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October 21, 1997



**HAND DELIVERY**

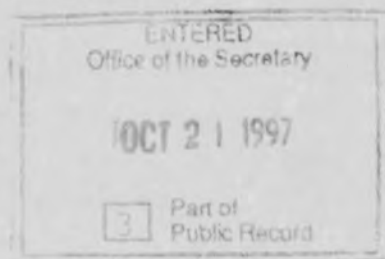
The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Room 711  
Washington, D.C. 20423

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

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of both versions of the Comments of The Gateway Western Railway and The Gateway Eastern Railway (GWWR-3). Please note that there are two versions of the Comments. The Public version does not contain Exhibits six, seven, and eight, which are Highly Confidential trackage rights agreements. The "Highly Confidential" version is filed under seal pursuant to the Board's first Decision in this proceeding, served April 16, 1997, and contains copies of Exhibits six, seven, and eight. Each version is clearly marked.

Also enclosed is 3.5-inch diskette containing the text of this pleading. Please date stamp the enclosed extra copy of the pleading and return it to the messenger for our files.



Sincerely yours,

William A. Mullins  
Attorney for The Gateway Western and The  
Gateway Eastern Railway

Enclosures

cc: The Honorable Jacob Leventhal  
All Parties of Record

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GWWR-3

**PUBLIC VERSION  
BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33388**

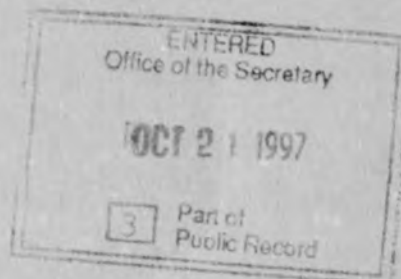
**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION**

**COMMENTS OF THE GATEWAY WESTERN RAILWAY  
AND THE GATEWAY EASTERN RAILWAY**

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**October 21, 1997**

**PUBLIC VERSION  
BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK  
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
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Railway**

**October 21, 1997**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
FINANCE DOCKET NO. 33388**

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

**COMMENTS OF THE GATEWAY WESTERN RAILWAY  
AND THE GATEWAY EASTERN RAILWAY**

Gateway Western Railway Company ("GWWR") and Gateway Eastern Railway Company ("GWER") (GWWR and GWER collectively referred to as "Gateway") hereby submit the following comments with respect to the Primary Application filed by CSX and NS in this proceeding.

As a part of the proposed transaction, Applicants are requesting that "the Board's order approving this Application also include a declaratory order that CSX and NS will have the authority to conduct operations over the routes of Conrail covered by Trackage Agreements, whether or not listed in Appendix L . . . notwithstanding any clauses in any such agreements purporting to limit or prohibit Conrail's unilateral assignment of its operating rights to another person." Application, Vol. I at 94-95. Gateway opposes that request to the extent that it concerns terminal track and facilities in East St. Louis, Illinois, owned by Gateway and over which Conrail has trackage rights, for the reasons that: (a) Gateway does not consent to the assignment of these agreements; (b) Applicants' request properly should be one for "terminal trackage rights" under Section 11102 of the Interstate Commerce Termination Act and Applicants have made no showing that CSX's use of Gateway's terminal trackage is justified under the terms of that section; (c) Applicants have not shown that CSX's or NS' operations over those lines are necessary "to let [those] rail carrier[s], . . . carry out the transaction, hold,

maintain, and operate property, and exercise control or franchises acquired through the transaction."<sup>1</sup> (49 U.S.C. §11321(a)); and (d) that, at a minimum, the parties should be required to privately negotiate all of the provisions of the agreements or return to the Board for the Board to impose provisions.

### **BACKGROUND**

As cited above, Applicants first stated in their Primary Application that they were requesting a declaratory order permitting the assignment of a non-exclusive list of trackage rights agreements contained in Volume 1 of the Application, Appendix "L," at 217-224. The list contained in Appendix "L" generally describes three agreements between Conrail and GWR or GWER that are subject to the requested assignment. The information provided in the Application on those agreements is as follows:

<u>Line Segment</u>	<u>Owner/Grantor</u>
East St. Louis, IL	Gateway Western
East St. Louis, IL - Sauget, IL	Gateway Western
Willows Interlocking, IL - Q Tower, IL	Gateway Eastern

Because Appendix "L" reflected limited information and was only a partial listing and because the Application requested an order that both "CSX and NS" would have the authority to conduct operations over the routes of Conrail covered by the trackage agreements, it was difficult to determine exactly which trackage rights agreements relevant to GWR and GWER were at issue in the proceeding and the Applicants' intentions toward those agreements. Accordingly, by letter dated August 6, 1997 (attached hereto as Exhibit 1), GWR and GWER requested Applicants to provide the following information with respect to each trackage rights agreement

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<sup>1</sup> Gateway has recently been assured by Applicants that CSX, and not NS, proposes to operate over the terminal track in question as discussed more fully in the Background section of these comments. Therefore, Gateway will address the Primary Application only with respect to CSX.

involving GWR and/or GWER that the Applicants requested be assigned from Conrail to them: (1) the parties to the agreement; (2) the date of the agreement; (3) a description of the trackage rights granted in the agreement; (4) the carrier that seeks to succeed Conrail in such trackage rights; (5) a statement as to NS's or CSX's intentions regarding whether it will be bound by the terms of that agreement or will seek to abrogate or otherwise modify the agreement; and (6) a statement as to whether it is the intent of CSX and NS to both operate over the assigned trackage.

By letter dated August 15, 1997 (attached hereto as Exhibit 2), Applicants responded to Gateway's request and provided a copy of four trackage rights agreements affecting GWR and GWER. In the August 15<sup>th</sup> letter accompanying the agreements, counsel for CSX stated that he would follow-up to confirm counsel's previous discussions regarding whether CSX would be the sole party requesting the assignment of these agreements.

On September 9, 1997, counsel for CSX supplemented his earlier correspondence (attached hereto as Exhibit 3) and confirmed that CSX intends to succeed to the position of Conrail for the trackage rights agreements they had previously forwarded to Gateway. Thereafter, counsel for Gateway completed their review of the trackage rights agreements and responded to CSX, by letter dated October 6, 1997 (attached hereto as Exhibit 4), and addressed Gateway's concerns with CSX's plan to replace Conrail under the trackage rights agreements. Specifically, Gateway raised its concern that a significant amount of new traffic over these lines would cause substantial operating problems. Additionally, Gateway's counsel proposed that the parties set up a meeting in an attempt to alleviate these concerns. By letter dated October 13, 1997 (attached hereto as Exhibit 5), CSX's counsel suggested that a meeting between Gateway's

and CSX's operating/business people should be set up. To date, no other substantive negotiations have occurred.

It is important to note that despite the fact that the agreements at issue require Gateway's consent to their assignment, not once did CSX attempt to contact Gateway and obtain its consent. Indeed, CSX has completely failed to undertake any obligation to initiate negotiations for their operation of these terminal trackage rights. In fact, Gateway believes that CSX should have included its operations over the Gateway as part of the operating plan because a new carrier would be operating over these tracks. While, Gateway believes its concern's can be resolved through negotiation, until such time as negotiations occur and Gateway's concerns are resolved, Gateway will oppose the assignment of these trackage rights to CSX.

#### **STATEMENT OF FACTS**

GWWR is a Class II rail carrier that owns and operates approximately 461 miles of rail lines between Kansas City, Kansas and East St. Louis and Springfield, Illinois. GWWR also has haulage rights over the UPSP line between Springfield and Chicago, Illinois. GWER, GWWR's wholly owned subsidiary, is a Class III rail carrier that owns and operates approximately 17 miles of rail lines between East Alton, Illinois and East St. Louis, Illinois. In addition, GWER operates over 5 miles of track of the Terminal Railroad Association of St. Louis ("TRRA") between WR Tower and Willows Tower, Illinois and over 11.07 miles of the track of the Alton Southern Railway Company ("ALS") between Lenox Tower and Rose Lake, Illinois.

GWER also has operating rights over portions of GWWR between East St. Louis and Wann, Illinois. Between Wann and WR Tower, Illinois, a distance of approximately 5.8 miles, GWWR owns and operates a line jointly with SPCSL Corporation ("SPCSL"), an affiliate of UPSP. This joint GWWR/SPCSL line between Wann and WR Tower and GWER's rail line



running parallel to it are operated as a double main track which hereinafter will be referred to as the "paired track segment". The issues discussed in these comments involve GWWR's and GWER's facilities in East St. Louis, Illinois, including the aforesaid "paired track segment".

Two of the current Conrail trackage rights agreements over Gateway are the gravamen of these comments. They are included in the list of trackage rights to which Applicants' aforesaid request for declaratory order attaches. Each of these agreements require Gateway's consent to their assignment.<sup>2</sup> The first agreement dates to November 18, 1988, captioned CR Registry No. 293205 (attached hereto as Exhibit 6, a Highly Confidential document). This is an agreement between Conrail and Gateway's predecessor in interest, the Trustee of the Chicago, Missouri & Western Railroad Company ("CMW"), whereby the CMW's Trustee granted Conrail trackage rights over approximately 2.3 miles of CMW's terminal tracks between a connection with Conrail at Missouri Avenue and a connection with TRRA at Trendley Avenue, and continuing between a connection with TRRA at "M&O Junction" and Cahokia Marine Terminal, all in East St. Louis, Illinois. GWWR now owns the involved CMW tracks. Hereinafter, this trackage rights segment will be referred to as the "Q to Cahokia segment".

The second agreement was entered into on January 28, 1994, captioned CR Registry No. 307228 (attached hereto as Exhibit 7, a Highly Confidential document). In this agreement, GWER granted Conrail overhead trackage rights over 1.9 miles of its track between GWER's "Q Connection" and Willows, all in East St. Louis, Illinois. Hereinafter, this trackage rights segment will be referred to as the "Willows to Q segment".

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<sup>2</sup> One of the two trackage rights agreements, dated November 18, 1988, does provide for non-consensual assignment to the acquirer of "all or substantially all" of Conrail's assets. As addressed more fully on pages 7-8 of these comments, CSX is not acquiring "all or substantially all" of Conrail's assets and the exception does not apply.

Combined, these two trackage rights segments allow Conrail to move its trains from its Rose Lake Yard in St. Louis to the Cahokia Marine Terminal, via GWER's Q Connection. The Q Connection is a crossover of TRRA's line and all of Gateway's traffic interchanged with Conrail and CSX must traverse it and the Willows to Q segment. The Q to Cahokia segment, together with the aforementioned paired track segment, currently constitute a heavily used route by their owners and trackage rights tenants. Adding a new tenant, capable of introducing significant volumes of unit coal train traffic, would substantially impair the owners' use of those tracks. Gateway traffic has grown on these track segments in past year. Gateway also anticipates future growth of its own traffic on these lines, which also would be impaired if CSX operated over them. The introduction of any additional trains, particularly CSX unit coal trains, on both the Willows to Q and the Q to Cahokia trackage segments would not be practicable and would substantially impair the ability of Gateway and SPCSL to handle their own business on those lines.

Conrail currently moves a limited number of trains per week across the two trackage rights segments. (see Exhibit 8 for a breakdown of Conrail's traffic levels over these segments). This in part is due to the limited market coverage of Conrail's system. Conrail's limited use of its trackage rights was a key consideration in granting Conrail the rights in the first place. The much more extensive market coverage of CSX's system, added to the market coverage of that portion of Conrail's system which CSX will assume, drastically changes the potential extent to which the two trackage rights segments will be used, particularly with respect to the number of trains per day CSX may move across the segments. This is particularly true of coal traffic, of which Conrail currently moves very little to the Cahokia Marine Terminal for transloading to barge. Conrail's current coal trains to Cahokia are limited by the number of mine origins it



serves. On the other hand, should CSX acquire the portion of Conrail which it proposes to acquire, its new system will have access to far more coal than Conrail<sup>3</sup> and the potential for CXS coal trains across the trackage rights segments increases exponentially.

Although Gateway controls train traffic moving across the trackage rights through its dispatching of the lines, dispatching does not give Gateway adequate control over a foreign line's trains. Once those trains get on the segment, they are subject to being held on the line for various reasons, all at the discretion of and in service of the exclusive needs of the train's owner. If Gateway were forced to accept an increase in traffic over these two trackage rights segments due to CSX's post-acquisition traffic, its own use of those lines would be impaired. However, Gateway's usage would be impaired far less if it did not have to accept CSX's trains, but instead could handle the CSX traffic itself through terminal switching services.

### **ARGUMENT**

#### **A. CSX DOES NOT HAVE AUTHORITY TO REPLACE CONRAIL IN THESE TRACKAGE RIGHTS AGREEMENTS BECAUSE GATEWAY DOES NOT CONSENT TO SUCH ASSIGNMENT**

As stated above, there are two current trackage rights agreements between Gateway and Conrail which cannot be assigned to CSX without Gateway's consent. The first trackage rights agreement for the "Q to Cahokia segment", Exhibit 6, contains the following assignment language:

Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement; provided,

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<sup>3</sup> Applicant's filing shows that, whereas Conrail currently transports approximately 51.5 million tons of coal, after CSX's acquisition of its portion of Conrail, CSX is projected to transport almost four times as much coal or approximately 205.6 million tons. See, Primary Application Vol. 2A at 349 (pre-transaction, CSX shipped a total of 180 million tons of coal) and Primary Application Vol. 1 at 80 (post-transaction, CSX will get 49.7% of Conrail's coal traffic). Obviously, CSX's post-acquisition potential for moving coal to the Cahokia transloading facility is much greater than Conrail's current usage.

however, that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor, or assign of all or substantially all of the rail properties of one of the parties hereto or to a purchaser, successor, or assign of [Gateway Western's] interest in the Subject Trackage or any portion thereof.

The second trackage rights agreement for the "Willows to Q segment", Exhibit 7, contains the following language with respect to assignment:

Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

The contractual provision found in the second agreement clearly prohibits Conrail from assigning the trackage rights to CSX without Gateway's consent. The first agreement also requires Gateway's consent to an assignment. The only exemption from such consent requirement is the limited exception if "all or substantially all" of the Conrail's rail properties were acquired by CSX in this proceeding. However, in this proceeding Applicants have underscored in their Application that the proposed transaction is a joint acquisition by CSX and NS for the division of Conrail's assets between both CSX and NS. Vol. 1 at 6. Basically, CSX and NS have each acquired approximately 50% each of Conrail. By definition, this cannot be "all or substantially all" of Conrail's rail properties. Therefore, Gateway's consent would also be necessary for the "Q to Cahokia segment" agreement.

In addition, the rights which CSX seeks represent a stark departure from the rights which Conrail enjoyed under the trackage rights agreements. Among the choices which a party has in considering a business transaction is with whom to transact that business. When the transaction is to be long term, involving mutual rights and obligations which the parties set down in a contract, the choice of a contracting party is even weightier. For any number of reasons, a person may be willing to enter into such a long term relationship with one person but not with another.

That is why the assignment of contract rights by one party to a contract often are subject to the prior consent of the other party. However, more than simply being a contract term, that restriction on assignment also recognizes that an assignment introduces into the transaction a new contracting party, who may be quite different from the original party. In fact, the new party may be of such a make-up (whether as to size, credit worthiness, relative position in a competitive market, or otherwise) as to drastically change the nature of the contract and the benefits and burdens for which the non-assigning party originally bargained.

CSX wants to substitute itself for Conrail as the party with whom Gateway must deal, but, CSX is a drastically different party than Conrail. Conrail was of a limited size and served a limited market territory. At the time the governing trackage rights agreements were entered into, Gateway, or its predecessor in interest, considered and relied upon the fact that Conrail's use of the line would be limited by the amount of train traffic over the facilities its system could generate. CSX, on the other hand, is not simply buying and operating the Conrail system as it currently exists. Rather, it is adding a portion of the Conrail system to its own system, which by itself is much larger than the Conrail system. As a result, the train traffic which CSX potentially can move over Gateway's terminal facilities is massive compared to that contemplated by Conrail and Gateway. Because of the limited capacity of the facilities, such a potentially large user never would have been admitted to the facility in the first place. Compelling Gateway to accept such a new tenant is equal to requiring it to enter into an entirely new contract with a party with whom it may not have chosen to bargain in the first place.

Most importantly, the language of these trackage rights agreements specifically contemplated and provided that the agreements could not be assigned to another party, such as CSX. The contractual provisions bargained for in the agreements require consent, yet CSX has

not sought Gateway's consent, nor has Gateway provided its consent. Therefore, CSX does not have authority, and the Board should not grant authority, for CSX to operate over Gateway's trackage absent a new bargained for agreement between Gateway and CSX.

By requesting the Board to abrogate the restriction on assignment, CSX in essence seeks far more than mere assignment of the instant trackage rights agreement. As argued above, they are seeking the imposition upon Gateway of a markedly different contracting party than what was originally intended. The contractual burdens on Gateway are far greater than the original intent of the agreements. CSX in reality is seeking new terminal trackage rights over Gateway's facilities. As such, CSX should be required to file a terminal trackage rights application and justify those rights under the requirements set forth in Section 11102 of the Interstate Commerce Termination Act.

**B. CSX MUST FILE A TERMINAL TRACKAGE RIGHTS APPLICATION UNDER 49 U.S.C. § 11102 FOR THESE AGREEMENTS.**

It is long standing precedent that a railroad that desires access over another railroad's facilities, including jointly operated facilities, must file a terminal trackage rights application under 49 U.S.C. § 11102, even in the context of a merger or line acquisition proceeding. See *CSX Corp. -- Control -- Chessie and Seaboard C.L.I.*, Finance Docket No. 28905 (Sub-No. 1), 363 I.C.C. 584 (1980); *Union Pacific Corp., et al -- Control -- Missouri Pacific Corp., et al*, Finance Docket No. 30000, 366 I.C.C. 462 (1982).; *Rio Grande Indus., et al. -- Purchase and Related Trackage Rights -- Soo Line Railroad Company Line Between Kansas City and Chicago, IL*, Finance Docket No. 31505, Decision No. 6 (ICC Served November 15, 1989); *Rio Grande Indus., Inc. et al -- Purchase and Trackage Rights -- Chicago, Missouri & Western Railway Company Line between St. Louis, MO and Chicago, IL*, Finance Docket No. 31522, 5 I.C.C.2d 952 (1989) and *Union Pacific Corp., et al. -- Control and Merger -- Southern Pacific Rail Corp., et al.*, Finance



Docket No. 32760, Decision No. 63 (STB Served Dec. 4, 1996) (Hereinafter "*UP/SP*"). CSX has not even attempted to file a terminal trackage rights application. Instead, CSX only makes the meager request, in the Primary Application, that the Board, under the authority of § 11321(a), approve the assignment of these agreements to CSX within the overall decision granting approval of the transaction. Vol. 1 at 94-95.

CSX cannot simply invoke the immunity provision of 49 U.S.C. § 11321(a) to override the contractual provisions found in these trackage rights agreements in the absence of a terminal trackage rights application under § 11102. Although § 11321 provides that a person participating in an approved railroad merger is "exempt from antitrust laws and from all other law . . . as necessary to let that person carry out the transaction," this section cannot be interpreted to deprive another carrier of the use of its property without adequate due process of law, adequate compensation, and without an opportunity to resolve operational problems. More importantly, where a terminal trackage rights remedy is available, as here, an override of a contractual agreement is not necessary under § 11321(a). See, *UP/SP*, Decision No. 63 at 9, note 31.

Under the rules of statutory construction, section 11321(a) cannot be read to exempt applicants from the requirements of § 11102, just as § 11321(a) could not be read to exempt the transaction from any other provision of the Interstate Commerce Act, such as labor protection under § 11347. In reading Section 11321 and Section 11102, the Board must interpret the statutes as being consistent with one another when possible. *Local 478 Trucking and Allied Industries Pension Fund v. Jayne*, 778 F. Supp. 1289 (D.N.J. 1991). In resolving the apparent conflict between § 11321 and § 11102, the Board must regard each statute as effective wherever possible, absent clearly expressed congressional intent to the contrary. *Muller v. Lujan*, 928 F.2d 207 (6th Cir. 1991); *U.S. v. Norquay*, 905 F.2d 1157 (8th Cir. 1990). In addition, the Board's

discussion of the section 11321(a) issue in the context of the terminal trackage rights application in *UP/SP*, Decision No. 44 at 168-169, makes it clear that § 11102 and § 11321 may be harmoniously applied in the context of a merger.

