rail operators have been developing to expand their operations in the future. These expansion plans, which are undertaken to address regional goals for economic development and growth, or to find low cost solutions to congestion problems, are supportive of broader national economic and environmental goals.
Because commuter railroads generally utilize federal funds to finance expansion of their systems, these plans take a long time to become operational. Many of our commuter rail members’ long-term plans to expand their operations through the use of rail freight tracks/ROW, which are not currently used or are underused, could be negatively affected by the acquisition.

The two examples that follow demonstrate how important it is that assurances be made to commuter rail agencies that reasonable accommodation will be made to allow them to access the rail lines for the operation of expanded levels of rail passenger service:

NJ TRANSIT has been working on the expansion of its commuter rail network for a number of years. Using both federal and state funds, the agency has been studying the potential for commuter rail service to be restored in corridors that have been under the control of Conrail in southern New Jersey and the NYS&W in northern New Jersey. The planned expansions of the commuter rail system are important components in the State of New Jersey’s plans to realize its economic, mobility, and environmental goals.

The Southeastern Pennsylvania Transportation Authority (SEPTA) is another transit agency that is actively pursuing system expansion and New Start funding. The proposed Cross County and Schuylkill Valley Metro projects are focusing on new light rail lines or commuter rail service along existing freight rail corridors, parallel to active Conrail freight service. Both projects respond to changing regional demographic, development and travel needs, as well as the need for transit agencies to serve new markets, promote economic development and support community revitalization. The Schuylkill Valley Metro would also reconnect the Philadelphia and Reading metropolitan areas for the first time since 1981.

**New commuter rail starts.** Across the United States, there is keen interest in initiating new commuter rail services. As part of the nation’s agenda to enhance mobility and air quality through the reduction of automobile traffic and regional plans to encourage economic development and growth, these efforts are made possible through the use of federal and/or local funds, including funds raised by long-term public debt. New commuter operations, utilizing existing freight rights-of-way, are in advanced stages of planning in: Portland, Maine; Burlington, Vermont; Raleigh-Durham, North Carolina; Jacksonville and Tampa, Florida; Atlanta, Georgia; Nashville and Memphis, Tennessee; Cleveland, Ohio; Milwaukee, Wisconsin; and St. Louis, Missouri.

In light of the large number of “new starts” commuter rail operations that are actively under consideration, it is important that the CSX/NS acquisition not be allowed to become a deterrent to the development of new systems.
If this acquisition leads to greater restrictions on access to freight railroad rights-of-way, the establishment of new commuter rail operations could be affected. APTA believes that the STB should use this acquisition as an opportunity to promote cooperation between CSX and NS and commuter rail operations, ensuring that rights-of-way that are necessary for passenger service are available to the public, over the long term.

The central importance that access to CSX and NS lines has for current commuter rail operators, as well as future growth in the service, clearly indicates the need for a way to resolve disputes on this issue. In their discussions with the applicants, some commuter rail operators have been able to agree upon some form of accommodation regarding access issues. However, many of these accommodations were influenced by the need for public agency support for the proposed acquisition, a factor that will not be present in the future. APTA believes that, as a condition to the approval of this acquisition, the STB needs to define a process that will ensure that fair and reasonable operating rights agreements can be established in the future, with fair and reasonable compensation to CSX and NS. Such an action by the Board will assure that commuter rail service in freight corridors is protected for the American public interest in the future.

**Operating Service and Schedules**

Closely associated with the issue of operating rights and the ability of our members to access freight lines, is the issue of how freight operations affect commuter rail service and schedules. Because the proposed acquisition directly affects some of the most highly concentrated rail corridors in the nation, where freight traffic shares space with heavily-used commuter and intercity passenger service, the issue of operating performance and ability to maintain on-time service schedules is critical. We expect that where increases in freight traffic are projected on lines that are also used for passenger traffic, conflicts between freight and commuter rail service schedules will also increase. The 40% increase in freight traffic in VRE’s Fredricksburg corridor is illustrative of an area where on-time performance problems could be expected.

The experience of the Southern California Regional Rail Authority (see comments dated August 1, 1997 in Finance Docket No. 32760 [Sub-No. 21]) with recent rail mergers confirms the potential for freight traffic to interfere with established passenger operations. This point has been underscored in even more recent media accounts regarding Metrolink’s (California) on-time performance problems on its Riverside Line that it rents from the Union Pacific. The problems that the Union Pacific has encountered following its recent merger has made it difficult for several of our members to get railroad management to focus on commuter rail issues. Dispatching and coordination problems have gone unresolved, on-time performance is not a concern and communications in general have been difficult as the freight railroad has focused on its own problems.
Commuter rail service issues have had very low, or no, priority and commuter passengers have suffered through unnecessary delays and degradations in the quality of service that they receive. The freight railroad has focused on backed-up freight traffic and ignored its commuter rail partners.

Our concern regarding this issue is further underscored by the prior experience of our members with the parties to the acquisition and the parties’ stated desire to adopt existing agreements, some of which are outdated. Both NS and CSX, in spite of the existence of operating agreements designed to protect commuter operations, have caused significant schedule problems for the Virginia Railway Express (VRE). In incidents that occurred during the summers of 1996 and 1997 that were reported in local media accounts, VRE’s ability to operate its service in accordance with published schedules was negated by the actions of the freight railroad owners.

Such interference, which results in delays in commuter rail service and poor on-time performance, encourages passengers to view transit services as unreliable. When faced with poor on-time performance, these riders have the option to return to their cars and will do so, further impacting the environmental and safety of the riders (see APTA’s comments STB Environmental Impact Statement). In our experience, and in survey after survey conducted by transit properties across the nation, unreliable service and poor on-time performance are the biggest factors that cause transit riders to abandon public transit service in favor of private automobiles.

We note that the operating plans that have been formulated by CSX and NS provide no details about how they will accommodate passenger operations and work cooperatively with commuter rail operators to ensure that their schedules are maintained in shared corridors. Schedule interference, dispatching, and maintenance procedures are critical to assessing the impact of the acquisition, and the STB must insure that the efforts of commuter rail operators to provide high quality service to customers will not be undermined by the actions of the freight railroads. As with the issue of access, it is important that the STB provide a means to resolve potential disputes beyond the three-year timeframe, ensuring that future freight traffic increases are not a reason for commuter rail schedules and service to be interrupted.

In addition, we think it is appropriate to move towards incentive-based operating agreements in shared corridors, an idea that most freight railroads have not been willing to consider in the past.
Railroad Retirement

The Railroad Retirement System, like Social Security, is a pay-as-you-go pension system that is a holdover from the days when freight and passenger rail operations were combined. Under the provisions of the Railroad Retirement Act, both commuter and freight railroads are charged a payroll tax based upon the number of active employees working for each system. This tax supports the pensions provided to railroad employees across the country — the only private sector retirement system that is mandated by Congress.

Over the years, freight railroad employment has dropped significantly as employees have retired and the industry has consolidated, while commuter rail operations and their publicly funded workforces have expanded. This new environment has created a situation in which commuter rail operators -- funded by public and taxpayer dollars -- are providing large and growing subsidies to the freight railroads in the form of pension payments to freight railroad retirees. The workforce reductions that will result from the proposed acquisition, as well as the previous freight railroad mergers, have served to exacerbate the current situation in which commuter rail employer tax burdens are three times that of FICA-based employers. APTA is concerned that the proposed action will result in additional cross-subsidization of the freight railroads by publicly funded commuter railroads.

APTA suggests that the STB review the 1990 report “Commission on Railroad Retirement Reform”. Further, the impact that this acquisition and further declines in freight railroad employment will have on commuter rail systems needs to be considered by the STB in conjunction with the Railroad Retirement Board. The STB needs to impose conditions to this acquisition that will ensure that CSX and NS fund any negative financial impacts of the merger upon the commuter railroads’ contributions to railroad retirement.

Conclusion

In the freight industry there is a group of customers who are known as “captive shippers,” railroad customers who have no other alternatives in moving their products and are tied to one railroad. Because there is no competition for their business, captive shippers frequently pay higher rates and get poorer quality service.

The relationship of a commuter railroad to a freight railroad is that of a captive shipper. Commuter railroads that rent their tracks/ROW do not have an alternative way to transport their passengers. If they cannot use the tracks/ROW at the time that their customers want to travel, there is no need for their service. If their use of the railroad is subject to frequent delays, the quality of their service will be poor and it will go unused. And if they cannot gain reliable access to the railroad -- the only alternative is to abandon their passengers.
Our nation needs to maximize the public's use of mass transportation systems in order to enhance mobility and improve the environment. The establishment of cooperative and mutually beneficial relationships— not captive shipper relationships— between freight and commuter railroads is essential to the success and efficiency of the industry. The STB's review of the acquisition of Conrail's assets and rights by CSX and NS will play a role in how those relationships are defined in the future.

The American Public Transit Association urges you and the Board to ensure that commuter rail operations can continue to provide the American public with high quality and efficient transportation service.

Sincerely,

William W. Millar
President

cc APTA Commuter Rail Members
APTA's Commuter Railroad Members

Caltrain, San Carlos, CA
Connecticut Department of Transportation, Newington, CT
Mass Transit Administration of Maryland (MARC), BWI Airport, MD
Massachusetts Bay Transportation Authority, Boston, MA
Metra, Chicago IL
MTA - Metro-North Commuter Railroad, New York, NY
MTA - Long Island Railroad, Jamaica, NY
New Jersey Transit Corporation, Newark, NJ
Northern Indiana Commuter Transportation District (NICTD), Chester, IN
Southeastern Pennsylvania Transportation Authority (SEPTA), Philadelphia, PA
Tri-County Commuter Rail Authority, Ft. Lauderdale, FL
Trinity Railway Express, Dallas, TX
Southern California Regional Rail Authority (Metrolink), Los Angeles, CA
Virginia Railway Express (VRE), Arlington, VA

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AFFIDAVIT OF SERVICE BY MAIL

State of New York, County of Jefferson, United States of America

I, Angelo J. Chick, Jr., say: I am over the age of 21; I reside in the County of Jefferson, State of New York, United States of America. On this 27th day of August 1997 I served the attached "ATTACHED FILINGS FILED WITH SURFACE TRANSPORTATION BOARD FOR FINANCE DOCKET NUMBER 33388 all Parties of Record listed in Decision Number 21 dated August 19, 1997 at address listed for Parties of Record listed by depositing a true copy of same enclosed in a postal paid wrapper under the exclusive care and custody of the U.S. Postal Service within the State of New York, United States of America.

Angelo J. Chick, Jr.
NOTICE OF INTENT TO PARTICIPATE IN PROCEEDING DUE

S.T.B. 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

This is Notice of Intent to Participate in proceeding due for Surface Transportation Board Finance Docket Number 33388 for myself individually and for and on behalf of the interests of the individuals and membership of Brotherhood of Locomotive Engineers Division 227, Chartered and located at Gouverneur, New York and Pulaski, New York with offices located at 48396 Old Goose Bay Road, P.O. Box 908, Redwood, New York 13679 and Meeting Place at Potsdam, New York and Watertown, New York and be recognized as a "PARTY OF RECORD" in any and all proceedings.

Dated: July 28, 1997
At: PO Box, 48398 Old Goose Bay Road
Redwood, New York 13679

COPY

Angel J. Chick, Jr.
Local Chairman
Brotherhood of Locomotive Engineers Division 227
AFFIDAVIT OF SERVICE BY MAIL

State of New York, County of Jefferson, United States of America

I Angelo J. Chick, Jr., being sworn says: I am over the age of 21; I reside in the County of Jefferson, State of New York, United States of America. On this 28th day of August 1997 I served the attached NOTICE OF INTENT TO PARTICIPATE IN PROCEEDING DUE, Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; Richard A. Allen, Esq., Zuckert Scoutt & Rasenberger, L.L.P., 100, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036, by depositing a true copy of same enclosed in a post paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York, United States of America.

Subscribed and Sworn to before me this 28th day of July, 1997

Angelc J. Chick, Jr.

CONCETTA LINCOLN
NOTARY PUBLIC

CONCETTA LINCOLN
NOTARY PUBLIC STATE OF NEW YORK
REGISTRATION NO. 0111462979
QUALIFIED IN JEFFERSON COUNTY
COMMISSION EXPIRES 04/00 28
Office of the Secretary  
Case Control Branch  
Attention STB Finance Docket NO. 33388  
Surface Transportation Board  
1925 "K" Street, NW  
Washington, D.C. 20423-0001

PETITION FOR CONDITIONS  
SURFACE TRANSPORTATION BOARD DOCKET NO 33388

Angelo J. Chick, Jr. acting on behalf and for himself and the members of Brotherhood of Locomotive Engineers Division 227 ask that the following conditions be met for this Finance Docket Number 33388:

1. Any Seniority System established for the "Northern District" on the CSX System recognize the Equities, Rights, Prior Rights and Prior-Prior Rights to the Jobs and Equities established Prior to the acquisition of Con Rail by CSX and NS Corporations.

For these reasons listed:

1. Referring to Appendix "A" Projected Seniority, Agreement and Territory Changes Required for the Operating Plan, pages 485 through 490. The "Northern District" referred to on page 487 is entirely on the present Con Rail System and does not integrate with other former rail lines. The present Con Rail Agreements are more than adequate to give CSX the latitude to establish any service that might be envisioned. Article R-s-2 pages 35 through 40 of the present agreement between Con Rail and the Brotherhood of Locomotive Engineers would give CSX the right to establish any service envisioned and a corresponding agreement is contained in the Trainmen's Agreement with Con Rail.

2. Refer to page 489, "Since the Northern District will be composed entirely of former Conrail lines and employees, the Conrail collective bargaining agreements will be applicable." The present agreements are in part the result of legislation, the "North East Rail Services Act" of 1976, which sets forth certain conditions that require that Prior Rights and Equities be met.

3. Refer to page 489, 3rd paragraph, last sentence. CSX will have an efficient rule for qualifying employees Article G-s-12 page 109 through 111, and also for their transfer from one location to another Article S-e-3 under the
present Conrail - BLE Agreements.

4. The present Conrail Agreement with the BLE does address the question of seniority in Article 5-e-1 pages 65 through 69. This article makes any reference to date of hire seniority moot. Inasmuch as the present seniority for Conrail Engineers gives all Engineers on Conrail a System Seniority date of June 1, 1980 or a date subsequent to that date if Engineers Seniority had not been established prior to that date.

5. Any Seniority System that would not address the Rights, Prior Rights, Prior-Prior Rights and Equities and only address the "Date of Hire" for Locomotive Engineers will not only violate the present Conrail - BLE Agreement and the "North East Rail Services Act" but it will also violate the Constitution and Bylaws of the Brotherhood of Locomotive Engineers, Standing Rules 33, 34 and 35.

Respectively submitted for Brotherhood of Locomotive Engineers Division 227,

Sincerely,

Angelo J. Chick, Jr.
Chairman of the Local Grievance Committee for Brotherhood of Locomotive Engineers Division 227
LIST OF EXHIBITS

For: Petition for Conditions submitted by Angelo J. Chick, Jr., Chairman of the Local Grievance Committee for Division 227, Brotherhood of Locomotive Engineers
Surface Transportation Board Docket No 33388

Exhibit "A" Article R-s-2, agreement between Consolidated Rail Corporation and the Brotherhood of Locomotive Engineers.

Exhibit "B" Article G-s-13, agreement between Consolidated Rail Corporation and the Brotherhood of Locomotive Engineers.

Exhibit "C" Part 4, Subpart B Section 1146 and Section 4110 of Section 1131 of Public Law 97-35
Cited as the "Northeast Rail Services Act of 1981"
(a) Intraseniority and interseniority district road freight service may be established by the Corporation. Road freight service entirely within a Conrail seniority district which runs through an established home or away-from-home terminal crew change point is intraseniority district service. Road freight service between Conrail seniority districts is interseniority district service.

(b) Thirty days advance notice shall be given to the General Chairman when intraseniority district road freight service is to be established by the Corporation where a prior-prior or prior right equity in the work may accrue to engineers within a Conrail seniority district or when interseniority district road service is to be established, the total mileage of all runs in such road freight service in which the engineers of the seniority districts are entitled to participate, shall be determined, and these runs divided between the engineers of the seniority districts entitled to participate, on the basis of the percentage which the mileage actually run on each of the seniority districts bears to the total mileage made in such service on the participating seniority districts.

(c) Engineers in interseniority district road freight service may make up to three moves as follows at each of the (1) initial terminal, (2) intermediate points and (3) final terminal in addition to picking up/yarding the train; and in connection therewith, spot, pull, couple, or uncouple cars set out or picked up by them and reset any cars disturbed. Each move may include pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

(d) When computing the mileage of an intraseniority or interseniority district run under the provisions of paragraph (b) whose actual mileage is less than 100, such actual mileage shall be proportionately expanded to 100 miles.

EXAMPLE: Intraseniority or interseniority district run makes 25 miles over seniority district A, 15 miles over seniority district B, and 10 miles over seniority district C, such run making a total of 50 actual miles. In computing mileage of this run, seniority district A should be credited with 50 miles, seniority district B with 30 miles, seniority district C with 20 miles.

(e) Services covered by paragraph (b) shall each be computed and allotted separately.

(f) Where computations under paragraph (b) develop that the engineers on no one seniority district are entitled to all of a run or assignment, such run or assignment shall be considered as a rotating run or assignment to be periodically covered by the engineers of each seniority district entitled to participate in proportion to their percentage interest in such run or assignment.

In such cases, the length of time in the complete cycle or periodic occupancy may be determined by the General Chairman, but in no event shall it exceed 1 year, nor be for a shorter period than 60 days.

EXAMPLE: Interseniority district run makes 50 miles over seniority district A, 33.4 miles over seniority district B, and 16.6 miles over seniority district C; such runs may be allotted to engineers on seniority district A for 3 months, seniority district B for 2 months, and to seniority district C for 1 month. Such cycle, however, could not be greater than 6 months to seniority district A, 4 months to seniority district B, and 2 months to seniority district C.

(g) In computing and allotting runs under paragraph (b), the mileage made over tracks within the switching limits of the initial and final terminal, or over foreign railroads, shall be considered neutral mileage to which none of the participating seniority districts are entitled to credit.
(h) In computing and allotting service under the provisions of paragraph (b), mileage made by extra crews shall be debited to the seniority district furnishing such extra crews in periodic checks made of such service. Such periodic check may be made as determined by the General Chairman, but in no event shall it be less often than once a year, nor more often than once in 60 days.

(i) The following conditions shall apply to intraseniority and interseniority district road service established under this article:

1. Runs shall be adequate for efficient operation and reasonable in regard to miles run, hours on duty and other conditions of work.

2. All miles operated over the number of miles comprising a basic day shall be paid for at the mileage rate established by the basic rate of pay for the first one hundred miles or less. Mileage rates of pay, for miles run in excess of the number of miles comprising a basic day, applicable to intraseniority and interseniority district runs now existing or to be established in the future shall not exceed the applicable rates as of June 30, 1986. Such rates shall be exempted from general, cost-of-living, or other forms of wage increases. Weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

3. In order to expedite the movement of trains in intraseniority and interseniority district service, the Carrier shall determine the condition under which engineers may stop en route to eat. When engineers on intraseniority or interseniority runs are not permitted to stop to eat they shall be paid an allowance of $2.00 for the trip.

4. Deadhead payments shall be as provided in Article G-e-1 except that on runs over two hundred miles payment for deadhead to employees with seniority in engine or train service established prior to November 1, 1985 shall be on the basis of one-half miles for the deadhead trip with not less than payment of a minimum day in separate service unless actual time consumed is greater, in which event the latter amount shall be allowed.

5. Engineers in intraseniority or interseniority district service cut out en route account hours of service shall be deadheaded to the destination terminal of the train.

6. Engineers assigned to regular assigned runs in interseniority or intraseniority district service shall not be held at the away-from-home terminal so that they cannot cover their assigned run out of the home terminal.

7. When engineers are required to report for duty or are relieved from duty at a point other than the on and off duty point fixed for the service established hereunder, the engineer shall be furnished suitable transportation as provided in Article R-s-7.

8. On runs which operate through an established home terminal the following additional conditions shall apply:

(A) Any engineer adversely affected either directly or indirectly as a result of establishing service under this paragraph (i) (8) shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of May 1936, except that for the purposes of this paragraph (i) (8), Section 7(a) is amended to read 100% (less earnings in outside employment) instead of 60% and extended to provide period of payment equivalent to length of service not to exceed 5 years and to provide further that allowances in Section 6 and 7 be increased by subsequent general wage increases.

(B) Any engineer required to change his residence as a result of services established under this paragraph (i) (8) shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement and in addition to such benefits shall receive a transfer allowance of four hundred dollars and five working days instead of the “two working days” provided by Section 10(a) of said agreement. Under this paragraph, change of residence shall not be considered “required” if the reporting point to which the engineer is changed is not more than 30 miles from his former reporting point.

NOTE: If any engineer is entitled to benefits greater than those provided in paragraphs (i) (8) (A) and (B) by law such greater benefits shall apply subject to the terms and obligations of the Corporation and the engineer under such law.

Questions and Answers

1. Q. Re (a). Intraseniority district service is defined as service within a Central seniority district which runs through an established home or away-from-home terminal crew...
change point. Will it be necessary to readvertise engineer positions in such service?

A. No.

2. Q. Re (c). Will this paragraph apply at points where yard crews are or are not employed?

A. Yes.

3. Q. Re (g). This provides that mileage made over tracks within the switching limits of the initial and final terminal shall be considered neutral mileage to which none of the participating seniority districts are entitled to credit. In some territories the mileage from the center of the yard at the initial terminal to the center of the yard at the final terminal has been used for equity allocation purposes, will this continue?

A. The mileage traversed over tracks within the switching limits of the initial and final terminal shall be considered neutral mileage for service established under this Article.

4. Q. Re (i)(2). Are there any exceptions wherein intraseniority and interseniority district runs would be paid for miles run over 100 at other than basic rate of pay for the first one hundred miles or less?

A. No.

5. Q. Re (i)(5). Doesn't this paragraph conflict with R-s-3 (b).

A. No, paragraph (i)(5) applies to inter and intra seniority district service (operating through an established crew change point) and R-s-3 (b) applies to other road service.

6. Q. Is the over-mile rate for interdivisional runs already in effect frozen?

A. Yes, at the rate of pay in effect on June 30, 1986.

7. Q. Are local or system agreements dealing with interdivisional runs canceled or have the over-miles just been frozen?

A. Such agreements are not canceled; however, payments for miles run in excess of the number of miles encom-
Article G-s-13 - QUALIFYING ON PHYSICAL CHARACTERISTICS

(a) When an engineer exercises seniority in an assignment which requires him to operate over territory in which he has not been qualified on the physical characteristics, he shall become qualified for service over such territory without expense to the Corporation.

(b) When an engineer is force assigned to an assignment for which no bids were received or is set up on an extra list, pursuant to paragraph (c) of Article S-e-3, which requires him or her to operate over territory in which he or she has not been qualified on the physical characteristics, the engineer shall become qualified for service over such territory and shall be compensated in accordance with paragraphs (c) and (d) of this Article.

(c) Engineers engaged in qualifying pursuant to paragraph (b) shall be compensated on an hourly basis for each day spent training to become qualified at the straight time basic through freight rate of pay, with a minimum of 8 hours.

(d) The maximum number of days an engineer engaged in qualifying pursuant to paragraph (b) may be compensated for while training to become qualified on a specific territory shall be determined by the Division Superintendent and the General Chairman of the Brotherhood of Locomotive Engineers. Any time necessary to qualify in excess of the time designated shall be at no expense to the Corporation.

(e) The manner in which an engineer receives his training to become qualified on the physical characteristics shall be determined by the Corporation.

(f) Before performing service on an assignment which requires him to operate over territory in which he has not been qualified, the engineer shall be required, without compensation therefor, to pass an examination on the physical characteristics of the territory involved. Engineers who are not examined on the physical characteristics within 48 hours after signifying they are ready for such examination shall be paid 8 hours at the straight time basic rate of pay applicable to the class of service to which they are assigned for the dates their assignment is operated without them. When held off an extra list, they shall be paid 8 hours at the straight time basic rate of pay applicable to the preponderant class of service covered by that extra list for each calendar day they are withheld from the list and on which they do not perform service. Payment under this paragraph (f) shall cease if, when examined, the engineer fails to qualify.

(g) An engineer shall not be permitted to mark up on an extra list until he is qualified on the physical characteristics of all the territory accruing to that extra list.

(h) When an engineer is force assigned to an assignment in a territory where his qualification on the physical characteristics has lapsed he shall be allowed one trip or tour of duty under pay to requalify.

Questions and Answers

1. Q. Re (a). Does this apply to the voluntary exercise of seniority?
   A. Yes.

2. Q. Re (a). Does this apply to prior right engineers who exercise their seniority off their prior right territory?
   A. Yes, except where operations of the former railroads have been consolidated, prior right engineers will be allowed the qualifying time determined under paragraph (d) for the territory other than their prior right territory.

3. Q. Will paragraphs (b), (c), (d), (e) and (f) apply to the engineers who are on an extra list when new assignments to be covered by that extra list are established over territory on which such engineers are not qualified?
   A. Yes.

4. Q. Re (d). Will engineers be provided pilots where the Superintendent and General Chairman have failed to determine qualifying time?
   A. Yes, on an interim basis.

5. Q. Re (h). When pool freight service is advertised to
operate over alternate routes and the service is not operated over one or more of the available routes frequently enough for the engineers to remain qualified on the physical characteristics in compliance with the Corporation Operating Rules, will the engineers in the pool, although not force assigned, be allowed the trip provided for in paragraph (h) to requalify?

A. Yes.

6. Q. In cases where an engineer can't hold a job or assignment in territory where he is qualified and he is forced to exercise seniority to another territory where he is not qualified in order to work, will he be paid to qualify?

A. If an engineer is required by other provisions of this agreement to exercise seniority to a territory in which he is not qualified in order to work, he will be subject to the provisions of paragraph (b) or (h) of this Article.

7. Q. If during qualifying time an engineer must lay over at an away-from-home terminal, will he be subject to the provisions of Article G-c-4?

A. Yes.

October 19, 1995

Mr. W. Godwin  
General Chairman  
Brotherhood of Locomotive Engineers  
110 Abbott Road, Suite 200  
Buffalo, NY 14220

Dear Mr. Godwin:

This refers to our continuing discussions concerning proposed amendments to the January 1, 1979 BLE Single Collective Bargaining Agreement. During the course of those discussions, we reached consensus on certain issues involving employee utilization. We agreed that a work force which is properly motivated to be qualified and reliably available serves both our interests. To further these goals we agree to amend Articles G-s-13(b), S-c-3(c) and (d), S-c-4, S-c-1, as amended, and S-e-3(b), as amended, as well as S-e-3 and S-e-4 as follows:

I. ARTICLE G-s-13(b) is amended to read:

"When an Engineer is force assigned to an Engineer's assignment for which no bids were received or is set up on an extra list, pursuant to paragraph (c) of Article S-c-3, which requires him or her to operate over territory in which he or she is not qualified on the physical characteristics, the Engineer shall become qualified for service over such territory and shall be compensated in accordance with paragraphs (c) and (d) of this Article."

II. ARTICLE S-c-3(c) and (d) are amended to read:

"(c) If a permanent vacancy develops for an Engineer for which no valid applications are received or if an extra list is to be increased in accordance with paragraph (e), it shall be filled in the following order:

A. Yes.

the Railway Retirement Act of 1974 before amendment by this Act or under section 207(2) of Public Law 93-445 shall be increased only by the same percentage, or percentages, as an employee's annuity amount determined under section 3(b) of the Railroad Retirement Act of 1974 is increased under section 3(g) of the Railroad Retirement Act of 1974 on or after October 1, 1981. Section 4(g)(5) and 4(g)(6) of the Railroad Retirement Act of 1974, as amended by this Act, shall take effect on October 1, 1981.

(g) The amendments made by sections 1118(b), 1118(g), 1120(b), 1122(a)(2), 1122(b)(1), 1122(c), 1124, 1126, and 1127 of this Act shall take effect October 1, 1981.

(h) The amendments made by sections 1117(e)(2), 1117(f), 1118(h)(2), and 1119(b)(4) shall take effect January 1, 1982.

Subtitle E—Conrail

Sec. 1131. This subtitle may be cited as the "Northeast Rail Service Act of 1981".

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stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act.

(g) If the emergency board selects a final offer submitted by the employees and the carrier refuses to accept such offer, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

(h) The provisions set forth in this section shall be the exclusive means for resolving any dispute relating to entering into an initial collective bargaining agreement between Amtrak Commuter or a commuter authority, as the case may be, and representatives of the various classes or crafts of employees to be transferred to Amtrak Commuter or such commuter authority.

Subpart B—Freight Employees

LABOR TRANSFER

Sec. 1146. (a) Title IV of the Regional Rail Reorganization Act of 1973, as added by this subtitle, is amended by adding at the end thereof the following new sections:

"LABOR TRANSFER AGREEMENTS"

Sec. 411. (a) IMPLEMENTING AGREEMENT.—Within 90 days after the date any freight transfer agreement is entered into under this title, any Class I or Class II railroad purchasing rail properties under such agreement, including any entity that attains such status on the transfer date, and the representatives of the various crafts or classes of employees of the Corporation to be transferred to such railroad or other entity shall commence implementing agreement negotiations. Such negotiations shall—

(1) determine the number of employees to be transferred to such railroad;

(2) identify the specific employees of the Corporation to whom such railroad or other entity offers employment;

(3) determine the procedure by which such employees may elect to accept employment with such railroad or other entity;

(4) determine the procedure for acceptance of such employees into employment with such railroad or other entity;

(5) determine the procedure for determining the seniority of such employees in their respective crafts or classes in the system of such railroad or other entity, which shall, to the extent possible, preserve their prior freight service seniority rights; and

(6) ensure that all such employees are transferred to such railroad or other entity no later than 120 days after the date the agreement is entered into under this title.

(b) DECISION OF REFEREE.—(1) If no agreement with respect to the matters being negotiated pursuant to subsection (a) is reached within 30 days after the date such negotiations are commenced, the parties to the negotiations shall, within an additional 10 days, select a neutral referee. If the parties are unable to agree upon the selection of such a referee, the National Mediation Board shall promptly appoint a referee.

(2) The referee shall commence hearings on the matters being negotiated pursuant to subsection (a) within 10 days after the date he is selected or appointed, and shall render a decision within 30 days.
PUBLIC LAW 97-35—AUG. 13, 1981
95 STAT. 673

after the date of commencement of such hearings. All parties may participate in the hearings, but the referee shall have the only vote.

"(3) The referee shall resolve and decide all matters in dispute with respect to the negotiation of the implementing agreement or agreements. The referee's decision shall be final and binding to the same extent as an award of an adjustment board under section 3 of the Railway Labor Act, and shall constitute the implementing agreement or agreements between the parties. The National Mediation Board shall fix and pay the compensation of such referees.

"LABOR CONDITIONS"

"SEC. 412. (a) NEW YORK DOCK.—Employees of the Corporation who are transferred under this title shall be entitled to the labor protection benefits set forth in New York Dock Railway-Contract-Brooklyn: Eastern Terminal, 360 ICC 60 (1979), except as provided in subsection (b) of this section.

"(b) ALTERNATIVES.—(1) If the entity to which such employees are transferred was a railroad under the provisions of subtitle IV of title 49, United States Code, prior to the date of transfer, and the parties are unable to reach a collective bargaining agreement under procedures referred to in subsection (a), the collective bargaining agreement in effect between such railroad and its employees shall govern.

"(2) If the entity to which such employees are transferred was not a railroad under the provisions of subtitle IV of title 49, United States Code, prior to the date of transfer, and the parties are unable to reach a collective bargaining agreement under procedures referred to in subsection (a), the collective bargaining agreement in effect between the Corporation and its employees prior to the date of transfer shall govern.

"(c) CLASS III EXEMPTION.—The provisions of this section shall not apply to any Class III carrier.

(b) The table of contents of the Regional Rail Reorganization Act of 1973 is amended by striking out the items relating to title IV and inserting in lieu thereof the following new items:

"TITLE IV—TRANSFER OF FREIGHT SERVICE"

"Sec. 401. Interest of United States.
Sec. 402. Debt and preferred stock.
Sec. 403. Profitability determinations.
Sec. 404. Failure to sell as entity.
Sec. 405. Transfer plan.
Sec. 407. Public comment and congressional notification.
Sec. 408. Performance under agreements; effect.
Sec. 409. Assignment.
Sec. 410. Subsidiaries.
Sec. 411. Labor transfer agreements.
Sec. 412. Labor conditions.

PART 5—UNITED STATES RAILWAY ASSOCIATION ORGANIZATION OF USRA"

Sec. 1147. Section 201 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended by striking out subsections (d) through (i), by redesignating subsection (j) and (k) as subsections (g) and (h), respectively, and by inserting after subsection (f) the following new subsections:
AFFIDAVIT OF SERVICE BY MAIL

State of New York, County of Jefferson, United States of America

I Angelo J. Chick, Jr., says: I am over the age of 21; I reside in the County of Jefferson, State of New York, United States of America. On this 18th day of August 1997 I served the attached PETITION FOR CONDITIONS AND LIST OF EXHIBITS AND EXHIBITS, Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004-1202; Richard A. Allen, Esq., Zuckert Scoutt & Rascherger, L.L.P., 600, 888 Seventeenth Street, N.W., Washington, DC 20006-3939; and Paul L. Cunningham, Esq., Harkins Cunningham, Suite 600, 1600 Nineteenth Street, N.W., Washington, DC 20036, by depositing a true copy of same enclosed in a post paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within the State of New York, United States of America.

Angelo J. Chick, Jr.
To The Secretary:

This notice is to certify that the North Jersey Transportation Planning Authority, Inc., J. William Van Dyke, Chairman, acting as representative before the STB in the matter of Docket No. 33388, has complied with the requirements of STB Decision No. 21 by supplying all Parties of Record with our filings to date. These materials were sent on Wednesday, August 27, 1997 by First Class U.S. Postage to all Parties of Record as listed in Bulletin No. 21.

Sincerely,

J. William Van Dyke
Chairman
August 26, 1997

Honorable Vernon A. Williams
Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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

Dear Secretary Williams:

Pursuant to Decision No. 21 in the above-referenced proceeding, enclosed please find the original and ten copies of the Certificate of Service of Metro-North Commuter Railroad Company for filing in this matter.

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

Respectfully submitted,

Walter E. Zullig, Jr.
Special Counsel
(212) 340-2027

Enclosure

cc: Administrative Law Judge Jacob Leventhal
All Parties on Record on Service List
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 1997, a copy of all filings in Finance Docket No. 33388 submitted by Metro-North Commuter Railroad Company prior to the service date of Board Decision No. 21 have been served (to the extent not previously served), by first class U.S. mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the service list attached to Board Decision No. 21.

WALTER E. ZULLIG, JR.
July 30, 1997

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

RE: Finance Docket No. 33388

Ladies/Gentlemen:

Transmitted for filing are the original and 25 copies of Metro-North Commuter Railroad Company's Notice of Intent to Participate in the above-captioned proceeding.

A Certificate of Service on the persons listed in the Board's Decision served July 23, 1997, is attached.

Please get in touch with me if anything further is required.

Respectfully submitted,

Walter E. Zullig Jr.,
Special Counsel
July 30, 1997

Surface Transportation Board
Office of the Secretary
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 Rail Corporation

Dear Secretary Williams:

By this letter, Metro-North Commuter Railroad Company ("MNCR") submits notice to the Surface Transportation Board of its intent to participate in the above-captioned proceeding.

MNCR is a public benefit corporation of the State of New York which provides commuter railroad passenger transportation over several railroad lines which radiate out of Grand Central Terminal in New York City. Under the proposal submitted by CSX and Norfolk Southern ("NS") in the instant case, CSX will operate freight train service over portions of three of MNCR's lines. Likewise, NS will operate freight train service over a fourth line over which commuter railroad passenger service is operated by NJ Transit Rail Operations, Inc., under a service contract with MNCR.

MNCR hereby requests that it be made a party to this proceeding, that it be added to the appropriate service lists, and that the Board furnish it with all relevant notices hereafter. Correspondence should be sent as follows:

Walter E. Zullig Jr., Esq., Special Counsel
Metro-North Commuter Railroad Company
347 Madison Avenue (19th Floor)
New York, NY 10017

Thank you for your courtesy in this matter.

Respectfully submitted,

Walter E. Zullig Jr.
Special Counsel

MTA Metro-North Railroad is an agency of the Metropolitan Transportation Authority, State of New York

F. Vergil Conway, Chairman
CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of July 1997 served a copy of the foregoing Notice of Intent to Participate on Administrative Law Judge Jacob Leventhal, Dennis G. Lyons, Esq., Richard A. Allen, Esq. and Paul A. Cunningham, Esq. by means of U. S. Mail, first class postage prepaid.

Walter E. Zullig Jr.

62071/57.wez
August 23, 1997

Regulatory Law Office
U 3963

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

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

Dear Secretary Williams:

Enclosed are an original and ten (10) copies of the Certificate of Service of the Department of Defense for filing in the subject proceeding. This filing is to comply with the provisions of this Board’s Decision No. 21, served August 19, 1997 in this matter.

If anything further is required please contact me at (703) 696-1644.

Sincerely,

Peter Q. Nyce Jr.
General Attorney
Regulatory Law Office
US Army Legal Services Agency
901 N. Stuart St., Suite 713
Arlington, VA 22203

Enclosure

cf. The Honorable Jacob Leventhal
All Parties of Record
BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the provisions of Decision No. 21 served August 19, 1997 in the above-captioned case, a copy of the attached request of the Department of Defense to become a “party of record” was served, by copy of this filing, on all parties of record identified in Decision No. 21, by first class mail, postage prepaid on this 28th day of August, 1997.

Respectfully Submitted,

Peter Q. Nyce Jr.
Regulatory Law Office
Us Army Legal Services Agency
August 29, 1997

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

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

Dear Mr. Secretary:

Enclosed for filing in the above matter are the original and 10 copies of a certificate of service stating that Metropolitan Transportation Authority's previous filing in this matter (an August 5, 1997 Notice of Intent to Participate) has been served on Administrative Law Judge Jacob Leventhal and upon each Party of Record identified on the service list attached to the Board's Decision No. 21.

Respectfully submitted,

Anthony P. Semancik  
Deputy General Counsel  
(212) 878-7248

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

Parties of Record
BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I, Anthony P. Semancik, hereby certify that on this 29th day of August, 1997, I caused a true copy of Metropolitan Transportation Authority's August 5, 1997 Notice of Intent to Participate in STB Finance Docket No. 33388 (to date, Metropolitan Transportation Authority's only filing in this matter) to be served by first class U.S. mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and upon each Party of Record identified as such on the service list attached to the Board's Decision No. 21.

Anthony P. Semancik
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Administrative Law Judge Jacob Leventhal and all
Parties of Record as provided on the attached list, by first class mail, with the notice of
the American Public Transit Association’s previous filing in the above captioned
proceeding.

Mattie C. Condray
Senior Counsel
American Public Transit Association
1201 New York Avenue, NW
Washington, DC 20005
202/898-4108
FINANCE DOCKET NO. 33888

PARTY OF RECORD
J D FITZGERALD
UTU, GENERAL CHAIRPERSON
400 E EVERGREEN BLVD STE 217
VANCOUVER WA 98660-3264 US

Reps: UNITED TRANSPORTATION UNION-GENERAL COMMITTEE OF ADJUSTMENT CO 186

PARTY OF RECORD
STEPHEN M FONTAINE
MASSACHUSETTS CENTRAL RAILROAD CORPORATION
ONE WILISRAHAM STREET
PALMER MA 01059 US

Reps: MASSACHUSETTS CENTRAL RAILROAD CORPORATION

GOVERNOR
HONORABLE KIRK FORDICE, GOVERNOR
STATE OF MISSISSIPPI
P O BOX 139
JACKSON MS 39203 US

Member of Congress
HONORABLE TIL LE K FOWLER
US HOUSE REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
GARLAND B GARTHET JR
NC DEPT OF TRANSPORTATION
P O BOX 35201
RALEIGH NC 27611 US

PARTY OF RECORD
MICHAEL J GARRIGAN
BP CHEMICALS INC
4440 WARRENSVILLE CTR RD
CLEVELAND OH 44128 US

Reps: BP AMERICA, INC

PARTY OF RECORD
RICHARD A GAVREL
16700 GENTRY LANE NO 104
TINLEY PARK IL 60477 US

PARTY OF RECORD
PETER A GILBERTSON
REGIONAL RRS OF AMERICA
122 C ST NW STE 850
WASHINGTON DC 20001 US

Reps: REGIONAL RAILROADS OF AMERICA

PARTY OF RECORD
LOUIS E GITOMER
BALL JANIK LLP
1453 F STREET NW SUITE 223
WASHINGTON DC 20005 US

Reps: APL LAND TRANSPORT SERVICES
DELAWARE VALLEY RAILWAY COMPANY INC
HURON AND EASTERN RAILWAY COMPANY INC
RAILAMERICA INC
SAGINAW VALLEY RAILWAY COMPANY INC

MEMBER OF CONGRESS
HONORABLE JOHN GLENN
U S SENATE ATTN: ANISA BELL
200 N HIGH STREET S-600
COLUMBUS OH 43215-2408 US

Reps: GRA INC

PARTY OF RECORD
DOUGLAS S GOLDEN
SUITE 200
533 FELLOWSHIP ROAD
MT LAUREL NJ 08054 US

Reps: PENNSYLVANIA SENATE TRANSPORTATION COMMITTEE

PARTY OF RECORD
ANDREW P GOLDESTIN
c CATHY, SWEENEY ET AL
1739 PENNSYLVANIA AVE NW
WASHINGTN DC 20006 US

Reps: ARCHER DANIELS MIDLAND CO
NATIONAL GRAIN AND FEED ASSOCIATION

PARTY OF RECORD
JOHN GORDON
NATIONAL LIME & STONE COMPANY
P O BOX 120
FINDLAY OH 45840 US

Reps: NATIONAL LIME & STONE COMPANY

PARTY OF RECORD
EDWARD D GROBBER
GALLAND, KSHABASCHE, MORSE & GARFinkle
1034 THIRTY-FIRST STREET NW
WASHINGTN DC 20037-4492 US

Reps: PROVIDE, CE AND WORCESTER RAILROAD COMPANY
STEEL WAREHOUSE CO INC
THE INTERNATIONAL PAPER COMPANY

PARTY OF RECORD
ETER A GREENE
THOMPSON HINE FLORY
1750 N STREET NW, SUITE 800
WASHINGTON DC 20006 US

Reps: TOLEDO-LUCAS COUNTY PORT AUTHORITY
TOLEDO-LUCAS COUNTY PORT AUTHORITY

PARTY OF RECORD
ROBERT E GREENLESE
TOLEDO-LUCAS COUNTY PORT AUTHORITY
1 MARITIME PLAZA SUITE 700
TOLEDO OH 43604 US

Reps: TOLEDO-LUCAS COUNTY PORT AUTHORITY

PARTY OF RECORD
DONALD F GRIFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
460 N CAPITOL ST NW SUITE 832
WASHINGTON DC 20001 US

Reps: GRA INC

PARTY OF RECORD
JOHN J GROCKI
115 WEST AV ONE JENKINTOWN STA
JENKINTOWN PA 19046 US

Reps: GRA INCORPORATED
FINANCE DOCKET NO. 33388

PARTY OF RECORD
JAMES F. MCGRAIL
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSP.
& CONST.
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

Represent: COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION

PARTY OF RECORD
FRANCIS G. MCKINNON
ANDERSON & PENCE ET. AL.
1700 F ST NW SUITE 1107
WASHINGTON DC 20006 US

Represent: WEST VIRGINIA STATE RAIL AUTHORITY

PARTY OF RECORD
COLETTA MCNAMEE SR
CUDELL IMPROVEMENT INC
11500 ? RANKIN BLVD STE 104
CLEVELAND OH 44102 US

Represent: CUDELL IMPROVEMENT INC

MEMBER OF CONGRESS
HONORABLE MICHAEL McNULTY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3321 US

PARTY OF RECORD
H. DOUGLAS MIDKOFF
65 WEST BROAD ST STE 101
ROCHESTER NY 14614-2210 US

Represent: GENESEE TRANSPORTATION COUNCIL

MEMBER OF CONGRESS
HONORABLE BARBARA A. MCDONALD
UNITED STATES SENATE
WASHINGTON DC 20510 US

PARTY OF RECORD
CLINTON J MILLER, III, GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107-4250 US

PARTY OF RECORD
G. PAUL MCATES
SIDLEY & AUSTRIN
1722 EYE ST. S W
WASHINGTON DC 20006 US

Represent: MOATES SIDLEY & AUSTRIN

PARTY OF RECORD
C. V. MONT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET
CLEVELAND OH 44113 US

Represent: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PARTY OF RECORD
KARL MOLLER
BALL JANKS LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

Represent: ANN ARBOR RAILROAD
CHICAGO RAIL LINK LLC
CONNECTICUT SOUTHERN RAILROAD INC
GEORGIA WOODLANDS RAILROAD LLC
INDIANA & OHIO RAILWAY COMPANY
INDIANA SOUTHERN RAILROAD INC
MANUFACTURERS JUNCTION RAILWAY LLC
NEW ENGLAND CENTRAL RAILROAD INC
NEWBURG & SOUTH SHORE RAILROAD LTD
NORTHERN OHIO & WESTERN RAILWAY LLC
PITTSBURGH INDUSTRIAL RAILROAD INC

PARTY OF RECORD
IAN MUIR
BUNGE CORPORATION
P O BOX 28200
ST LOUIS MO 63146 US

Represent: NEW YORK STATE ELECTRIC & GAS

PARTY OF RECORD
JOHN R. MADDONI, VICE PRESIDENT & GENERAL COUNSEL
BOSTON & MAINE CORPORATION
IRON HORSE PARK
NO EBBERICA MA 01862 US

Represent: BOSTON AND MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPPKNOFIELD TERMINAL RAILWAY COMPANY

PARTY OF RECORD
S. J. NASCA
STATE LEGISLATIVE DIRECTOR UTU
35 FULLER ROAD STE 251
ALBANY NY 12205 US

PARTY OF RECORD
GERALD P. MORTON
HAIER'S CSNNE EBHAM
1300 19TH ST NW SUITE 600
WASHINGTON DC 20036 US

PARTY OFF RECORD
SANDRA L. MUNN
FROST & JACOBS LLP
201 EAST FIFTH STREET
CINCINNATI OH 45202 US

Represent: SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY

PARTY OF RECORD
PETER Q. MCNEAL, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

Represent: U. S. DEPARTMENT OF THE ARMY
PARTY OF RECORD
FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US
Represent: DELAWARE DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
RANDOLPH L. SEGER
MCNAIR COOK & WELCH PC
250 N MERIDIAN STREET STE 1100
INDIANAPOLIS IN 46204 US
Represent: CITY OF INDIANAPOLIS INDIANA

PARTY OF RECORD
DIANE KERTZ
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US
Represent: CENTRAL HUDSON GAS & ELECTRIC CORP.