If CSX wishes to gain trackage rights in the face of contractual provisions to the contrary, even in the context of a merger or asset acquisition proceeding, they must either obtain Gateway's consent or absent that consent file an application for terminal trackage rights under § 11102. If Congress did not intend Section 11102 to apply in the context of a Section 11323 proceeding, it would have expressed that intent in the language of the statute.<sup>4</sup> Therefore, a terminal trackage rights application is a necessary prerequisite for CSX to use the immunity provision of § 11321 to override the contractual obligations governing the Conrail-Gateway trackage agreements for the "Q to Cahokia segment" and the "Willows to Q segment".

A § 11102 terminal trackage rights application is necessary to ensure that an owner of the facilities is afforded constitutional due process before its property is taken for another's use. The application procedure provides the owner with an opportunity to demonstrate that the proposed usage is not practicable and not in the public interest; it allows the owner to show that the proposed usage would substantially impair its ability to handle its own business over the trackage and that the relief is not operationally feasible; and it allows the owner to prove that such access is not in the "public interest." A § 11102 proceeding also allows the owner a forum in which to pursue appropriate conditions and compensation for the use of its facilities.

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<sup>4</sup> In that Congress only recently rewrote the Interstate Commerce Act and Congress had the full opportunity to change the terminal trackage rights statute, but Congress did not modify, repeal, or otherwise substantively change former § 11103. See ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, enacted December 29, 1995, effective January 1, 1996, section 11102.



Therefore, CSX should not be permitted to make a meager one sentence statement in their Primary Application sufficient enough to override the contractual provisions in these agreements. The Board must require, at a minimum, that CSX file a § 11102 terminal trackage rights application before that access can be implemented. This would afford Gateway the proper and necessary opportunity to respond to that application.

**C. EVEN IF THE BOARD FINDS THAT CSX MAY PROCEED UNDER SECTION 11321 WITHOUT REQUIRING THE FILING OF A TERMINAL TRACKAGE RIGHTS APPLICATION, CSX FAILS TO SATISFY THE BURDEN OF PROOF FOR THE ASSIGNMENT OF TRACKAGE RIGHTS UNDER SECTION 11321(a)**

The Supreme Court has clearly stated that "[t]he immunity provision does not exempt carriers from all law, but rather [only] from [a] law necessary to carry out an approved transaction." *Norfolk & Western Ry. Co. v. American Train Dispatchers' Assn.*, 111 Sup. Ct. Rpt. 1156, 1166 (1991). Under the terms of the agreements, CSX cannot obtain assignment of the agreements without Gateway's consent. Such consent is not necessary if the Board invokes its authority under either § 11102 or § 11321(a). If the Board does not require the filing of a terminal trackage rights application and allows CSX to proceed under § 11321(a), it must first be shown that it is "necessary" to override the consent provisions of the agreement in order to carry out the proposed transaction. CSX has failed to show that the assignment of these agreements are "necessary" to carry out the break up of Conrail. Furthermore, the Board's UP/SP Decision No. 63, determined that a § 11321(a) override is, by definition, not "necessary" when a terminal trackage rights remedy is available.

The only statement made by the Applicants which appears to be a paltry attempt to even address the necessity standard is that "[u]se of those [trackage] rights ... by CSX [] is essential to the realization of the benefits that this transaction offers." App. Vol. 1 at 94. CSX has presented no evidence or argument whatsoever as to why the abrogation of Gateway's contract rights under

the aforesaid trackage rights agreements and the imposition of CSX on the lines covered by those agreements is "necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction." 49 U.S.C. §11321(a).

As noted, the statutory exemption under § 11321(a) only applies when abrogating a law or overriding a contract is "necessary" to carry out the Board's approved transaction. A determination by the Board that a railroad is exempted from certain laws, without finding that the exemption is necessary in order to carry out the transaction, has no legal force. *See Railway Labor Executives v. ICC*, 883 F.2d 1079, 1082 (D.C. Cir. 1989). Clearly though, the issue of whether the abrogation of the agreements in this case, is "necessary" to the CSX/NS proposed transaction is within the exclusive jurisdiction of the Board. *See, Norfolk & Western, supra*; *Harris v. Union Pacific*, 952 F. Supp. 598 (N.D. ILL. 1997); *Railway Labor Executives' Ass'n v. Southern Pacific Transp. Co.*, 7 F.3d 902 (9<sup>th</sup> Cir. 1993); *Polich v. Burlington Northern, Inc.*, 942 F.2d 1467 (9<sup>th</sup> Cir. 1990).

The instances in which the Board has undertaken to define what is "necessary" under § 11321(a), embrace disputes over labor issues.<sup>5</sup> The cases that address this issue support the proposition that the abrogation of the existing terminal trackage rights agreements are not necessary for this transaction. A finding of necessity requires CSX to prove that the failure to abrogate these terminal trackage rights agreements "is an impediment to the approved transaction." *CSX-Corp.-Control Chessie Sys., Inc., and Seaboard Coast Line Indus., Inc.*, 8 I.C.C.2d 715, 721 (1992). In addition, the proposed assignment of the trackage rights agreement must yield a transportation benefit, such as enhanced efficiency, greater safety or some other

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<sup>5</sup> This fact is significant, since Gateway can understand how labor issues would generally entail a more far reaching impediment to a proposed § 11321(a) transaction.

gain, the realization of which necessitates the abrogation of these agreements. *Railway Labor Executives' Assoc. v. United States*, 987 F.2d 806, 815 (1993); see also, *American Train Dispatchers Assoc. v. ICC*, 26 F.3d 1157 (D.C. Cir. 1994).

CSX has failed, and in fact has not even attempted, to meet this burden. CSX appears to rely simply upon an arguable assumption that, because CSX is buying Conrail's assets, the trackage rights are necessary for CSX to own and operate those assets. In fact, the trackage rights are not at all necessary to that ownership or those operations. They may be convenient, but they certainly are not necessary. Access to Cahokia Maine Terminal can be provided after CSX's acquisition of Conrail's property in East St. Louis, **without CSX's ability to conduct its own operations over the two trackage rights segments**. Furthermore, such access can be provided to CSX without impairing the ability of Gateway or SPCSL to use their own terminal services. Gateway can simply provide whatever terminal or interchange switching CSX may require, and indeed because CSX currently connects with GWER and GWR in East St. Louis, GWER already currently conducts terminal switching services for CSX's account in the East St. Louis area.

Most significantly is the fact that CSX has not offered one iota of evidence to substantiate CSX's need to conduct operations on these trackage rights segments and thus satisfy the requirements of Section 11321(a) of the Act. Nevertheless, it is without question that the abrogation of these agreements and their forced assignment to CSX will add nothing to the alleged efficiency, greater safety, or any other gain of the proposed transaction that could not be achieved by a less intrusive way. Consequently, CSX has not and cannot show that these terminal trackage rights agreements should be assigned to them.

**D. IF THE BOARD AUTHORIZES CXS TO ABROGATE THE NON-ASSIGNMENT PROVISION OF THESE AGREEMENTS, THEN AT A MINIMUM, THE PARTIES SHOULD BE REQUIRED TO PRIVATELY NEGOTIATE ALL OF THE PROVISIONS OR RETURN TO THE BOARD FOR BOARD IMPOSED PROVISION.**

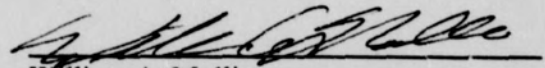
If for some reason the Board is to impose a new tenant upon Gateway, it should, at the very least, allow Gateway to protect its interests by requiring a complete renovation of the contract and not just those portions concerning who the tenant is. This would permit Gateway and CSX to attempt to privately negotiate all the terms and conditions of these trackage rights agreements. This is in line with the Board's long standing preference for trackage right provisions to be privately negotiated by the parties. *Burlington Northern Inc. et al., - Control - Santa Fe Pacific Corp.*, Finance Docket No. 32549, slip op. At 88 (ICC served Aug. 23, 1995).

Furthermore, the Board should provide that, in the event that the parties are unable to mutually agree upon the terms or conditions of the trackage rights, that Gateway and/or CSX may submit them to the Board for resolution. This request is also clearly in line with the Board's long standing precedent. *See, UP/SP*, Finance Docket No. 32760, Decision 44, slip op. at 169 (STB served Aug. 12, 1996) and Decision 63, slip op. at 9 (STB served Dec. 4, 1996).

If the Board considers granting CSX the authority to abrogate the non-assignment provision of these trackage rights agreements, then the Board also should abrogate all provisions of the agreements and permit the parties to privately negotiate all the provisions. If the parties cannot agree to mutually acceptable provisions, then they should be permitted to come back and let the Board impose the provisions of the agreements. Not only is this in line with precedent, this would be the fairest and most equitable determination.

Respectfully Submitted, this 21<sup>st</sup> day of October, 1997.

Richard P. Bruening  
Robert K. Dreiling  
KANSAS CITY SOUTHERN INDUSTRIES  
114 West 11<sup>th</sup> Street  
Kansas City, Missouri 64105  
Tel: (816) 983-1392  
Fax: (816) 983-1227



William A. Mullins  
Sandra L. Brown  
TROUTMAN SANDERS LLP  
1300 I Street, N.W.  
Suite 500 East  
Washington, D.C. 20005-3314  
Tel: (202) 274-2950  
Fax: (202) 274-2994

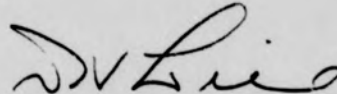
Attorneys for The Gateway Western  
Railway and The Gateway Eastern Railway



**VERIFICATION**

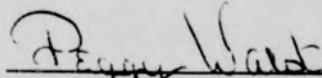
STATE OF ILLINOIS       )  
                                  ) ss.  
COUNTY OF ST. CLAIR    )

Donald H. Gill, being duly sworn, deposes and says that he is the President and General Manager of both Gateway Western Railway Company and Gateway Eastern Railway Company; that he joined Gateway Western Railway Company on January 1, 1995, as Vice President Transportation and was elected to his current positions with Gateway Western Railway Company and Gateway Eastern Railway Company on December 12, 1996; that he has knowledge of the matters contained in the foregoing Comments of Gateway Western Railway Company and Gateway Eastern Railway Company, GWWR-3, filed with the Surface Transportation Board in 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; and that the statements made in those Reply Comments are true and correct to the best of his knowledge and belief.



Donald H. Gill

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

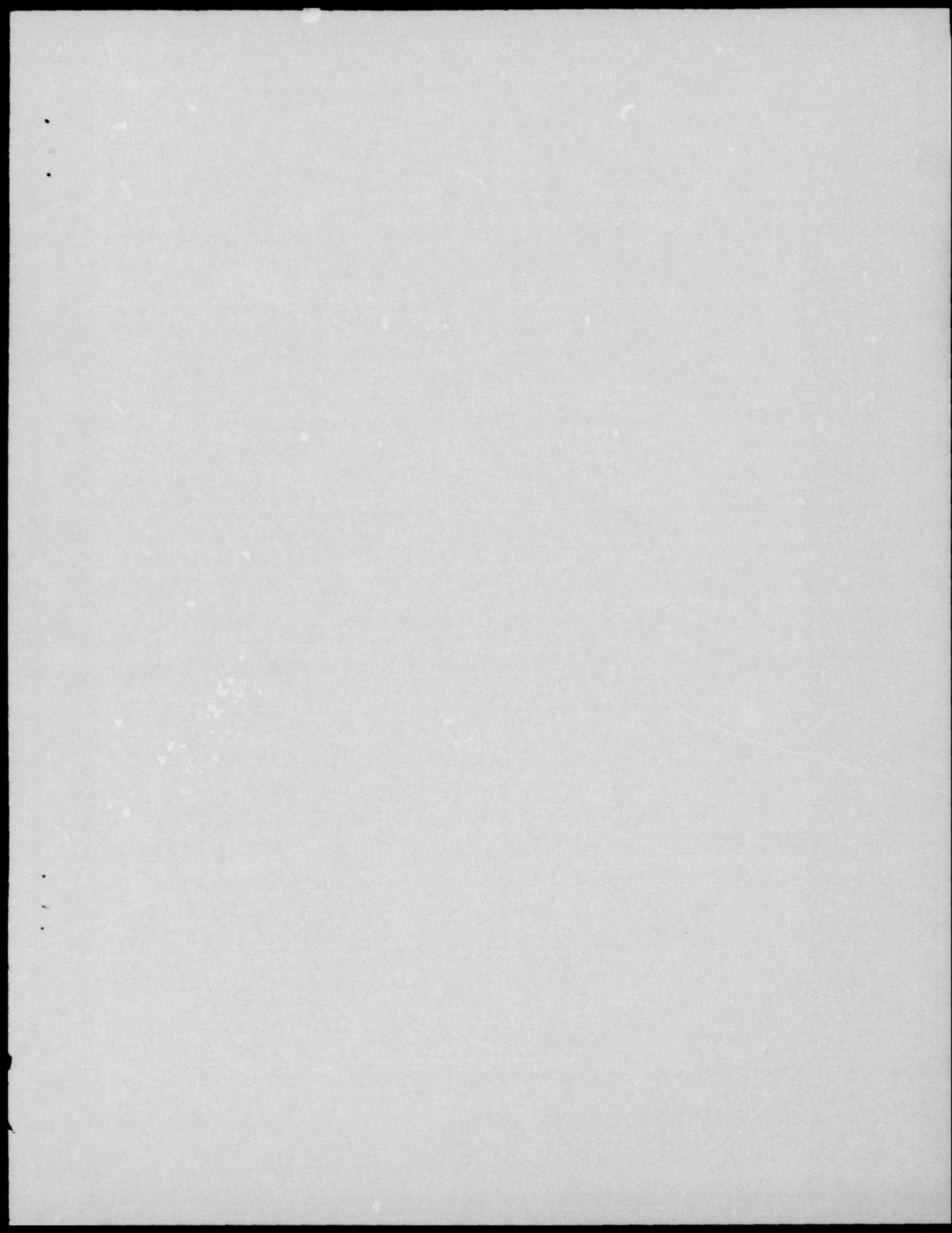


Notary Public

My Commission Expires: 6-16-2001







# TROUTMAN SANDERS LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

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SUITE 500 EAST  
WASHINGTON, D.C. 20005-3314  
TELEPHONE 202-274-2950  
FACSIMILE 202-274-2994

William A. Mullins

202-274-2953

August 6, 1997

## VIA FACSIMILE

Dennis G. Lyons, Esq.  
Drew A. Harker, Esq.  
Jodi B. Danis, Esq.  
Christopher P. Datz, Esq.  
Arnold & Porter  
555 12<sup>th</sup> Street, NW  
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Richard A. Allen, Esq.  
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Patricia Bruce, Esq.  
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888 17<sup>th</sup> Street, N.W.  
Washington, DC 20005-3939

Paul A. Cunningham, Esq.  
Gerald P. Norton, Esq.  
Harkins Cunningham  
Suite 600  
1300 19<sup>th</sup> 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 Gentleman:

This law firm represents The Kansas City Southern Railway Company, Gateway Western Railway Company and Gateway Eastern Railway Company. Our review of the Application filed in the above-referenced proceeding indicates that the Applicants are requesting that "the Board's order approving this Application also include a declaratory order that CSX and NS will have the authority to conduct operations over the routes of Conrail covered by Trackage Agreements, whether or not listed in Appendix L . . . notwithstanding any clauses in any such agreements purporting to limit or prohibit Conrail's unilateral assignment of its operating rights to another person." Application, Vol. I at 94-95 (emphasis supplied). As noted, a partial listing of the trackage rights agreements at issue is contained in Volume 1 of the Application, Exhibit "L." pp. 219-220.

TROUTMAN SANDERS LLP  
ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

Dennis G. Lyons

Samuel M. Sipe

Richard A. Allen

Paul A. Cunningham

August 6, 1997

Page 2

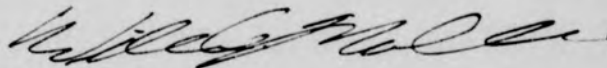
The list contained in Exhibit "L" generally describes three agreements between Conrail and Gateway Western or Gateway Eastern that are subject to the requested assignment. The information provided on those agreements is as follows:

<u>Line Segment</u>	<u>Owner/Grantor</u>
East St. Louis, IL	Gateway Western
East St. Louis, IL - Sauget, IL	Gateway Western
Willows Interlocking, IL - Q Tower, IL	Gateway Eastern

Because Exhibit "L" reflects limited information and is only a partial listing and because the Application requests an order that both "CSX and NS" will have the authority to conduct operations over the routes of Conrail covered by the trackage agreements, it is difficult to determine exactly which trackage rights agreements relevant to Gateway Western and Gateway Eastern are at issue in the proceeding and Applicants' intent toward those agreements. Accordingly, I would appreciate if you would provide the following information with respect to each trackage rights agreement involving Gateway Western and/or Gateway Eastern that the Applicants request be assigned from Conrail: (1) the parties to the agreement; (2) the date of the agreement; (3) a description of the trackage rights granted in the agreement; (4) the carrier that seeks to succeed Conrail in such trackage rights; (5) a statement as to NS's or CSX's intentions regarding whether it will be bound by the terms of that agreement or will seek to abrogate or otherwise modify the agreement; and (6) a statement as to whether it is the intent of CSX and NS to both operate over the assigned trackage.

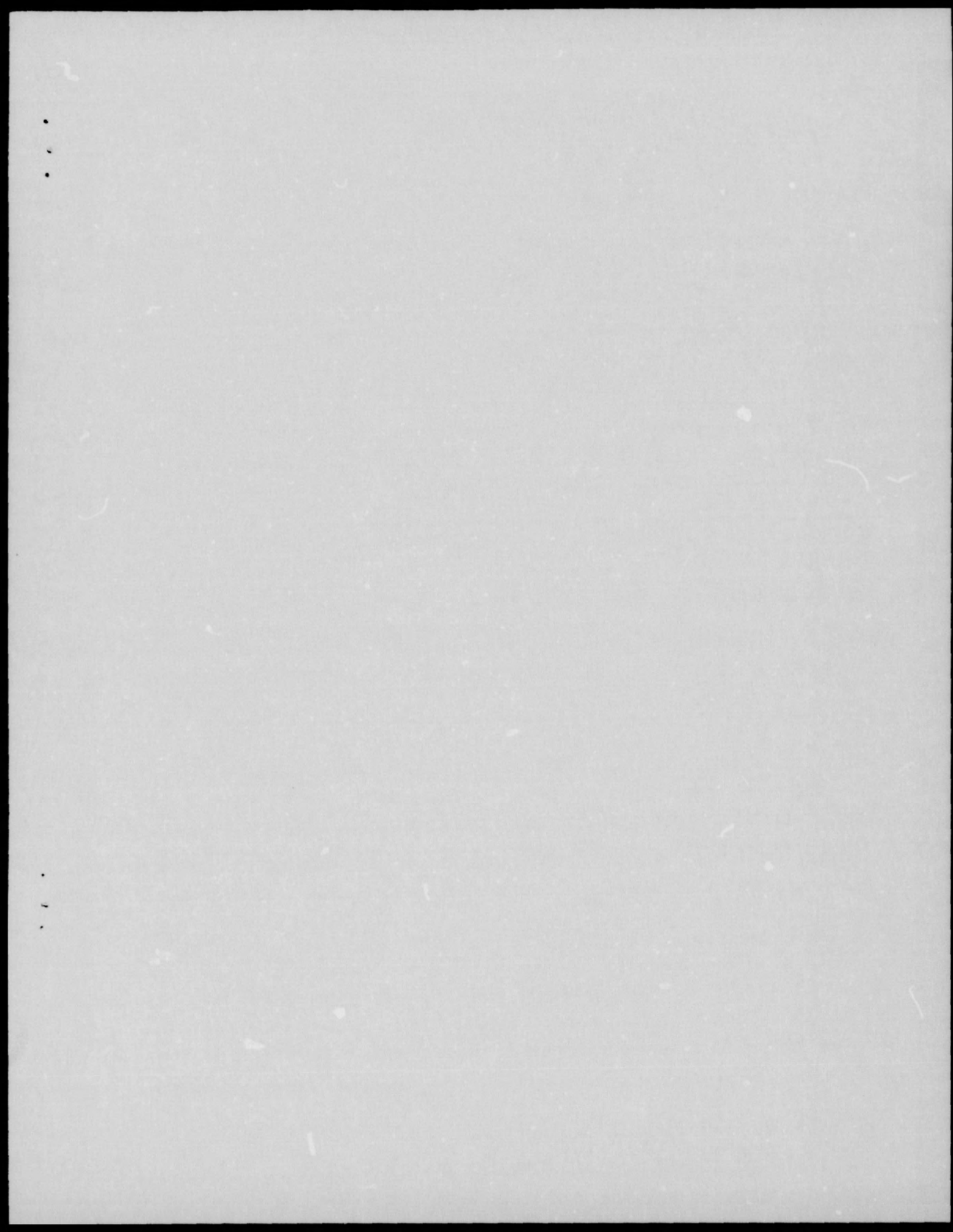
It is my desire that we can resolve these questions without the necessity of engaging in formal discovery and would thus appreciate an expeditious response to my request. If I can be of any assistance to you in providing this information, please call me at (202) 274-2953.

Sincerely,



William A. Mullins

cc: Robert K. Dreiling



ARNOLD & PORTER

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DENNIS G. LYONS  
(202) 942-5858

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

August 15, 1997

VIA NX DAY DELIVERY

William Mullins, Esq.  
Troutman Sanders LLP  
1300 I Street, N.W.  
Suite 500 East  
Washington, DC 20005-3314

Re: Gateway Eastern/Gateway Western

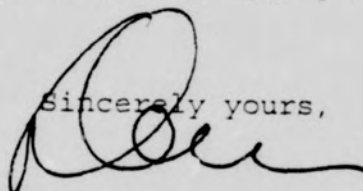
Dear Mr. Mullins:

Here are copies of what Conrail has advised us are its trackage rights agreements with your clients, Gateway Eastern and Gateway Western.

These are being reviewed by our client to make sure that the indications which we discussed over the phone are correct. I will get back to you in due course after hearing from them; I will be away for the next two weeks so you will not be hearing from me during that time. However, I have no reason to believe that there will be any exceptions. Certainly there is no provision in the documentation of the transaction involving Conrail, CSX and NS that any rights to or on any Conrail lines in the area of St. Louis will be going to NS.

With kind regards.

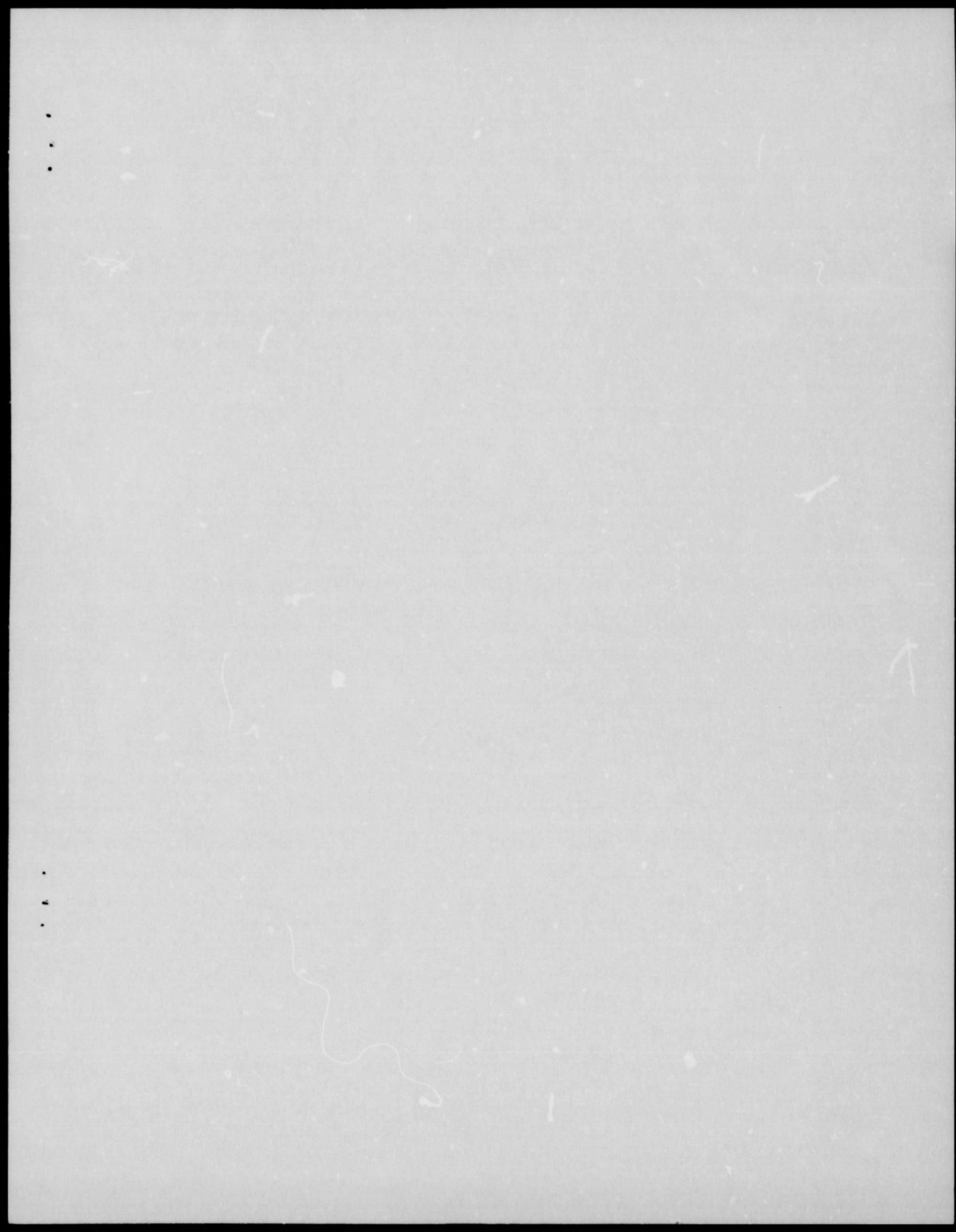
Sincerely yours,



Dennis G. Lyons

Enclosures







ARNOLD & PORTER

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(202) 942-5858

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LOS ANGELES  
LONDON

September 9, 1997

VIA NX DAY DELIVERY

William Mullins, Esq.  
Troutman Sanders LLP  
1300 I Street, N.W.  
Suite 500 East  
Washington, DC 20005-3314

Re: Gateway Eastern/Gateway Western

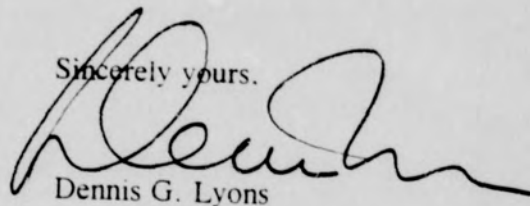
Dear Mr. Mullins:

This is in further reference to our earlier correspondence, in which I sent you copies of the trackage rights agreements in question, forwarded to us by Conrail.

We can confirm that CSX will succeed to the position of Conrail under those trackage rights agreements upon authorization by the Surface Transportation Board in the terms that have been requested in our Application and upon the division of Conrail's assets contemplated by the Application; that CSX does not propose to abrogate these agreements but will perform the obligations of Conrail under them; and that CSX will expect that Gateway Eastern and Gateway Western will perform their obligations under those agreements, upon the STB authorization and the division of Conrail contemplated thereby.

With kind regards,

Sincerely yours,



Dennis G. Lyons

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•  
•

# TROUTMAN SANDERS LLP

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.  
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William A. Mullins

202-274-2953

October 6, 1997

## VIA FACSIMILE

Dennis G. Lyons, Esq.  
Arnold & Porter  
555 12<sup>th</sup> Street, NW  
Washington, DC 20004-1202

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. Lyons:

As you may recall, this law firm represents The Kansas City Southern Railway Company ("KCS"), Gateway Western Railway Company ("Gateway Western") and Gateway Eastern Railway Company ("Gateway Eastern") in the above-referenced proceeding. In late August, you sent me copies of the existing agreements between Conrail and Gateway Western or Conrail and Gateway Eastern. By letter dated September 9, you confirmed that CSX intends to abide by the provisions of those contracts and that CSX expects Gateway Western and Gateway Eastern to likewise abide by the provisions of those agreements. Your responses to my clients' concerns have been expeditious and courteous.

In reviewing those agreements and the Application, however, it has become apparent that the proposed transaction has a high probability of diverting a significant amount of new traffic over the current Conrail routes that utilize Gateway's lines. This new traffic could cause substantial operating problems over the Gateway system, especially with respect to operations over the Q Connection and in the Cahokia Marine river terminal area.

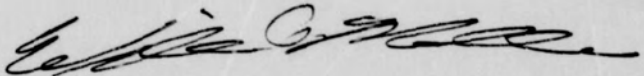
To discuss some of these issues, I would like to propose that representatives of KCS, Gateway, and CSX meet as soon as possible to help alleviate some of these concerns. As Robert K. Dreiling, Assistant General Counsel for KCS, will be in my offices all of this week on other matters, it might be beneficial to have an initial meeting with you, and any other CSX representative you deem appropriate, sometime this week. We could then follow-up with a meeting of our operating and other personnel sometime next week. As an alternative, if you

Dennis G. Lyons  
October 6, 1997  
Page 2

were able to have a CSX operating person who is familiar with the St. Louis and Chicago areas meet with us this week, we could ensure that an appropriate KCS and Gateway operating person would also be present. This could save the time and trouble of having two meetings.

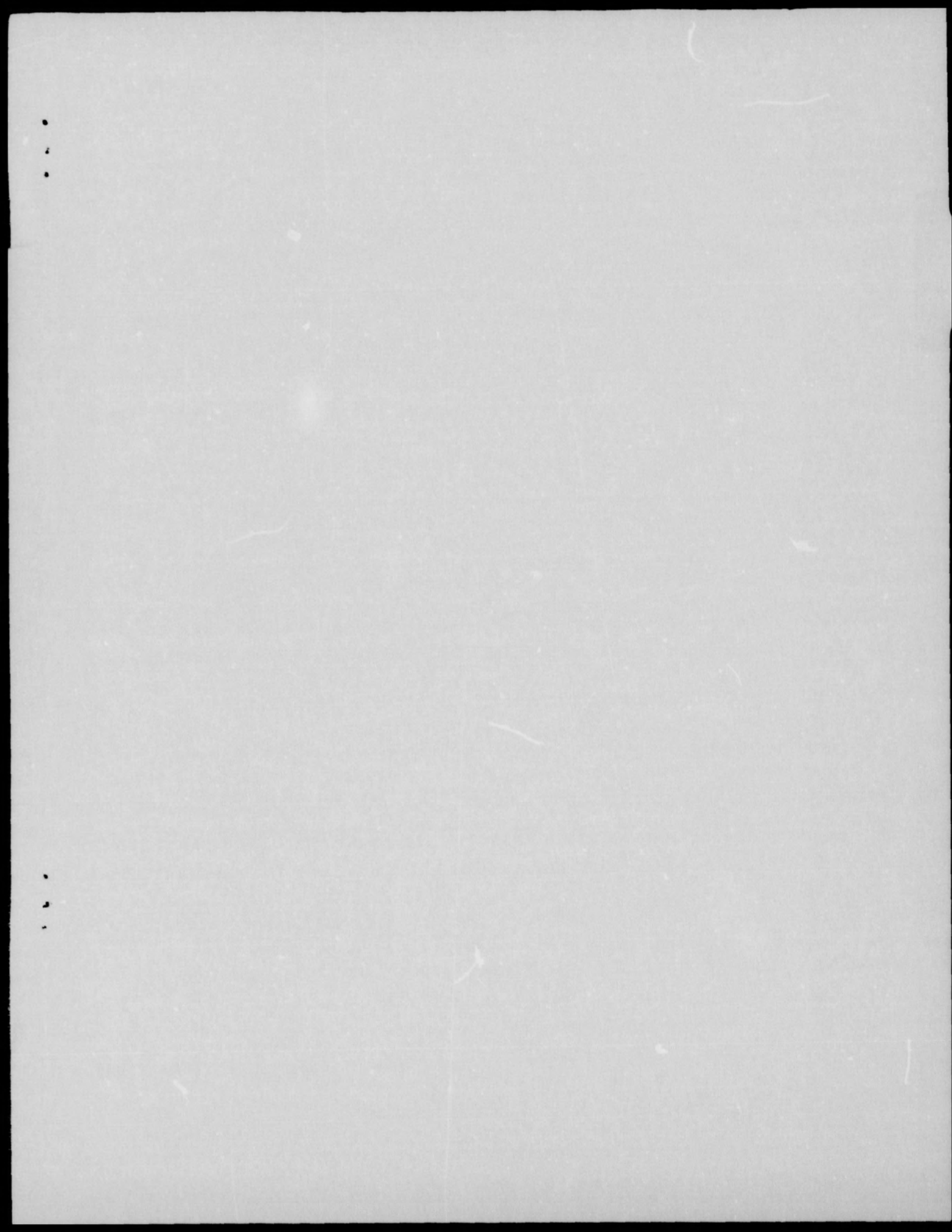
It is the desire of my clients to resolve these questions without the necessity of engaging in formal discovery or filing a formal protest with the STB. Accordingly, your continued assistance in resolving these matters in an expeditious manner would be greatly appreciated.

Sincerely,



William A. Mullins

cc: Robert K. Dreiling





DENNIS G. LYONS  
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LONDON

**CONFIDENTIAL**  
**SETTLEMENT DISCUSSION MATERIALS**

October 13, 1997

**VIA FAX**

William Mullins, Esq.  
Troutman Sanders LLP  
1300 I Street, N.W.  
Suite 500 East  
Washington, DC 20005-3314

Re: Gateway Eastern/Gateway Western

Dear Mr. Mullins:

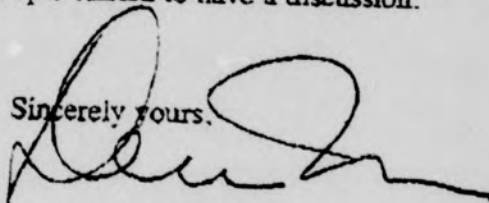
Your fax letter of October 6 was received here on October 7, and I have discussed its contents with the appropriate in-house counsel at CSX. They are alerting the appropriate business people on the subject.

We find that in these cases of operational matters it is best to see if a direct contact between the business people on both sides involved can be worked out, since we have not generally found that the intervention of lawyers (on either side) makes much of a net addition to the process of working out smooth physical railroad operations.

If you could identify the pertinent business person at KCS or its affiliates, I would appreciate it. Naturally, he would be contacted only by the appropriate business people at CSX. And if you or he could furnish a brief but more precise statement of the operating problem that KCS and its affiliates foresee, that might help in getting our people started to have a discussion.

With kind regards.

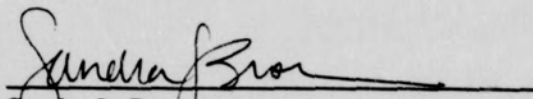
Sincerely yours,



Dennis G. Lyons

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "Comments of The Gateway Western Railway and The Gateway Eastern Railway" (GWWR-3) was served this 21<sup>st</sup> day of October, 1997, by hand delivery to Applicants' representatives and to Judge Leventhal, and by first class mail to all parties of record in this proceeding.

  
Sandra L. Brown  
Attorney for The Gateway Western Railway  
and The Gateway Eastern Railway

STB

FD

33388

10-21-97

D

182851

182851

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

FOPC-3

COMMENTS AND REQUEST FOR  
PROTECTIVE CONDITIONS  
OF THE  
FORT ORANGE PAPER COMPANY



John D. Heffner  
REA, CROSS & AUCHINCLOSS  
1920 N Street, N. W.  
Suite 420  
Washington, 20036  
(202) 785-3700

Counsel for Fort Orange  
Paper Company

Dated: October 21, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388

---

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

---

**FOPC-3**

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COMMENTS AND REQUEST FOR  
PROTECTIVE CONDITIONS  
OF THE  
FORT ORANGE PAPER COMPANY

---

**BACKGROUND**

Pursuant to the schedule adopted by the Surface Transportation Board ("the Board") on July 23, 1997, Fort Orange Paper Company ("Forge") files its comments in the above-captioned proceeding. Forge opposes the acquisition and partition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and Norfolk Southern Railroad ("NS") absent a grant of local trackage rights on Conrail's Albany-New York Hudson Division to Canadian Pacific Railroad ("CP Rail") and the New York State Department of Transportation ("NYSDOT") or its



designee. Alternatively, Forge opposes the CSX/NS Conrail acquisition and partition without the imposition of the traffic and rate conditions discussed in these comments.

Originally established in 1884, Forge is a rail freight customer of Conrail located at Castleton-on-Hudson, NY, just South of Rensselaer on the East Side of the Hudson River. There it manufactures clay coated, recycled box board for packaging food, hardware, and other consumer products. Forge utilizes Conrail for inbound loads of kaolin clay and scrap paper used in manufacturing its product.<sup>1</sup> Forge uses motor carrier service to ship its outbound product. Forge submits as part of this filing a short Verified Statement by its Distribution Manager Daniel Luizzi describing its transportation needs and elaborating on its concerns.

Forge is a small business. As such, it purchases raw materials in limited quantities and watches its material and transportation costs very carefully so as to remain competitive. Forge currently receives under 50 car loads of raw materials every year, primarily from origins in the Deep South and central Pennsylvania. Forge is a classic example of a small railroad customer with limited transportation needs. While the small size of its business necessarily limits the number of rail cars it receives, Forge does not want the Board to regard its modest transportation needs as any indication that rail service is

---

<sup>1</sup> These commodities are exempt from regulation. See, Rail Exemption--Transp. of Selected Commodity Groups, 9 I.C.C.2d 969 (1993).

unimportant to it. Forge also acknowledges that it has in the past made greater use of rail for inbound transportation than it does today. Prior to 1994, Forge typically received approximately 50 to 100 car loads of inbound product by rail per year. Forge cut back on use of rail as a result of an unfortunate decision by Conrail to impose a \$350 per car light density surcharge plus a 20% increase in the base rate of its inbound traffic, thereby diverting much of this freight to truck.

Forge's present rail transportation story really goes back to about 1988 and comes about as an accident of geography. Forge and its predecessors have been modest but loyal rail customers for Conrail and before it, the New York Central ("NYC") and Penn Central Railroads. Forge's Castleton facility is adjacent to one of Conrail's two major railroad lines linking the Albany Area with the New York Metropolitan Area. One of these two lines, commonly known as Conrail's "River Line," is a major freight artery on the west side of the Hudson River linking Albany with industrial northern New Jersey. The second of these two lines, commonly known as Conrail's "Hudson Division," hugs the eastern side of the Hudson River. The Hudson Division was a major NYC freight and passenger route. It is this "main line" that has served the Forge's plant for many years. While the NYC historically operated numerous freight trains over Hudson Division between points in the Midwest and upper New York State and New York City, the through freight trains bypassed Forge's facility. These trains came out of NYC's Albany Area

classification yard at Selkirk, bypassing the city of Albany, crossing the Hudson River and joining the Hudson Division south of Forge's factory. The rail line adjacent to Forge's factory was and still is primarily a passenger main line. Nevertheless, Forge and its predecessors have relied on this line during the past 70 years for freight service adequate for its needs.

In 1988, Conrail's planners determined that it should terminate rail service to Forge's plant absent an agreement by Forge to guaranty to pay a light density line surcharge sufficient to defray Conrail's cost of maintaining this portion of the Hudson Division to minimum passenger train standards.<sup>2</sup> Unwilling to bear a maintenance obligation Conrail had voluntarily and properly accepted with Amtrak in 1976, Forge declined to pay Conrail any light density surcharge over and above its normal freight rates. Thereafter, Conrail announced that it would place the subject trackage on its System Diagram Map as a prelude to termination of freight service and abandonment of the line.<sup>3</sup> Conrail then proposed to retain the line if Forge and the NYSDOT would enter into an agreement with it and Amtrak providing for the four parties to share the track

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<sup>2</sup> Under the agreements in effect between Amtrak and Conrail at the time, Conrail was responsible for maintaining certain Hudson Division tracks (including those serving Forge's plant) to a minimum speed of 70 mph. and Amtrak was responsible for maintaining the tracks for speeds over 70 up to 110 mph. Relevant pages of those agreements are attached as Exhibit A.