PARTY OF RECORD
ANTHONY P. SEMANCZEK
347 MADISON AVENUE
NEW YORK NY 10017-3706 US
Represent: METROPOLITAN TRANSPORTATION AUTHORITY

PARTY OF RECORD
ROGER A. SERPE
INDIANA HARBOR BELT RR
175 WEST JACKSON BOULEVARD SUITE 1460
CHICAGO IL 60604 US
Represent: INDIANA HARBOR BELT RAILROAD COMPANY INC

PARTY OF RECORD
JAMES E SHEPHERD
TUSCOLA & SAGINAW BAY
PO BOX 550
OWOSSO MI 48867-0550 US
Represent: TUSCOLA & SAGINAW BAY RAILWAY COMPANY INC

PARTY OF RECORD
MARK H. SIDMAN
WEINER, BRODSKY, SIDMAN
1350 NEW YORK AVE NW STE 800
WASHINGTON DC 20005 US
Represent: CENTRAL RAILROAD COMPANY OF INDIANA

PARTY OF RECORD
PHILIP O SIDO
UNION CAMP CORPORATION
1600 VALLEY ROAD
WAYNE NJ 07470 US
Represent: UNION CAMP CORPORATION

PARTY OF RECORD
KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC.
2200 MILL ROAD

PARTY OF RECORD
PATRICK B. SIMMONS
NC DEPT OF TRANSP.
1 S WILMINGTON STREET ROOM 557
RALEIGH NC 27611 US
Represent: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
WILLIAM G SIEPEL
OPPESEIMER WOLFF & DONNELLY
180 N STETSON AVE TWO PRUDENTIAL PLAZA 45th FLOOR
CHICAGO IL 60601 US
Represent: BESSEMER & LAKE ERIE RR CO

PARTY OF RECORD
RICHARD G. SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE N E
WASHINGTON DC 20002 US

PARTY OF RECORD
WILLIAM L. SLOVER
SLOVER & LOFTUS
1234 SEVENTEENTH STREET NW
WASHINGTON DC 20036-5803 US
Represent: STATE OF NEW YORK DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
GARETT O SMITH
MOBIL OIL CORPORATION
3223 GALLOWS RD BM BA903
FAIRFAX VA 22037-0001 US
Represent: MOBIL OIL CORPORATION

PARTY OF RECORD
HON ROBERT F. SMITH
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
PAUL E. SMITH
U S DEPT OF TRANSP.
400 7TH ST SW, ROOM 4102 C-30
WASHINGTON DC 20590 US
Represent: U S DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
MIKE SPAHS
FINA OIL & CHEMICAL CO.
PO BOX 2159
DALLAS TX 75221 US
Represent: FINA OIL AND CHEMICAL COMPANY

PARTY OF RECORD
HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US
PARTY OF RECORD
CHARLES A SPITULNIK
HOPKINS & SUTTER
885 SIXTEENTH STREET NW
WASHINGTON DC 20001 US

Represent: COMMERTER RAIL DIVISION REGIONAL
TRANSIT AUTHORITY-NORTH EAST
ILLINOIS REGIONAL SUBWAY FUND
FLORIDA POWER & LIGHT COMPANY
NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION
PHILADELPHIA BELT LINE RAILROAD COMPANY

PARTY OF RECORD
MARY GABRIELLE SF JAGUE
335 TWP. TH STREET NW
WASHINGTON DC 20004-1202 US

MEMBER OF CONGRESS
HON. LOUIS E STOKES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
EILEEN S. STOMMES, DIRECTOR, TAM DIVISION
AGRICULTURAL MARKETING SERVICE, USDA
P. O. BOX 96456
WASHINGTON DC 20090-6456 US

Represent: U S DEPARTMENT OF AGRICULTURE

PARTY OF RECORD
SCOTT N. STONG
PATTON BOGGS LLP
2530 M STREET NW 7TH FLOOR
WASHINGTON DC 20037-1566 US

MEMBER OF CONGRESS
HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
D G STRUNK JR
GENERAL CHAIRPERSON UTU
817 KILBOURNE STREET
BELLEVUE OH 44811 US

Represent: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE O derailMENT CO-687

PARTY OF RECORD
JAMES F SULLIVAN
CT DEPT OF TRANSPORTATION
P.O. BOX 317346
NEWINGTON CT 06131 US

Represent: CONNECTICUT DEPARTMENT OF
TRANSPORTATION

PARTY OF RECORD
DAVID J. SWEENEY
MC CARYTE, SWENNEY & HARKAWAY, P. C.
1750 PENNSYLVANIA AVE NW, STE 1005
WASHINGTON DC 20006 US

Represent: PENNSYLVANIA POWER & LIGHT COMPANY

PARTY OF RECORD
ROBERT G. SZABO
V. NESS FELDMAN
1050 THO JEFFERSON STREET NW
WASHINGTON DC 20007 US

Represent: CONSUMERS UNITED FOR R * N. EQUITY

PARTY OF RECORD
J. E. THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19894 US

PARTY OF RECORD
K N THOMPSON
GENERAL CHAIRPERSON UTU
11017-F BORAVAS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

PARTY OF RECORD
WILLIAM R THOMPSON
CITY OF PHILADELPHIA LAW DEPT
1600 ARCH ST 10TH FLOOR
PHILADELPHIA PA 19103 US

PARTY OF RECORD
W. DAVID TIDWELL
HUTCHISON & GRUNDY
1200 SMITH STREET #3000
HOUSTON TX 77002 US

MEMBER OF CONGRESS
HONORABLE ROBERT G. TORRICELLI
1 RIVER FRONT PLAZA, 13RD FLOOR
NEWARK NJ 07102 US

MEMBER OF CONGRESS
HONORABLE ROBERT G. TORRICELLI
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

MEMBER OF CONGRESS
JAMES A TRAFFICANT JR
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3517 US

PARTY OF RECORD
MERRILL L. TRAVIS
ILLINOIS DEPT. OF TRANSP.
2300 SOUTH DRIKSEN PARKWAY ROOM 302
SPRINGFIELD IL 62703-4555 US

Represent: ILLINOIS DEPARTMENT OF
TRANSPORTATION

PARTY OF RECORD
MAYOR VINCENT M URBIN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

Represent: CITY OF AVON LAKE OHIO

PARTY OF RECORD
STEVE M UTHOFF
CONIGLIO & UTHOFF
110 WEST OCEAN BOULEVARD SUITE C
LONG BEACH CA 90802 US

Represent: THE RAIL-BRIDGE TERMINAL
CORPORATION

PARTY OF RECORD
J WILLIAM VAN DYE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

Represent: NORTH JERSEY TRANSPORTATION
PLANNING AUTHORITY
PARTY OF RECORD
SERGEANT W WISE
LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
P. O. BOX 190-B
5769 SWEETWATERS BLVD
LAKEVILLE NY 14468 US
Representative: LIVONIA AVON & LAKEVILLE RAILROAD CORPORATION

PARTY OF RECORD
TIMOTHY A WOLFE
WYANDOT DOLomite, INC
P O BOX 99 1794 CORD #99
CAREY OH 43916 US
Representative: WYANDOT DOLomite INC

PARTY OF RECORD
FREDERIC L WOOD
DONELAN, CLEARY, WOOD & MASEY, P. C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-1934 US
Representative: NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

PARTY OF RECORD
E C WRIGHT
RAIL TRANSPORTATION PROCUREMENT MANAGER
1007 MARKET STREET, DUPONT BUILDING
WILMINGTON DE 19898 US
Representative: E I DU PONT DE NEMOURS AND COMPANY

PARTY OF RECORD
L PAT WYNNS
SUITE 210
1050 - 17TH STREET NW
WASHINGTON DC 20036-5503 US

PARTY OF RECORD
EDWARD WYTKO MD, EXECUTIVE DIRECTOR
TRANS P TRAF. DEPT AFL-CIO
1717 17TH ST SW STE 261
WASHINGTON DC 20001 US
Representative: TRANSPORTATION TRADES DEPARTMENT AFL-CIO

PARTY OF RECORD
SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US
Representative: NORTHERN INDIANA PUBLIC SERVICE COMPANY

PARTY OF RECORD
SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASEMBERGER LLP
888 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

PARTY OF RECORD
WALTER E ZULIG JR SPECIAL COUNSEL
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3106 US
Representative: METRO-NORTH COMMUTER RAILROAD COMPANY
BEFORE THE

STB FINANCE DOCKET NO. 33388

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

CERTIFICATE OF SERVICE

In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by Reading Blue Mountain & Northern Railroad Company ("REB&N") have been served on all Parties of Record designated in Decision No. 21.

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) 692-8116

Dated: August 28, 1997

Attorneys for Reading Blue Mountain & Northern Railroad Company
BEFORE THE
STB FINANCE DOCKET NO. 33388

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

CERTIFICATE OF SERVICE

In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by The New York, Susquehanna and Western Railway Corporation (“NYSW”) have been served on all Parties of Record designated in Decision No. 21.

William P. Quinn
Eric M. Hocky
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-6796
(610) 692-9116

Dated: August 28, 1997

Attorneys for The New York, Susquehanna and Western Railway Corporation
August 23, 1997

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

Dear Secretary Williams:

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

Respectfully submitted,

[Signature]

Harold P. Quinn, Jr.

Enclosures

cc: All Parties of Record on Service List
CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 1997, a copy of all filings in Finance Docket No. 33388 submitted by the National Mining Association prior to the service date of Board Decision No. 21 have been served by first class mail upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the service list attached to Board Decision No. 21.

[Signature]
Harold P. Quinn, Jr.
BEFORE THE
STB FINANCE DOCKET NO. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by Buffalo & Pittsburgh Railroad, Inc. ("BPRR") have been served on all Parties of Record designated in Decision No. 21.

William F. 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: August 28, 1997
Attorneys for Buffalo & Pittsburgh Railroad, Inc.
BEFORE THE
STB FINANCE DOCKET NO. 33788

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

CERTIFICATE OF SERVICE

In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by Bethlehem Steel Corporation and its subsidiary railroads ("BSCX") have been served on all Parties of Record designated in Decision No. 21.

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

Dated: August 28, 1997

Attorneys for Bethlehem Steel Corporation and its subsidiary railroads
BEl 'JR^ THE
STB FINANCE DOCKET NO. 33388
CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

in accordance with Decision No. 21. I hereby certify that a copy of all filings
submitted so far in this proceeding by Pittsburg & Shawmut Railroad, Inc. ("PSRR") have been
served on all Parties of Record designated in Decision No. 21.

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: August 28, 1997
Attorneys for Pittsburg & Shawmut Railroad, Inc.
Before the

STB Finance Docket No. 33388

CSX Corporation and CSX Transportation, Inc.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by Rochester & Southern Railroad, Inc. ("RSR") have been served on all Parties of Record designated in Decision No. 21.

Dated: August 28, 1997

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

Attorneys for Rochester & Southern Railroad, Inc.
August 27, 1997

VIA FEDERAL EXPRESS

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

RE: RBTC Re: Access CSX/NS
File No.: 2312

Dear Secretary Williams:

Enclosed for filing please find an original, ten (10) copies and a 3.5 diskette of The Rail Bridge Terminals (New Jersey) Corporation's Certificate of Service designated RBTC-3. The Certificate of Service is saved on the disk in WordPerfect 5.2 and Text formats.

Please file the enclosed and return a conformed copy to our office in the enclosed self-addressed stamped envelope.

Regards,

[Signature]

Stephen M. Uthoff

SMU:1me2
Enclosures
cc: John L. Miller
August 27, 1997

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 Party of Record:

Pursuant to Surface Transportation Board Decision No. 21, enclosed please find copies of all filings made by The Rail-Bridge Terminals (New Jersey) Corporation in this proceeding prior to the Board's issuance of the official service list.

Very truly yours,

Stephen M. Uthoff

SMU:me2
Enclosures
cc: See attached service list
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 LIASES/AGREEMENTS -- CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

Pursuant to Decision No. 21 of The Surface Transportation Board, I hereby certify that on August 27, 1997, all Parties of Record listed in Decision No. 21 were served (to the extent not previously served), by first-class U.S. mail, postage prepaid, with the following filings of The Rail-Bridge Terminals (New Jersey) Corporation submitted thus far in this proceeding:

Notice of Intent to Participate (RBTC-1) (dated July 21, 1997)
Notice of Inconsistent or Responsive Application (RBTC-2) (dated August 13, 1997)

DATED: August 27, 1997

Respectfully submitted,

TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644
CERTIFICATE OF TRANSMITTAL AND SERVICE

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

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

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

 For all Parties of Record — see attached service list

 by mailing, first class, postage prepaid a copy to each such person.

 I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

 Dated at this 27th day of August, 1997 at Long Beach, California.

 By: LISA K. ELIAKEDIS
David Abraham
7315 Wisconsin Ave
Ste 631 W
Bethesda, MD 20814

Nels Ackerson
The Ackerson Group
1275 Pennsylvania Ave
Suite 1100
Washington, DC, 20004

David A. Allen
Zuckert, Schutt, Resnberger
888 17th St NW
Ste 600
Washington, DC, 20006

Charles E. Allenbaugh, Jr.
East Ohio Stone Company
2000 W Benson St
Alliance, OH 44601

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

Donald G. Avery
Slovier & Loftus
1224 Seventeenth St NW
Washington, DC, 20036

T. Scott Armister
T Scott Armister & Assoc
1300 Des Moines Bldg.
445 Sixth Ave.
Des Moines, IA 50309

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

Harry C. Barbin
Barbin, Lauffer & O’Connell
608 Huntington Pike
Rockledge, PA 19111

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

Dina Bear
Ex Office of the President
council Environmental Quality
Washington, DC, 20503

James L. Belcher
Eastman Chemical Co.
P.O. Box 431
Kingston, IA 37662

Martin W Bercovici
Keller & Heckman
1601 G St NW
Ste. 500 West
Washington, DC, 20001

David Berger
Berger & Montague, P.C.
1622 Locust St.
Philadelphia, PA 19103

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

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

William A. Bon, General Counsel
Brotherhood/Maintenance
26553 Evergreen Rd.
Ste 250
Southfield, MI 48076

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

Thomas C Brady
Broady Brooks & O’Connell LLP
41 Main St.
Salamanca, NY 14779-3227

William T. Bright
PO Box 149
200 Greenbrier Rd
Summersville, WV 26611

Anita R Brindza
11500 Franklin Rd
Suite 104
Cleveland, OH 44102

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

Ross Capon
National Association of Railroad Passage
900 Second St., N.E.
Ste. 308
Washington, DC, 20002-3357

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

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

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

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

Sylvia Chinn-Levy
Intergovernmental Co-Op
969 Copley Rd
Akron, OH 44320-1992

Paul M. Donovan
Laro, Winn, et al.
3506 Idaho Ave., N.W.
Washington, DC, 20016

Kelvin J. Dowd
Slovier & Loftus
1224 17th St., N.W.
Washington, DC, 20036
John Hoy  
P.O. Box 117  
Glen Burne, MI 21060

Brad P. Huston  
Cypress Amax Coal Sales Corp.  
400 Technecenter Dr.  
Ste. 320  
Milford, OH 45150

Sheila Meek Hyle  
City Attorney, City Hall  
342 Central Avenue  
Dunkirk, NY 14048

Ernest J. Ierardi  
Nixon Harrave Devans Doyle LLP  
PO Box 105, Clinton Square  
Rochester, NY 14603-1051

William P. Jackson, Jr.  
Jackson & Jessup, P.C.  
PO Box 240  
3426 N. Washington Blvd.  
Arlington, VA 22210

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

Doreen C Johnson  
Ohio Atty General Office  
30 E. Broad St.  
Columbus, OH 43215

Erika Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Ave, NW  
Ste. 6500  
Washington, DC, 20006

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

Frank N. Jorgensen  
The Erie River Railroad, Inc.  
P.O. Box 4t0  
Summersville, WV 26651

Fritz R. Kahn  
1100 New York Ave, NW  
Ste. 750 West  
Washington, DC, 20005-3934

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

Larry B. Karnes  
Transportation Building  
PO Box 30050  
425 W. Ottawa  
Lansing, MI 48909

Champion International Corp.  
101 Knightsbridge Dr.  
Hamilton, OH 45020-0001

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

L.P. King, Jr.  
General Chairperson UTU  
145 Campbell Ave, SW  
Ste. 207  
Roanoke, VA 24011

Mitchell Kraus, General Counsel  
Transportation Communications Int'l  
3 Research Place  
Rockville, MD 20850

Honorable Dennis J. Kucinich  
United States  
House of Representatives  
Washington, DC, 20515

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

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

John K. Leary, Gen'l Mgr.  
S.E. Pennsylvania Trans Authority  
1234 Market St.  
5th Fir.  
Philadelphia, PA 19107-3780

Sherri Lehman  
Corn Refiners Assoc.  
1701 Pennsylvania Ave., N.W.  
Washington, DC, 20006-3905

Administrative Law Judge Leventhal  
Off. Hearings, Fed Energy Regulatory  
888 - 1st St., N.E.  
Ste. 11F  
Washington, DC, 20426

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

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

C. Michael Loftus  
Slover & Loftus  
1224 Seventeenth St., N.W.  
Washington, DC, 20036

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

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

William G. Mahoney  
Highbaugh, Mahoney & Clarke  
1050 Seventeenth St., N.W.  
Ste. 210  
Washington, DC, 20036

Ron Marquardt  
Local Union 1810 UMWA  
Road #2  
Rayland, OH 43943
William L. Isten
Associate General Counsel TVA
400 W. Summit Hill Dr.
Knoxville, TN 37902

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

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

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

Patrick R. Plummer
Guerrieri Edmond & Clayman PC
1331 F St., N.W.
Washington, DC 20004

Andrew W. Plump
Zuckert, Scoult, Razenger
886 17th St., N.W.
Suit 600
Washington, DC, 20006-3939

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

Patrick R. Plummer
Guerrieri Edmond & Clayman PC
1331 F St., N.W.
Washington, DC 20004

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

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

Arvid E. Roach, II
Covington & Burling
PO Box 7566
1201 Pennsylvania Ave. N.W.
Washington, DC 20044-7566

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

Joseph R. Pomponio
Federal Railroad Admin
400 7th E., S.W.
RCC-20
Washington, DC, q 20590

Larry R. Pruden
Transp Comm Int'l Union
3 Research Place
Rockville, MD 20850

Harold P. Quinn, Jr., Senior VP
Nat' Mining Assoc
1130 Seventeenth St., N.W.
Washington, DC, 20036

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

J L Rodgers
General Chairperson UTU
480 Ocoee Ave
Jacksonville, FL 32250

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

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

John Jay Rosacker
KS, Dept. of Transportation
217 S.E. 4th St.
2nd Floor
Topeka, KS 66603

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

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

John Jay Rosacker
KS, Dept. of Transportation
217 S.E. 4th St.
2nd Floor
Topeka, KS 66603

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

Christine H. Rosso
Ill Asst Atty General
100 W. Randolph St.
13th Flr.
Chicago, IL 60601

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

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

Christine H. Rosso
Ill Asst Atty General
100 W. Randolph St.
13th Flr.
Chicago, IL 60601

Scott M. Saylor
North Carolina Railroad Co.
3200 Atlantic Ave
Ste. 110
Raleigh, NC 27604

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

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

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

Diane Seltz
Central Hudson Gas & Electric Corp
284 S. Avenue
Poughkeepsie, NY 12601

Denise L. Sejna
City Attorney, City of Hammond
5925 Calumet Ave
Hammond, IN 46220

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

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

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

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

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

Scott M. Saylor
North Carolina Railroad Co.
3200 Atlantic Ave
Ste. 110
Raleigh, NC 27604

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

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

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

Diane Seltz
Central Hudson Gas & Electric Corp
284 S. Avenue
Poughkeepsie, NY 12601

Denise L. Sejna
City Attorney, City of Hammond
5925 Calumet Ave
Hammond, IN 46220

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

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

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

RBTC-2

NOTICE OF INCONSISTENT OR RESPONSIVE APPLICATION

In accordance with Decision 6 of the above referenced matter
served by The Surface Transportation Board ("STB") on May 30, 1997
The Rail-Bridge Terminals (Ne. Jersey) Corporation ("RBTC") hereby
submits its notice and description of the comments, protests,
requests for conditions and other opposition evidence or in the
alternative of inconsistent and responsive applications which it
intends to file in the above-captioned matter.

RBTC currently operates the E-Rail intermodal facility located
in Elizabeth, New Jersey. E-Rail is located in what has been
designated the North Jersey Shared Assets Area ("SAA"). Although
geographically part of the SAA, E-Rail has been allocated solely to
NS. Other intermodal terminals found in the SAA geographical
boundary have been allocated on an "equal access" basis to both CSX
and NS.

The application is ambiguous as to the effect of this
allocation of facilities on RBTC or its customer's ability to move
its intermodal cargo pursuant to its current agreements with
Conrail, and it offers no explanation as to why other intermodal yards found in the SAA have been given equal access to CSX/NS, which is a distinct competitive advantage over the E-Rail facility operated by RBTC. Also, the application needs further clarification as to the intended operations of the E-Rail facility, (post approval), which apparently will be serviced by trackage that is part of the SAA but will function as a dedicated NS facility.

At present, RBTC contemplates only filing, comments, evidence and requests for conditions. However, it reserves its right to file responsive or inconsistent applications to address the subjects aforementioned.

DATED: August 13, 1997

Respectfully submitted,

TERRY CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644
CERTIFICATE OF TRANSMITTAL AND SERVICE

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

Secretary Vernon A. Williams
Office of the Secretary
Case Control Branch
Attn: STB Finance Docket No. 33388
1925 "K" St., N.W.
Washington, D.C. 20423-0001

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

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

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

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

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

Samuel M. Sipe, Jr.
Timothy M. Walsh
Steptoe & Johnson, L.L.P.
1300 Connecticut Ave.
Washington, D.C. 20036-1795
by mailing, first class, postage prepaid a copy to each such person.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 13th day of August, 1997 at Long Beach, California

By: LISA M. ELIAKEDIS
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

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

NOTICE OF INTENT TO PARTICIPATE

Please take notice that The Rail-Bridge Terminals (New Jersey) Corporation hereby intends to participate in STB Finance Docket No. 33388, including, but not limited the application of CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company under 49 U.S.C. §11323-25 seeking the Service Transportation Board’s authorization for, among other things, the acquisition and control of Conrail, Inc. and Consolidated Rail Corporation.

The Rail-Bridge Terminals (New Jersey) Corporation may be contacted through their counsel, Stephen M. Uthoff, Coniglio & Uthoff, a Professional Law Corporation, 110 West Ocean Boulevard, Suite C, Long Beach, California 90802-4615, (562) 491-4644.

DATED: July 21, 1997

Respectfully submitted,

By:

TERRY J. CONIGLIO
STEPHEN M. UTHOFF
CONIGLIO & UTHOFF
A Professional Law Corporation
Attorneys for The Rail-Bridge Terminals (New Jersey) Corporation
110 West Ocean Boulevard, Suite C
Long Beach, California 90802-4615
Telephone: (562) 491-4644
DECLARATION RE: REPRESENTATION

I, Stephen M. Uthoff declare:

1. That I am an attorney at law duly licensed to practice before all of the Courts of the State of California and the Surface Transportation Board.

2. Terry J. Coniglio, Stephen M. Uthoff and the firm of Coniglio & Uthoff, a Professional Law Corporation have been retained to represent The Rail-Bridge Terminals (New Jersey) Corporation in the above-captioned matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of July, 1997 at Long Beach, California.

By: [Signature]

STEPHEN M. UTHOFF, Declarant
CERTIFICATE OF TRANSMITTAL AND SERVICE


I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated at this 21st day of July, 1997 at Long Beach, California.

By: LISA M. ELIAKEDIS
In accordance with Decision No. 21, I hereby certify that a copy of all filings submitted so far in this proceeding by Allegheny & Eastern Railroad, Inc. ("AL.Y") have been served on all Parties of Record designated in Decision No. 21.

Dated: August 28, 1997

Attorneys for Allegheny & Eastern Railroad, Inc.
Office of the Secretary  
Case Control Unit  
August 22, 1997  
Page 2

BPRR-3/ALY-3 - Petition of Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc. for Clarification and Waivers (Sub Docket Nos. 43-51)

RSR-2 - Description of Responsive Applications Anticipated by Rochester & Southern Railroad, Inc. (Sub Docket Nos. 52 and 56)

RSR-3 - Petition of Rochester & Southern Railroad, Inc. for Clarification and Waivers (Sub Docket Nos. 52 and 56).

Also enclosed is a diskette containing each of the four filings in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

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

Respectfully,

ERIC M. HOC Y

Enclosures
August 22, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388

Dear Secretary Williams,

Please find enclosed for filing with the Board an original and twenty-six (26) copies of the Description of Anticipated Responsive Application of the Resources Warehousing & Consolidation Services Inc. for filing in this proceeding.

In accordance with Decision No. 6 in this proceeding, copies of the enclosed document is being served upon Applicants' counsel, Administrative Law Judge Jacob Leventhal, and parties of record.

Please return a file-stamped copy in the envelope provided. Should there be any questions about this filing, please call me at (202) 496-4920.

Respectfully submitted,

Paul H. Lamboley

Enclosures

cc: Hon. Jacob Leventhal
All parties of record
UNITED STATES OF AMERICA

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

DESCRIPTION OF ANTICIPATED RESPONSIVE
APPLICATION OF THE RESOURCES
WAREHOUSING & CONSOLIDATION SERVICES INC.

Paul H. Lamboley
1020 Nineteenth Street, NW
Suite 400
Washington, D.C. 20036-6105
Telephone: 202 496-4920
Facsimile: 202-293-6200

Counsel for Resources Warehousing
& Consolidation Services, Inc.
Resources Warehousing & Consolidation Services Inc. (RWCS) has offices, warehouses and terminal facilities located at 2200 Secaucus Road, North Bergen, NJ. Commonly owned Land Bridge Terminal Inc. (LBT) is also located at that address.

RWCS, a freight forwarder, provides warehousing, consolidation, and intermodal services for international trade from warehouse and terminal facilities owned and operated by RWCS - LBT being the terminal operator. RWCS is a significant intermodal terminal facility in Northern New Jersey.

RWCS intermodal facilities are located on the southern terminus of a north-south rail line owned and served by the New York Susquehanna & Western (NYSW). The Delaware Oste;go Corporation (DO) owns the NYSW. The RWCS terminal lies between the North Bergen and Croxton Terminals, north of the Kearny - APL Terminal facility. RWCS has committed to substantial development and expansion of its intermodal facilities on property owned at its present location.

The recent CSX and NS agreement to acquire DO makes less clear the nature of rail services that may be available to RWCS. Earlier RWCS had discussions with DO, CSX and NS regarding rail service options at its facilities. RWCS desires to obtain additional information clarifying the DO arrangement and to negotiate service opportunities or commitments for its current intermodal facilities as well as the planned expansion.
RWCS supports the transaction proposed by the Applicants and does not anticipate difficulty in achieving satisfactory service options or commitments. However, out of an abundance of caution at this time, RWCS declares an intention to seek, if necessary, imposition of appropriate conditions for competitive rail service to its present and future facilities. In short RWCS does and will seek dual access to both NS and CSX service from its terminal, similar to the dual access applicants propose for the APL Terminal in Kearny. See Rail -road Control Application Vols. 3A, p. 227 and 3B, p. 194.

Accordingly, this procedurally required Notice and Description is filed as RWCS-2.

Dated: August 22, 1997

Respectfully submitted,

[Signature]

Paul H. Lamboley

Counsel for Resources Warehousing & Consolidation Services, Inc.
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August 1997, copies of the foregoing Description of Anticipated Responsive Application of the Resources Warehousing & Consolidation Services, Inc. were served upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE, Suite 11F, Washington, DC 20426, counsel for applicant parties and upon other parties of record identified in Decision 21 attached hereto, first class mail, prepaid, in accordance with the rules of the Surface Transportation Board.