<sup>3</sup> The fact that the line handled numerous Amtrak trains at top speeds of 110 mph. did not deter Conrail in threatening abandonment of the line.

maintenance expenses (up to 70 mph.) on the 7 mile segment between Amtrak's Rensselaer Depot and the switch leading to Forge's plant. As luck would have it, Conrail's map did not describe the line correctly and it ultimately withdrew the map. Although Forge (and NYSDOT) had rejected Conrail's latest maintenance sharing proposal as too expensive and unfair, Forge suggested an alternative "take or pay" contract whereby Conrail, Amtrak, and Forge would share the track maintenance expense up to 70 mph. and Forge would commit to receive a minimal number of cars. The principal difference between Forge's proposal and the earlier Conrail proposal was that Forge's track maintenance obligation was capped at a level (\$5,000 per mile per year), comparable to the typical maintenance costs for a branch line. The parties signed a three year take or pay contract and then entered into a similar agreement for two year's duration upon expiration of the first agreement.

In 1995, as the 2 year agreement was about to expire, Conrail contacted Forge about negotiating a new arrangement. By this time, Conrail's maintenance expenses on the line had increased significantly. Conrail asked Forge to commit to shipping or receiving at least 300 cars per year, a traffic level well beyond Forge's needs. Forge negotiated in good faith with both Amtrak and Conrail. While Forge was willing to make certain traffic commitments, it could not accept Conrail's exorbitant demands. In addition, Amtrak was unwilling due to its financial problems to commit to an agreement longer than one year. The

negotiation ended in a stalemate with hard feelings between the parties. Conrail responded by slapping a \$350 per car light density surcharge and a 20% rate increase on all of Forge's traffic. Conrail's actions merely led Forge to discontinue use of rail freight except where truck transportation was unavailable or unacceptable.

Unhappy with this result, Forge considered its options including initiation of rate reasonableness litigation and petitioning the Interstate Commerce Commission for a revocation of the commodity exemptions on its traffic. Believing that such rate litigation would be unsuccessful, Forge sought to bring its transportation rate issues to the Board's attention by attempting to intervene and submit comments in a dispute between Amtrak and Conrail involving the compensation methodology to be employed for Amtrak's use of Conrail's track.<sup>4</sup> These experiences have led Forge to the inescapable conclusion that there are two ways to restrain pricing on the transportation of its inbound product: through the market place by competition between two or more rail carriers or, alternatively, by government regulation in the form of protective conditions and rate related relief. Consistent with Board policy that favors market based solutions, Forge prefers a competitive solution in the form of a trackage rights grant to a second rail carrier on the Hudson Division.

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<sup>4</sup> FD No. 32467, National Rail Passenger Corporation And Consolidated Rail Corporation--Application Under Section 402(a) of the Rail Passenger Service Act For An Order Fixing Just Compensation (served March 24, 1995).



### FORGE'S CONCERNS

Forge has four principal concerns. First, the proposed transaction does not offer that part of New York State east of the Hudson River the same competitive and economic benefits that points west of the Hudson will enjoy with the result that much of the Northeast is at a competitive disadvantage. Applicants represent that their proposed acquisition and division of Conrail presents numerous public interest benefits. For some lucky shippers and communities, the Conrail acquisition transaction has much to offer. For example, rail customers in northern New Jersey and eastern Pennsylvania gain real railroad competition for the first time in over 20 years. Other customers who use Conrail for traffic moving to or from points on either CSX or NS will now enjoy faster, direct single line service to or from these points. But for some shippers and communities -- such as those on the east side of the Hudson River -- the merger's benefits are more illusory than real. Absent special relief, these east of Hudson customers such as Forge will not enjoy competitive rail service. The only change will be in the paint scheme on the engines. These customers will exchange Conrail blue for CSX's gray, yellow, and blue livery. One monopoly will merely replace another.

A second Forge concern involves what has come to be termed "1 to 2 service." Specifically, many customers like Forge are concerned that the division of Conrail between CSX and NS will mean that what had been an efficient single line haul from

points such as Lancaster, PA, to Castleton, NY, will become a less efficient and more expensive two line haul involving carriers that have traditionally competed rather than collaborated for traffic. The introduction of a second carrier in the routing will not add any transportation benefits. This new interchange will only delay transportation, create opportunities for loss and damage of product, and increase rates on traffic that is already highly susceptible to truck diversion.

Forge's third concern involves traffic that Conrail has traditionally interlined with either CSX or NS. For example, on Forge's traffic from southern points such as Sandersville, GA, Conrail has traditionally functioned as a neutral connection for either CSX or NS. In view of the natural tendency of a class I railroad to seek the longest haul possible regardless of customer needs, Forge fears that arch competitors CSX and NS may not cooperate to interline traffic in the way that best serves Forge's interest,

Finally, Forge worries that CSX will see the Hudson Division as the poor sibling of the rival River Division between the Albany Area and the New York Metropolitan Area, just as Conrail has done. Despite CSX's pronouncements about wanting to develop traffic on the east side of the Hudson, Forge fears that CSX's service will replicate Conrail's lackluster efforts.<sup>5</sup>

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<sup>5</sup> Forge understands that NS sales and marketing personnel have been aggressively seeking out customers on those Conrail lines NS would acquire. By contrast, CSX's presence in New York and adjacent New England has been conspicuous by its absence.

While Conrail's service frequency has been adequate for Forge's needs, its policy of treating the Hudson Division as a light density branch line to be surcharged to recoup track maintenance costs represents a total disinterest in the needs of its shippers.

Regarding Forge's concerns, Forge propounded a series of interrogatory questions to CSX to ascertain how it would address these issues and sent an informal inquiry to CP Rail. CSX responded -- over and beyond the usual legalistic discovery responses -- by stating that it had not yet formulated commercial arrangements with NS on these movements. It also noted that it had not "definitively" identified any suitable interchange points with NS and could not predict any specific transit times. Copies of CSX's responses are attached here as Exhibit B. By contrast, CP Rail's answers were both specific and well thought out, albeit by telephonic and handwritten response.

#### RELIEF SOUGHT

1. Consistent with Forge's preference for "market based" solutions, Forge seeks additional rail competition at its Castleton facility. The Board can easily accommodate this request by granting the Responsive Applications of either CP Rail and NYSDOT (or its designee) for local service trackage rights between Rensselaer and New York City via Castleton. Forge requests that the Board assign to the grantee of these rights a common carrier obligation to provide local service on customer

request. Forge believes that the presence of several competing carriers on this line will ensure that all rates stay at a reasonable level, free of surcharges.

2. In the event both of these Responsive Applications are denied, Forge asks the Board to order CSX to maintain or establish routes and rates through gateways at Albany and New York City to permit interchange of freight with CP Rail (at Albany for movement to NS at Harrisburg) and with New York Cross Harbor Railroad in New York (for movement to NS at Greenville, NJ). In addition, Forge requests that the Board order CSX to fix rates at their current level<sup>6</sup> despite the interchange of traffic to NS and that the Board require CSX to cancel the light density line surcharge imposed by Conrail in 1995.

#### CONCLUSION

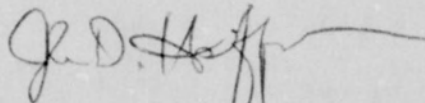
Fort Orange Paper Company opposes the acquisition and partition of Conrail CSX and NS absent a grant of local trackage rights on Conrail's Albany-New York Hudson Division to either CP Rail and the NYSDOT or its designee. Alternatively, Forge requests that the Board condition any approval of this transaction with routing and rate relief discussed above which will insure that it receives the efficient, competitive rail

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<sup>6</sup> Subject to normal industry wide rate increases or decreases.

service that shippers on the west side of the Hudson River will get once this transaction is consummated.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner  
REA, CROSS & AUCHINCLOSS  
1920 N Street, N. W.  
Suite 420  
Washington, 20036  
(202) 785-3700

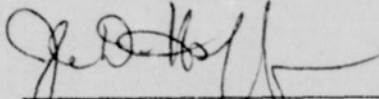
Counsel for Fort Orange  
Paper Company

Dated: October 21, 1997



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 21st day of October, 1997, served the foregoing Comments and Request for Protective Conditions of the Fort Orange Paper Company by mailing a copy thereof, first class, postage prepaid, to all parties of record.



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John D. Heffner

**VERIFIED STATEMENT**  
**OF**  
**DANIEL D. LUIZZI**

1. My name is Daniel D. Luizzi. My business address is 1900 River Road, Castleton, NY 12033. I am employed as Director of Operations for Fort Orange Paper Company ("Forge"), for whom I have worked for the past 16 years. In the capacity, I am responsible for, among other things, purchasing transportation services. I am intimately familiar with the company's transportation needs. I have read the Comments prepared for submission by Forge in these proceedings and am authorized to make this verified statement in support of those comments.

2. Forge is a small company which specializes in making cardboard and paper boxes at its sole facility located in Castleton, NY, about 10 miles southeast of Albany on the east bank of the Hudson River. Annually, Forge manufactures about 40,000 tons of recycled, clay coated box board generating about \$18 to \$20 million in sales. Because Forge is a small company and operates in a very competitive business environment, it must carefully monitor its overhead costs including those involving the transportation of inbound raw materials and outbound finished product. In that regard, Forge depends heavily upon rail for inbound transportation of raw materials used in its manufacturing and uses motor carrier service for outbound product. Forge's sole facility is connected by a spur to the "Hudson Division" of Consolidated Rail Corporation ("Conrail").<sup>1</sup> Because Conrail is

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<sup>1</sup> Forge maintains and operates this trackage and owns a small locomotive used to switch cars.

the only freight carrier presently providing freight service on this line, we are a "captive shipper."

3. In preparation for this statement, I have reviewed our freight bills for the past three years and 1997 to date. Our annual rail usage has varied from a low of 12 cars in 1997 to date to a high of 39 cars in 1995. Historically, our inbound rail shipments ran between 50 and 100 car loads per year but a substantial \$350 per car light density surcharge along with a 205 increase to the basic rate imposed by Conrail in 1993 drastically reduced use of rail. If that surcharge is eliminated and the rates reduced somewhat, Forge would make greater use of rail for inbound traffic. Examining our inbound traffic patterns, I find that the vast majority of our inbound traffic during these three and one half years consists of kaolin clay originating at Sandersville, GA, and routed via Norfolk Southern Railroad ("NS") to Conrail through Hagerstown, PA. We also had a small amount of inbound raw paper from points in central Pennsylvania, Ohio, or Illinois that exclusively moved over Conrail.

4. Based upon my company's 10 years of recent experience with Conrail involving threats of rate surcharges, abandonments, and heavy handed contract negotiations as well as our inbound transportation needs, I would enthusiastically support the Responsive Applications to be filed by Canadian Pacific Railway ("CP Rail") and the State of New York Department of Transportation ("NYSDOT") or its designee for local trackage down the east side of the Hudson River. Although Forge does not have

any major objection to CSX Transportation's ("CSX") proposal to acquire the former New York Central lines in New York State, Forge believes that the rail competition these trackage rights will provide will cure the problems and attitudes that arose under Conrail's 20 year rail monopoly in the Northeast. It is ironic that CSX and NS justify their proposal to acquire and divide Conrail on the need to break up Conrail's monopoly, yet they ignore the needs of rail customers and communities east of the Hudson River. Granting the CP Rail and NYSDOT applications will ameliorate this shortcoming of their merger proposal.

5. There are two other major reasons why Forge supports the CP Rail and NYSDOT applications. First, because most of our company's inbound traffic consists of freight with NS origins we would either like direct NS single line service or joint line service from a carrier with a long history of a close NS relationship. With its haulage agreements and other close contractual relationships in the Northeast with NS, CP Rail is just such a carrier. Indeed, I understand that NS and CP Rail have recently signed a haulage agreement that will make CP Rail NS' partner for expanded access into New England as a bridge to Guilford Transportation by linking NS to Guilford. Also a smaller amount of our traffic comes from points in Pennsylvania, Ohio, and sometimes Illinois that are located on Conrail lines that would, post-transaction, be operated by NS. Again, having CP Rail as our serving carrier would be preferable because of its strong NS ties. Second, with CP Rail as a serving carrier, Forge

will for the first time in years be able to obtain favorable rail rates and single line service on inbound Canadian paper products. Currently, Forge either cannot afford to buy Canadian paper products or must truck it in at higher rates. Forge has customers in both Toronto and Montreal and would like to use rail for outbound moves if economically attractive. CP Rail will also address Forge concern over surcharges. While CP Rail is not yet able to quote rates for Forge, it has advised us that the company has a normal policy against imposing rate surcharges.

6. Before closing, I would like to elaborate on my first point, the CP/NS interline arrangements along with the perceived difficulties in a NS/CSX joint line relationship. Although I realize there is no theoretical reason why NS and CSX could not be effective interchange partners to serve Forge's needs, actual experience suggests otherwise. In reading about the advantages and disadvantages of the proposed Conrail split up, I have read that a concern of many shippers involves Conrail's historical role as a neutral carrier for eastern customers. On traffic moving to or from southern and western points, Conrail acts as a nondiscriminatory feeder. In our case, Conrail acted freely to interchange with either NS (the usual case) or CSX (the rare exception). But once Conrail is gone, the serving carrier will normally want to have the longest haul possible with the result that CSX will lack an incentive to cooperate with NS on routings that are best for Forge. CSX will prefer a routing that gives it the longest possible haul that maximizes its revenues regardless



of whether the haul is in the customer's best interest. Had NS acquired the rights to serve Forge's facility we would not be making this argument, but disadvantaged shippers dependent upon NS for local service would be making a similar argument for access to CSX origins. Finally, to the extent this Conrail exclusive traffic would be divided between two arch competitors like NS and CSX, the chances for higher rates, and service problems merely increase. Because Forge is a small company with a tight raw material and transportation budget, it is very sensitive to changes in its transportation costs and has a limited ability to tolerate increases.

7. Forge supports NYSDOT' application in addition to the CP Application. A grant of rights to NYSDOT or its designee will ensure that Forge has alternative access to NS in the event of any problem with CP Rail as well as access to southern New York and NS via connections with the New York & Atlantic Railroad, operator of the Long Island Rail Road freight service, and the New York Cross Harbor Railroad car float to New Jersey.

8. I understand from our legal counsel that CSX's responses to our discovery questions indicate that CSX has not formulated any arrangements with NS for interchange of our traffic or done any specific planning on how best to serve small "east of Hudson" customers such ourselves. By comparison, discussions with CP Rail show that this carrier has made specific plans for its service should its trackage rights request be granted.

9. In conclusion, Forge enthusiastically endorses any plan by either CP Rail and the NYSDOT for local trackage rights on the Hudson Division to serve its facility. Barring a grant of such an application, Forge requests that the Board impose conditions that will ensure that CSX interchanges NS origin inbound traffic at Albany with CP Rail, that the Board require that the rates in effect do not increase as a result of the substitution of CSX for Conrail as Fort Orange's serving carrier, and that CSX rescind the light density surcharge formerly imposed by Conrail.

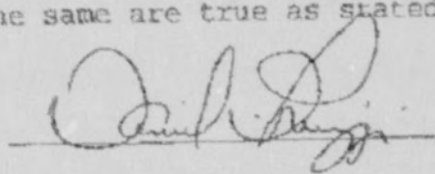
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## VERIFICATION

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

Daniel D. Luizzi, being duly sworn, deposes and  
says that he has read the foregoing statement, knows the facts  
asserted there are true and that the same are true as stated.

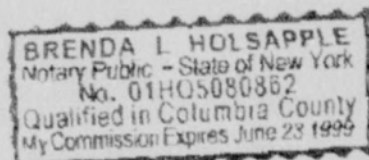


Subscribed and sworn to before me this 20 day of  
October, 1997.

Notary Public of State of New York

Brenda L. Holsapple

My Commission expires: 6/23/99



AMENDMENT TO OFF CORRIDOR OPERATING AGREEMENT  
BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION  
AND  
CONSOLIDATED RAIL CORPORATION

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THIS AMENDMENT, dated as of July 1, 1980 to the Off-Corridor Operating Agreement between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia (Amtrak) and Consolidated Rail Corporation, a corporation organized under the Regional Rail Reorganization Act of 1973 (Rail Act) and the laws of the Commonwealth of Pennsylvania (Conrail).

WHEREAS, Section 4.2 of the Agreement provides that Conrail is to maintain the Conrail rail lines in no less than the condition in which such rail lines were conveyed to Conrail under the Rail Act; and

WHEREAS, Section 4.3 of the Agreement provides that Amtrak shall have the right to require Conrail to improve or add to the Conrail rail lines and that any increase in maintenance costs occasioned by such improvements or additions shall be paid by Amtrak; and

WHEREAS, the State of New York, Amtrak and Conrail have agreed that certain lines in the State of New York should be upgraded to permit passenger trains to operate at higher speeds between Poughkeepsie and Hoffmans; and

WHEREAS, Conrail and Amtrak agree to the proposed upgrading of the line between Poughkeepsie and Hoffmans and to share in the cost of the maintenance thereof.

NOW, THEREFORE, the parties hereto and in consideration of the mutual promises, conditions, terms and obligations herein contained, do agree and covenant as follows:

1. The line between Poughkeepsie and Hoffmans will be divided into four segments for track maintenance purposes.

These segments are defined as follows:

(a) Segment 1: Poughkeepsie (MP 75.7) to CP 123, (MP 123.8), on Track No. 1 and to CP 125 (MP 125.6), on Track No. 2.

(b) Segment 2: CP 123 (MP 123.8) to CP 2 (MP 142.5) on Track 1 and CP 125 (MP 125.6) to CP 2 (MP 142.5) on Track No. 2;

(c) Segment 3: CP 2 (MP 142.5) to CP 8 at Carman (MP 156.45); and

(d) Segment 4: Carman (MP 156.45) to Hoffmans (MP 168.3).

2. The parties agree that since Segment 1 is used predominantly by Conrail freight trains that it will be maintained by Conrail forces. Segment 2 tracks are used solely or predominantly by Amtrak and it is proposed that this segment will be leased to Amtrak which will thereafter be responsible for maintenance of the tracks. Segment 3 tracks are used solely or predominantly by Amtrak passenger trains and it is proposed that this segment will be leased

CP 123  
maint  
CP down

Amtrak  
maint  
CP down

← line  
in grass

X



to and thereafter maintained by Amtrak. Segment 4 is used solely by Amtrak including the track between MP 161.5 and MP 168.3 which is owned by Amtrak. It is proposed that the track between Milepost 156.45 and Milepost 161.5 will be leased to Amtrak. After this track is leased by Amtrak Segment 4 in its entirety will be maintained by Amtrak. The parties agree that Conrail shall retain the maintenance responsibility for Segments 2, 3 and 4 until lease agreements for those segments are executed.

3. Conrail will be responsible for maintenance of the Hudson River Bridge between Albany and Rensselaer except for the railroad tracks located on the bridge which tracks will be maintained by Amtrak. Conrail will perform all communication and signal maintenance between Poughkeepsie and Hoffmans. The expense for this maintenance will be paid as follows:


- (a) Maintenance of communication lines and facilities will be paid by Conrail;
- (b) Maintenance of fixed cab signal facilities and grade crossing predictors will be paid by Amtrak;
- (c) Maintenance of signal facilities, other than the pole-line and wires, on tracks used solely by Amtrak will be paid by Amtrak;
- (d) Maintenance of the pole-line and wires between Schenectady (Milepost 159.5) and Hoffmans (Milepost 169.9) will be paid by Amtrak. All other pole-line and wire maintenance will be paid by Conrail.

(e) All other signal maintenance, including pole-line and wires, will be paid by Conrail.

4. Conrail will also maintain the signals on the Post Road connection including buried signal cable. This maintenance will be performed at Amtrak's expense.