Paul H. Yamboley
James C. Bishop, Jr.
William C. Woolridge
J. Gary Lane
James I. Howe, III
Robert J. Cooney
A. Gayle Jordan
George A. Aspatore
James R. Raschall
Roger A. Petersen
Greg E. Summy
James A. Squires
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838

Richard A. Allen
James A. Caiaerwood
Andrew R. Plump
John V. Edwards
Zuckert, Scout & Rasenberger, LLP
883 Seventeenth Street, NW
Suite 600
Washington, DC 20006-3939
(202) 371-7400

Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company

Mark G. Aron
Peter J. Shudtz
Ellen M. Fitzsimmons
CSX Corporation
One James Center
901 East Cary Street
Richmond, VA 23219
(804) 782-1400

P. Michael Giftos
Douglas R. Maxwell
Paul R. Hitchcock
Nicholas S. Yovanovic
Fred R. Birkholz
John W. Humes, Jr.
R. Lyle Key, Jr.
Charles M. Rosenberger
Pamela E. Savage
James D. Tomoka
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-3100

Dennis G. Lyons
Jeffrey A. Burt
Richard L. Rosen
Mary Gabrielle Sprague
Paul T. Denes
Drew A. Harker
Susan T. Morita
Susan B. Cassidy
Sharon L. Taylor
Jeffrey R. Denman
Jodi B. Danis
Chris P. Datz
Amanda J. Paracuellos
Arnold & Porter
555 12th Street, NW
Washington, DC 20004-1202
(202) 942-5000

Samuel M. Sipe, Jr.
Betty Jo Christian
Timothy M. Walsh
David H. Coburn
Carolyn D. Clayton
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
(202) 429-5000

Counsel for CSX Corporation and
CSX Transportation, Inc.

Timothy T. O'Toole
Constance C. Abrams
Anne E. Treadway
John J. Paylor
Jonathan M. Broder
David C. Ziccardi
Consolidated Rail Corporation
Two Commercial Square
2001 Market Street
Philadelphia, PA 19101
(215) 209-4000

Paul A. Cunningham
Richard B. Herzog
David A. Hirs
Robert M. Jenkins, III
A. Carl Kaseman, III
Gerald P. Norton
James G. Rafferty
Michael J. Gergen
James M. Guinivan
Joe A. Rabinovitz
Harkins Cunningham
1300 Nineteenth Street, NW
Suite 600
Washington, DC 20036
(202) 973-7600

Counsel for Conrail Inc., and
Consolidated Rail Corporation
MEMBER OF CONGRESS
HONORABLE RICHARD BURR
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3303 US

PARTY OF RECORD
THOMAS R. BOBAK
113 RIVER OAKS DRIVE
CARMETT CITY IL 60-09 T.S

Representative of RECORD
VILLAGE OF CARMETT

MEMBER OF CONGRESS
HONORABLE JON R. BLAGOJEVICH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-1303 US

PARTY OF RECORD
TOM BLILEY
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

MEMBER OF CONGRESS
HONORABLE JOHN BREAUX
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
ANTHONY BOTTALICO
UNITED TRANSPORTATION UNION
1400-20TH STREET
GRANITE CITY IL 62040 US

Representative of RECORD
UNITED TRANSPORTATION UNION-GENERAL COMMITTEE OF ADJUSTMENT

PARTY OF RECORD
WILLIAM A. BON, GENERAL COUNSEL
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
26355 EVERGREEN ROAD SUITE 200
SOUTHFIELD MI 48076 US

PARTY OF RECORD
ANTHONY BOTTALICO
UTU
420 LEOMETON AVENUE ROOM 458-460
NEW YORK NY 10017 US

Representative of RECORD
UNITED TRANSPORTATION UNION-GENERAL COMMITTEE OF ADJUSTMENT-GO-532

PARTY OF RECORD
THOMAS C. BRADY
BRODIE BROOKS & C. O'NEILL LLP
41 MAIN STREET
SALAMANCA NY 14779-0227 US

Representative of RECORD
SOUTHERN TIER WEST REGIONAL PLANNING AND DEVELOPMENT BOARD

MEMBER OF CONGRESS
HON. JOHN BREAUX
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
WILLIAM T. BRIGHT ETAL
PO BOX 149
200 GREENBRIER ROAD
SUMMERSVILLE WV 26641 US

Representative of RECORD
THE WEST VIRGINIA ASSOC FOR ECONOMIC DEVELOPMENT THROUGH THE JOINT USE OF CONRAIL TRACKS BY NORFOLK SOUTHERN AND CSX

PARTY OF RECORD
ANTHA R. BRUNZA
"THE ONE FIFTY HUNDRED BUILDING"
11500 FRANKLIN BLVD SUITE 104
CLEVELAND OH 44102 US

Representative of RECORD
WESTERN-ELMWOOD-BERK CORP.

MEMBER OF CONGRESS
HON. SHERROD BROWN
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

FINANCE DOCKET NO. 33388

STEPHEN H BROWN
VORYS SATER SEYMOUR AND PEASE
1623 L STREET NW
WASHINGTON DC 20036 US

Representative of RECORD
FRATERNAL ORDER OF PC ICE NATIONAL LABOR COUNCIL CONRAIL

MEMBER OF CONGRESS
HON. ED BRYANT
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
HAMILTON L. CARMOUCHED, CORPORATION COUNSEL
CITY OF GARY
401 BROADWAY 4TH FLOOR
GARY IN 46402 US

Representative of RECORD
CITY OF GARY INDIANA

PARTY OF RECORD
RICHARD C. CARPENTER
1 SELLECK STREET SUITE 210
EAST NORWALK CT 06853 US

Representative of RECORD
SOUTHWESTERN REGION METROPOLITAN PLANNING ORGANIZATION
SOUTHWESTERN REGIONAL PLANNING AGENCY

PARTY OF RECORD
CHARLES M. CHADWICK
MARYLAND MIDLAND RAILWAY INC
PO BOX 1000
UNION BRIDGE MD 21771 US

MEMBER OF CONGRESS
HONORABLE JOHN H. CHAFFEE
UNITED STATES SENATE
WASHINGTON DC 20510-3902 US

MEMBER OF CONGRESS
HONORABLE SAXBY CHAMBLISS,
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
ANGELO J. CHECK, JR. LOCAL CHAIRMAN
PO BOX 48398 OLD GOOSE BAY ROAD
REDWOOD NY 13679 US

Representative of RECORD
BROTHERHOOD OF LOCOMOTIVE ENGINEERS DIVISION 227

GOVERNOR
HONORABLE LAWTON CHILES
OFFICE OF THE GOVERNOR
THE CAPITOL
TALLAHASSEE FL 32399-0001 US

PARTY OF RECORD
SYLVIA CEJN-LEVY
INTERGOVERNMENTAL CO-OP
969 Copley Road
Akron OH 44320-2592 US

Representative of RECORD
NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION
PARTY OF RECORD:
JAMES F. McGRAIL
COMMONWEALTH OF MASS. EXEC. OFFICE OF TRANSP.
& CONST.
10 PARK PLAZA ROOM 3170
BOSTON MA 02116-3969 US

Represent: COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION AND
CONSTRUCTION

PARTY OF RECORD:
FRANCIS G. MCKENNA
ANDERSON & PENDLETON
1700 K ST NW SUITE 1107
WASHINGTON DC 20006 US

Represent: WEST VIRGINIA STATE RAIL AUTHORITY

PARTY OF RECORD:
COLETTA MCNAMEE SR
CUDELL IMPROVEMENT LLC
11500 FRANKLIN BLVD STE 104
CLEVELAND OH 44102 US

Represent: CUDELL IMPROVEMENT INC

MEMBER OF CONGRESS:
HONORABLE MICHAEL MCKINLEY
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2211 US

PARTY OF RECORD:
H. DOUGLAS MIDKIFF
65 WEST BROAD ST STE 101
ROCHESTER NY 14611-2311 US

Represent: GENESSEE TRANSPORTATION COUNCIL

PARTY OF RECORD:
CLINTON J. MILLER, III, GENERAL COUNSEL
UNION TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44105-4150 US

PARTY OF RECORD:
G. PAUL MOATES
SIDLEY & AUSTIN
222 EY STREET, NW
WASHINGTON DC 20006 US

Represent: MOATES SIDLEY & AUSTIN

PARTY OF RECORD:
C. V MOON
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
1370 ONTARIO STREET
CLEVELAND OH 44113 US

Represent: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PARTY OF RECORD:
KARL MORELL
BALL JANKE LLP
1455 F STREET NW SUITE 225
WASHINGTON DC 20005 US

Represent: ANN ARBOR RAILROAD
CHICAGO RAIL LINK LLC
CONNECTICUT SOUTHERN RAILROAD INC
GEORGIA WOODLANDS RAILROAD LLC
INDIANA & OHIO RAILWAY COMPANY
INDIANA SOUTHERN RAILROAD INC
MANUFACTURERS JUNCTION RAILWAY LLC
NEW ENGLAND CENTRAL RAILROAD INC
NEWBURGH & SOUTH SHORE RAILROAD LTD
NORTHERN OHIO & WESTERN RAILWAY LLC
PITTSBURGH INDUSTRIAL RAILROAD INC

PARTY OF RECORD:
IAN MUIR
BUNGE CORPORATION
P O BOX 25200
ST LOUIS MO 63146 US

Represent: BUNGE CORPORATION

PARTY OF RECORD:
WILLIAM A. MULLINS
TROUTMAN SANDERS LLP
1500 I STREET NW SUITE 500 EAST
WASHINGTON DC 20005-3314 US

Represent: NEW YORK STATE ELECTRIC & GAS

PARTY OF RECORD:
JOHN R. NADOLNY, VICE PRESIDENT & GENERAL COUNSEL
BOSTON & MAINE CORPORATION
IRON HORSE PARK
NO BELLERICA MA 01862 US

Represent: BOSTON AND MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

PARTY OF RECORD:
S. J NASCA
STATE LEGISLATIVE DIRECTOR UTU
35 FULLER ROAD STE 205
ALBANY NY 12205 US

PARTY OF RECORD:
GERALD P. NORTON
HARKINS CUNNINGHAM
1300 15TH ST NW SUITE 600
WASHINGTON DC 20036 US

PARTY OFF RECORD:
SANDRA L. NUNN
FROST & JACOBS LLP
201 EAST FIFTH STREET
CINCINNATI OH 45202 US

Represent: SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY

PARTY OF RECORD:
PETER Q. NYCE, JR.
U. S. DEPARTMENT OF THE ARMY
901 NORTH STUART STREET
ARLINGTON VA 22203 US

Represent: U. S. DEPARTMENT OF THE ARMY
FINANCE DOCKET NO 33388

PARTY OF RECORD
FREDERICK H SCHRANCK
PO BOX 778
DOVER DE 19903 US

Represent: DELAWARE DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
LINDOLOPHIL S. SEGER
MICHAE COOK & WELCH PC
320 N MERICAN STREET STE 1100
INDIANAPOLIS IN 46204 US

Represent: CITY OF INDIANAPOLIS INDIANA

PARTY OF RECORD
DIANE SETT
CENTRAL HUDSON GAS & ELECTRIC CORP
284 SOUTH AVENUE
POUGHKEEPSIE NY 12601 US

Represent: CENTRAL HUDSON GAS & ELECTRIC CORPORATION

PARTY OF RECORD
DENISE L. SEJNA CITY ATTORNEY
CITY OF HAMMOND
5925 CALLUMET AV
HAMMOND IN 46320 US

Represent: CITY OF HAMMOND INDIANA

PARTY OF RECORD
ANTHONY P. SEMANCIK
347 MADISON AVENUE
NEW YORK NY 10017-5706 US

Represent: METROPOLITAN TRANSPORTATION AUTHORITY

PARTY OF RECORD
ROGER A. SERPE
INDIANA HARBOR BELT RR
175 WEST JACKSON BOULEVARD SUITE 1460
CHICAGO IL 60604 US

Represent: INDIANA HARBOR BELT RAILROAD COMPANY

PARTY OF RECORD
JAMES E. SHEPHERD
TUSCOLA & SAUGANASH BAY
PO BOX 350
OWOSO MI 48867-0350 US

Represent: TUSCOLA & SAUGANASH BAY RAILWAY COMPANY INC

PARTY OF RECORD
MARK H. SIDMAN
WEINER, BRODECKI, SIDMAN
1350 NEW YORK AVE NW STE 800
WASHINGTON DC 20005 US

Represent: CENTRAL RAILROAD COMPANY OF INDIANA

PARTY OF RECORD
PHILIP G. SIDO
UNION CAMP CORPORATION
1600 VALLEY ROAD
WAYNE N.J 07470 US

Represent: UNION CAMP CORPORATION

PARTY OF RECORD
KENNETH E. SIEGEL
AMERICAN TRUCKING ASSOC
2200 MELL ROAD

ALEXANDRIA VA 22314-4677 US

PARTY OF RECORD
PATRICK B. SIMMONS
NC DEPT OF TRANSPT
1 S WILMINGTON STREET ROOM 137
RALEIGH NC 27611 US

Represent: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
WILLIAM G. SIEPEL
OPPENHEIMER WOLFF & DONNELLY
180 N STETSON AVE TWO PRUDENTIAL PLAZA 45TH FLOOR
CHICAGO IL 60061 US

Represent: BESSEMER & LAKE ERIE RR CO

PARTY OF RECORD
RICHARD O. SLATTERY
AMTRAK
60 MASSACHUSETTS AVENUE NW
WASHINGTON DC 20002 US

PARTY OF RECORD
WILLIAM L. SLOVER
SLOVER & LOFTUS
1234 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3033 US

Represent: STATE OF NEW YORK DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
GARRET G. SMITH
MOBIL OIL CORPORATION
2225 GALLOWS RD EM 8A803
FAIRFAX VA 22037-0001 US

Represent: MOBIL OIL CORPORATION

MEMBER OF CONGRESS
HON ROBERT F. SMITH
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
PAUL SAMUEL SMITH
U. S. DEPT OF TRANSP
400 7TH ST SW, ROOM 4102 C-30
WASHINGTON DC 20590 US

Represent: U.S DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
MIKE SPAHIS
FINA OIL & CHEMICAL CO.
PO BOX 1150
DALLAS TX 75221 US

Represent: FINA OIL AND CHEMICAL COMPANY

MEMBER OF CONGRESS
HON ARLEN SPECTER
UNITED STATES SENATE
WASHINGTON DC 20510-3802 US
PARTY OF RECORD
CHARLES A. SPITTLIK
HOPKINS & SUETER
856 SIXTEENTH STREET NW
WASHINGTON DC 20006 US

Representatives: COMMUTER RAIL DIVISION REGIONAL
TRANSIT AUTHORITY-NORTHEAST
ILLINOIS REGIONAL COMMUTER RR CORP DBA METRA
FLORIDA POWER & LIGHT COMPANY
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHILADELPHIA BELT LINE RAILROAD COMPANY

PARTY OF RECORD
MARY ALAN W. SPRAGUE
555 TWELTH STREET NW
WASHINGTON DC 20004-1202 US

MEMBER OF CONGRESS
HONORABLE LOUIS E. STOKES
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
ERUNEL J. STOMMES, DIRECTOR, T&M DIVISION
AGRICULTURAL MARKETING SERVICE, USDA
P. O. BOX 96456
WASHINGTON DC 20090-1456 US

Representatives: U S DEPARTMENT OF AGRICULTURE

PARTY OF RECORD
SCOTT H. STONE
PATTON BOOGS LLP
2550 M STREET NW 7TH FLOOR
WASHINGTON DC 20001-1346 US

MEMBER OF CONGRESS
HONORABLE TED STRICKLAND
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
D. O. STRUNK JR
GENERAL CHAIRPERSON UTU
517 KILBOURNE STREET
BELLEVUE OH 44811 US

Representatives: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE OF ADJUSTMENT GO-697

PARTY OF RECORD
JAMES P. SULLIVAN
CT DEPT OF TRANSPORTATION
P O BOX 317546
NEWINGTON CT 06111 US

Representatives: CONNECTICUT DEPARTMENT OF
TRANSPORTATION

PARTY OF RECORD
DANIEL J. SWEENEY
MCCARTHY, SWEENEY & HARKAWAY, P. C.
1750 PENNSYLVANIA AVE NW, STE 1105
WASHINGTON DC 20006 US

Representatives: PENNSYLVANIA POWER & LIGHT COMPANY

PARTY OF RECORD
R. B.ERT G. SZABO
VNESS FEI.LMAN
1600 THO JEFFERSON STREET, NW
WASHINGTON DC 20007 US

Representatives: CONSUMERS UNITED FOR RAIL EQUITY

PARTY OF RECORD
J E. THOMAS
HERCULES INCORPORATED
1313 NORTH MARKET STREET
WILMINGTON DE 19804 US

PARTY OF RECORD
K. J. THOMPSON
GENERAL CHAIRPERSON UTU
11017-F GRAVOS INDUSTRIAL PLAZA
ST LOUIS MO 63128 US

PARTY OF RECORD
WILLIAM R. THOMPSON
CITY OF PHILADELPHIA LAW DEPT
1600 ARCH STREET 10TH FLOOR
PHILADELPHIA PA 19103 US

Representatives: CITY OF PHILADELPHIA PA

PARTY OF RECORD
D. A. TOSI
HUTCHESON & GRUNDY
1200 SMITH STREET 1300
HOUSTON TX 77002 US

MEMBER OF CONGRESS
HONORABLE ROBERT G. TORRICELLI
1 RIVER FRONT PLAZA, 3RD FLOOR
NEWARK NJ 07102 US

MEMBER OF CONGRESS
HONORABLE ROBERT G. TORRICELLI
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

MEMBER OF CONGRESS
JAMES A. TRAFFICANT JR
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-3517 US

PARTY OF RECORD
MERRILL L. TRAVIS
ILLINOIS DEPT. OF TRANSP.
2300 7TH DIRKSEN PARKWAY ROOM 302
SPRINGFIELD IL 62703-5553 US

Representatives: ILLINOIS DEPARTMENT OF
TRANSPORTATION

PARTY OF RECORD
K. A. VOR VINCENT M. URIAN
150 AVON BELDEN RD
AVON LAKE OH 44012 US

Representatives: CITY OF AVON LAKE OHIO

PARTY OF RECORD
STEPHEN M. UTHOFF
CONKLING & UTHOFF
110 WEST OCEAN BOULEVARD SUITE C
LONG BEACH CA 90802 US

Representatives: THE RAIL-BRIDGE TERMINALS
CORPORATION

PARTY OF RECORD
J. WILLIAM VAN DYKE
NJ TRANSPORTATION PLANNING AUTHORITY
ONE NEWARK CENTER 17TH FLOOR
NEWARK NJ 07102 US

Representatives: NORTH JERSEY TRANSPORTATION
PLANNING AUTHORITY
PARTY OF RECORD
WILLIAM C VAN SLYE
157 WESTON AV
ALBANY NY 12210 US

Represented: THE BUSINESS COUNCIL OF NEW YORK STATE INC

MEMBER OF CONGRESS
HONORABLE PETER J. VECLOCOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
JOHN A. VUONO
VUONO & GRAY
1310 GRANT BUILDING
PITTSBURGH PA 15219 US

Represented: NATIONAL STEEL CORPORATION

PARTY OF RECORD
F RONALDS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIEAN STREET
INDIANAPOLIS IN 46202 US

Represented: CITIZENS GAS & COKE UTILITY

PARTY OF RECORD
JACK A WALTER
WCI STEEL INC
1040 FINE AVENUE S E
WARREN OH 44483 US

Represented: WCI STEEL INC

MEMBER OF CONGRESS
HONORABLE JOHN WARNER
UNITED STATES SENATE
WASHINGTON DC 20510 US

MEMBER OF CONGRESS
HONORABLE JOHN WARNER
UNITED STATES SENATE
P.O.BOX 8177
233 FEDERAL BUILDING
ABINGDON VA 22421-0877 US

PARTY OF RECORD
JAMES P. WEISS
PRESTON GATE: ELLIS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

Represented: MARYLAND DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
HUGH H. WELSH
LAW DEPT., SUITE 676
ONE WORLD TRADE CENTER
NEW YORK NY 10004-0202 US

PARTY OF RECORD
JAY WESTBROOK
CITY HALL RM 216
601 L. JESSE AV NE
CLEVELAND OH 44114 US

Represented: CITY OF CLEVELAND OHIO

MEMBER OF CONGRESS
HONORABLE BOB WELFYAND
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
CHARLES H. WHITE, JR.
GALLAND, KHARASCH & GARFINKEL, P. C.
1054 THIRD-FIRST STREET NW
WASHINGTON DC 20007-4492 US

Represented: STARK DEVELOPMENT BOARD INC
WHEELING & LAKE ERIE RAILWAY COMPANY

PARTY OF RECORD
WILLIAM W., JR. WHITEHURST
W W WHITEHURST & ASSOCIATES, INC.
12421 HAPPY HOLLOW ROAD
COCKEYSVILLE MD 21030 US

Represented: W W WHITEHURST & ASSOCIATES INC

PARTY OF RECORD
HENRY M. WICK, JR.
WICK, STREFF, ET AL
450 TWO CHATHAM CENTER
PITTSBURGH PA 15219 US

Represented: U S CLAY PRODUCERS TRAFFIC ASSOCIATION INC

PARTY OF RECORD
ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

PARTY OF RECORD
RICHARD R WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

Represented: ASHLEAON RAILROAD COMPANY
DURHAM TRANSPORT INC
JUNIATA VALLEY RAILROAD COMPANY
L.YING VALLEY RAILROAD COMPANY
NITTANY & BALD EAGLE RAILROAD COMPANY
NORTH SHORE RAILROAD COMPANY
NORTHWEST PENNSYLVANIA RAIL AUTHORITY
ONE RAIL CORPORATION
RICHARD D BOBEY
SHAMROCK VALLEY RAILROAD COMPANY
SOUTHWESTERN PENNSYLVANIA REGIONAL PLANNING COMMISSION
STURBRIDGE RAILROAD COMPANY
TRANSPORTATION COMMITTEE PENNSYLVANIA HOUSE OF REPRESENTATIVES
WELLESBORO & CORNING RAILROAD COMPANY

PARTY OF RECORD
ROBERT A. WIMBER, ESQ
REA, CROSS & AUGENLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

Represented: CONNECTICUT CENTRAL RAILROAD

PARTY OF RECORD
C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44132 US

Represented: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT GO-451

PARTY OF RECORD
JOHN F WING CHAIRMAN
CITIZENS ADVISORY COMMITTEE
601 NORTH HOWARD STREET
BALTIMORE MD 21201 US

Represented: CITIZENS ADVISORY COMMITTEE
August 22, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary, Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an original and twenty-five copies of (1) Canadian Pacific Parties' Description of Anticipated Responsive Application, and (2) Canadian Pacific Parties' Petition for Waiver or Clarification of Railroad Consolidation Procedures. Also enclosed is a 3.5-inch diskette, formatted...
for WordPerfect 5.x for Windows, which can be converted to
WordPerfect 7.0, containing the pleadings.

Thank you for your assistance.

Sincerely,

[Signature]

George W. Mayo, Jr.
Attorney for Canadian Pacific Railway Company,
Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and
St. Lawrence & Hudson Railway Company Limited

GWM:jms

Enclosures

cc: All Counsel of Record
    The Honorable Jacob Leventhal
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33386

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

CANADIAN PACIFIC PARTIES' DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

MARCELLA M. SZEL
Vice President-Legal Services
CANADIAN PACIFIC RAILWAY COMPANY
Suite 500, Gulf Canada Square
401 Ninth Avenue, S.W.
Calgary, Alberta T2P 4Z4
CANADA
(403) 218-7174

GEORGE W. MAYO, JR.
ERIC VON SALZEN
THOMAS B. LEARY
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Attorneys for Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited

August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

__________________________

CANADIAN PACIFIC PARTIES'
DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

Pursuant to the Board’s Decision No. 6, Canadian Pacific Railway Company (“CPR”), Delaware and Hudson Railway Company, Inc. (“D&H”), Soo Line Railroad Company (“Soo”), and St. Lawrence & Hudson Railway Company Limited (“StL&H”) (collectively “Canadian Pacific Parties” or “CP”) hereby provide a description of the responsive application D&H anticipates filing in this proceeding.

CPR is one of the two major Canadian railroads. It operates a rail network that serves most of the principal centers of Canada, as well as, through its own properties and those of its wholly owned subsidiaries D&H, Soo, and StL&H, certain major centers in the midwestern and northeastern United States. CPR acquired the assets of D&H, the nation’s oldest transportation company, out of bankruptcy in 1991, and has committed substantial
resources in an effort to make D&H a viable competitive force in the northeastern United States.

The proposed transaction -- pursuant to which CSX Corporation and CSX Transportation, Inc. ("CSX") on the one hand, and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") on the other, propose to acquire joint control of Conrail Inc. ("CRI") and to divide the assets of Consolidated Rail Corporation ("Conrail") into certain assets to be leased to them individually, certain assets to be sold to them individually, and certain assets to continue to be owned and operated by Conrail -- will threaten the ability of D&H to continue to provide competitive and essential services, and as a consequence will diminish the competitive options available to shippers and the public generally.

To ameliorate the adverse competitive impact of the proposed transaction and its effects on D&H, D&H anticipates filing a responsive application seeking the following relief:

(1) **Reciprocal Switching.** D&H will seek access through reciprocal switching rights (including without limitation intermediate switching rights) at non-discriminatory rates with respect to:

(a) North Jersey Shared Assets Area, including without limitation all existing and future customers, facilities, Port terminals, and shortline railroads within that area, which reciprocal switching rights will be utilized via appropriate
Conrail shared assets facilities, which in turn will be accessed via D&H’s Oak Island, NJ yard, and via D&H’s trackage rights;

(b) South Jersey/Philadelphia Shared Assets Area, including without limitation all existing and future customers, facilities, Port terminals and shortline railroads within that area (which area includes without limitation the current Philadelphia switching district and north section of the Belt Line Railway), which reciprocal switching rights will be utilized via appropriate Conrail shared assets facilities, which in turn will be accessed via D&H’s existing Philadelphia facilities;

(c) Buffalo-Niagara Frontier terminal area, including without limitation elimination of restrictions on current D&H reciprocal switching rights within that area; and

(d) Baltimore, MD terminal area, including without limitation all existing and future customers, facilities, Port terminals and shortline railroads within the area. (To the extent that utilization of these reciprocal switching rights require agreement with Amtrak, D&H will pursue negotiation of the necessary Amtrak agreement; Conrail-related limitations on Amtrak’s right to permit D&H to interchange traffic in connection with D&H’s current trackage rights over Amtrak’s lines would be eliminated under item 2 below).

(2) **Elimination of Particular Restrictions in D&H’s Existing Trackage Rights.** D&H will seek elimination of particular restrictions contained in its existing trackage rights over CR lines which restrictions are an outgrowth of ill-advised
Final System Plan limitations on those rights. This will include elimination of the Amtrak-related restriction referenced in item 1(d) above, whether derived from the Final System Plan or contract. These restrictions serve to limit D&H’s ability to carry particular types of traffic over certain CR (and Amtrak) lines and to interchange with particular carriers. In addition, D&H will seek certain de minimis trackage rights to make the elimination of the aforementioned restrictions effective.

(3) **Trackage Rights.** D&H will seek the following trackage rights:

(a) To provide a single-line competitive service to the shippers of New York and Long Island and provide an alternate competitive connection to the New York and Atlantic Railroad at Fresh Ponds, NY, D&H will seek full service trackage rights at non-discriminatory rates over the following route:

- over Conrail (CSX) trackage between Schenectady, NY and Poughkeepsie, NY;
- over Metro-North trackage between Poughkeepsie, NY and New York City (to the extent necessary, D&H will negotiate these trackage rights with Metro-North; D&H seeks only removal of any Conrail restrictions that would limit grant of these trackage rights to D&H); and
- then on to CR (CSX) trackage to Fresh Pond, NY.

(b) To provide a single-line competitive service to the shippers of the New York service area, D&H will seek
overhead trackage rights at non-discriminatory rates over the following route:

- over CR (CSX) trackage between its junction with the D&H at Kenwood Yard in Albany, NY, including Selkirk, NY as an intermediate point, and D&H's Oak Island, NJ terminal and/or the appropriate shared assets terminal in the North Jersey Shared Assets Area, including the right to serve directly Port of New York and New Jersey facilities.

Respectfully submitted,

[Signature]

MARCELLA M. SZEL
Vice President-Legal Services
CANADIAN PACIFIC RAILWAY COMPANY
Suite 500, Gulf Canada Square
401 Ninth Avenue, S.W.
Calgary, Alberta T2P 4Z4
CANADA
(403) 218-7474

GEORGE W. Mayo, JR.
ERIC VON SALZEN
THOMAS B. LEARY
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Attorneys for Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited

August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, I served by the means indicated below a copy of the foregoing Canadian Pacific Parties' Description of Anticipated Responsive Application on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, DC 20426
(by hand)

Counsel for Applicants
(by hand or first-class mail)

Counsel for parties of record (certain such counsel, identified for the first time in the Board's recently published service list, will be served within 10 days of the service date of such service list)
(by first-class mail)

George W. Mayo, Jr.
August 22, 1997

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

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

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are
the original and 25 copies of each of the following documents:

BPRP-2/ALY-2 - Description of Responsive Applications
Anticipated By Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc.
(Sub Docket Nos. 43-51)
BEFORE THE 
SURFACE TRANSPORTATION BOARD 
STB FINANCE DOCKET NO. 3338

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

DESCRIPTION OF RESPONSIVE APPLICATIONS ANTICIPATED BY 
ROCHESTER & SOUTHERN RAILROAD, INC.

(Sub Docket Nos. 82 and 561)

Dated: August 22, 1997

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
Attorneys for Rochester & Southern Railroad, Inc.
BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33388

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

DESCRIPTION OF RESPONSIVE APPLICATIONS ANTICIPATED BY
ROCHESTER & SOUTHERN RAILROAD, INC.

(Sub Docket Nos. 52 and 56)

Rochester & Southern Railroad, Inc. ("RSR")\(^1\) in accordance with Decision No. 7 served May 30, 1997, \(^2\) in Decision No. 12 served July 23, 1997, hereby files its Description of Anticipated Responsive Applications:

INTRODUCTION

RSR operates a line of railroad between Rochester and Silver Spring and a line between Machias and Ashford Junction in the State of New York.\(^2\) RSR participates in routes with Buffalo & Pittsburgh Railroad, Inc. ("BPRR") and other railroads in the GWI system which

\(^1\) RSR is a wholly owned subsidiary of Genesee & Wyoming, Inc. ("GWI")

\(^2\) RSR has Delaware and Hudson Railway haulage rights over tracks of Consolidated Rail Corporation ("Conrail") between Silver Spring and Buffalo, NY.
compete with routes of Conrail. The NS-CSXT transaction will provide new single line service routes that are expected to divert substantial traffic from RSR. To maintain continued financial stability and to address competitive harms caused by the primary transaction, RSR anticipates filing the responsive applications described herein.

A map showing the lines of RSR and its affiliates in the region is attached hereto.

**DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATIONS**

**Sub Docket No. 52**

RSR will seek authority under section 11323 or 10902 for the use of tracks in CSXT’s yard at Genesee Junction, NY, for the direct interchange of traffic with Livonia, Avon & Lakeville Railroad without restrictions.

**Sub Docket No. 56**

RSR will seek authority under section 10903 to abandon its line of railroad between Machias and Ashford Junction, NY.

Respectfully submitted,

[Signature]

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
Attorneys for Rochester & Southern Railroad, Inc.

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by first class mail on the following persons and on Parties of Record listed in Decision No. 21:

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

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

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

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

Dated: August 22, 1997

[Signature]

Eric M. Hocky
HAND DELIVERY BY COURIER
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

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

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are the original and 25 copies of each of the following documents:

BPRR-2/ALY-2 - Description of Responsive Applications Anticipated By Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc. (Sub Docket Nos. 43-51)
Office of the Secretary  
Case Control Unit  
August 2\textsuperscript{nd}, 1997  
Page 2

BPRR-3/ALY-3 - Petition of Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc. for Clarification and Waivers (Sub Docket Nos. 43-51)

RSR-2 - Description of Responsive Applications Anticipated by Rochester & Southern Railroad, Inc. (Sub Docket Nos. 52 and 56)

RSF-3 - Petition of Rochester & Southern Railroad, Inc. for Clarification and Waivers (Sub Docket Nos. 52 and 56).

Also enclosed is a diskette containing each of the four filings in a format (WordPerfect 6.1) that can be converted into WordPerfect 7.0.

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

Respectfully,

ERIC M. HOCKY

Enclosures
BEFORE THE

STB FINANCE DOCKET NO. 33188

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

DESCRIPTION OF RESPONSIVE APPLICATIONS ANTICIPATED BY
BUFFALO & PITTSBURGH RAILROAD, INC. AND
ALLEGHENY & EASTERN RAILROAD, INC.

(Sub Docket Nos. 48-51)

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
Attorneys for Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc.

Dated: August 22, 1997
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

DESCRIPTION OF RESPONSIVE APPLICATIONS ANTICIPATED BY
BUFFALO & PITTSBURGH RAILROAD, INC. AND
ALLEGHENY & EASTERN RAILROAD, INC.

(Sub Docket Nos. 43-51)

Buffalo & Pittsburgh Railroad, Inc. ("BPRR") and its affiliate Allegheny & Eastern
Railroad, Inc. ("ALY")\(^1\), in accordance with Decision No. 7 served May 30, 1997, and Decision
No. 12 served July 23, 1997, hereby file their Description of Anticipated Responsive
Applications:

"INTRODUCTION"

BPRR, a Class II rail carrier, operates lines of railroad in the States of Pennsylvania and
New York which were acquired from CSX Transportation, Inc. ("CSXT") in 1988. See ICC
Finance Docket No. 31116, Buffalo & Pittsburgh Railroad, Inc.--Exemption--Acquisition &

\(^1\) BPRR and ALY are both wholly owned subsidiaries of Genesee & Wyoming Inc.
("GWI").
331. BPRR interchanges traffic with both Norfolk Southern Railway Company ("NS") and
CSXT for traffic originating and terminating on their lines. The joint routes now compete with
routes of Consolidated Rail Corporation ("Conrail") for most of this traffic. As a result of the
transaction proposed in this proceeding, NS and CSXT will be able to provide single line service
for much of this traffic, and will no longer need to use BPRR as a bridge carrier. This is
confirmed by Applicants' own diversion studies which show that virtually all of this traffic,
producing annual freight revenue of approximately $8.3 million (approximately 40% of BPRR's
annual freight revenue), is expected to be diverted as a result of that transaction. CSXT's
studies estimate that about $7.1 million will be diverted from BPRR annually, including over
$3.5 million of annual coal traffic revenue - the greatest loss of coal traffic forecast for any
railroad.\(^2\) Application, vol. 2A at 176, 183. Further, traffic diversion studies conducted for
Norfolk Southern Railway Company ("NS") disclose that BPRR will lose an additional $1.2
million of annual freight revenue. Application, vol. 2B at 8.

The enormity of the revenue loss confronting BPRR leaves it with two options: (i) it can
seek inclusion in the CSXT or NS systems or (ii) it can reconfigure its lines of transportation in
cooperation with contiguous rail lines in its corporate family through the aid of various operating
rights over certain lines of CSXT or NS and abandonment of a segment of its lines that the

\(^2\) Traffic diversions estimated for BPRR included diversions from BPRR's sister
companies, ALY, Rochester & Southern Railroad, Inc. ("RSR") and Genesee & Wyoming
Railroad, Inc. Omitted were diversions from another affiliate serving the region, Pittsburg &
Shawmut, Inc. ("PSR").
CSXT-NS transaction will cause to be redundant. These responses will require the filing of the responsive applications described below.\(^3\)

BPRR and ALY had hoped to obviate the need for some or all of the responsive applications now anticipated through negotiations with CSXT (and to a lesser extent NS). If negotiations are ultimately productive, it may be unnecessary to seek all or part of the relief described here.

A map showing the lines of BPRR and ALY and their affiliates in the region is attached hereto.

**DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATIONS**

**A. Inclusion (Sub Docket No. 43)**

BPRR will seek to be included in the CSXT-NS transaction under 49 U.S.C. §11324(c). If inclusion is ordered by the Board, BPRR expects that, prior to consummation of inclusion, it will grant trackage rights to ALY over its line between Dubois and Johnsonburg, PA, and file for an exemption under 49 C.F.R. §1180.2(d)(7).

\(^3\) BPRR, ALY and their affiliates may seek other conditions that do not require responsive applications such as haulage rights and reductions in switching charges.
B. Trackage Rights and Other Relief (Sub Docket Nos. 44-51)

If inclusion is not ordered by the Board, BPRR and ALY anticipate that they will apply for authority to abandon a line under 49 U.S.C. §10903 and will seek authority for trackage rights over lines of the Applicants under 49 U.S.C. §§11323-25 and for use of certain CSXT or NS tracks for interchange purposes under 49 U.S.C. §§11323-25 or 10902. To that end, the following responsive applications may be filed:

Sub Docket No. 44

BPRR will seek authority under section 10903 to abandon its line between Buffalo and Salamanca, NY.

Sub Docket No. 45

BPRR will seek authority under section 11323 for approximately 90 miles of overhead trackage rights over CSXT’s Chicago Line between Erie, PA and BPRR’s Buffalo Creek Yard ("BPRR Yard") in Buffalo, NY; together with overhead trackage rights over CSXT’s Chicago Line between BPRR Yard and Seneca Yard, all in Buffalo, NY, for interchange with SB.

BPRR would have continued access from BPRR Yard to all carriers at Buffalo (including Canadian National, Canadian Pacific, and South Buffalo).

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4 The relief sought will benefit BPRR and its affiliates operating in Pennsylvania and New York (ALY, RSR and PSR). As information is developed, it is possible that ALY may be the actual party to seek the relief described in Sub Docket Nos. 45, 47 and 51.

5 Reference: to lines of an Applicant include lines currently owned by the Applicant, as well as lines of Conrail that will be operated by the Applicant if the primary transaction is consummated.
Sub Docket No. 46

BPRR will seek authority under section 11323 for approximately 30 miles of overhead trackage rights over NS’s Corry Extension and Buffalo Line between Salamanca and Machias, NY, via Olean, NY, with the right to serve a specified customer at the intermediate point of Franklinville, NY. This right to serve a customer will be limited to moving a specified commodity from Franklinville to points in western Pennsylvania on affiliated carriers BPRR, ALY and PSR.6

Sub Docket No. 47

BPRR will seek authority under section 11323 for approximately 130 miles of optional overhead trackage rights over CSXT’s Chicago Line between Erie, PA, and a connection with WLE at Akron, OH, or another efficient interchange point. The option would be exercised when justified by traffic levels.7

Sub Docket No. 48

BPRR will seek authority under section 11323 for approximately 35 miles of restricted trackage rights over CSXT’s portion of the Indiana Branch between Punxatawney and Homer City, via Creekside, and over NS’s portion between Creekside and Shelocta, all in Pennsylvania, limited to the right to handle coal to power plants located in Homer City and Shelocta.

6 BPRR would continue to be able to operate from Machias to Buffalo under existing trackage rights from Conrail.

7 These rights would be used to supplement or replace CSXT’s haulage for the Wheeling and Lake Erie Railroad (“WLE”) between New Castle, PA, and Akron, OH, expanded to provide haulage for WLE between WLE’s line and Erie, PA, for interchange with BPRR and ALY. BPRR will seek the expanded rights as a condition to approval of the primary transaction in these proceedings.
Sub Docket No. 49

BPRR will seek authority under sections 11323 or 10902 for the use of tracks in CSXT’s New Castle Yard at New Castle, PA for the direct interchange of traffic with ISS Rail, Inc. without restrictions.8

Sub Docket No. 50

BPRR will seek authority under section 11323 for trackage rights between BPRR Yard and its affiliate, RSR, over either (i) CSXT’s Water Level route between Buffalo and Rochester, NY, or (ii) NS’s Southern Tier between Buffalo and Silver Spring, NY.

Sub Docket No. 51

BPRR will seek authority under section 11323 or section 10902 for the use of tracks in CSXT’s OD Yard at Erie, PA, to allow unrestricted direct interchange to NS on the connecting tracks that NS proposes to relocate at Erie (see Sub Docket No. 23).

_____________________________
8 BPRR will also seek the elimination of additional payments assessed under BPRR’s lease with CSXT on traffic from the Petrolia Branch that BPRR would handle to New Castle Yard for interchange with carriers other than CSXT.
It is intended that ALY will provide haulage to BPRR between Johnsonburg and Erie, PA, over ALY's line and existing trackage rights. If necessary, ALY may seek amendment of its trackage rights agreement with CSXT to allow for the requested interchange rights.

Respectfully submitted,

[Signature]
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
Attorneys for Buffalo & Pittsburgh Railroad, Inc. and Allegheny & Eastern Railroad, Inc.

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by first class mail on the following persons and on Parties of Record listed in Decision No. 21:

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

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

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

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

Dated: August 22, 1997

Eric M. Hocky
The Commonwealth of Massachusetts ("The Commonwealth") is a party of record in these proceedings, and through its Executive Office of Transportation & Construction has reviewed the primary application filed jointly by Norfolk Southern and CSX.

The Commonwealth is coordinating its review with the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority and the Massachusetts Highway Department. The Commonwealth's overall impression is that the transaction will enhance rail freight transportation services in the eastern United States. However, the Commonwealth has two general concerns that the proposed transaction may have negative implications to railroad safety and economic competition in Massachusetts.

Therefore, in accordance with the procedural schedule of the Board's May 23, 1997 decision, the Commonwealth submits this description of a responsive application which it reserves the right to file later in the proceeding.

A. Safety

The application indicates a reduced level of commitment in Massachusetts, particularly in maintenance of way and signals. This is a major concern to the Commonwealth because MBTA has invested some $40 million in the Conrail Right of Way to increase capacity to accommodate both passenger and freight operations. This reduction has the potential to impact safety and on time performance of commuter services.

Furthermore, these reductions indicate a decline in the level of utility effort by CSX to maintain these investments (track and signal). This follows a pattern of a reduced level of utility on the light density branch lines in southeastern Massachusetts (the so called "Boston Cluster" lines) which have experienced a decline in level of maintenance and resultant downturns in business activity. This also contributes to safety concerns because grade
crossing activity patterns are altered, and track maintenance declines.

PROPOSED ACTION

The Commonwealth proposes that MBTA be assigned dispatching responsibility on the Boston Main Line between Boston and Selkirk, and on the branch lines in eastern Massachusetts. This local control will protect the MBTA investment, and provide a means of communication with CSX to assure that an adequate level of utility is maintained.

In conjunction with this concept the Commonwealth seeks the transfer of certain operating rights on certain of the light density branches. Examples are the Fall River/New Bedford branches, and portions of the Fitchburg secondary.

B. Competitive issues

The proposed transaction places Massachusetts and New England at a competitive disadvantage when compared to other major metropolitan regions on the east coast. This contradicts CSX Chairman Snow's verified statement in which he speaks about Conrail's lack of intense competition from a worthy Class I rival. The NS - CPR haulage rights agreement, cited as the NS entree to the New England markets, clearly is not a competitive and effective restraint on CSX domination of the Boston metropolitan market.

It appears that the parties have divided the markets and agreed to leave New England at a competitive disadvantage. Greater Boston and New England are comparable markets to Detroit and Philadelphia which will enjoy joint access operations of both CSX and NS. These joint operations will reduce track maintenance and capital costs for the two class ones, which savings will be passed onto local customers.

The lack of effective competition will have direct negative impacts on the state's economic competitiveness and will also impact the ability of regional and short line railroads to compete for rail freight traffic. In fact, the projections within the application illustrate substantial losses for several Massachusetts based short line railroads.

PROPOSED ACTION

The Commonwealth urges the parties to revise the plan to assure open access for Massachusetts shippers and local railroads to connect to both CSX and NS. As the application shows, direct access is the best way to assure vigorous competition. However, we are open to a proposal which would produce the kind of "worthy" competition which Conrail never faced in the Northeast.

Ultimately, the Board ought to leave open to review the
need to provide competitive access for metropolitan Boston and all of Massachusetts as well as for all of New England. This review should take place no later than three years after the Board’s decision.

**EIR issue:** These proposed actions will have no negative environmental impact, and we will offer additional information on this matter after consultation with the Board’s SEA.

**Conclusion**

The proposed acquisition of Conrail by CSX and NS has many positive attributes, and it is our hope that the issues cited above can be resolved by the parties. However, absent reliable commitments our responsive application will include requests for specific conditions or specific relief.

Respectfully,

Patrick J. Moynihan
Secretary
Executive Office of Transportation & Construction
Commonwealth of Massachusetts
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 1997, I served a copy of the foregoing Commonwealth of Massachusetts' Description of the Responsive Application by first class mail, postage prepaid, upon the attached list of interested parties.

John D. Cirame
Deputy General Counsel
Counsel for the Commonwealth of Massachusetts Executive Office of Transportation and Construction
August 22, 1997

VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
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

Finance Docket No. 33388 (Sub-No. 36)
Transtar, Inc. and Elgin, Joliet and Eastern
Railway Company -- Control -- Indiana Harbor
Belt Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding
are an original and twenty-five copies of the Description of
Anticipated Responsive Application of Transtar, Inc. and Elgin,
Joliet and Eastern Railway Company (EJE-3) and the Petition for
Clarification or Waiver of Transtar, Inc. and Elgin, Joliet and
Eastern Railway Company (EJE-4), both dated August 22, 1997. A
computer diskette containing the text of these filings in
WordPerfect 5.1 format also is enclosed.

In accordance with the Board’s recently-issued service
list, copies of EJE-3 and EJE-4 have been served by first class
mail, postage prepaid, on all designated parties of record in
this proceeding.
If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

William C. Sippel
Attorney for Transtar, Inc.
and Elgin, Joliet and Eastern
Railway Company

WCS:tjl
Enclosures

cc: Parties on Certificate of Service
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY--CONTROL--INDIANA HARBOR BELT RAILROAD COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Robert N. Gentile
Colette Ferris-Shotton
Transtar, Inc.
135 Jamison Lane
P.O. Box 68
Monroeville, PA 15146
(412) 829-6890

William C. Sippel
Kevin M. Sheys
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR TRANSTAR, INC.
AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Dated: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY -- CONTROL -- INDIANA HARBOR BELT RAILROAD COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Transtar, Inc. ("Transtar") and the Elgin, Joliet and Eastern Railway Company ("EJE") hereby submit this description of the responsive application which they expect to file in this proceeding on or before October 21, 1997.

Transtar is a non-carrier transportation holding company which controls eight Board-regulated rail carrier subsidiaries: (1) EJE; (2) Bessemer and Lake Erie Railroad Company, a Class II carrier operating in western Pennsylvania and northeastern Ohio; (3) Birmingham Southern Railroad Company, a Class III switching and terminal carrier in Birmingham, Ensley, Fairfield and Bessemer, Alabama; (4) Duluth, Missabe and Iron Range Railway Company, a Class II carrier operating in
northeastern Minnesota and northwestern Wisconsin; (5) The Lake Terminal Railroad Company, a Class III switching carrier operating in Lorain, Ohio; (6) Union Railroad Company, a Class III carrier operating from North Bessemer to Clairton Junction, Pennsylvania, and thence to Clairton and Mifflin Junction, Pennsylvania; (7) McKeesport Connecting Railroad Company, a Class III switching operation in McKeesport, Pennsylvania; and (8) The Pittsburgh & Conneaut Dock Company, which operates a rail/water dock facility on Lake Erie at Conneaut, Ohio.

EJE is a Class II carrier that owns and operates 196 miles of mainline and branchline trackage in and around Chicago in the states of Illinois and Indiana. EJE's main line extends from Waukegan, Illinois through Joliet, Illinois to Gary, Indiana. Branch lines extend from Plainfield to East Morris, Illinois and from Gary to Whiting and East Chicago, Indiana and Hegewisch and South Chicago, Illinois. EJE functions as a linehaul and industrial switching railroad, serving a large number of industrial customers in the Chicago area and connecting with all line-haul carriers serving Chicago.

Transtar and EJE believe that the proposed control of Consolidated Rail Corporation ("Conrail") by CSX Corporation and Norfolk Southern Corporation and the proposed allocation of Conrail's assets -- including Conrail's 51% ownership interest in the Indiana Harbor Belt Railroad Company ("IHB"), a major Chicago area terminal and switching carrier -- to CSX Transportation, Inc. and Norfolk Southern Railway Company will have serious anticompetitive effects in the Chicago switching district,
particularly with respect to the interchange of traffic between carriers and the provision of intermediate switching services. Transtar and EJE oppose the proposed transaction in the absence of conditions which will mitigate these anticompetitive effects. Transtar and EJE anticipate filing herein a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4) seeking, as a condition on any Board approval of the Primary Application, the divestiture of Conrail's controlling, 51% stock interest in the IHB to Transtar, EJE or another corporate affiliate.¹

Transtar and EJE also anticipate that they may seek additional conditions, not requiring the filing of a responsive application, in their comments and evidentiary submission scheduled to be filed on or before October 21, 1997.

¹ Transtar Holdings L.P ("Holdings"), which owns 51% of the stock of Transtar, and Holdings' controlling general partner, Blackstone Transportation Company, Inc., also will join as parties to the responsive application to the extent necessary.
WHEREFORE, Transtar and EJE respectfully submit this description of their anticipated responsive application in this proceeding.

Respectfully submitted,

By:

Robe t N. Gentile
Colette Ferris-Shotton
Transtar, Inc.
135 Jamison Street
P.O. Box 68
Monroeville, PA 15146
(412) 829-6890

William C. Sippel
Kevin M. Sheys
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR TRANSTAR, INC.
AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of Transtar, Inc. and Elgin, Joliet and Eastern Railway Company (EJE-3) was served by first class mail, postage prepaid, upon:

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

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

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

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

and upon all parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997.

William C. Sippel
August 22, 1997

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Description of Anticipated Responsive Application of New Jersey Transit Corporation (NJT-3) and the Petition for Clarification or Waiver of New Jersey Transit Corporation (NJT-4). Also enclosed is a 3.5 inch diskette containing the filings in WordPerfect 5.1.

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

Respectfully submitted,

Kevin M. Sheys

Enclosures

cc: All Parties of Record on Service List
BEFORE THE
SURFACE TRANSPORTATION BOARD

______________________________
Finance Docket No. 333F8

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

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

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

______________________________

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF NEW JERSEY TRANSIT CORPORATION

Robert Shire
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
One Penn Plaza East
Newark, NJ 07105-2246
(201) 491-7037

Kevin M. Sheys
Thomas Lawrence III
Thomas J. Litwiler
Edward J. Fishman
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 293-6300

Counsel for New Jersey Transit Corporation

Dated: August 22, 1997
DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF NEW JERSEY TRANSIT CORPORATION

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, New Jersey Transit Corporation ("NJT") hereby submits this description of the responsive application which NJT intends to file in this proceeding on or before October 21, 1997.