5. Except as provided in Paragraph 6, it is agreed that the party which is responsible for maintaining the track will also be responsible for maintaining the right-of-way including control of weeds and brush adjacent thereto and maintenance of grade crossings and drainage ditches adjacent to and under the right-of-way.

6. It is further agreed that between CP 123 (MP 123.8) and CP 125 (MP 125.6); CP 2 (MP 142.5) to CP 4 (MP 143.6); CP 4 (MP 143.6) to Colonie, (MP 151.5); and MP 155.0 to MP 159.9 Conrail will be responsible for the control of weeds and brush and the provision of proper drainage on the side for which it is responsible for maintenance of the tracks and Amtrak will be responsible for control of weeds and brush and the provision of proper drainage on the side for which it is responsible for maintenance of the tracks.

7. The parties agree the annual maintenance cost to maintain the tracks between Poughkeepsie and Hoffmans to a maximum speed of 70 m.p.h., which was the maximum speed on April 1, 1976, is \$10,900 per track mile as stated in July 1, 1980 dollars. 

8. The parties agree that Amtrak will be financially responsible for the maintenance of the solely related passen-

ger tracks and for that portion of the maintenance relating to high speed service on all tracks subject to this Agreement, that is, for speeds over 70 m.p.h., but not exceeding 110 m.p.h. The over 70 m.p.h. maintenance expense for tracks between Poughkeepsie and Hoffmans is \$7,535 per track mile annually, as stated in July 1, 1980 dollars.

9. The parties agree that the maintenance charges in Paragraphs 7, 8 and 10 will be increased or decreased annually on July 1st in accordance with the Association of American Railroads (AAR) Quarterly Indexes of Charge-Out Prices and Wage Rates of railroad material prices, wages and supplements (excluding fuel), Class I Railroads, Eastern District at the July 1, 1980 index level.

10. The parties agree that the following costing arrangements for maintenance of tracks between Poughkeepsie and Hoffmans shall be in effect from the time the parties agree that Conrail has upgraded the tracks in accordance with its agreement with the State of New York as inspected by track geometry car which would permit operation of intercity passenger trains at speeds in accordance with Exhibit 1. These costing arrangements will be in effect until January 1, 1983 after which date either party shall have the right to reopen negotiations on the costing provisions:

(A) Until lines are leased to Amtrak between Rensselaer and Hoffmans, Segments 3 and 4 will be maintained by Conrail. The parties agree that there are 19.9 miles of track with

speeds in excess of 70 m.p.h. and 15.55 miles of solely related passenger tracks thus requiring an annual payment to Conrail by Amtrak of \$319,441.

(B) After lines are leased to Amtrak between Rensselaer and Hoffmans, the maintenance of Segments 3 and 4 will be performed by Amtrak, including 10.25 miles of main track used by both parties, requiring an annual payment from Conrail to Amtrak for maintenance to the 70 m.p.h. level of \$111,725.

(C) Until lines are leased to Amtrak between Stuyvesant and Rensselaer, Segment 2 will be maintained by Conrail. The parties agree that there are 16.7 miles of track with speeds in excess of 70 m.p.h. on Track 1 and 11.4 miles of solely related passenger track on Track 1. The parties further agree that there are 15.9 miles of track with speeds in excess of 70 m.p.h. on Track 2 and 16.6 miles of solely related passenger track on Track 2. The annual payment to Conrail by Amtrak for Segment 2 will be \$550,841.

(D) After lines are leased to Amtrak between Stuyvesant and Rensselaer, the maintenance of Segment 2 will be performed by Amtrak, including 7.6 miles of main track used by both parties, requiring an annual payment from Conrail to Amtrak for maintenance to the 70 m.p.h. level of \$82,840.

(E) When tracks are upgraded in accordance with Exhibit 1 between Poughkeepsie and Stuyvesant, Conrail will maintain from Poughkeepsie (MP 75.7) to Stuyvesant (MP 123.8 on Track 1 and MP 125.6 on Track 2). The parties agree there will be

customers located adjacent to the tracks involved in this Amendment Agreement regardless of whether the tracks are maintained by Amtrak or Conrail and regardless of whether the tracks are owned or leased by Amtrak.

17. The parties agree that all other provisions of the Off Corridor Operating Agreement will remain in effect for operations between Poughkeepsie and Hoffmans as if all provisions of the agreement were specifically included herein.

18. That portion of the Memorandum of Understanding between Amtrak and Conrail dated March 25 and April 1, 1977 pertaining to the division of maintenance costs is hereby revoked and rendered invalid.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 30th day of October, 1980.

ATTEST:

T. P. M. Gordinier

ASSISTANT SECRETARY

ATTEST:

Edye Hansen

CONSOLIDATED RAIL CORPORATION

By:

Frank M. Reed  
PRESIDENT

NATIONAL RAILROAD  
PASSENGER CORPORATION

By:

Alan S. Boyd



## IMPLEMENTING AGREEMENT

WHEREAS, by Agreement entered into as of July 1, 1980, entitled "Amendment to Off-Corridor Operating Agreement Between National Railroad Passenger Corporation and Consolidated Rail Corporation" (the Agreement) Conrail and Amtrak (the Parties) agreed to certain terms and conditions governing the upgrading and future maintenance of certain lines of railroad in New York State; and

WHEREAS, as of August 1, 1980, Conrail had satisfactorily completed the upgrading of Segments 3 and 4 as defined in Paragraph 1 of the Agreement; and

WHEREAS, the parties realize that additional work is necessary in order to fully comply with the terms and conditions of the Agreement; and

WHEREAS, the parties have agreed to implement certain of the provisions of the Agreement in advance of the completion of the entire project called for in the Agreement;

NOW, THEREFORE, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein contained do agree and covenant as follows:

1. Amtrak agrees to assume financial responsibility as of August 1, 1980 for the over 70 m.p.h. maintenance expense for Segments 3 and 4 as defined in Paragraph 1 of the Agreement.

2. The parties agree that Conrail has upgraded the tracks in Segments 3 and 4 in accordance with Conrail's agreement with the State of New York and in accordance with Paragraph 10 of the Agreement to permit the operation of intercity passenger trains at speeds set forth in Exhibit 1 to said Amendment Agreement.

3. Amtrak agrees that it will assume responsibility for the actual maintenance of tracks included in Segments 3 and 4 as soon as Amtrak acquires the necessary maintenance equipment and the leases for these lines and rights-of-way have been executed.

4. Conrail and Amtrak agree that the party which is responsible for the actual maintenance of tracks between Poughkeepsie and Hoffmans which are the subject of this Implementing Agreement will have the responsibility and authority to impose, amend and remove any restrictions on the speed of railroad movements within the area of its maintenance responsibility.

5. Conrail is continuing to upgrade tracks in Segments 1 and 2. All obligations to pay maintenance expenses and to perform actual maintenance, or any changes in such responsibility, will be determined in accordance with the terms and conditions of the Agreement.

6. In all other respects, all provisions of the Off-Corridor Operating Agreement and the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Conrail and Amtrak have caused this  
Implementing Agreement to be duly executed by their respective  
designated negotiators all as of the day and year first above  
written.

NATIONAL RAILROAD PASSENGER  
CORPORATION

Harold E. Boyd  
Elmer Hansen

CONSOLIDATED RAIL CORPORATION

Stanley M. Reed  
PRESIDENT  
E. P. Robertson  
ASSISTANT SECRETARY

45,133

Modification of  
Amendment to Off Corridor Operating Agreement  
Between  
National Railroad Passenger Corporation  
And  
Consolidated Rail Corporation

This Modification, dated Dec 30, 1982, supplements the Amendment, dated as of July 1, 1980, to the Off Corridor Operating Agreement between National Railroad Passenger Corporation (Amtrak) and Consolidated Rail Corporation (Conrail).

WHEREAS, the State of New York requested certain modifications or clarifications in the July 1, 1980, Amendment to the Off Corridor Operating Agreement; and

WHEREAS, Amtrak and Conrail have agreed to the requested modifications and clarifications.

NOW, THEREFORE, the parties hereto and in consideration of the mutual promises, conditions, terms, and obligations herein contained, do agree and covenant as follows:

1. Paragraph 1 of the Amendment is revised to more specifically define the mile post locations for each of the segments as follows:

(a) Segment 1: Poughkeepsie (MP 75.70) to CP 123, (MP 123.86), on Track No. 1 and to CP 125 (MP 125.67), on Track No. 2;

(b) Segment 2: CP 123 (MP 123.86) to CP 2 (MP 142.46) on Track 1 and CP 125 (MP 125.67) to CP 2 (MP 142.46) on Track No. 2;

(c) Segment 3: CP 2 (MP 142.46) to CP 8 at Carman (MP 156.50); and

(d) Segment 4: Carman (MP 156.50) to Hoffmans (MP 169.77) on the route to Schenectady.

2. Conrail and Amtrak agree that insofar as the Hudson River Bridge is concerned that the maintenance responsibility defined in Paragraph 3 of the Amendment Agreement of July 1, 1980, means that Amtrak will maintain the bridge ties, rail, and other track material while Conrail will be responsible for maintaining the piers and superstructure of the bridge.

3. Amtrak and Conrail agree that in the event the Off Corridor Agreement between Amtrak and Conrail is terminated or that the Off Corridor Agreement is not extended beyond its current termination date of April 30, 1996, that the maintenance requirements of the Conrail NYDOT Agreement will revert to Conrail. The parties agree that this obligation does not in any way require Conrail to operate passenger service over the involved lines.

4. Amtrak will be responsible for ditching, weed and brush control between lease lines as shown on Conrail/Amtrak lease dated November 1982.

5. Conrail and Amtrak agree that all other provisions of the Amendment Agreement as well as all provisions of the Off Corridor Agreement will remain in effect for operations between Poughkeepsie and Hoffmans as if all provisions of those Agreements were specifically included herein.



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the year and date first above written.

ATTEST:

CONSOLIDATED RAIL CORPORATION

Harry John, Jr.

By: Stuart M. Reed  
PRESIDENT

ATTEST:

NATIONAL RAILROAD PASSENGER  
CORPORATION

John

By: W. Cahoon



## EXHIBIT B

Response: Without waiving any objections, and subject to the General

Objections stated above, CSX responds as follows:

CSX states that it has not yet formulated commercial arrangements with NS with respect to the movements identified in the request. Accordingly, the interchange points for those movements, as well as the routing that would follow from a choice of interchange points, are not definitively known at this time. CSX further states that the depository contains information prepared by ALK Associates, based on the General Merchandise Study conducted by ALK in connection with the Application, that shows the potential routing and interchange point for the shipment identified in the request. See CSX-23-HC-000020.

3. In the same manner as you have responded to Interrogatory No. 2, above, please provide the proposed routing and/or all available routings and interchange point(s) (between NS and CSXT) for carload traffic originating in Lancaster, PA, and destined to FOPC.

Response: Without waiving any objections, and subject to the General

Objections stated above, CSX responds as follows:

See response to Interrogatory No. 2.

4. For both of the traffic routings and interchanges identified in your responses to Interrogatories 2 and 3, above, will such routings and interchanges – (a) increase the overall efficiency and reduce transit times for FOPC traffic; (b) decrease the overall efficiency and increase transit times for FOPC traffic; (c) have no appreciable impact on the overall efficiency and transit times for FOPC traffic; or (d) CSXT has never before considered the overall efficiency and transit times for FOPC traffic and declines to offer any such assessments or projections at this time.

Response: CSX objects to this interrogatory on the ground that the term

“overall efficiency” is vague, overbroad, and susceptible to several interpretations.

Without waiving any objections, and subject to the General Objections stated above, CSX responds as follows:

See response to Interrogatory No. 2.

5. As part of its Application, CSXT has offered information demonstrating how CSXT's operation of the New York Central Lines will result in more efficient traffic routings and transit time improvements in certain corridors. Inclusion of such information indicates that CSXT can calculate the approximate transit times for carload traffic moving on its system. In this case, for FOPC traffic identified in Interrogatories 2 and 3, above, please provide the approximate time (in hours and days) between the time such traffic would be received by CSXT from NS and the time such traffic is delivered by CSXT to FOPC.

Response: CSX objects to this interrogatory on the ground that it would require a burdensome special study. CSX further objects on the ground that the term "approximate time" is vague and ambiguous. Without waiving any objections, and subject to the General Objections stated above, CSX responds as follows:

CSX states that specific transit times requested are not definitively known at this time. See response to Interrogatory No. 2.

6. Please identify any plans CSXT may have concerning the future operation of the portion of the New York Central Lines, particularly a line segment extending between Rensselaer, NY and Hudson, NY, and indicate any plans CSXT may have for discontinuance of freight service over this line segment, imposition of light density surcharges, changes in frequency of freight service, transfer of freight operating rights to a short line or regional railroad, and diversion of any additional through freight service to this line segment.

Response: CSX objects to this request on the ground that the term "concerning" is vague, ambiguous and overbroad. Without waiving this or any objection, and subject to the General Objections stated above, CSX responds as follows:

CSX states that no such plans exist at this time.

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



181323

TEL: (860) 767-9629  
(860) 388-9629  
FAX: (860) 767-7419

August 21, 1997

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

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

Housatonic Railroad's Notice of Intent to File Responsive  
Application

Housatonic Railroad's Petition for Determination - Minor  
Transaction

Dear Secretary Williams:

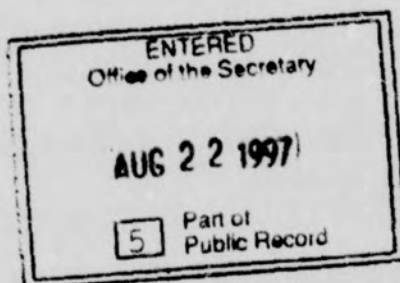
Enclosed is an original and 25 copies of each of Housatonic  
Railroad's Notice of Intent to File Responsive Application and  
Housatonic Railroad's Petition for Determination - Minor  
Transaction for the above captioned proceeding.

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

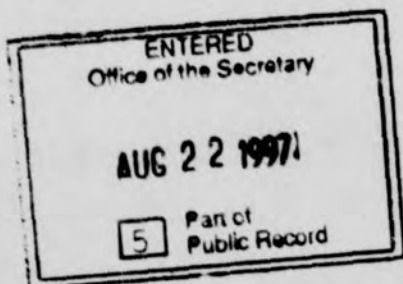
Thank you.

Very truly yours,

Edward J. Rodriguez







BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33338

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

HOUSATONIC RAILROAD COMPANY, INC.  
NOTICE OF INTENT TO FILE RESPONSIVE APPLICATION

Housatonic Railroad Company, Inc. hereby gives notice that it intends to file a responsive application in the above proceeding and provides a summary description of the proposed responsive application.

Background.

Housatonic Railroad Company, Inc. (HRRRC) is a Class III carrier which currently interchanges all of its interline freight with Conrail at Pittsfield, Massachusetts.<sup>1</sup> While the proposed CR/CSX/NS transaction ("Transaction") has been described by the applicants as fostering rail competition in the Northeast, the ability of HRRRC to compete will not be enhanced but will be seriously diminished. Rail competition will be introduced where

<sup>1</sup> HRRRC operates approximately 161.3 miles in Massachusetts, Connecticut and New York.

none now exists in nearby New York, including the Albany area, while HRRC, which primarily serves western Connecticut and western Massachusetts, will see its competitive position diminished.<sup>2</sup>

HRRC is uniquely situated just a few miles on the wrong side of the competitive wall which separates that part of New York which will enjoy rail competition from Connecticut, Massachusetts and New York points east of the Hudson River, which will not. As proposed, the Transaction will introduce vigorous competition between CSX, NS and other rail carriers in nearby New York. While HRRC will not have access to NS, NS has already made public its plans for an intermodal facility in Albany which will compete for rail freight business in the HRRC market area. HRRC expects that NS will establish other intermodal terminals in the HRRC service area and make other arrangements to vigorously compete for HRRC business. HRRC will be unable to meet these competitive challenge unless it obtains equal access to all carriers serving the New England market.

The adverse impacts which the Transaction, as presently structured, will likely have upon HRRC include, but may not be limited to (1) a diversion of rail freight business from HRRC to NS intermodal facilities in nearby New York, including the Albany area; (2) a loss of business originating or terminating at CR

---

<sup>2</sup> HRRC also serves Putnam and Dutchess Counties, New York. These areas are located east of the Hudson River and are in the same competitive position as HRRC Massachusetts and Connecticut stations, except insofar as they may be even more susceptible to intermodal competition as described below.

stations which will become NS stations, thus requiring a three line traffic movement; and (3) a loss of certain business originating on HRRC as a result of NS and CSX favoring single line routes. These adverse impacts will harm HRRC shippers and will result in a loss of business and loss of revenue for HRRC which will jeopardize the financial viability of HRRC.

Relief to be Sought.

In order to obtain access to other carriers and to maintain its competitive position, Housatonic Railroad Company, Inc. intends to seek overhead trackage rights over the following lines now owned by Conrail: (1) the Boston and Albany main line from Pittsfield, Massachusetts to the Albany, New York area, a distance of approximately 47 miles,<sup>3</sup> for the purpose of interchange with all other carriers operating in the Albany area; (2) the Boston and Albany main line from Pittsfield, Massachusetts to Palmer, Massachusetts, a distance of approximately 67 miles, for the purpose of interchanging with other carriers at Springfield and Palmer, Massachusetts; and (3) to the extent that Housatonic Railroad does not already have such rights, on the Boston and Albany main line from its connection with Housatonic's Berkshire Line at approximate mile post 151 (CP 150) to approximate mile post 148 (CP 147) in Pittsfield, Massachusetts and in and through North Adams Junction Yard and on

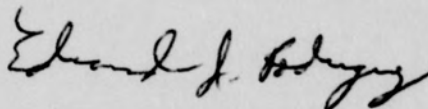
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<sup>3</sup> The distance of approximately 47 miles is from Pittsfield to Selkirk. If interchange with other carriers occurs elsewhere in the Albany area, the distance may be somewhat greater.

the North Adams Secondary track from its intersection with the Boston and Albany main line at mile post 0.0 through North Adams Junction Yard to the end of track at approximately mile post 2.5.

In addition, HRRC plans to seek the imposition of certain protective conditions including, but not necessarily limited to, haulage arrangements.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Edward J. Rodriguez".

Edward J. Rodriguez  
Attorney for Housatonic Railroad  
P.O. Box 298  
Centerbrook, Connecticut 06409  
(860) 767-9629

Dated: August 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 1997, I served a copy of the foregoing Housatonic Railroad Co., Inc. Notice of Intent to File Responsive Application by first class mail, postage prepaid, upon the following parties and will serve copies upon all other parties of record upon receipt from the Surface Transportation Board of a service list thereof.

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, LLP  
888 Seventeenth Street, NW, Suite 600  
Washington, DC 20006-3939

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, NW  
Washington, DC 20004-1202

Paul A. Cunningham, Esq.  
Markins Cunningham  
1300 19th Street, NW, Suite 600  
Washington, DC 20036

Richard G. Slattery, Esq.  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, NE  
Washington, DC 20002

James C. Bishop, Jr., Esq.  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191

John M. Nannes, Esq.  
Scot B. Hutchins, Esq.  
Skadden, Arps, Slate, Meagher & Flom, LLP  
1440 New York Avenue, NW  
Washington, DC 20005-2111

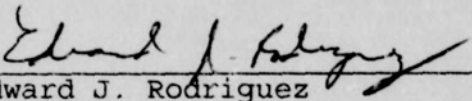


Mark G. Aron, Esq.  
Peter J. Schudtz, Esq.  
Ellen M. Fitzsimmons, Esq.  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, Virginia 23129

P. Michael Giftos, Esq.  
CSX Transportation, inc.  
500 Water Street  
Jacksonville, Florida 32202

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

Timothy O'Toole, Esq.  
Constance L. Abrams, Esq.  
Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
Philadelphia, Pennsylvania 19101

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

STB

FD

33388

8-20-97

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181300

181300

LAW OFFICES .  
of  
**T. SCOTT BANNISTER AND ASSOCIATES**  
ATTORNEY AND COUNSELOR AT LAW  
1300 DES MOINES BUILDING  
405 - SIXTH AVENUE  
DES MOINES, IOWA 50309

TELEFAX:  
(515) 244-8258

TELEPHONE:  
(515) 244-0177  
(515) 244-8877

August 1997



**VIA FEDERAL EXPRESS**

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

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

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of Iowa Interstate Railroad, Ltd. Comments in Opposition to Control Application with a Certificate of Service as required attached thereto.