New Jersey Transit Rail Operations, Inc. ("NJTRO"), an operating subsidiary of NJT, operates approximately 591 commuter rail trains each weekday over 972 miles of rail line in the State of New Jersey owned by NJT and by Consolidated Rail Corporation ("Conrail"), a Primary Applicant in this proceeding. NJTRO has an average weekday ridership of 170,000 trips and annual ridership of approximately 47 million. NJTRO was formed in 1982 to take over commuter rail services then provided by Conrail, and commenced operations on January 1, 1983. NJT is an
instrumentality of the State of New Jersey, and is participating in this proceeding as a party of record with the New Jersey Department of Transportation ("NJDOT").

NJT believes that the proposed control of Conrail by the parents of CSXT and NSR, the division of Conrail's assets between CSXT and NS, the proposed joint operations of CSXT and NSR in the so-called North Jersey Shared Assets Area and the operational changes and congestion associated with these actions will have serious adverse impacts on existing and future commuter rail operations in the State of New Jersey, will diminish the adequacy of transportation to the public and, absent appropriate conditions to ameliorate these harms, would not be in the public interest. NJT anticipates filing herein a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4) for the following transactions to be sought as conditions on any Board approval of the Primary Application:\(^1\)

1. **NJT's acquisition of operating rights over Conrail's line of railroad known as the Bordentown Secondary, between Trenton and Camden, New Jersey.**

2. **NJT's acquisition of operating rights over Conrail's line of railroad known as the Vineland Secondary, between Camden and Glassboro, New Jersey, including the Bulson Street Running Track.**

3. **NJT's acquisition of operating rights over Conrail's line of railroad known as the main line of the former Central Railroad Company of New Jersey or the Elizabeth Industrial Track, between Elizabethport and Cranford, New Jersey.**

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\(^1\) NJT is filing concurrently herewith a Petition for Clarification or Waiver (NJT-4) that seeks, in part, a determination that these proposed transactions do not require the filing of a responsive application.
4. NJT's acquisition of operating rights over Conrail's line of railroad known as the Amboy Secondary Track between South Amboy and Monmouth Junction (via Jamesburg) and over Conrail's Freehold Secondary between Jamesburg and Freehold, all in New Jersey.

5. NJT's acquisition of operating rights over Conrail's line of railroad known as the Trenton Line between Bound Brook and West Trenton (via Port Reading Junction), in New Jersey.

6. NJT's acquisition of operating rights over Conrail's line of railroad known as the West Shore Line or the River Line between North Bergen, New Jersey and the New Jersey-New York state line.

7. NJT's acquisition of operating rights over Conrail's line of railroad known as the Northern Branch between CP Croxton and the New Jersey-New York state line.

8. NJT's acquisition of operating rights over the line of the New York, Susquehanna & Western Railway Company between Secaucus Road, in North Bergen, New Jersey and Pelton Road, in Warwick, New York.

9. NJT's acquisition of operating rights over Conrail's line of railroad known as the Washington Secondary between Netcong and Phillipsburg, New Jersey.

10. NJT's acquisition of operating rights over Conrail's line of railroad known as the Southern Secondary between South Lakewood and Woodmansie, New Jersey.

NJT and NJDOT may seek additional conditions, not requiring the filing of a responsive application, in their comments and evidentiary submission scheduled to be filed on or before October 21, 1997.
WHEREFORE, NJT respectfully submits this description of its anticipated responsive application in this proceeding.

Respectfully submitted.

Robert Shire  
Deputy Attorney General  
State of New Jersey  
Department of Law and Public Safety  
Division of Law  
One Penn Plaza East  
Newark, NJ 07105-2246  
(201) 491-7037

Dated: August 22, 1997

Kevin M. Sheys  
Thomas Lawrence III  
Thomas J. Litwiler  
Edward J. Fishman  
Oppenheimer Wolff & Donnelly  
1020 Nineteenth Street, N W.  
Suite 400  
Washington, D.C. 20036  
(202) 293-6300

Counsel for New Jersey Transit Corporation
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of New Jersey Transit Corporation (NJT-3) was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

Kevin M. Sheys
August 22, 1997

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Description of Anticipated Responsive Application of R.J. Corman Parties (RJC-2) and the Petition for Clarification or Waiver of R.J. Corman Parties (RJC-4). Also enclosed is a 3.5 inch diskette containing the filings in WordPerfect 5.1.

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

Respectfully submitted,

Kevin M. Sheys

Enclosures

cc: All Parties of Record on Service List
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (Sub-No. 63)

R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE
-- PURCHASE OR TRACKAGE RIGHTS --
LINE OF CONSOLIDATED RAIL CORPORATION

DESCRIPTION OF ANTICIPATED RESPONSIVE
APPLICATION OF R.J. CORMAN PARTIES

Kevin M. Sheys
Edward J. Fishman
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, DC 20036
(202) 293-6300

ATTORNEYS FOR R.J. CORMAN PARTIES

Dated: August 22, 1997
Pursuant to Decision numbers 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, the R.J. Corman Parties' hereby submit this description of the responsive application which R.J. Corman Railroad Company/Western Ohio Line ("RJCW") intends to file in this proceeding on or before October 21, 1997.

RJCW is a common carrier by rail operating approximately 51.5 miles of line between Lima, Ohio and the Indiana/Ohio border. RJCW also operates a line of railroad between Lima and Glenmore, Ohio pursuant to a modified certificate of public convenience and necessity.


RJCW believes that the proposed control of Consolidated Rail Corporation ("Conrail") by the parents of CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"), the division of Conrail’s assets between CSXT and NSR and the associated operational changes will have serious adverse impacts on the shippers served by RJCW on the Lima-Glenmore line. Absent appropriate conditions to ameliorate these harms, RJCW believes that the proposed control of Conrail and division of its assets would not be in the public interest. RJCW anticipates filing a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4) for the following transaction, to be sought as a condition on any Board approval of the Primary Application.

1. RJCW’s acquisition of ownership of or trackage rights on Conrail’s line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.
WHEREFORE, the R.J. Corman Parties respectfully submit this description of RJC's anticipated responsive application in this proceeding.

Respectfully submitted,

By:

Kevin M. Cheys
Edward J. Fishman
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, DC 20036
(202) 293-6300

ATTORNEYS FOR R.J. CORMAN PARTIES

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of R.J. Corman Parties (RJC-2), was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

Kevin M. Sheys
VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty-five (25) copies of Description of Responsive or Inconsistent Application of The Burlington Northern and Santa Fe Railway Company (BNSF-3). Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 6.1 format.

Copies of BNSF-3 are being served via first-class mail, postage prepaid on the Honorable Jacob Leventhal and on All Counsel of Record, including counsel for Applicants. I would appreciate it if you would date-stamp the enclosed extra copy of the pleading and return it to the messenger for our files. If you have any questions, please contact me at (202) 778-0642. Thank you.

Sincerely,

Erika Z. Jones

Enclosures

cc: The Hon. Jacob Leventhal
All Counsel of Record
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

DESCRIPTION OF RESPONSIVE OR
INCONSISTENT APPLICATION

Jeffrey R. Moreland
Richard E. Weicher
Sidney L. Strickland, Jr.
The Burlington Northern and
Santa Fe Railway Company
1700 East Golf Road
Schaumburg, IL 60173
(847) 995-6887

and

Janice G. Barber
Michael E. Roper
The Burlington Northern and
Santa Fe Railway Company
3017 Lou Menk Drive
Fort Worth, Texas 76131-2830
(817) 352-2352

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Ave., NW
Washington, DC 20006
(202) 463-2000

Attorneys for The Burlington Northern and Santa Fe Railway Company

August 22, 1997
On July 10, 1997, The Burlington Northern and Santa Fe Railway Company ("BNSF") filed its Notice of Intent to Participate in this proceeding as a party of record. Pursuant to the Board's Decision No. 12 herein, all parties intending to file a responsive or inconsistent application are required to state their intention to do so and to furnish a general statement of what such application is expected to include by August 22, 1997. In accordance with the Board's Decision, the following is BNSF's statement of its intent and general statement.

Although BNSF has not yet determined what, if any, additional comments it intends to make with respect to the proposed Conrail control transaction, BNSF has determined that it will actively participate in this proceeding as necessary to ensure the
maintenance of effective competition in those territories affecting BNSF and its customers. In this regard, several parties to this proceeding have indicated in their preliminary and discovery filings that they are opposed to the proposed control transaction and that they may seek conditions or make proposals with respect to the divestiture or sale of or access to Applicants' lines. Should such conditions or proposals be made, and depending on the nature of the requested relief, BNSF intends to participate as its interests may appear. Such participation may include, inter alia, (i) an appropriate responsive application pertaining to any proposed divestiture or sale of or other access to Applicants' lines in the Gulf Coast and Midwestern Regions; and (ii) such responsive applications or requests for other conditions as may be necessary to permit BNSF to compete effectively by assuring BNSF (a) access to CSX, Norfolk Southern or other terminal facilities or operations affected by the proposed Conrail transaction (e.g., trackage rights over trackage within the Chicago area), and (b) effective routing alternatives through major gateways.
Respectfully submitted,

Erika Z. Jones
Adrian L. Steel, Jr.
Roy T. Englert, Jr.
Kathryn A. Kusske
Mayer, Brown & Platt
2000 Pennsylvania Ave., NW
Washington, DC 20006
(202) 463-2000

and

Janice G. Barber
Michael E. Roper
The Burlington Northern and Santa Fe Railway Company
3017 Lou Menk Drive
Fort Worth, Texas 76131-2830
(817) 3-2-2352

Attorneys for The Burlington Northern and Santa Fe Railway Company

August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that copies of the Description of Responsive or Inconsistent Application of The Burlington Northern and Santa Fe Railway Company (BNSF-3) have been served this 22nd day of August, 1997, by first-class mail, postage prepaid on the Honorable Jacob Leventhal and on all Counsel of Record in Finance Docket No. 33388.

[Signature]
August 22, 1997

HAND DELIVER

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 600
Washington, D.C. 20423-9001

Re: STB Finance Docket No. 33388 CSX CORPORATION AND CSX
TRANSPORTATION INC. NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY—CONTROL
AND OPERATING LEASES/AGREEMENTS—CONRAIL INC. AND
CONSOLIDATED RAIL CORPORATION

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Description of
Anticipated Responsive Applications and Petition for Clarification or Waiver on behalf of Ann
Arbor Railroad. Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.2.

Please time and date stamp the extra copy and return it with our messenger.

If you have any questions, please contact me.

Sincerely,

Karl Morell
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

DESCRIPTION OF ANTICIPATED
RESPONSIVE APPLICATIONS

PETITION FOR
CLARIFICATION OR WAIVER

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 466-6530

Attorneys for:
ANN ARBOR RAILROAD

Dated: August 22, 1997
DESCRIPTION OF CONDITIONS

In accordance with the Surface Transportation Board’s ("Board") Decision Nos. 6 and 12, AA describes below those conditions it anticipates seeking in this proceeding that require responsive applications. Conditions that do not require responsive applications are not described.

As the term is used below, "local" trackage rights include: (1) the right to operate trains over the lines described, (2) the right to interchange with all carriers (including shortlines) at all
junctions on the lines described; and (3) the right to serve all shippers, sidings and team tracks located on the lines described.

AA anticipates filing a responsive application seeking one of the following three trackage rights conditions:

1. **Toledo - Chicago**
   
   Local trackage rights between Toledo, Ohio and Chicago, Illinois via Elkhart, Indiana over the Consolidated Rail Corporation ("CRC") rail line to be acquired by Norfolk Southern Railway Company ("NS").

2. **Toledo - Chicago**
   
   Local trackage rights between Toledo, Ohio and Chicago, Illinois via Detroit and Grand Rapids, Michigan over the CSX Transportation, Inc. rail line.

3. **Ann Arbor - Chicago**
   
   Local trackage rights between Ann Arbor, Michigan and Chicago, Illinois via Kalamazoo, Michigan over the CRC rail line to be acquired by NS.

**PETITION FOR CLARIFICATION OR WAIVER**

AA is a class III rail carrier providing rail service over approximately 53 miles of track between Ann Arbor, Michigan and Toledo, Ohio. AA’s anticipated responsive application merely includes trackage rights over one of three rail lines approximately 275 to 325 miles in length. Accordingly, AA requests that its application be considered a minor transaction or, alternatively, that the Board waive certain regulatory provisions otherwise applicable to significant transactions.
The responsive application AA anticipates filing is clearly not a major transaction since it does not involve the control or merger of two or more class I railroads. See 49 C.F.R. § 1180.2 (a). Pursuant to the Board’s rules, responsive applications which are not major transactions are presumed to be significant transactions. See 49 C.F.R. § 1180.4 (d) (4) (ii). The limited trackage rights AA anticipates seeking, however, do not fall within the Board’s definition of significant transaction. A significant transaction is one of regional or national transportation significance. A transaction is not significant if it “clearly will not have any anticompetitive effects...” 49 C.F.R. § 1180.2 (b). The condition AA intends to seek merely involves approximately 275 to 325 miles of trackage rights. Moreover, the condition clearly will have no anticompetitive effects. Rather, the condition is procompetitive and is intended to eliminate certain anticompetitive effects of the Primary Application in this proceeding. Accordingly, AA urges the Board to consider its anticipated responsive application as a minor transaction.

Alternatively, AA requests the Board to waive the following filing requirements that are otherwise applicable to significant transactions:

- 49 C.F.R. § 1180.6 (b) (3) Change in control
- 49 C.F.R. § 1180.6 (b) (5) Issues
- 49 C.F.R. § 1180.6 (b) (6) Corporate chart
- 49 C.F.R. § 1180.6 (b) (7) Noncarrier applicant
- 49 C.F.R. § 1180.6 (b) (8) Inter corpor ate relationships
- 49 C.F.R. § 1180.7 Market analyses
- 49 C.F.R. § 1180.8 (a) Operational data for major or significant transactions
These filing requirements applicable to significant transactions are totally irrelevant to the limited condition AA anticipates seeking, would provide the Board with information that is totally useless in assessing the merits of AA’s responsive application, and would impose an onerous and unnecessary burden on AA. AA is aware of the Board’s criteria for imposing conditions on the Primary Application and that AA must meet those criteria to justify a grant of its responsive application. The filing requirements AA seeks to have waived would neither diminish AA’s ability to meet its burden of proof nor impede the Board’s ability fully to assess the merits of AA’s requested condition.

In summary, AA respectfully urges the Board to clarify that AA’s anticipated responsive application is minor or, alternatively, to grant the requested waiver of filing requirements.

Respectfully submitted,

[Signature]

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N W.
Washington, D.C. 20005
(202) 466-6530

Attorneys for:
ANN ARBOR RAILROAD

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, I caused a copy of the foregoing Descriptions of Anticipated Responsive Applications and Petition for Clarification or Waive: to be served by first class mail, postage prepaid, on Administrative Law Judge Jacob Leventhal and the following parties:

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
JAMES L. HOWE, III
ROBERT J. COONEY
GEORGE A. ASPATORE
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

RICHARD A. ALLEN
JAMES A. CALDERWOOD
ANDREW R. PLUMP
JOHN V. EDWARDS
Zuckert, Scoult & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939

JOHN M. NANNES
SCOT B. HUTCHINS
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

SAMUEL M. SIPE, JR.
TIMOTHY M. WALSH
Steptoe & Johnson LLP
1330 Connecticut Avenue
Washington, D.C. 20036-1795

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

MARK G. ARGON
PETER J. SHUDIZ
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23129

P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CSX Transportation, Inc.
500 Water Street,
Speed Code J-120
Jacksonville, FL 32202

DENNIS G. LYONS
RICHARD L. ROSEN
PAUL T. DENIS
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202

TIMOTHY T. O'TOOLE
CONSTANCE L. ABRAMS
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19103

Karl Morell

Karl Morell
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY -- CONTROL -- INDIANA HARBOR BELT RAILROAD COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Robert N. Gentile
Colette Ferris-Shotton
Transstar, Inc.
135 Jamison Lane
P.O. Box 68
Monroeville, PA 15146
(412) 829-6890

William C. Sippel
Kevin M. Sheys
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Dated: August 22, 1997
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 36)

TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY -- CONTROL -- INDIANA HARBOR BELT RAILROAD COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF TRANSTAR, INC. AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Transtar, Inc. ("Transtar") and the Elgin, Joliet and Eastern Railway Company ("EJE") hereby submit this description of the responsive application which they expect to file in this proceeding on or before October 21, 1997.

Transtar is a non-carrier transportation holding company which controls eight Board-regulated rail carrier subsidiaries: (1) EJE; (2) Bessemer and Lake Erie Railroad Company, a Class II carrier operating in western Pennsylvania and northeastern Ohio; (3) Birmingham Southern Railroad Company, a Class III switching and terminal carrier in Birmingham, Ensley, Fairfield and Bessemer, Alabama; (4) Duluth, Missabe and Iron Range Railway Company, a Class II carrier operating in
northeastern Minnesota and northwestern Wisconsin; (5) The Lake Terminal Railroad Company, a Class III switching carrier operating in Lorain, Ohio; (6) Union Railroad Company, a Class III carrier operating from North Bessemer to Clairton Junction, Pennsylvania, and thence to Clairton and Mifflin Junction, Pennsylvania; (7) McKeesport Connecting Railroad Company, a Class III switching operation in McKeesport, Pennsylvania; and (8) The Pittsburgh & Conneaut Dock Company, which operates a rail/water dock facility on Lake Erie at Conneaut, Ohio.

EJE is a Class II carrier that owns and operates 196 miles of mainline and branchline trackage in and around Chicago in the states of Illinois and Indiana. EJE's main line extends from Waukegan, Illinois through Joliet, Illinois to Gary, Indiana. Branch lines extend from Plainfield to East Morris, Illinois and from Gary to Whiting and East Chicago, Indiana and Hegewisch and South Chicago, Illinois. EJE functions as a linehaul and industrial switching railroad, serving a large number of industrial customers in the Chicago area and connecting with all line-haul carriers serving Chicago.

Transtar and EJE believe that the proposed control of Consolidated Rail Corporation ("Conrail"), by CSX Corporation and Norfolk Southern Corporation and the proposed allocation of Conrail's assets -- including Conrail's 51% ownership interest in the Indiana Harbor Belt Railroad Company ("IHB"), a major Chicago area terminal and switching carrier -- to CSX Transportation, Inc. and Norfolk Southern Railway Company will have serious anticompetitive effects in the Chicago switching district,
particularly with respect to the interchange of traffic between carriers and the provision of intermediate switching services. Transtar and EJE oppose the proposed transaction in the absence of conditions which will mitigate these anticompetitive effects. Transtar and EJE anticipate filing herein a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4) seeking, as a condition on any Board approval of the Primary Application, the divestiture of Conrail's controlling, 51% stock interest in the IHD to Transtar, EJE or another corporate affiliate.¹

Transtar and EJE also anticipate that they may seek additional conditions, not requiring the filing of a responsive application, in their comments and evidentiary submission scheduled to be filed on or before October 21, 1997.

¹ Transtar Holdings L.P. ("Holdings"), which owns 51% of the stock of Transtar, and Holdings' controlling general partner, Blackstone Transportation Company, Inc., also will join as parties to the responsive application to the extent necessary.
WHEREFORE, Transtar and EJE respectfully submit this description of their anticipated responsive application in this proceeding.

Respectfully submitted,

By: William C. Sippel
Robert N. Gentile
Colette Ferris-Shotton
Transtar, Inc.
135 Jamison Street
P.O. Box 68
Monroeville, PA 15146
(412) 829-6890

William C. Sippel
Kevin M. Sheys
Oppenheimer Wolff & Donnelly
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, Illinois 60601
(312) 616-1800

ATTORNEYS FOR TRANSTAR, INC.
AND ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of Transtar, Inc. and Elgin, Joliet and Eastern Railway Company (SJE-3) was served by first class mail, postage prepaid, upon:

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

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

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

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

and upon all parties of record appearing on the Surface Transportation Board’s official service list in this proceeding, served August 19, 1997.

William C. Sippel
August 22, 1997

VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
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

Finance Docket No. 33388 (Sub-No. 59)
Wisconsin Central Ltd. -- Purchase and Related
Trackage Rights -- Lines of The Baltimore & Ohio
Chicago Terminal Railroad Company and Consolidated
Rail Corporation

Finance Docket No. 33388 (Sub-No. 60)
Conrail Inc. and Consolidated Rail Corporation --
Divestiture of Control -- Indiana Harbor Belt
Railroad Company

Dear Secretary Williams:

Enclosed for riling in the above-captioned proceeding
are an original and twenty-five copies of the Description of
Anticipated Responsive Application of Wisconsin Central Ltd.
(WC-2) and the Petition for Clarification or Waiver of Wisconsin
Central Ltd. (WC-3), both dated August 22, 1997. A computer
diskette containing the text of these filings in WordPerfect 5.1
format also is enclosed.

In accordance with the Board's recently-issued service
list, copies of WC-2 and WC-3 have been served by first class
mail, postage prepaid on all designated parties of record in this
proceeding.
If you have any questions regarding these filings, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Janet H. Gilbert
Attorney for Wisconsin Central Ltd.

JHG:tlj

Enclosures

cc: Parties on Certificate of Service
BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (SUB-NO. 59)

WISCONSIN CENTRAL LTD.
-- PURCHASE AND RELATED TRACAGE RIGHTS -- LINES OF THE BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 60)

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION
-- DIVESTITURE OF CONTROL -- INDIANA HARBOR BELT RAILROAD COMPANY

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF WISCONSIN CENTRAL LTD.

Janet H. Gilbert
General Counsel
Wisconsin Central Ltd.
6250 North River Road, Suite 9000
Rosemont, IL 60018
(847) 318-4691

ATTORNEY FOR WISCONSIN CENTRAL LTD.

Dated: August 22, 1997
BEFORE THE 
SURFACE TRANSPORTATION BOARD 

FINANCE DOCKET NO. 33388 

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

FINANCE DOCKET NO. 33388 (SUB-NO. 59) 

WISCONSIN CENTRAL LTD. 
-- PURCHASE AND RELATED TRACKAGE RIGHTS -- LINES OF THE BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD COMPANY AND CONSOLIDATED RAIL CORPORATION 

FINANCE DOCKET NO. 33388 (SUB-NO. 60) 

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- DIVESTITURE OF CONTROL -- INDIANA HARBOR BELT RAILROAD COMPANY 

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF WISCONSIN CENTRAL LTD. 

Pursuant to Decision Nos. 6 and 12 herein, served on May 30, 1997 and July 23, 1997, respectively, Wisconsin Central Ltd. ("WCL") hereby submits this description of the responsive application which WCL expects to file in this proceeding on or before October 21, 1997. 

WCL is a Class II common carrier by rail which owns or operates approximately 2000 route miles of rail line in the states of Wisconsin, Illinois, Michigan and Minnesota. WCL began operations in 1987 after acquiring its core rail lines from Soo Line Railroad Company. WCL is a wholly-owned subsidiary of Wisconsin Central Transportation Corporation ("WCTC"), which also
controls Fox Valley & Western Ltd. ("FVW"), a Class II common carrier by rail which owns approximately 500 miles of rail line within the state of Wisconsin, and the Sault Ste. Marie Bridge Company ("SSMB"), a Class III common carrier by rail which owns approximately 220 miles of rail line in northern Wisconsin and the Upper Peninsula of Michigan and between Sault Ste. Marie, Michigan and Sault Ste. Marie, Ontario, Canada. WCTC, FVW and SSMB are each participating as parties of record in this proceeding, see WC-1, dated August 6, 1997, and the relief sought herein by WCL is sought on behalf of those entities as well.

WCL's rail lines emanate north from Chicago, Illinois, and Chicago is by far the largest traffic gateway for the Wisconsin Central system. The efficient, timely and cost-effective interchange of traffic with other rail carriers at Chicago is absolutely critical to WCL's ability to offer competitive rail service. Together with its affiliates, WCL is the largest railroad in the state of Wisconsin and the Upper Peninsula of Michigan. Shippers in those states depend on WCL's capacity to move commodities through the Chicago gateway in interchange with other rail carriers. Any diminution in the competitiveness and efficiency of the Chicago gateway would have serious adverse effect on shippers and businesses in Wisconsin and Michigan's Upper Peninsula.

WCL does not have significant yard facilities in the Chicago terminal, and does not possess an ownership interest in any of the intermediate switching carriers at Chicago. WCL accordingly is dependent on competitive, neutral intermediate
switching carriers and the cooperation of other line-haul carriers in developing routings through the Chicago terminal to ensure the efficient interchange of traffic.

Whatever its virtues elsewhere in the Northeast, the proposed control of Consolidated Rail Corporation ("Conrail") by the parent corporations of CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR") and the division of Conrail's assets between CSXT and NSR will not enhance rail transportation service in and through the Chicago gateway. To the contrary, WCL believes that the proposed transaction will have serious and on-going anticompetitive effects in the Chicago switching district, resulting from the domination of intermediate switching services by one or a small number of carriers, the increased market power of the Primary Applicants to compel self-serving but inefficient and anti-competitive interchange relationships, the loss of existing competitive interchange options, the elimination of direct interchanges, increased congestion and increased interchange and intermediate switching costs. The proposed transaction will not only adversely affect WCL and its shippers, but all other carriers operating and interchanging traffic within the Chicago switching district and their shippers as well.