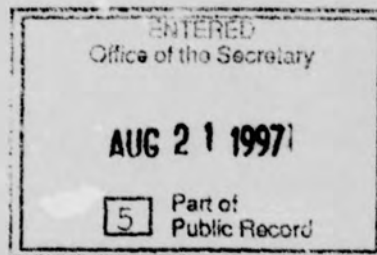
Your attention to this matter is appreciated.

Sincerely,

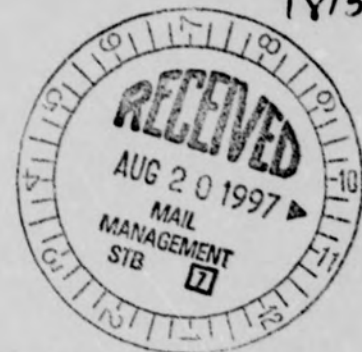
T. Scott Bannister

TSB/hjw  
CC: Frederic W. Yocum, Jr.  
Douglas H. Christy

1029/1/CORR/47044



BEFORE THE  
SURFACE TRANSPORTATION BOARD

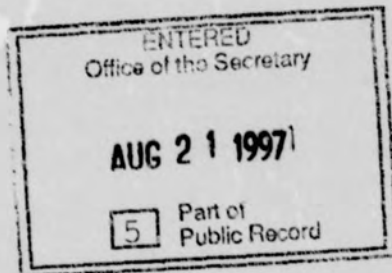


STB Finance Docket No. 33388

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

IOWA INTERSTATE RAILROAD, LTD.

COMMENTS IN OPPOSITION TO CONTROL APPLICATION  
AND DESCRIPTION OF ANTICIPATED INCONSISTENT  
AND RESPONSIVE APPLICATION



T. Scott Bannister  
Secretary and General Counsel  
Iowa Interstate Railroad, Ltd.  
1300 Des Moines Building  
405 - Sixth Avenue  
Des Moines, IA 50309

Telephone 515-244-0177  
Telefax 515-244-8258

Dated: August 19, 1997

ATTORNEYS FOR PROTESTANT,  
IOWA INTERSTATE RAILROAD, LTD.

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

IOWA INTERSTATE RAILROAD, LTD.

COMMENTS IN OPPOSITION TO CONTROL APPLICATION  
AND DESCRIPTION OF ANTICIPATED INCONSISTENT  
AND RESPONSIVE APPLICATION

Commenting Party and Representative:

These Comments are filed on behalf of Iowa Interstate Railroad, Ltd., 800 Webster Street, Iowa City, Iowa. The representative upon whom service should be made is as follows:

T. Scott Bannister  
Secretary and General Counsel  
Iowa Interstate Railroad, Ltd.  
1300 Des Moines Building  
405 - Sixth Avenue  
Des Moines, IA 50309

Commenting Party's Position:

Iowa Interstate Railroad, Ltd., a corporation organized and existing under the laws of the State of Delaware, is a common carrier by rail operating in interstate commerce ("IAIS" or "Protestant"). IAIS submits these Comments in Opposition to the Control Application (the "Application") filed with the Board in the above-referenced proceeding by CSX Corporation and CSX Transportation, Inc. (collectively referred to as "CSX"), Norfolk Southern Corporation and Norfolk



Southern Railway Company (collectively referred to as "NS") and Conrail, Inc. and Consolidated Rail Corporation (collectively referred to as "CRC") (CSX, NS and CRC collectively referred to as the "Applicants").

IAIS is a subsidiary of Heartland Rail Corporation, a corporation organized and existing under the laws of the State of Iowa (referred to as "Heartland"). Heartland owns a railroad right of way located between Bureau, Illinois and Council Bluffs, Iowa with trackage rights between Bureau and Chicago, Illinois, and branchlines between Rock Island and Milan, Illinois, Altoona and Pella, Iowa, Atlantic and Exira, Iowa and Hancock and Oakland, Iowa.

IAIS is a Class II regional railroad which operates Heartland's rail system as well as a line of railroad located between Bureau and Peoria, Illinois.

IAIS opposes the Application for Control unless properly conditioned to protect against anticompetitive impacts upon IAIS and the shipping public in its service territory and the threat of loss of essential services by IAIS to those shippers. If properly conditioned, IAIS will support the Application for Control.

Commenting Party Participation:

IAIS intends to participate formally in all phases of this proceeding including filing a responsive application. If oral hearing for cross examination is held, IAIS intends to participate in that phase as well.

Initial List of Specific Protective Conditions:

To offset the anti-competitive impacts of the division of CRC's assets and the control of CRC by the other Applicants, to maintain and enhance the benefits of railroad competition for the affected shipping public, and to ensure the preservation of essential services to the public in and near IAIS's service territory, IAIS

proposes a particular protective condition. This condition will not impose any material burden upon Applicants or deprive them of the benefits resulting from Board approval of their Application.

Condition: Assignment and transfer of lease rights and obligations to IAIS.

CSX, through its predecessor company, the Baltimore and Ohio Railroad Company ("B & O"), leases the former Rock Island East West mainline between milepost 40.70 at or near Joliet, Illinois and milepost 114.85 at or near Bureau, Illinois, and in addition, leases certain additional trackage from Bureau, Illinois to milepost 126.9 at or near Henry, Illinois (referred to as the "New Rock Subdivision"). The lease agreement was entered into by the B & O with the Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company on or about December 3, 1981, as supplemented and amended. In turn, the B & O and IAIS entered into a Trackage Rights Agreement on or about March 28, 1985, with CSX permitting IAIS overhead trackage rights over the New Rock Subdivision. Under the terms of the Trackage Rights Agreement, IAIS is restricted in terms of movement of its trains during certain time periods each day, it is required to have certain locomotive power related to maximum actual tonnage ratings for each train, and IAIS is further prohibited from the interchange of cars with any other railroad. Under a separate agreement, IAIS also operates between Bureau, Illinois at milepost 114.85 to Henry, Illinois at milepost 126.9. A copy of a map showing the location of the New Rock Subdivision trackage is marked Exhibit I and is attached to these Comments.

The Trackage Rights Agreement contains substantial restrictions as to IAIS train movements and there is no adequate protection to promote efficient and timely rail operations by IAIS in relation to CSX restrictions against the same. This proposed protective condition will mitigate the anticompetitive impacts of CSX/NS control of CRSC and will enhance operations for all IAIS shippers who rely upon this

particular line segment.

Since IAIS has to operate over the New Rock Subdivision pursuant to the restrictions and guidelines of the existing Trackage Rights Agreement, IAIS service has continually been degraded due to CSX dispatching which favors CSX local switch operations over more time sensitive IAIS overhead, through trains. In the event the Control Application is approved by the Board, CSX dispatching of the New Rock Subdivision, which is for all intent and purposes nothing more than an appendage to the total CSX/Conrail consolidated system, will become even more of a dispatching irritation for CSX and IAIS train movements will be placed in an even more inferior service position. That will result in a material, adverse impact upon IAIS and the shipping public, and upon competition for rail traffic in the Council Bluffs to Chicago corridor. As a result, IAIS has a clear and vital stake in the outcome of the Control Application by the Applicants.

IAIS, by accepting the assignment and transfer of CSX lease rights and obligations as to the New Rock Subdivision, will then have the right to provide improved rail service upon an overhead, through movement between Chicago and points to the west served by IAIS. In addition, IAIS will maintain the New Rock Subdivision at a higher level than CSX is currently doing which will promote more efficient operations both by CSX and IAIS. IAIS is willing to protect CSX in regard to its existing shipper and traffic base which is originated or terminated on the New Rock Subdivision to or from CSX points east of Chicago.

#### Analysis of Issues:

Board consideration of adverse, anticompetitive impacts upon IAIS and the shipping public, should the Control Application be approved and implemented, will be necessary. Adoption of IAIS's requested condition will enhance rail service and rail competition for the shipping public which relies upon IAIS. The proposed

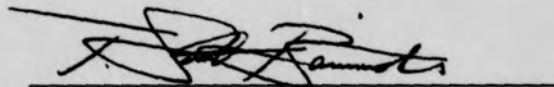
condition deals directly with the potentially harmful impacts of the Control Application and will remediate the adverse effects which will befall IAIS, while at the same time preserving and enhancing the level of rail service and competition.

The proposed condition will not impose significant operating challenges upon the Applicants, nor will the proposed condition impose material adverse cost impacts which otherwise would diminish the claimed financial benefits resulting from the requested Control Application.

The condition sought will require no continuing supervision by the Board. It will also improve through train service and interchange access by IAIS to the national rail system at the Chicago gateway.

IAIS hereby states that it intends to file a Responsive Application for assignment and transfer of the rights and obligations under the B & O - Trustee Lease Agreement, as amended and supplemented, or for modification of the CSX-IAIS Trackage Rights Agreement, and such other petitions, applications and other pleadings which may be necessary, to provide for authorization and implementation of the foregoing requested protective condition.

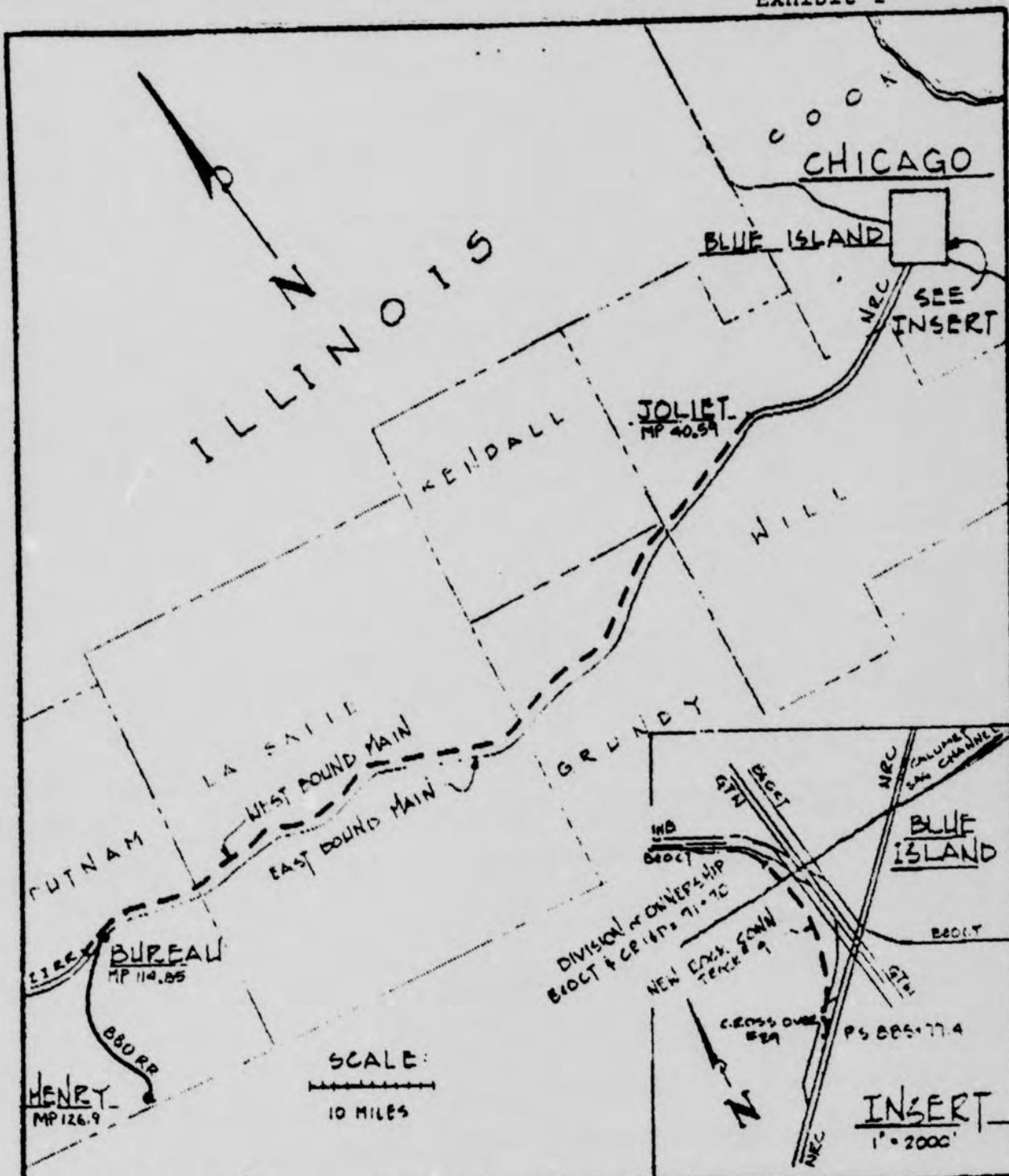
Respectively submitted,



T. Scott Bannister  
Secretary and General Counsel  
Iowa Interstate Railroad, Ltd.  
1300 Des Moines Building  
405 - Sixth Avenue  
Des Moines, IA 50309  
Telephone 515-244-0177  
Telefax 515-244-8258

Dated: August 19, 1997





### ~ LEGEND ~

--- I.I.R.R. LTD TRACKAGE  
RIGHTS OVER B&O  
BUREAU TO JOLIET  
& CONNECTION AT  
BLUE ISLAND

#### REVISIONS

2-27-85

FILE: H-20720

#### Chicago System ENGINEERING DEPARTMENT

EXHIBIT I  
IOWA INTERSTATE RAILROAD, LTD TRACKAGE  
RIGHTS OVER THE BALTIMORE & OHIO RAILROAD  
COMPANY LEASED LINE BUREAU TO JOLIET  
AND AT BLUE ISLAND, ILLINOIS

CHICAGO TERM 4D - NEW ROCK DIV.

SCALE: NOTED  
DATE: 11-8-84  
DRAWN: E.L. ICE  
CHECKED:

VAL. SEC.

137.1

DRAWING NO

X-24300

SHEET 1 OF 1



CERTIFICATE OF SERVICE

I, T. Scott Bannister, hereby certify that a copy of the foregoing document has been served on the applicants' representatives and Administrative Law Judge Jacob Leventhal, by first class U.S. mail, postage prepaid or by other more expeditious means on this 19th day of August, 1997, as follows:

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

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

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

Paul A. Cunningham  
Hawkins Cunningham  
Suite 600  
1300 - 19th Street, N.W.  
Washington, D.C. 20036

  
T. Scott Bannister

STB

FD

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181299

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



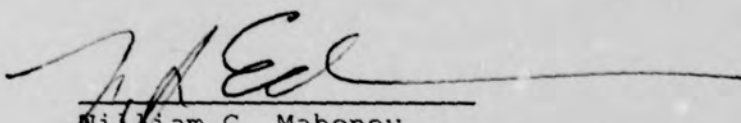
CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corp. and Norfolk  
Southern Ry. Co.--Control and Operating  
Leases/Agreements--Conrail Inc.  
and Consolidated Rail Corporation  
Transfer of Railroad Line by Norfolk  
Southern Railway Company to CSX Transportation, Inc.

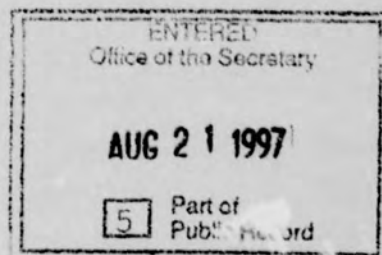
**AMENDED NOTICE OF INTENT TO PARTICIPATE**

The Allied Rail Unions hereby amend their notice of intent to participate (ARU-6) by adding the Transport Workers Union of America ("TWU") as one of the Unions participating collectively in this case as the "Allied Rail Unions." TWU also hereby adopts the prior filings submitted by the ARU.

Respectfully submitted,

Of Counsel:  
William A. Bon  
General Counsel  
Brotherhood of Maintenance of  
Way Employees  
26555 Evergreen Road  
Suite 200  
Southfield, MI 48076  
(810) 948-1010

  
William G. Mahoney  
Richard S. Edelman  
L. Pat Wynns  
HIGHSAW, MAHONEY & CLARKE, P.C.  
1050 17th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(202) 296-8500



Donald F. Griffin, Esq.  
Brotherhood of Maintenance of  
Way Employes  
400 North Capitol St., N.W.  
Suite 852  
Washington, D.C. 20001-1511  
(202) 638-2135

Counsel for Railway Labor  
Executives Association and its,  
affiliated organizations,  
Brotherhood of Maintenance of  
Way Employees, and Interna-  
tional Brotherhood of  
Electrical Workers

Counsel for Brotherhood of  
Maintenance of Way Employes

David Rosen  
O'Donnell Schwartz Glanstein  
& Rosen  
60 East 42<sup>nd</sup> Street, Suite 1022  
New York, NY 10165

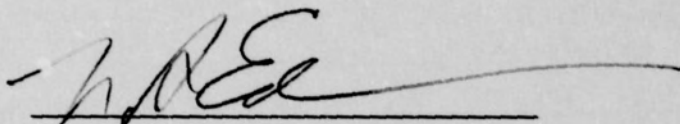
Counsel for Transport Workers  
Union of America

Dated: August 20, 1997

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served one copy of the foregoing Amended Notice of Intent To Participate, by first-class mail, postage prepaid, to the offices of the parties on the attached list.

Dated at Washington, D.C. this 20<sup>th</sup> day of August, 1997.

  
Richard S. Edelman



Alfred P. Agler  
Director, Transportation  
Public Utilities Commission of Ohio  
180 E. Broad Street, 5<sup>th</sup> Floor  
Columbus, OH 43215

Richard A. Allen  
ZUCKERT, SCOUTT ET AL.  
888 17th Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939 US

Peter Arth, Jr.  
Edward W. O'Neill  
James T. Quinn  
505 Van Ness Avenue  
San Francisco, CA 94102

J. R. Barbee, General Chairman  
United Transportation Union  
General Committee of Adjustment, GO-898  
Post Office Box 9599  
Knoxville, TN 37940

Janice G. Barber  
Michael E. Roper  
The Burlington Northern & Santa Fe Ry. Company  
3017 Lou Menk Drive  
Fort Worth, TX 76131-2830

Martin W. Bercovici, Esq.  
Keller and Heckman, LLP  
1001 G Street, N.W.  
Suite 500 West  
Washington, D.C. 20001

Michael D. Billiel  
Antitrust Division  
U.S. Department of Justice  
325 Seventh Street, N.W.  
Suite 500  
Washington, D.C. 20530

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

Anthony Bottalico  
General Chairman  
United Transportation Union  
General Committee of Adjustment 532  
420 Lexington Avenue, Room 458-460  
New York, NY 10017

Sean D. Brady  
Manager, Strategic Planning-Generation  
Corporate Drive  
Kirkwood Industrial Park  
P. O. Box 5224  
Binghamton, NY 13902-5224

Teresa M. Brennan, Esq.  
Pennsylvania Power & Light Company  
Two North Ninth Street  
Allentown, PA 18101-1179

Charles W. Chabot, President  
Buffalo & Pittsburgh Railroad, Inc.  
201 North Penn Street  
P. O. Box 477  
Punxsutawney, PA 15767

Charles M. Chadwick  
Maryland Midland Railway, Inc.  
P. O. Box 1000  
Union Bridge, MD 21791-0568

Nicole E. Clark  
WACHTELL, LIPTON, ROSEN & KATZ  
51 West 52<sup>nd</sup> Street  
New York, NY 10019-6150 US

David A. Coburn  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Paul D. Coleman  
Hoppel, Mayer & Coleman  
1000 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Robert J. Cooper  
General Chairperson  
United Transportation Union  
GCA-NSW, GOA-348  
1238 Cass Road  
Maumee, OH 43537-2714

Thomas D. Crowley  
L.E. Peabody & Associates, Inc.  
1501 Duke Street  
Suite 200  
Alexandria, VA 22314

Paul A. Cunningham  
HARKINS CUNNINGHAM  
1300 19th Street, N.W.  
Suite 600  
Washington, D.C. 20036

Delmar A. Davis  
Director, Corporate Transportation  
Bethlehem Steel Corporation  
Room 460 Martin Tower  
1170 Eighth Avenue  
Bethlehem, PA 18016-7699

Bruce A. Deerson  
Martin Marietta Materials, Inc.  
P. O. Box 30013  
Raleigh, N.C. 27622

Paul D. DeMariano  
President & Chief Executive Officer  
The Port of Philadelphia & Camden, Inc.  
3460 North Delaware, Suite 200  
Philadelphia, PA 19134

Frederic L. Wood  
John K. Maser III  
Nicholas J. DiMichael  
Karyn A. Booth  
Donella, Cleary, Wood & Maser, P.C.  
1100 New York Avenue, N.W. Suite 750  
Washington, D.C. 20005-3934

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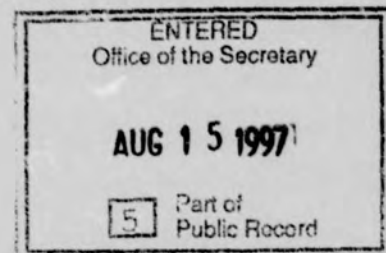
OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**

ATTORNEY GENERAL

August 6, 1997

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



Attn: Case Control Branch, Finance Docket No. 33388

Dear Mr. Williams:

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

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

Christine H. Rosso  
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Sincerely,

Christine H. Rosso

cc: Service List

Before The  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388

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

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NOTICE OF INTENT TO PARTICIPATE AND  
PRELIMINARY COMMENTS OF THE  
PEOPLE OF THE STATE OF ILLINOIS

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

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

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

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

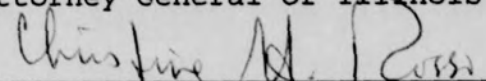
The Illinois Attorney General intends to be an active participant in the proceeding on behalf of the People of the State of Illinois.