In the absence of mitigation conditions to ameliorate these serious anticompetitive effects in the nation's most important railroad gateway, WCL strongly opposes the proposed transaction in its present form. WCL anticipates filing a responsive application pursuant to 49 C.F.R. § 1180.4(d)(4)
herein for the following transactions to be sought as conditions on any Board approval of the Primary Application:

1. WCL's purchase of: a) the Altenheim Subdivision of The Baltimore & Ohio Chicago Terminal Railroad Company ("B&OCT"), a CSXT subsidiary, between the connection with WCL at Madison Street in Forest Park and the connection with the Union Pacific Railroad Company and Conrail’s former "Panhandle Line" at Rockwell Street (also known as Ogden Junction) in Chicago, and b) Conrail's "Panhandle Line" right-of-way and remaining track (currently unused) between Rockwell Street and Brighton Park in Chicago, together with related trackage rights to interchange traffic with The Burlington Northern and Santa Fe Railway Company ("BNSF") at 22nd Street, CSXT, NSR and BNSF at Brighton Park and Grand Trunk Western Railroad, Inc. (Canadian National) at the Railport facility in Chicago.

2. The divestiture by Conrail of its controlling, 51% stock interest in the Indiana Harbor Belt Railroad Company to a carrier or consortium of non-eastern carriers that may include, *inter alia*, WCL.

WCL also anticipates that it will seek a condition on any approval of the Primary Application requiring the merger of B&OCT into its parent, CSXT. As is explained further in WCL's Petition for Clarification or Waiver (WC-3), filed concurrently herewith, WCL does not believe that this transaction requires the filing of a responsive application by WCL.

In addition to the foregoing, WCL also anticipates that it will seek additional competitive conditions, not requiring the
filing of a responsive application, in its comments and evidentiary submission scheduled to be filed on October 21, 1997.

WHEREFORE, WCL respectfully submits this description of its intended responsive application in this proceeding.

Respectfully submitted,

By: [Signature]
Janet H. Gilbert
General Counsel
Wisconsin Central Ltd.
6250 North River Road, Suite 9000
Rosemont, IL 60018
(847) 318-4691

ATTORNEY FOR
WISCONSIN CENTRAL LTD.

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, a copy of the foregoing Description of Anticipated Responsive Application of Wisconsin Central Ltd. (WC-2) was served by first class mail, postage prepaid, upon:

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

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

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

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

and upon all parties of record appearing on the Surface Transportation Board's official service list in this proceeding, served August 19, 1997.

Janet H. Gilbert
Janet H. Gilbert
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

DESCRIPTION OF ANTICIPATED
RESPONSIVE APPLICATIONS

PETITION FOR
CLARIFICATION OR WAIVER

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 466-6530

Attorneys for:
CONNECTICUT SOUTHERN
RAIL ROAD, INC.

Dated August 22, 1997
Connecticut Southern Railroad, Inc. ("CSO"), pursuant to 49 U.S.C. § 11323-25, Decision No. 6 (served May 30, 1997) and Decision No. 12 (served July 23, 1997), hereby submits its Description of Anticipated Responsive Applications and Petition for Clarification or Waiver.

DESCRIPTION OF CONDITIONS

In accordance with the Surface Transportation Board’s ("Board") Decision Nos. 6 and 12, CSO describes below the condition it anticipates seeking in this proceeding that requires a responsive application. Conditions that do not require responsive applications are not described.

As the term is used below, "local" trackage rights include: (1) the right to operate trains over the lines described, (2) the right to interchange with all carriers (including shortlines) at all
junctions on the lines described; and (3) the right to serve all shippers, sidings and team tracis located on the lines described.

1. New Haven - New York

Local trackage rights between New Haven, Connecticut and Fresh Pond Junction, New York over the rail line operated by Consolidated Rail Corporation ("CRC") and to be operated by CSX Transportation, Inc. ("CSXT").

PETITION FOR CLARIFICATION OR WAIVER

CSO is a class III rail carrier providing rail service over approximately 78 miles of track between Springfield, Massachusetts and New Haven, Connecticut. CSO’s anticipated responsive application merely includes trackage rights over a rail line totalling approximately 75 miles in length. Accordingly, CSO requests that its application be considered a minor transaction or, alternatively, that the Board waive certain regulatory provisions otherwise applicable to significant transactions.

The responsive application CSO anticipates filing is clearly not a major transaction since it does not involve the control or merger of two or more class I railroads. See 49 C.F.R. § 1180.2 (a). Pursuant to the Board’s rules, responsive applications which are not major transactions are presumed to be significant transactions. See 49 C.F.R. § 1180.4 (d) (4) (ii). The limited trackage rights CSO anticipates seeking, however, do not fall within the Board’s definition of significant transaction. A significant transaction is one of regional or national transportation significance. A transaction is not significant if it “clearly will not have any anticompetitive effects....” 49 C.F.R. § 1180.2 (b). The condition CSO intends to seek merely involves approximately 75 miles of
Moreover, the condition clearly will have no anticompetitive effects. Rather, the condition is procompetitive and is intended to eliminate certain anticompetitive effects of the Primary Application in this proceeding. Accordingly, CSO urges the Board to consider its anticipated responsive application as a minor transaction.

Alternatively, CSO requests the Board to waive the following filing requirements that are otherwise applicable to significant transactions:

49 C.F.R § 1180.6 (b) (3) Change in control
49 C.F.R § 1180.6 (b) (5) Issues
49 C.F.R § 1180.6 (b) (6) Corporate chart
49 C.F.R § 1180.6 (b) (7) Noncarrier applicant
49 C.F.R § 1180.6 (b) (8) Intercorporate relationships
49 C.F.R § 1180.7 Market analyses
49 C.F.R § 1180.8 (a) Operational data for major or significant transactions

These filing requirements applicable to significant transactions are totally irrelevant to the limited condition CSO anticipates seeking, would provide the Board with information that is totally useless in assessing the merits of CSO’s responsive application, and would impose an onerous and unnecessary burden on CSO. CSO is aware of the Board’s criteria for imposing conditions on the Primary Application and that CSO must meet those criteria to justify a grant of its responsive application. The filing requirements CSO seeks to have waived would neither diminish CSO’s ability to meet its burden of proof nor impede the Board’s ability fully to assess the merits of CSO’s requested condition.
In summary, CSO respectfully urges the Board to clarify that CSO's anticipated responsive application is minor or, alternatively, to grant the requested waiver of filing requirements.

CSO also requests the following two specific clarifications or waivers:

1. CSO seeks clarification or waiver of the definition of "applicant" in 49 C.F.R. § 1180.3 (a) to exclude RailTex, Inc. ("RailTex"). CSO does not believe that RailTex, its noncarrier parent, is properly characterized as "initiating [the proposed] transaction". In any event, requiring RailTex to file as an applicant would impose unnecessary burdens on CSO without enhancing the Board's ability to evaluate the competitive and financial impacts of the condition CSO anticipates seeking.

2. CSO seeks clarification or waiver of the definition of "applicant carrier" in 49 C.F.R. § 1180.3 (b) to exclude all of CSO's affiliated carriers in the RailTex family. RailTex currently controls 22 class III railroads, including CSO, operating in 22 states, as well as three rail carriers that operate in Canada. Those carriers are operated autonomously under separate management, independently of CSO, and would not be affected by the trackage rights CSC anticipates seeking in its responsive application. Characterizing these affiliated carriers as "applicant carriers" would impose significant burdens on CSO, without materially enhancing the
Board's ability to evaluate the competitive and financial effects of the transactions to be proposed by CSO.

Respectfully submitted,

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 466-6530

Attorneys for:
CONNECTICUT SOUTHERN RAILROAD, INC.

Dated: August 27, 1997
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 1997, I caused a copy of the foregoing Descriptions of Anticipated Responsive Applications and Petition for Clarification or Waiver to be served by first class mail, postage prepaid, on Administrative Law Judge Jacob Leventhal and the following parties:

JAMES C. BISHOP, JR.
WILLIAM C. WOOLDRIDGE
JAMES L. HOWE, III
ROBERT J. COONEY
GEORGE A. ASPATORE
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241

MARK G. ARGON
PETER J. SITUDTZ
CSX Corporation
One James Center
902 East Cary Street
Richmond, VA 23125

RICHARD A. ALLEN
JAMES A. CALDERWOOD
ANDREW R. PLUMP
JOHN V. EDWARDS
Zuckert, Scott & Rasenberger, L.L.P.
888 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20006-3939

P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CSX Transportation, Inc.
500 Water Street,
Speed Code J-120
Jacksonville, FL 32202

JOHN M. NANNES
SCOT B. HUTCHINS
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

DENNIS G. LYONS
RICHARD L. ROSEN
PAUL T. DENIS
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202

SAMUEL M. SIPE, JR.
TIMOTHY M. WALSH
Steptoe & Johnson L.L.P
1330 Connecticut Avenue
Washington, D.C. 20036-1795

TIMOTHY T. O'TOOLE
CONSTANCE L. ABRAMS
Consolidated Rail Corporation
Two Commerce Square
2061 Market Street
Philadelphia, PA 19103

PAUL A. CUNNINGHAM
Harkings Cunningham
1300 Nineteenth Street, N.W., Suite 600
Washington, D.C. 20036

Karl Morell
August 22, 1997

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 33388

Dear Secretary Williams:

Please find enclosed for filing with the Board an original and twenty-six (26) copies of the Description of Anticipated Responsive Application of the Southern Tier West Regional Planning & Development Board for filing in this proceeding.

In accordance with Decision No. 6 in this proceeding, copies of the enclose document is being served upon Applicants' counsel, Administrative Law Judge Jacob Leventhal, and parties of record.

Please return a file-stamped copy in the envelope provided. Should there be any questions about this filing, please call me at (202) 496-4920.

Respectfully submitted,

[Signature]

Paul H. Lamboley

Enclosures

cc: Hon. Jacob Leventhal
All parties of record
UNITED STATES OF AMERICA

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/AGREEMENT -
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

DESCRIPTION OF ANTICIPATED RESPONSIVE
APPLICATION OF THE SOUTHERN TIER WEST
REGIONAL PLANNING AND DEVELOPMENT BOARD

Paul H. Lambchéy
1020 Nineteenth Street, NW
Suite 400
Washington, D.C. 20036-6105
Telephone: 202-496-4920
Facsimile: 202-293-6200

Counsel for Southern Tier West
Regional Planning & Development Board
DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION OF THE SOUTHERN TIER WEST REGIONAL PLANNING AND DEVELOPMENT BOARD

The Southern Tier West Regional Planning and Development Board ("STW") hereby submits this description of the responsive application which STW anticipates filing in this proceeding on or prior to October 21, 1997.

STW is a regional planning board representing the New York State counties of Allegany, Cattaraugus, and Chautauqua located in the southwestern corner of New York State. For purposes of this proceeding, STW also represents the county of Steuben, also in New York State.

The STW region is served by a Conrail line known as the Southern Tier Extension, which runs from Hornell, New York to Corry, Pennsylvania. Formerly part of the east-west main line of the Erie Lackawanna Railway Company, it connects at Hornell with Conrail's Buffalo-Jersey City "Southern Tier Line." Between Corry and Meadville, Pennsylvania, the former Erie Lackawanna main line is owned by the Northwest Pennsylvania Rail Authority. Between Meadville and Youngstown, Ohio, it is owned by Conrail. At Corry, connection is made to the Emporium-Erie line of the Allegheny & Eastern Railroad, a Class III carrier.

The STW region is also served by three north-south lines. Conrail's Buffalo-Harrisburg line intersects the Southern Tier Extension at Olean, New York. The Buffalo & Pittsburgh Railroad is a Class III railroad whose line passes over the Southern Tier Extension east of Salamanca, New York. The Buffalo & Pittsburgh is a corporate affiliate of the Allegheny & Eastern Railroad. Finally,

Conrail and Norfolk Southern operate separate main lines along the shore of Lake Erie in Chautauqua County. Inasmuch as these lines are at the periphery of the STW region, this filing does not address them.

Following the proposed division of Conrail between CSX Transportation ("CSXT") and the Norfolk Southern Railway Company ("NS"), the Southern Tier Extension and Conrail's Buffalo-Harrisburg line are designated for transfer to Norfolk Southern. Taken together with Conrail's Meadville-Youngstown line (which will also be conveyed to NS) and the Corry-Meadville segment owned by the Northwest Pennsylvania Rail Authority, the Southern Tier Extension could therefore form part of a continuous route between other NS lines at Hornell and Youngstown. Alternatively, it could form part of a continuous route between Hornell and Erie, using Conrail trackage rights over the Allegheny & Eastern Railroad which NS expects to acquire.

STW has been deeply involved in the future of the Southern Tier Extension since 1993. Following a comprehensive study of the line's future during 1993 and 1994, STW attempted to negotiate its acquisition from Conrail. Summarizing a long and difficult process, Conrail was generally willing to sell the line whenever Conrail believed that it would be able to sever a continuous route between CSXT at Youngstown and Canadian Pacific ("CP") at Hornell by abandoning the segment between Corry and Meadville. When this segment
was sold to the Northwest Pennsylvania Rail Authority pursuant to the order of the Interstate Commerce Commission in 1995 AB No. 167 (Sub No. 1139)
Consolidated Rail Corp. - Abandonment between Corry and Meadville, in Erie and Crawford Counties, PA. (non print) served April 17, 1995 clarified July 18, 1995. Conrail terminated negotiations with STW.

While these negotiations were underway, traffic continued to deteriorate and large portions of the Southern Tier Extension were allowed to fall into disuse. At this time, two customers remain active in the vicinity of Jamestown, New York. They receive service from Olean, approximately 50 miles away. Remaining segments, totaling 92 miles out of the 146 miles between Hornell and Corry, are shut down altogether. The segment between Olean and Hornell was damaged by flooding in January 1996. Due to Conrail's failure to repair the damage, the washed out sections continue to erode, raising the cost of any repair that might be made.

Working closely with the New York State Department of Transportation and Congressman Amo Houghton, STW continues to seek an outcome for the Southern Tier Extension that will stabilize the future of rail service to active customers in the Jamestown area and revive use of the Hornell-Corry route for overhead freight traffic sufficient to support the costs of maintaining this essential piece of our region's economic development infrastructure.

The CSX/NS merger filing fails to address Norfolk Southern's plans for the Southern Tier Extension in any way. STW believes that NS should be required to state specifically what its plans are for the Southern Tier Extension.
Though STW has been informed by Norfolk Southern that STW will receive further information about Norfolk Southern's plans for the Southern Tier Extension prior to October 21, 1997, we do not know what those plans are at this time. If they remain vague or call for abandonment or a continuation of Conrail's policy of abandonment-in-place, rail-dependent industries in the STW region will be adversely affected.

Accordingly, STW opposes the proposed division of Conrail's assets in its unconditioned form, and, pending receipt of further information from Norfolk Southern, may find it necessary to request that any Board approval of the Primary Application be conditioned upon the conveyance of the Southern Tier Extension to the counties represented by STW, so that the line may be operated as a regional railroad.

Dated: August 22, 1997

Respectfully submitted,

Paul H. Lamboley
Counsel for Southern Tier West Regional Planning & Development Board
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 1997, copies of the foregoing Description of Anticipated Responsive Application of the Southern Tier West Regional Planning and Development Board were served upon Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, NE, Suite 11F, Washington, DC 20426, counsel for applicant parties and upon other parties of record identified in Decision 21 attached hereto, first class mail, prepaid, in accordance with the rules of the Surface Transportation Board.

Paul H. Lamboley
PARTY OF RECORD
DAVID G ABRAHAM
SUITE 611W
7315 WISCONSIN AVENUE
BETHESDA MD 20814 US
Represented: INDIANA PORT COMMISSION

PARTY OF RECORD
NELS ACKERSON
THE ACKERSON GROUP
1275 PENNSYLVANIA AVENUE N W SUITE 1100
WASHINGTON DC 20004-2404 US
Represented: NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS AND LANDOWNERS

GOVERNOR
HONORABLE GEORGE ALLEN
GOVERNOR COMMONWEALTH OF VIRGINIA
STATE CAPITOL
RICHMOND VA 23219 US

PARTY OF RECORD
RICHARD A ALLEN
ZUCKERT, SCOUT, BASDEN & BERGER
888 7TH STREET N W STE 600
WASHINGTON DC 20001-3939 US
Represented: NORFOLK SOUTHERN CORPORATION
NORFOLK SOUTHERN RAILWAY COMPANY

PARTY OF RECORD
CHARLES E ALLENBAUGH JR
EAST OHIO STONE COMPANY
2000 W BESSON ST
ALLIANCE OH 44601 US
Represented: EAST OHIO STONE COMPANY

PARTY OF RECORD
WILLIAM D AMICHER
R : DEPT OF TRANSPORTATION
TWO CAPITOL HILL
PROVIDENCE RI 02909-0012 US
Represented: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
DONALD G AVERY
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036-3003 US
Represented: AMVEST CORPORATION
EAST JERSEY RAILROAD COMPANY
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
VAUGHAN RAILROAD COMPANY

PARTY OF RECORD
T SCOTT BANNISTER
T SCOTT BANNISTER AND ASSOCIATES
1300 DES MOINES BUILDING 405 SIXTH AVENUE
DES MOINES IA 50309 US
Represented: IOWA INTERSTATE RAILROAD LTD

PARTY OF RECORD
J R LARabee
GENERAL CHAIRPERSON UTU
P O BOX 9399
KNOXVILLE TN 37946 US
Represented: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT GO-898

PARTY OF RECORD
HARRY C EARIN
BAABIN LAUFFER & O'CONNELL
608 HUNTINGDON PLACE
ROCKLEDGE PA 19111 US
Represented: CHARLES D NESTER
DONALD E KRAFT
H C KOBOUT
JACQUELINE A MACE
LAWRENCE CIRILLO
PAUL J ENGELHART
ROBERT E GRAHAM
THOMAS F MEEHAN
WILLIAM J MCILPATRICK
MEMBER OF CONGRESS
HONORABLE JAMES A. BARKA
US HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-2204 US

PARTY OF RECORD
NORMAN E BARTLELOW
DETOIT EDISON
500 SECOND AVENUE
DETROIT MI 48226 US
Represented: DETROIT EDISON COMPANY

PARTY OF RECORD
DENNIS BEAN
EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON DC 20503 US

GOVERNOR
HONORABLE DAVID M BEASLY
GOVERNOR
P O BOX 11369
COLUMBIA SC 29111 US

PARTY OF RECORD
JAMES L BELCHER
EASTMAN CHEMICAL COMPANY
PO BOX 431
KINGSPORT TN 37663 US
Represented: EASTMAN CHEMICAL CO

PARTY OF RECORD
MARTIN W BERCOVICI
KELLER & HECKMAN
1001 Q ST NW SUITE 300 WEST
WASHINGTON DC 20001 US
Represented: ARCO CHEMICAL COMPANY
EIGHTY-FOUR MINING COMPANY
SOCIETY OF PLASTICS INDUSTRY

PARTY OF RECORD
DAVID BERGER
BERGER AND MONTAUGUE, P C
1621 LOCUST STREET
PHILADELPHIA PA 19103-4305 US
Represented: A HERB KEREKES AND GEORGE DONAHUE
MEMBER OF CONGRESS
HON JOSEPH R BIDEN
844 KING STREET
WILMINGTON DE 19801 US

PARTY OF RECORD
HON JOSEPH BIDEN
UNITED STATES SENATE
WASHINGTON DC 20510 US
PARTY OF RECORD
PAUL M DONOVAN
LAROE, WINN, ETAL
3306 IDAHO AVE NW
WASHINGTON DC 20016 US

PARTY OF RECORD
KELVIN J DOWD
SLOVER & LOFTUS
1224 17TH STREET NW
WASHINGTON DC 20036 US

Represent: CONSUMERS ENERGY COMPANY
GPU GENERATION INC

PARTY OF RECORD
DANIEL DUFF
AMERICAN PUBLIC TRANSIT ASSOC
1201 NEW YORK AV NW
WASH DC 20005 US

Represent: AMERICAN PUBLIC TRANSIT ASSOCIATION

PARTY OF RECORD
JOHN K DUNLEAVY
ASSISTANT ATTORNEY GENERAL
133 STATE STREET STATE AOM BLDG
MONTPELIER VT 05633-5001 US

Represent: STATE OF VERMONT

PARTY OF RECORD
DONALD W DUNLEVY
230 STATE STREET
UTU STATE LEG DIR
PA AFL-CIO BLDG 2ND FL
HARRISBURG PA 17101-1138 US

Represent: UNITED TRANSPORTATION UNION
PENNSYLVANIA STATE LEGISLATIVE BOARD

PARTY OF RECORD
FAY D DUPUS, CITY CLERIC
CITY HALL
501 PLUM STREET ROOM 214
CINCINNATI OH 45202 US

Represent: CITY OF CINCINNATI OHIO

PARTY OF RECORD
DAVID DYSARD
TMACOO
PO BOX 9508
300 CENTRAL UNION PLAZA
TOLEDO OH 43697-9508 US

Represent: TOLEDO METRO AREA COUNCIL OF GOVT

PARTY OF RECORD
GARY A EBER
CITY OF BAY VILLAGE
130 DOVER CENTER ROAD
BAY VILLAGE OH 44140 US

Represent: CITY OF BAY VILLAGE OHIO

PARTY OF RECORD
RICHARD S JEDELMAN
HIGHSHAW MAHONEY CLARKE
1050 SEVENTEENTH STREET N W, SUITE 210
WASHINGTON DC 20036 US

Represent: ALLIED RAIL UNIONS

FINANCE DOCKET NO. 33388

PARTY OF RECORD
ROBERT EDWARDS
EASTERN TRANSPORTATION AND LOGISTICS
1109 LANETTE DRIVE
CINCINNATI OH 45220 US

Represent: EASTERN TRANSPORT AND LOGISTICS

PARTY OF RECORD
DANIEL R ELLIOTT III ASST GENERAL COUNSEL
UNITED TRANSPORTATION UNION
14600 DETROIT AVENUE
CLEVELAND OH 44107 US

PARTY OF RECORD
TERRELL ELLIS
CAEZWV
P O BOX 95050
DALLAS TX 75380 US

Represent: CENTRAL APPALACHIA EMPOWERMENT ZONE OF WEST VIRGINIA

PARTY OF RECORD
ROBERT L EVANS
OXYCHEM
P O BOX 299050
DALLAS TX 75380 US

Represent: OCCIDENTAL CHEMICAL CORPORATION

PARTY OF RECORD
SARA J FAGNIEL DIRECTOR OF LAW
1250 DETROIT AVENUE
LAKEWOOD OH 44107 US

Represent: CITY OF LAKEWOOD OHIO

PARTY OF RECORD
GERALD W FAUTH III
G W FAUTH & ASSOCIATES, INC.
P O BOX 2401
116 SOUTH ROYAL STREET
ALEXANDRIA VA 22314 US

PARTY OF RECORD
CARL FELLER
DEKALB AGRA INC
P O BOX 127
4743 COUNTY ROAD 28
WATERLOO IN 46793-0127 US

Represent: DEKALB AGRA INC

PARTY OF RECORD
MICHAEL P FERRO
MILLENNIUM PETROCHEMICALS, INC.
11500 NORTHLAKE DRIVE
CINCINNATI OH 45249 US

Represent: MILLENIUM PETROCHEMICALS INC/QUANTUM CHEMICAL CORPORATION

PARTY OF RECORD
EDWARD J FISCHER
OPFENHEIM WOLFF & DONNELLY
1020 NINETEENTH ST NW STE 400
WASHINGTON DC 20036 US

Represent: NEW JERSEY DEPARTMENT OF TRANSPORTATION
NEW JERSEY TRANSIT CORPORATION
NORTHERN VIRGINIA TRANSPORTATION COMMISSION-POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION
FINANCE DOCKET NO. 3388

PARTY OF RECORD
JAMIE R. JACOBS
JACOBS INDUSTRIES
2 CHERRY LANE
STONY RIDGE OH 43463 US

Representative: JACOBS INDUSTRIES

GOVERNOR
HONORABLE JOE JAMES, JR
GOVERNOR
STATE OF ALABAMA
MONTGOMERY AL 36130 US

PARTY OF RECORD
DORRIE A. JOHNSON CHIEF ANTITRUST SECTION
OHIO ATTY GENERAL OFFICE
30 E BROAD STREET 16TH FLOOR
COLUMBUS OH 43215 US

PARTY OF RECORD
ERIKA Z. JONES
MAYER, BROWN & PLATT
2000 PENNSYLVANIA AVE NW SUITE 6500
WASHINGTON DC 20006 US

Representative: BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PARTY OF RECORD
TERRY E. D. JONES
KELLER & HECKMAN
1001 G ST NW STE 500 WEST
WASHINGTON DC 20001 US

Representative: NORTH AMERICAN LOGISTIC SERVICES INC

PARTY OF RECORD
FRANK H. JORGENSEN
THE ELK RIVER RAILROAD INC
P O BOX 460
SUMMERSVILLE WV 26651 US

Representative: THE ELK RIVER RAILROAD INC

PARTY OF RECORD
FRITZ B. KAHN
1000 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-1934 US