Respectfully submitted,

People of the State of Illinois

James E. Ryan  
Attorney General of Illinois

by

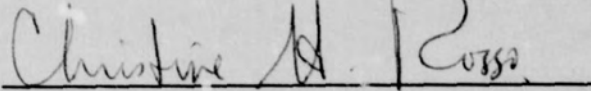
  
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Dated: August 6, 1997

Certificate of Service

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



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ALSO ADMITTED IN THE  
DISTRICT OF COLUMBIA

August 13, 1997

**VIA FEDERAL EXPRESS**

Secretary Vernon A. Williams  
Office of the Secretary  
Case Control Branch  
Attn: STB Finance Docket No. 33388  
1925 "K" Street N.W.  
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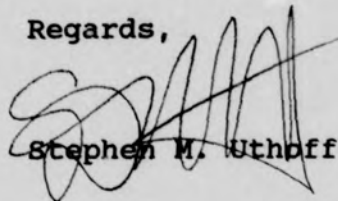
RE: RBTC Re: Access CSX/NS  
File No.: 2312

Dear Secretary Williams:

Enclosed for filing please find an original, twenty five (25) copies and a 3.5 diskette of The Rail Bridge Terminals (New Jersey) Corporation's Notice of Inconsistent or Responsive Application designated RBTC-2. The Notice of Inconsistent or Responsive Application 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.

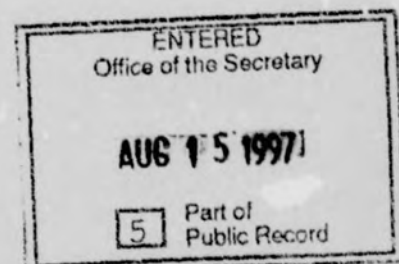
Regards,

  
Stephen M. Uthoff

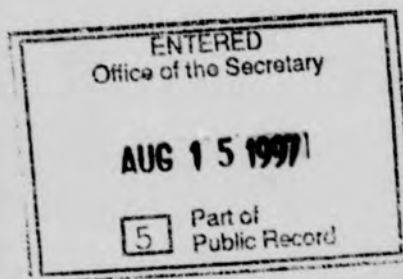
SMU:lme2  
Enclosures  
cc: John L. Miller



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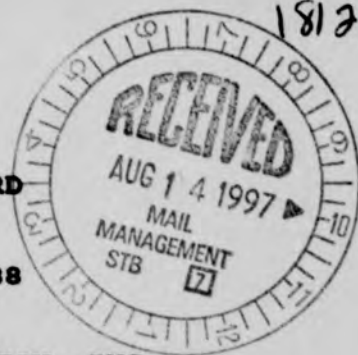


ORIGINAL



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 (New 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,

By: 

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CERTIFICATE OF TRANSMITTAL AND SERVICE

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

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Attn: STB Finance Docket No. 33388  
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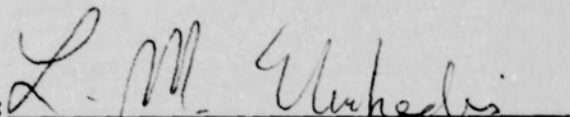
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by mailing, first class, postage prepaid a copy to each such person.

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

STB

FD

33388

8-12-97

D

181166

Before The  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.

Finance Docket No. 33388

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

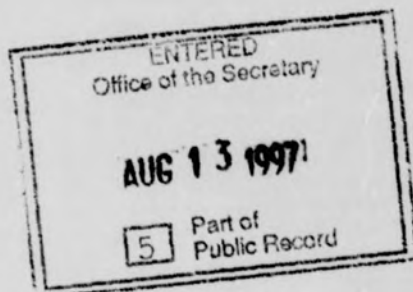


**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned on behalf of the Western-Elmwood-Berea Corporation, Cleveland, Ohio, acting on its own behalf, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. & 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated: August 6, 1997

Respectfully submitted



*Anita R. Brindza*

Anita R. Brindza, Executive Director  
Western-Elmwood-Berea Corporation  
The One Fifteen Hundred Building  
11500 Franklin Blvd. Suite 104  
Cleveland, Ohio 44102  
(216) 228-4383  
Fax: 228-3328

## CERTIFICATE OF SERVICE

I hereby certify that on August 6, 1997, a copy of the foregoing Western-Elmwood-Berea Corporation's Notice of Intent To Participate was served by first-class, U.S. mail, postage prepaid upon the following:

James C. Bishop, Jr.  
William C. Wouldridge  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-9241

Richard A. Allen, Esquire  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zuckert, Scout & Rasenburger, LLP  
888 Seventeenth Street, N.W.  
Washington, D.C. 20006-7939

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

Mark G. Aron  
Peter J. Shudrz  
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

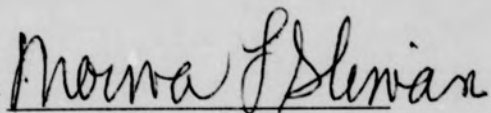
Dennis G. Lyons, Esquire  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202

Samuel M. Sipe, Jr.  
Timothy M. Walsh  
Steptoe & Johnson LLP  
1330 Connecticut Avenue  
Washington, D.C. 20036-1795

Timothy T. O'Toole  
Constance L. Abrams  
Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

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

Notary



Norma L. Sliman  
Notary Public, State of Ohio  
My Commission Expires May 18, 2001



STB

FD

33388

8-12-97

D

181163



# City of Cleveland

## Office of the Council

Jay Westbrook

Councilman, 18th Ward • President of Council

Committees: Finance, vice-chairman • Public Service • Rules, chairman

August 8, 1997

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



RE: Docket No. 33258

Dear Secretary:

Only yesterday I found out about the request by CSX railroad to abandon certain freight railroad lines and increase traffic on other railroad lines in the city of Cleveland. Unfortunately, I also found out that yesterday was the deadline to file as a Party of Record (POR) in this case.

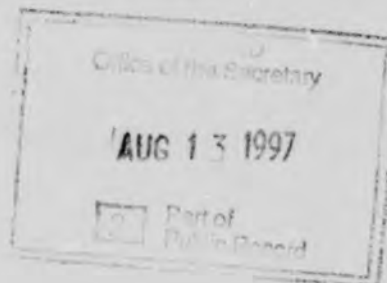
This issue is of vital importance to the businesses and residents of the ward I represent. It would seem that it would be a mistake for the city of Cleveland to not be a POR in this case. I have checked, and it appears that no one in the City was aware of this process. I also believe that there are other adjacent cities as well who did not have an opportunity to request to be a POR. In addition, there are several citizens groups and business associations which would also want to file if they had been aware of this proposal by CSX.

I am appealing to you to allow more parties to file as PORs. It would be a great service to the public in Cleveland as well as other cities if you could allow this. With this letter, I am including the required copies to participate as a POR with the hope that you might accommodate our request.

Thank you for your consideration for the people of Cleveland.

Sincerely,

Jay Westbrook  
Councilman, Ward 18  
President of Council



## CERTIFICATE OF SERVICE

I hereby certify that on August 8, 1997, a copy of the foregoing Notice of Intent to Participant by Councilman Jay Westbrook was served by first class, U.S. Mail, upon the following:

Administrative Judge Jacob Leventhal  
Federal Energy Regulatory Commission  
888 1st St., N.E., #11F  
Washington, DC 20426

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

Richard A. Allen Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 17th St., N.W., #600  
Washington, DC 20006-3939

Paul A. Cunningham, Esq.  
Harkins Cunningham  
1330 19th St., N.W., #600  
Washington, DC 20035



Jay Westbrook  
Councilman, Ward 18  
President of City Council  
City of Cleveland  
City Hall, Room 216  
601 Lakeside Ave., N.E.  
Cleveland, OH 44114  
phone (216) 664-2941  
facsimile (216) 664-3837

Before the  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.

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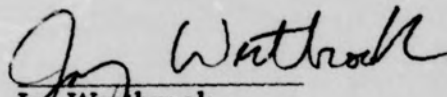
CSX Corporation and CSX Transportation Inc.  
Norfolk Southern Corporation and  
Norfolk Southern Railway Company  
Control and Operating Leases/Agreement  
Conrail, Inc. and Consolidated Rail Corporation  
to CSX Transportation, Inc.

**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned on behalf of the citizens and businesses of Ward 18 of the City of Cleveland, Ohio, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. Section 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated: August 7, 1997

Respectfully submitted,

  
Jay Westbrook  
Councilman, Ward 18  
President of City Council  
City of Cleveland  
City Hall, Room 216  
601 Lakeside Ave., N.E.  
Cleveland, OH 44114  
phone (216) 664-2941  
facsimile (216) 664-3837

STB

FD

33388

8-12-97

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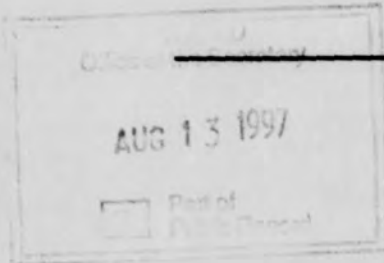
181160

181160

Before The  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.



Finance Docket No. 33388



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

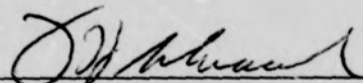
D

**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned counsel on behalf of the State of Delaware, Department of Transportation ("DelDOT"), acting on behalf of the State of Delaware, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. §1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated: August 7, 1997

Respectfully submitted,

  
Frederick H. Schranck  
Deputy Attorney General

Counsel for Delaware Department of  
Transportation  
P.O. Box 778  
Dover, Delaware 19903  
(302) 739-4575

### CERTIFICATE OF SERVICE

I hereby certify that on August 7, 1997, a copy of the foregoing State of Delaware Economic Development Corporation's Notice of Intent To Participate was served by First-class, U.S. mail, postage prepaid upon the following:

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, Esquire  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zuckert, Scoutt &  
Rasenberger, L.L.P.  
888 17th Street, N.W.  
Washington, D.C. 20006-3939

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

Mark G. Aron  
Peter J. Shudtz  
CSX Corporation  
One James Center  
902 East Cary Street  
Richmond, VA 23129

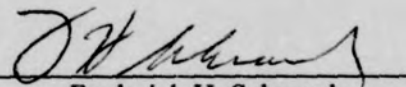
P. Michael Giftos  
Paul R. Hitchcock  
CSX Transportation, Inc.  
500 Water Street  
Speed Code J-120  
Jacksonville, FL 32202

Dennis G. Lyons, Esquire  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12<sup>th</sup> 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  
2001 Market Street  
Philadelphia, PA 19103

Paul A. Cunningham, Esquire  
Harkins Cunningham  
Suite 600  
1300 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

  
Frederick H. Schranck

STB

FD

33388

8-12-97

D

181159

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Before The  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.

Finance Docket No. 33388

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



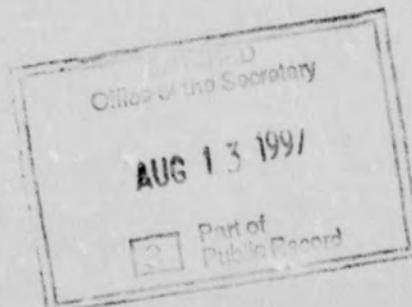
**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned on behalf of Cudell Improvement, Inc., Cleveland, Ohio, acting on its own behalf, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. & 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated: August 6, 1997

Respectfully submitted

*Sr. Coletta McNamee*  
Sr. Coletta McNamee, President  
Cudell Improvement, Inc.  
The One Fifteen Hundred Building  
11500 Franklin Blvd. Suite 104  
Cleveland, Ohio 44102  
(216) 228-4383  
Fax: 228-3328



## CERTIFICATE OF SERVICE

I hereby certify that on August 6, 1997, a copy of the foregoing Cudell Improvement, Inc.'s Notice of Intent To Participate was served by first-class, U.S. mail, postage prepaid upon the following:

James C. Bishop, Jr.  
William C. Wouldridge  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-9241

Richard A. Allen, Esquire  
James. A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zuckert, Scout & Rasenburger, LLP  
888 Seventeenth Street, N.W.  
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

Mark G. Aron  
Peter J. Shudrz  
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

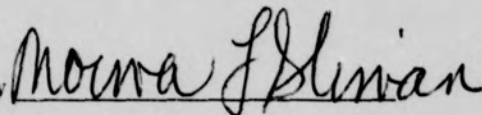
Dennis G. Lyons, Esquire  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202

Samuel M. Sipe, Jr.  
Timothy M. Walsh  
Steptoe & Johnson LLP  
1330 Connecticut Avenue  
Washington, D.C. 20036-1795

Timothy T. O'Toole  
Constance L. Abrams  
Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

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

Notary



Norma L. Sliman  
Notary Public, State of Ohio  
My Commission Expires May 18, 19 2001



stb

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33388

8-12-97

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Transportation  
OFFICE OF THE DIRECTOR  
Two Capitol Hill  
Providence, R.I. 02903 - 1124



July 23, 1997

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



**RE: STB Finance Docket No. 33388**  
**Conrail Acquisition - CSX & Norfolk Southern Railroads**

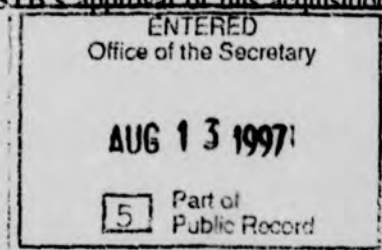
Dear Mr. Williams:

The purpose of this letter is to notify the Surface Transportation Board (STB) that the Rhode Island Department of Transportation (RIDOT) intends to actively participate in the upcoming proceedings under STB Docket No. 33388. We are requesting that RIDOT be designated as a "party of record" (POR) as described in STB Decision, dated May 22, 1997, Service Date May 30, 1997.

We have two major concerns regarding the acquisition of Conrail, as proposed in the Railroad Control Application submitted by the CSX and Norfolk Southern railroads. Our first concern is the inability of our existing and future industrial base to access a competitive Class I railroad system. We strongly support the establishment of a competitive freight rail system in the New England region. A balanced, competitive freight rail system is critical to the continued and future development of economic opportunities both in our state and the region.

The acquisition of Conrail by CSX and Norfolk Southern represents a golden opportunity to restore a competitive rail system in New England. Direct connection to competitive Class I railroads is critical to the ability of New England's existing and future intermodal ports to grow in conjunction with our expanding domestic and international commerce.

Under this acquisition application, as proposed, direct access to ports in the Northeast has been improperly established. While direct, competitive port access has been established at several Mid-Atlantic ports, New England has been unilaterally excluded from direct competitive access to a Class I rail system. This scenario has put New England ports at a major economic disadvantage with other East Coast ports, and will have serious national and international implications. Competitive rail access to New England, through Massachusetts, is warranted and should be mandated as part of the STB's approval of this acquisition application.

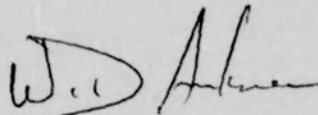


Mr. Vernon A. Williams  
July 23, 1997  
Page 2

Our second major concern is the potential impact that this acquisition may have on the region's passenger rail system. Located along the congested Northeast Corridor, Rhode Island travelers are dependent upon reliable and convenient intercity rail service between Washington D.C. and Boston; and commuter rail service between Providence and Boston. Considering the public investments made on the much-anticipated Northeast Corridor Improvement Project, it is critically important that passenger rail remain the primary focus on the Northeast Corridor. The State of Rhode Island has recognized this to the point that we are spending over \$100 million to construct a dedicated freight-only third track within the Northeast Corridor to service the expanding intermodal port at Quonset Point/Davisville.

Thank you in advance for designating RIDOT as an active participant in these proceedings. We look forward to the opportunity of expanding on our concerns in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "W.D. Ankner". The signature is fluid and cursive, with the first name "W.D." being more compact and the last name "Ankner" being more extended.

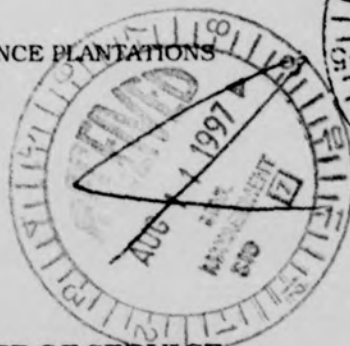
William D. Ankner, Ph.D.  
Director

cc. The Honorable Lincoln Almond, Governor



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Transportation  
OFFICE OF THE DIRECTOR  
Two Capitol Hill  
Providence, R.I. 02903 - 1124



**CERTIFICATE OF SERVICE**

I hereby certify that a true and authentic copy of the foregoing letter to Vernon A. Williams, Secretary, Surface Transportation Board, constituting a "notice of intent to become a party of record," and participate in STB Docket No. 33388 proceedings, was mailed First Class, postage prepaid, U.S. Mail, on the 1<sup>ST</sup> Day of August 1997, upon the following:

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

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

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

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

*W.D. Ankner*  
Deputy Director

WILLIAM D. ANKNER, Ph.D.

STB

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33388

8-11-97

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*Law Offices***GRUCCIO, PEPPER**  
GIOVINAZZI, DESANTO & FARNOLY, P.A.

D

AUG 1 3 1997

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

♦ CERTIFIED CIVIL TRIAL ATTORNEY

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

TELECOPIER: 609 692-4095  
609 691-3302

RICHARD M. MILSTEAD, COUNSEL

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

MEMBER NJ &amp; PA BAR

1 August 1997



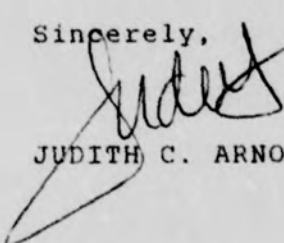
Secretary Vernon A. Williams  
Office of the Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
1925 K Street, NW  
Washington, DC 20423-0001

RE: Conrail Merger Proceedings  
Finance Docket No. 33388

Dear Secretary Williams:

Enclosed please find an original, twenty copies of a Notice of Intent to Participate and a 3.5" diskette formatted on word perfect 5.1 with the Notice of Intent to Participate. Please return a copy of the Notice marked filed in the enclosed self-addressed stamped envelope.