Representative: MARTIN MARIETTA MATERIALS INC

PARTY OF RECORD
STEVEN T. KALISH
MCARTHY, SWEENEY & HARIKAWA
1100 PENNSYLVANIA AVE NW
WASHINGTON DC 20004-5402 US

Representative: THE TOWN OF AYMARKET

MEMBER OF CONGRESS
HON. MARCY KAPTUR
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
LARRY B. KASHN
TRANSPORTATION BUILDING
PO BOX 30050
425 WEST OTTAWA
LANSING MI 48906 US

Representative: MICHIGAN DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
RICHARD E. KERTH, TRANS. MGR.
CHAMPION INTERNATIONAL CORP
131 KINGSBRIDGE DRIVE
HAMPTON OH 45020-0001 US

PARTY OF RECORD
DAVID D. KING
BEAUFORT AND MOREHEAD RR CO
PO BOX 23201
RALEIGH NC 27611-5201 US

PARTY OF RECORD
L. P. KING JR
GENERAL CHAIRPERSON UTU
145 CAMPBELL AVE SW STE 207
ROANOKE VA 24011 US

Representative: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT N & W-C

PARTY OF RECORD
MITCHELL H. KRAUS GENERAL COUNSEL
TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

Representative: TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION

PARTY OF RECORD
HON DENNIS J KUCZYNSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
PAUL A. LAMOOLEY
OPPENHEIMER WOLFF & JOHNSON
1020 19TH STREET, N.W., SUITE 600
WASHINGTON DC 20036 US

Representative: RESOURCES WAREHOUSING & CONSOLIDATED SERVICES INC

PARTY OF RECORD
HON. STEVE LATOURETTE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
J PATRICK LAY
HEAVY LIFT CARGO SYSTEM
PO BOX 51451
INDIANAPOLIS IN 46251-0451 US

Representative: HEAVY LIFT CARGO SYSTEMS

PARTY OF RECORD
JOHN K. LEARY, GENERAL MANAGER
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
1234 MARKET STREET 5TH FLOOR
PHILADELPHIA PA 19107-5780 US

Representative: SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

PARTY OF RECORD
SHERRI LEHMANN DIRECTOR OF CONGRESSIONAL AFFAIRS
CORN REFINERS ASSOC
1701 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006-5106 US

Representative: CORN REFINERS ASSOCIATION INC

ADMINISTRATIVE LAW JUDGE
JUDGE IACOB LEVENTHAL, OFFICE OF HEARINGS
FEDERAL ENERGY REGULATORY COMMISSION
888 - 1ST ST, N.E. 20511 US

WASHINGTON DC 20426 US

7
MEMBER OF CONGRESS
HONORABLE WILLIAM G. LIPINSKI
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20415 US

PARTY OF RECORD
THOMAS J. LITWILER
OPPENHEIMER WOLFF & DONELLY
180 N STETSON AVE 45TH FLOOR
CHICAGO IL 60601 US

Represent: FOX VALLEY & WESTERN LTD
ILLINOIS CENTRAL RAILROAD COMPANY
CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY AND CTI EAR RAILROAD COMPANY

PARTY OF RECORD
R J CORMAN PARTIES
R J CORMAN RAILROAD COMPANIES
SAULT STE MARIE BRIDGE COMPANY
TRANSTAR INC AND BENNETTING & LAKE ERIE RAILROAD COMPANY
TRANSTAR INC
ELGIN JOILET AND EASTERN RAILROAD COMPANY
WISCONSIN CENTRAL LTD
WISCONSIN CENTRAL TRANSPORTATION CORPORATION

PARTY OF RECORD
EDWARD LLOYD
RUTGERS ENVIRONMENTAL LAW CLINIC
15 WASHINGTON STREET
NEWARK NJ 07102 US

Represent: TRI-STATE TRANSPORTATION CAMPAIGN

PARTY OF RECORD
C MICHAEL LOFTUS
SLOVER & LOFTUS
1224 SEVENTEENTH STREET NW
WASHINGTON DC 20036 US

Represent: CENTERIOR ENERGY CORPORATION
EAST CHICAGO INDIANA-HAMMOND INDIANA-GARY
INDIANA THE FOUR CITY CONSORTIUM
EAST CHICAGO INDIANA-HAMMOND INDIANA-GARY
INDIANA-WIJNHO
POTOMAC ELECTRIC POWER COMPANY
THE DETROIT EDISON COMPANY

PARTY OF RECORD
DENNIS G LYONS
ARNDT & PORTER
555 12TH STREET NW
WASHINGTON DC 20004-7102 US

Represent: CSX CORPORATION
CSX TRANSPORTATION INC
CSX-NS

PARTY OF RECORD
GORDON P MADCOUGALL
1025 CONNECTICUT AVE NW SUITE 410
WASHINGTON DC 20036 US

Represent: JOSEPH C SBAJO
MEMBER OF CONGRESS
HONORABLE CONNIE MACK
UNITED STATES SENATE
WASHINGTON DC 20510-0904 US

PARTY OF RECORD
WILLIAM G. MAHONEY
HIGHISAW, MAHONEY & CLARKE
1050 SEVENTEENTH STREET NW SUITE 210
WASHINGTON DC 20036 US

PARTY OF RECORD
RON MARQUARDT
LOCAL UNION 1810 UMWA
R D #2
RAYLAND OH 43943 US

PARTY OF RECORD
ROBERT E MARTINEZ
VA SECRETARY OF TRANSPT
P.O. BOX 1475
RICHMOND VA 23218 US

Represent: COMMONWEALTH OF VIRGINIA

PARTY OF RECORD
JOHN K. MASER, III
DONELAN, CLEARY, WOOD, MASER
1100 NEW YORK AVE NW SUITE 750
WASHINGTON DC 20005-3534 US

Represent: ACME STEEL COMPANY
AK STEEL CORPORATION
CUTTILL INCORPORATED
ERIE-NIAGARA RAIL STEERING COMMITTEE
INSTITUTE OF SCRAP RECYCLING INDUSTRIES INC
JOSEPH SMITH & SONS INC
NIAGARA MOHAWK POWER CORPORATION

PARTY OF RECORD
DAVID J MATTY
CITY OF ROCKY RIVER
21012 BELLAR ROAD
ROCKY RIVER OH 44146-3398 US

Represent: CITY OF ROCKY RIVER OHIO

PARTY OF RECORD
GEORGE W. AYD, Jr.
HOGAN & BARTSON
535 THIRTEENTH STREET NW
WASHINGTON DC 20004-1161 US

Represent: CANADIAN PACIFIC RAILWAY COMPANY
DEL MAR RAILWAY COMPANY INC
ST LAWRENCE & HUDSON RAILWAY COMPANY LIMITED

PARTY OF RECORD
MICHAEL J. McBRIDE
LEBOEUF, LAMB, GREENE & MACRAE, L. T. P.
1875 CONNECTICUT AVE N W, STE 1200
WASHINGTON DC 20009 US

Represent: AMERICAN ELECTRIC POWER
ATLANTIC CITY ELECTRIC COMPANY
DEL MARA POWER & LIGHT COMPANY
FERTILIZER INSTITUTE
SOMERSET RAILROAD CORP
THE OHIO VALLEY COAL COMPANY

PARTY OF RECORD
EDWARD J. MCCAUGH
INLAND STEEL INDUSTRIES INC
30 WEST MONROE STREET
CHICAGO IL 60603 US

PARTY OF RECORD
CHRISTOPHER C. MCCracken
ULMER & BERGER LLP
1300 EAST NINTH STREET SUITE 900
CLEVELAND OH 44114 US

Represent: ASHTA CHEMICAL INC

PARTY OF RECORD
THOMAS F. McFarland, Jr.
McFarland & Herron
20 NORTH WACKER DRIVE, SUITE 1330
CHICAGO IL 60606-3101 US

Represent: KOKOMO GRAIN CO INC
FINANCE DOCKET NO. 33388

GOVERNOR
HONORABLE PAUL E. PATTON
GOVERNOR
700 CAPITOL AVENUE, STE. 100
FRANKFORT KY 40601 US

PARTY OF RECORD
LAWRENCE PEPPER JR
GRUCCIO PEPPER
817 EAST LANDIS AV
VINELAND NJ 8360 US

Represented: SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION

PARTY OF RECORD
F R. PICKELL
GENERAL CHAIRPERSON UTU
6797 NORTH HIGH ST STE 108
WOR.INGTON OH 43205 US

Represented: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT CONRAIL WEST & SOUTHEASTERN RAILWAY CO GO-777

PARTY OF RECORD
ARTHUR E. DUNCAN
GUERRIERI EDMOND & CLAYMAN PC
1331 F ST NW
WASHINGTON DC 20004 US

Represented: INTERNATIONAL ASSOCIATION OF MECHANICS AND AEROSPACE WORKERS UNITED RAILWAY SUPERVISORS ASSOCIATION

PARTY OF RECORD
JOSEPH R. POMONIO
FEDERAL RAILROAD ADMIN.
400 7TH ST SW RCC-20
WASHINGTON DC 20590 US

Represented: FEDERAL RAILROAD ADMINISTR

MEMBER OF CONGRESS
HONORABLE ROB PORTMAN
U. S. HOUSE OF REPRESENTATIVES
8044 MONTGOMERY ROAD, ROOM 540
CINCINNATI OH 45234 US

PARTY OF RECORD
LARRY P. PRUDEN
TRANS. COMM. INT'L UNION
3 RESEARCH PLACE
ROCKVILLE MD 20850 US

MEMBER OF CONGRESS
HONORABLE DEBORAH FRYCE
U. S. HOUSE OF REPRESENTATIVES
500 SOUTH FRONT STREET, ROOM 1130
COLUMBUS OH 43215 US

PARTY OF RECORD
HAROLD P QUINN JR SENIOR VP & GENERAL COUNSEL
NATL MINING ASSOCIATION
1130 SEVENTEENTH ST NW
WASHINGTON DC 20036 US

Represented: NATIONAL MINING ASSOCIATION

PARTY OF RECORD
KEITH G O'BRIEN
REACH CROSS AND Auchincloss
1920 W STREET NW, STE 420
WASHINGTON DC 20036 US

Represented: OHIO RAIL DEVELOPMENT COMMISSION PUBLIC UTILITIES COMMISSION OF OHIO MIDLAND OHIO INC

PARTY OF RECORD
D J O'CONNELL
GENERAL CHAIRPERSON UTU
410 LANCASTER AVE STE 5
HAVERFORD PA 19041 US

Represented: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT GO-770

PARTY OF RECORD
CHRISTOPHER C OHARA
BRICKFIELD BURCHETTE & RUTTIS PC
1025 THOMAS JEFFERSON ST NW EIGHTH FLOOR
WASHINGTON DC 20007 US

Represented: STEEL DYNAMICS INC

PARTY OF RECORD
JOSEPH L. OBERDORFER
FATON BOGGS LLP
2550 M ST NW
WASHINGTON DC 20037-1301 US

Represented: COMMONWEALTH OF PENNSYLVANIA GOVERNOR THOMAS J RICE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
BYRON D. OLSEN
FELHAEBER LARSON FENLON & VOOGT PA
601 SECOND AVENUE SOUTH 4200 FIRST BANK PLACE
MINNEAPOLIS MN 55402-4302 US

Represented: EASTMAN KODAK COMPANY

PARTY OF RECORD
R. JOHN OSBORN
SONNENSCHEIN NATH & ROSENTHAL
1301 K STREET NW STE 600
WASHINGTON DC 20005 US

Represented: CANADIAN NATIONAL RAILWAY COMPANY GRAND TRUNK WESTERN RAILROAD INCORPORATED

PARTY OF RECORD
WILLIAM L. OSTEEN
ASSOCIATE GENERAL COUNSEL TVA
400 WEST SUMMIT HILL DRIVE
KNOXVILLE TN 37902 US

Represented: TENNESSEE VALLEY AUTHORITY

PARTY OF RECORD
MONTY L PARKER
CMC STEEL GROUP
P O BOX 911
SEGUIN TX 78156 US

Represented: CMC STEEL GROUP COMMERCIAL METALS COMPANY
PARTY OF RECORD
J T REED
GENERAL CHAIRPERSON UTU
7783 BAY MEADOWS WAY STE 109
JACKSONVILLE FL 32256 US

Represent: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT B&O

MEMBER OF CONGRESS
HON. RALPH REGULA
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20513 US

GOVERNOR
HONORABLE THOMAS J RIDGE
GOVERNOR, COMMONWEALTH OF PENNSYLVANIA
225 MAIN CAPITOL BUILDING
HARRISBURG PA 17120 US

PARTY OF RECORD
ARVID E ROACH II
COVINGTON & BURLING
PO BOX 7566
1201 PENNSYLVANIA AVE NW
WASHINGTON DC 20044-7566 US

Represent: UNION PACIFIC CORP
UNION PACIFIC RAILROAD COMPANY

MEMBER OF CONGRESS
HON. CHARLES ROBB
UNITED STATES SENATE
WASHINGTON DC 20510 US

PARTY OF RECORD
JAMES F ROBERTS
216 E LOMBARD STREET
BALTIMORE MD 21202 US

Represent: COA·ARREDB INTERNATIONAL TRADING

PARTY OF RECORD
JOHN M ROBINSON
9316 OLD SPRING ROAD
KENSINGTON MD 20895-3124 US

Represent: EFFINGHAM RAILROAD COMPANY
ILLINOIS WESTERN RAILROAD COMPANY

PARTY OF RECORD
J L ROUGIERS
GENERAL CHAIRMAN UTU
480 OSCEOLA AVENUE
JACKSONVILLE FL 32250 US

Represent: UNITED TRANSPORTATION UNION GO-513

PARTY OF RECORD
EDWARD J RODRIGUEZ
PO BOX 298
67 MAIN ST
CENTERBROOK CT 06409 US

Represent: HOUSEATONIC RAILROAD CO INC

PARTY OF RECORD
DAVID ROLLOFF
GOLDSTEIN & ROLLOFF
526 SUPERIOR AVENUE EAST SUITE 1440
CLEVELAND OH 44114 US

Represent: LOCAL 1913 INTERNATIONAL LONGSHOREMEN'S UNION

PARTY OF RECORD
JOHN JAY ROOSACKER
KS. DEPT OF TRANSP
217 SE 4TH ST 2ND FLOOR
TOPEKA KS 66603 US

Represent: KANSAS DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
CHARLES M. ROSENBERGER
CSX TRANSPORTATION
500 W. 21st STREET
JACKSONVILLE FL 32217 US

PARTY OF RECORD
CERUSTINE H. ROSEO
IL ASSISTANT ATTORNEY GENERAL
100 W RANDOLPH ST 15TH FLOOR
CHICAGO IL 60601 US

Represent: STATE OF ILLINOIS

MEMBER OF CONGRESS
HON WILLIAM V. ROTH JR
U S SENATE
WASHINGTON DC 20510-0001 US

MEMBER OF CONGRESS
HONORABLE BOBBY L. RUSH
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515-4997 US

PARTY OF RECORD
THOMAS R RYDMAN PRESENT
INDIAN CREEK RAILROAD COMPANY
3003 W 600 NORTH
ANDERSON IN 46011 US

Represent: INDIAN CREEK RAILROAD COMPANY

MEMBER OF CONGRESS
HONORABLE RICK SANTORIUM
UNITED STATES SENATE
WASHINGTON DC 20510-3804 US

PARTY OF RECORD
R K SARGENT
GENERAL CHAIRPERSON UTU
1319 CHESTNUT STREET
PHILA PA 19102 US

Represent: UNITED TRANSPORTATION UNION GENERAL COMMITTEE OF ADJUSTMENT CSX-T-C&O NORTH

MEMBER OF CONGRESS
HONORABLE THOMAS C. SAWYER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20423 US

MEMBER OF CONGRESS
HONORABLE THOMAS C. SAWYER
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20423 US

PARTY OF RECORD
SCOTT M SAYLOR
NORTH CAROLINA RAILROAD CO
3200 ATLANTIC AV STE 110
RALEIGH NC 27604 US

PARTY OF RECORD
G CRAIG SCHELTER
PHILA INDUSTRIAL DEVELOPMENT CORPORATION
1500 MARKET STREET
PHILADELPHIA PA 19102 US

Represent: PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION
PARTY OF RECORD
WILLIAM C VANCYSLKE
132 WASHINGTON AVENUE
ALBANY NY 12210 US

Represent: THE BUSINESS COUNCIL OF NEW YORK
STATE INC

MEMBER OF CONGRESS
HONORABLE PETER J. VISCOLOSKY
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
JOHN A. VUONO
VUONO & GRAY
2310 GRANT BUILDING
PITTSBURGH PA 15219 US

Represent: NATIONAL STEEL CORPORATION

PARTY OF RECORD
F RON J. DS WALKER
CITIZENS GAS & COKE UTILITY
2020 N MERIDIAN STREET
INDIANAPOLIS IN 46202 US

Represent: CITIZENS GAS & COKE UTILITY

PARTY OF RECORD
JACK A WALTER
WCI STEEL INC
1040 PINE AVENUE S E
WARREN OH 44481 US

Represent: WCI STEEL INC

MEMBER OF CONGRESS
HONORABLE JOHN WARNER
UNITED STATES SENATE
WASHINGTON DC 20510 US

MEMBER OF CONGRESS
HONORABLE JOHN WARNER
UNITED STATES SENATE
P.O.BOX 8817
235 FEDERAL BUILDING
ABINGDON VA 24210-0817 US

PARTY OF RECORD
JAMES R WESS
PRESTON GATTS ELLS ET AL
1735 NEW YORK AVENUE NW SUITE 500
WASHINGTON DC 20006 US

Represent: MARYLAND DEPARTMENT OF TRANSPORTATION

PARTY OF RECORD
HUGH H. WELSH
LAW DEPT., SUITE 67E
ONE WORLD TRADE CENTER
NEW YORK NY 10048-2002 US

PARTY OF RECORD
JAY W. WESTBROOK
CITY HALL RM 216
601 LAKESIDE AV NE
CLEVELAND OH 44114 US

Represent: CITY OF CLEVELAND OHIO

MEMBER OF CONGRESS
HONORABLE BOB WYGAND
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20515 US

PARTY OF RECORD
CHARLES H. WHITE, JR.
GALLAND, KUBARICH & GARFINKE, P. C.
1054 THIRTY-FIRST STREET NW
WASHINGTON DC 20007-4492 US

Represent: STARK DEVELOPMENT BOARD INC
WHEELING & LAKE ERIE RAILWAY COMPANY

PARTY OF RECORD
WILLIAM W., JR. WHITEBURST
W W. WHITEBURST & ASSOCIATES, INC.
1341 HAPPA HOLLOW ROAD
COCKEYSVILLE MD 21030 US

Represent: W W WHITEBURST & ASSOCIATES INC

PARTY OF RECORD
HENRY M. WICK, JR.
WICK, STIEFF, ET AL
1450 TWO CHATHAM CENTER
PITTSBURGH PA 15219 US

Represent: U S CLAY PRODUCERS TRAFFIC
ASSOCIATION INC

PARTY OF RECORD
ROBERT J WILL
UNITED TRANSPORTATION UNION
4134 GRAVE RUN RD
MANCHESTER MD 21102 US

PARTY OF RECORD
RICHARD B. WILSON
1126 EIGHT AV STE 403
ALTOONA PA 16602 US

Represent: ASHLAND RAILROAD COMPANY
DURHAM TRANSPORT INC
JUNIATA VALLEY RAILROAD COMPANY
LYCOMING VALLEY RAILROAD COMPANY
NITTANY & BALD EAGLE RAILROAD COMPANY
NORTH SHORE RAILROAD COMPANY
NORTHWEST PENNSYLVANIA RAIL AUTHORITY
OHIO RAIL CORPORATION
RICHARD D ROBEY
SHAMOKIN VALLEY RAILROAD COMPANY
SOUTHWESTERN PENNSYLVANIA REGIONAL PLANNING COMMISSION
STURBRIDGE RAILROAD COMPANY
TRANSPORTATION COMMITTEE PENNSYLVANIA HOUSE
OF REPRESENTATIVES
WELLESBORO & CORNING RAILROAD COMPANY

PARTY OF RECORD
ROBERT A. WINDISH, ESQ.
REA, CROSS & AUCHINCLOSS
1920 N STREET NW SUITE 420
WASHINGTON DC 20036 US

Represent: CONNECTICUT CENTRAL RAILROAD

PARTY OF RECORD
C D WINEBRENNER
GENERAL CHAIRPERSON UTU
27801 EUCLID AV RM 200
EUCLID OH 44121 US

Represent: UNITED TRANSPORTATION UNION GENERAL
COMMITTEE OF ADJUSTMENT GO-651

PARTY OF RECORD
JOHN F. WING CHAIRMAN
CITIZENS ADVISORY COMMITTEE
601 NORTH HOWARD STREET
BALTIMORE MD 21201 US

Represent: CITIZENS ADVISORY COMMITTEE
MEMBER OF CONGRESS
HONORABLE BOB WISE
U S HOUSE OF REPRESENTATIVES
WASHINGTON DC 20510 US

PARTY OF RECORD
SERGEANT W WISE
LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
P. O. BOX 190-B
5769 SWEETENERS BLVD
LAKEVILLE NY 14480 US

Represent: LIVONIA AVON & LAKEVILLE RAILROAD CORPORATION

PARTY OF RECORD
TIMOTHY A WOLFE
WYANDOT DOLOMITE, INC
P O BOX 99 1794 CO RD #99
CAREY OH 43316 US

Represent: WYANDOT DOLOMITE INC

PARTY OF RECORD
FREDERIC L. WOOD
DONELAN, CLEARY, WOOD & MASER, P. C.
1100 NEW YORK AVE NW STE 750
WASHINGTON DC 20005-3934 US

Represent: NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

PARTY OF RECORD
E C WRIGHT
RAIL TRANSPORTATION PROCUREMENT MANAGER
1007 MARKET STREET, DUPONT BLDG 3100
WILMINGTON DE 19898 US

Represent: E I DU PONT DE NEMOURS AND COMPANY

PARTY OF RECORD
L PAT WYNNS
SUITE 210
1050 - 17TH STREET N W
WASHINGTON DC 20036-5503 US

PARTY OF RECORD
EDWARD WYTKIND, EXECUTIVE DIRECTOR
TRA/MF TRADES DEPT AFLCIO
400 N CAPITOL ST SW STE 861
WASHINGTON DC 20001 US

Represent: TRANSPORTATION TRADES DEPARTMENT AFM

PARTY OF RECORD
SHELDON A ZABEL
SCHIFF HARDIN & WAITE
7200 SEARS TOWER
CHICAGO IL 60606 US

Represent: NORTHERN INDIANA PUBLIC SERVICE COMPANY

PARTY OF RECORD
SCOTT M ZIMMERMAN
ZUCKERT SCOTT & RASENBERGER LLP
800 SEVENTEENTH STREET NW
WASHINGTON DC 20006 US

PARTY OF RECORD
WALTER E ZULLIG JR SPECIAL COUNSEL
METRO-NORTH COMMUTER RAILROAD COMPANY
347 MADISON AVE
NEW YORK NY 10017-3706 US

Represent: METRO-NORTH COMMUTER RAILROAD COMPANY
August 22, 1997

By Hand

Vernon A. Williams, Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, DC 20036

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

Dear Mr. Williams:

Enclosed for filing are an original and 25 copies of PA-3, the Description of Anticipated Responsive Application filed on behalf of the Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation. Also enclosed is a diskette containing PA-3 in WordPerfect format.

Please stamp the additional copy with the date of receipt and return with our messengers.

Sincerely,

[Signature]
John L. Oberdorfer
Outside Counsel for the Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and the Pennsylvania Department of Transportation
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

_________________________

DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION

_________________________

The Commonwealth of Pennsylvania, Governor Thomas J. Ridge and the Pennsylvania Department of Transportation (hereinafter collectively "the Commonwealth") respectfully describe below the elements of a responsive application which they may file in this proceeding.¹

Discovery in this matter is only in its early stages. As a result, the Commonwealth is still assessing the impacts of the transaction, and has not formally taken a position regarding the application. Therefore, the description below of the possible inconsistent application must necessarily be general. Subject to this caveat, the Commonwealth's anticipated responsive application would request the following conditions:

¹ The Commonwealth has in accordance with Decision No. 6 reserved Sub-No. 67 for its responsive application.
1. Conditions designating additional areas for joint access by NS and CSX in addition to the shared access areas and other jointly served areas proposed in the application.

2. Conditions designed to open shortline railroads in the Commonwealth to access by more than one class I rail carrier.

3. Conditions designed to remedy situations in which Pennsylvania shippers and receivers who now have single-system Conrail service will have to interline their shipments between CSX and NS after the proposed transaction.

4. Conditions designed to ensure that increased freight operations will not interfere with commuter and passenger service in the Commonwealth.

5. Conditions designed to ensure the financial soundness and responsibility of the surviving Conrail entity.

6. Conditions designed to mitigate labor and employment effects of the proposed transaction.

Respectfully submitted,

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

John L. Oberdorfer
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, DC 20037
(202) 457-6335

Counsel for Commonwealth of Pennsylvania, Governor Thomas J. Ridge, and Pennsylvania Department of Transportation

Dated: August 22, 1997
CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Description of Anticipated Responsive Application by first class mail upon all parties of record and Administrative Law Judge Jacob Leventhal, and by hand upon the following:

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

Richard A. Allen, Esq.
Zuckert, Scoult & Rasenberger, L.L.P.
881 17th Street, N.W.
Washington, DC 20006-3939

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

John L. Oberdorfer

8/22/97