Sincerely,

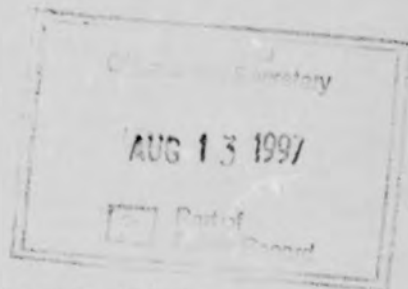


JUDITH C. ARNOLD

JCA:js

Enclosures

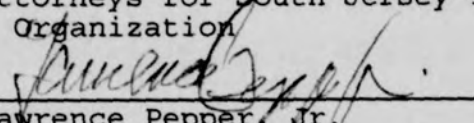
cc: South Jersey Transportation Planning Organization  
ATTN: Timothy G. Chelius, Executive Director



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

Vineland, New Jersey 08360  
(609) 691-0100

Attorneys for South Jersey Transportation Planning  
Organization

  
Lawrence Pepper, Jr.



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

---

**Finance Docket No. 33388**

---

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

---

**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned counsel on behalf of the South Jersey Transportation Planning Organization ("SJTPO"), acting on behalf of the southern district of the State of New Jersey, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. § 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated this 31st day of July 1997.

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

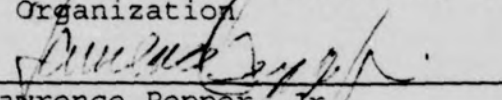
BY: 

Lawrence Pepper, Jr., Esquire

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

Vineland, New Jersey 08360  
(609) 691-0100

Attorneys for South Jersey Transportation Planning  
Organization

  
Lawrence Pepper, Jr.



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

---

Finance Docket No. 33388

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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

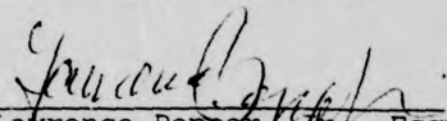
---

**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned counsel on behalf of the South Jersey Transportation Planning Organization ("SJTPO"), acting on behalf of the southern district of the State of New Jersey, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. § 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Dated this 31st day of July 1997.

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

BY:   
Lawrence Pepper, Jr., Esquire

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

---

Finance Docket No. 33388

---

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

---

CERTIFICATION OF MAILING

1. I certify that I have this day served copies of the Notice to Participate upon the parties of record which are listed on the attached Exhibit "A". Service was done by serving each party of record by first-class, U.S. mail, postage prepaid.

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

Dated this 28 day of July 1997.

South Jersey Transportation  
Planning Organization

BY: Timothy G. Chelius  
Timothy G. Chelius  
Executive Director

STB

FD

33388

8-11-97

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181129





181129

# City of East Chicago

## Department of Law

1525 Indianapolis Boulevard East Chicago, Indiana 46312-8227  
(219) 391-8291 Fax (219) 391-8223

Robert A. Pastrick  
Mayor

Secretary

Michael E. Connelly  
Corporation Counsel

July 31, 1997

Jesse M. Villalpando  
City Attorney

AUG 12 1997

Print of

D



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

Re: Finance Docket No. 33388, CSX Corporation & Transportation  
Company, Inc. Norfolk Southern Corporation & Norfolk Southern Railway  
Company - Transfer of Railroad Line by Norfolk Southern Railway Company  
to CSX Transportation Company

Dear Secretary Williams:

This document shall serve as the Notice of Intent to Participate in the above  
entitled proceeding filed on behalf of the City of East Chicago, Indiana.

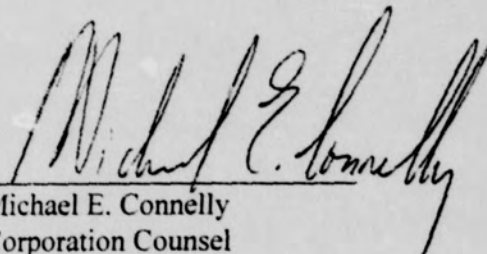
Pursuant to 49 C.F.R. Sec. 1180.4© (5) (v), the undersigned is requesting that the  
applicants serve a copy of their primary application and other pleadings on the following  
as the representative of the City of East Chicago, Indiana:

Michael E. Connelly  
Corporation Counsel  
4525 Indianapolis Boulevard  
East Chicago, IN 46312  
Phone: (219) 391-8291  
Fax: (219) 391-8223

This letter is also to request the Board to place the City of East Chicago and the  
above representative on the list of all parties of record that will be prepared and issue  
under the provisions of 49 C.F.R. Sec. 1180.4(a) (4). In accordance with 49 C.F.R.  
Sec. 1180.4(a) (2), East Chicago selects the acronym "EAST CHICAGO" (City of East  
Chicago, Indiana Law Department) for identifying all documents and pleadings it submits  
in this proceedings.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of July, 1997, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record listed below by depositing the same in the United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed.

  
Michael E. Connelly  
Corporation Counsel

Honorable Judge Jacob Leventhal  
Federal Energy Regulatory Commsn.  
888 1<sup>st</sup> Street N.E.  
Suite 11F  
Washington, D.C. 20426

Richard A. Allen  
Attorney for CSX Corporation  
Zuckert, Scott & Rosenberger

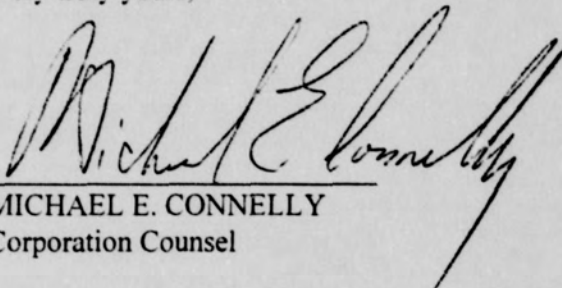
Paul A. Cunningham  
Attorney for Conrail  
Harkins & Cunningham  
1300 - 19<sup>th</sup> St. N.W.  
Suite 600  
Washington, D.C. 20036

Dennis G. Lyons  
Attorney for CSX  
Arnold and Porter  
555- 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202

Page Two

Enclosed you will find an original notice and twenty-five copies. I have attached a Certificate of Service as required. Copies of this notice will be sent to all other parties of record on the service list provided to our office by Board Personnel once that list has been received.

Very truly yours,



MICHAEL E. CONNELLY  
Corporation Counsel

MEC:jb

pc: Robert A. Pastrick, Mayor  
John Artis, Director Redevelopment  
Russell G. Taylor, Director Planning  
File

Enclosures: (As stated above)

STB

FD

33388

8-11-97

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181128

181128

81128

# ***united transportation union***

## **PENNSYLVANIA STATE LEGISLATIVE BOARD**

PA AFL-CIO BUILDING (2ND FLOOR) ■ 230 STATE STREET ■ HARRISBURG, PA 17101-1138 ■ PHONE (717) 234-2475 ■ FAX (717) 234-4375

**RONALD J. HARDESTY**  
VICE-CHAIRMAN

**DONALD W. DUNLEVY**  
STATE LEGISLATIVE DIRECTOR  
AND CHAIRMAN

**CHARLES E. WEHR**  
EXECUTIVE SECRETARY



August 7, 1997

Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

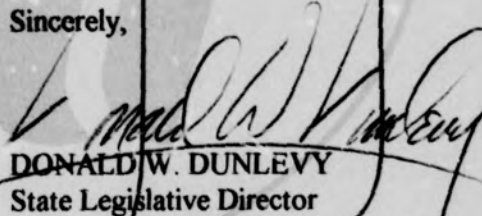
**VIA FAX & U.S.P.S.**

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

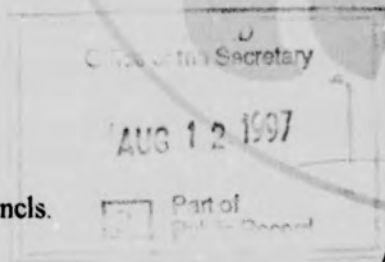
Dear Sirs:

Enclosed is an original document and twenty-five copies of a Notice of Intent to Participate and become a party of record in the above captioned proceeding.

Sincerely,

  
**DONALD W. DUNLEVY**  
State Legislative Director

Encls.





SURFACE TRANSPORTATION BOARD  
UNITED STATES OF AMERICA

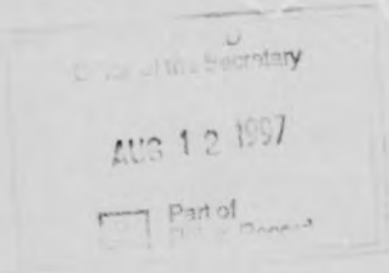
CSX Corporation and CSX  
Transportation Inc. Norfolk Southern  
Corporation and Norfolk Southern  
Railway Company Control and Operating  
Leases/Agreements-ConRail, Inc. and  
Consolidated Rail Corporation-Transfer  
of Line by Norfolk Southern Railway  
Company To CSX Transportation Inc.

STB Finance Docket No. 33388



NOTICE OF INTENT

Filed on behalf of:  
Pennsylvania State Legislative Board  
United Transportation Union  
Donald W. Dunlevy, Director  
230 State Street, 2nd Floor  
Harrisburg, PA 17101  
Phone: (717) 234-2475  
Fax: (717) 234-4375

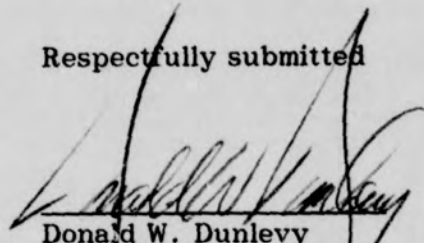


NOTICE OF INTENT TO PARTICIPATE

Please enter the appearance of the undersigned Donald W. Dunlevy on behalf of the Pennsylvania State Legislative Board, United Transportation Union, who intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Respectfully submitted

Date: August 7, 1997

  
Donald W. Dunlevy

CERTIFICATE OF SERVICE

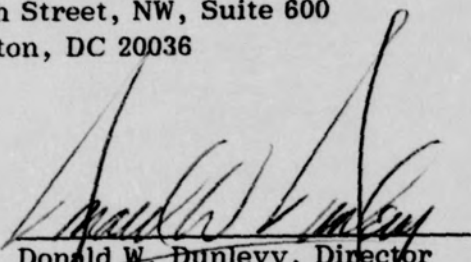
I hereby certify that on August 7, 1997, a copy of the foregoing Notice of Intent to participate was served by first-class, U. S. mail, postage prepaid upon the following.

John V. Edwards  
Patricia E. Bruce  
Zuckert, Scoutt & Rasenberger, LLP  
888 17th Street, N.W., Suite 600  
Washington, DC 20006

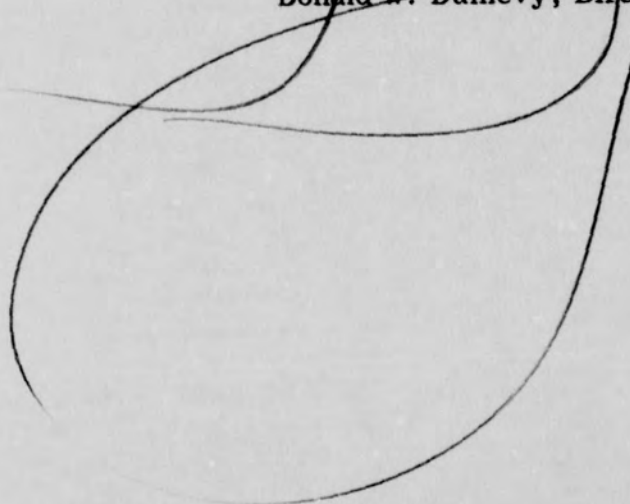
Drew A. Harker  
Christopher P. Datz  
Susan B. Cassidy  
Arnold & Porter  
555 12th Street, NW  
Washington, DC 20004

David H. Coburn  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036

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



Donald W. Dunlevy, Director



STB

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8-11-97

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181126



# CITY OF AVON LAKE, OHIO

150 AVON BELDEN ROAD • AVON LAKE, OHIO 44012-1699

Telephone: (216) 933-6141

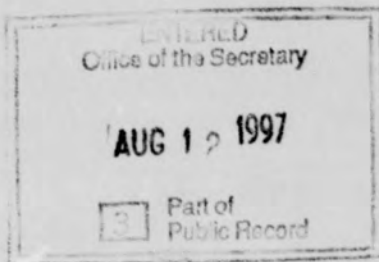
1-800-365-8626

Fax: 930-4107

August 7, 1997

Vincent M. Urbin  
MAYOR/SAFETY DIRECTOR

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



ATTN: STB Finance Docket No. 33388

Enclosed please find the original and twenty-six copies of the Notice of Intent to Participate filed in behalf of the City of Avon Lake, Ohio. Please return a file, time stamped copy in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation on this matter.

Very truly yours,

*Vincent M. Urbin*  
Mayor Vincent M. Urbin

VMU/slr

cc: Administrative Law Judge Jacob Vleventhal  
Albert J. Dispenza, City Planner  
Geoffrey R. Smith, Director of Law  
Parties of Record



# CITY OF AVON LAKE, OHIO

150 AVON BELDEN ROAD • AVON LAKE, OHIO 44012-1699

Telephone: (216) 933-6141

1-800-365-8626

Fax: 930-4107

**Vincent M. Urbin**  
MAYOR/SAFETY DIRECTOR

Before the  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.



---

Finance Docket No. 33388

---

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

## NOTICE OF INTENT TO PARTICIPATE

Please enter the appearance of the undersigned on behalf of the City of Avon Lake, Avon Lake, Ohio, acting on behalf of the city, which intends to participate and become a party of record in this proceeding. Pursuant to 49 C.F.R. § 1104.12 service of all documents filed in this proceeding should be made upon the undersigned.

Dated August 7, 1997

Respectfully submitted

Vincent M. Urbin

Mayor Vincent M. Urbin  
City of Avon Lake, Ohio  
150 Avon Belden Road  
Avon Lake, Ohio 44012



### CERTIFICATE OF SERVICE

I hereby certify that on August 7, 1997, a copy of the foregoing City of Avon Lake Notice Of Intent To Participate was served by first-class, U.S. mail, postage prepaid upon the following:

James C. Bishop, Jr.  
William C. Wooldridge  
James L. Howe, III  
Robert J. Cooney  
George A. Spatore  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510-9241

Richard A. Allen, Esquire  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zucker, Scutt &  
Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Washington, D.C. 20006-3939

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

Mark G. Aron  
Peter J. Shudtz  
CSX Corporation  
One James Center  
902 East Cary Street  
Richmond, VA 23129

Thomas R. Rydman, President  
Indian Creek Railroad Company  
3905 W. 600 North  
Anderson, Indiana 46011-9238

Vincent M. Urbin  
Mayor Vincent M. Urbin  
City of Avon Lake, Ohio

P. Michael Giftos  
Paul R. Hitchcock  
CSX Transportation, Inc.  
500 Water Street  
Speed Code J-120  
Jacksonville, FL 32202

Dennis G. Lyons, Esquire  
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  
2001 Market Street  
Philadelphia, PA 19103

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

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

Notary Judith D. Young  
Judith D. Young  
Notary Public, State of Ohio  
My Commission Expires 1/27/02

Witnessed By: Peenie Ackerman 8-7-97  
Albert J. Jorgensen 8/7/97

STB

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33388

8-11-97

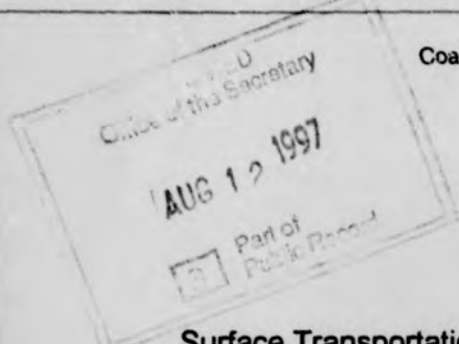
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181122



# COALARBED INTERNATIONAL TRADING

CoalARBED INTERNATIONAL TRADING, 210 East Lombard Street  
Baltimore, Maryland 21202 USA  
Tel (410) 727-4600 • Fax (410) 659-0894



August 5, 1997



Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
Attention STB Finance Docket #33388  
1925 K Street, NW  
Washington, DC 20423-0001

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

Dear Mr. Secretary:

CoalARBED International Trading hereby notifies the Surface Transportation Board, pursuant to Decision number 12 served July 23, 1997 in this above captioned Docket that CoalARBED International Trading intends to participate in this proceeding as a full party of record. Please add CoalARBED International Trading to the service list in this proceeding, at the following address:

CoalARBED International Trading  
210 E. Lombard Street  
Baltimore, Maryland 21202

Tel: (410) 727-4600  
Fax: (410) 659-0894

Thank you for your attention to this matter.

Sincerely,

James F. Roberts  
CoalARBED International Trading

A

Certificate of Service

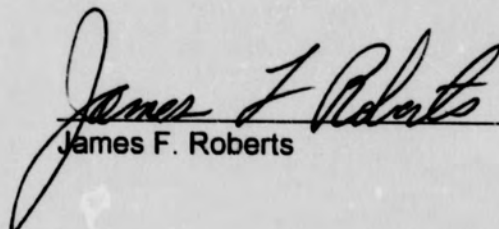
I hereby certify that I have this 5th day of August, 1997, caused copies of the foregoing document to be served by first-class mail upon Administrative law Judge Jacob Leventhal and upon counsel for Applicants, as follows:

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

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

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

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

  
James F. Roberts

STB

FD

33388

8-11-97

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

**NOTICE OF PENNSYLVANIA SENATE TRANSPORTATION COMMITTEE  
OF INTENTION TO PARTICIPATE IN PROCEEDINGS**

Please note our intention to participate and make the Pennsylvania Senate Transportation Committee a party of record in these proceedings. For purposes of the service of documents, please send documents to the committee's consultant at the following address:

Douglas Golden  
Main Line Management Services, Inc.  
520 Fellowship Road, Suite A-105  
Mount Laurel, New Jersey 08054-3407

Respectfully

*J. Doyle Corman*  
J. DOYLE CORMAN

Dated: August 6, 1997

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 6, 1997, he served the "Notice of the Pennsylvania Senate Transportation Committee Intention to Participate" by causing copies to be mailed by first class mail, postage prepaid to the parties listed below:

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

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

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

Paul A Cunningham, Esq.  
Harkins Cunningham  
Suite 600  
1300 19th Street N.W.  
Washington, D.C. 20036

  
J. DOYLE CORMAN

STB

FD

33388

8-11-97

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**BRADY, BROOKS & O'CONNELL, LLP**

**Attorneys and Counselors at Law**

*A Registered Limited Liability Partnership*

Thomas C. Brady\*  
Kameron Brooks  
Brian E. O'Connell, Jr.

PLEASE REPLY TO:

SALAMANCA OFFICE

Legal Assistants

Terri M. John

Linda M. Hall

AUG 12 1997

August 5, 1997

\* Admitted in New York & Florida

Part of  
Public Record

**The Honorable Vernon A. Williams**

**Secretary**

**Surface Transportation Board**

**1925 K Street NW**

**Washington, DC 20423-0001**

181119

41 Main Street, P.O. Box 227  
Salamanca, New York 14779-0227  
716/945-2000 - Telecopier 945-3566

1 Washington Street, P.O. Box 550  
Ellicottville, New York 14731-0550  
716/699-8010 - Telecopier 699-5805

165 Main Street  
Randolph, New York 14772  
716/358-6800

5300 South Florida Avenue  
Lakeland Florida 33807-5378  
813/646-509



**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**

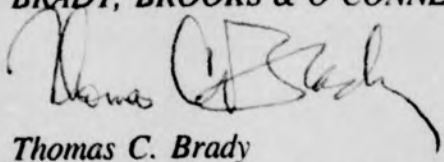
*Dear Secretary Williams:*

*Enclosed please find the original and 25 copies of the Notice of Intent to Participate of the  
Southern Tier West Regional Planning and Development Board.*

*Thank you for your assistance.*

*Very truly yours,*

**BRADY, BROOKS & O'CONNELL, LLP**

  
**Thomas C. Brady**  
**Counsel for Southern Tier West**  
**Regional Planning and Development Board**

tja

xc: All Parties on Certificate of Service


181179

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

**NOTICE OF INTENT TO PARTICIPATE OF  
SOUTHERN TIER WEST REGIONAL  
PLANNING AND DEVELOPMENT BOARD**



Thomas C. Brady  
Brady, Brooks & Oconnell, LLP  
41 Main Street  
P.O. Box 227  
Salamanca, New York 14779-0227

Counsel for the Southern Tier West  
Regional Planning and Development  
Board

August 6, 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

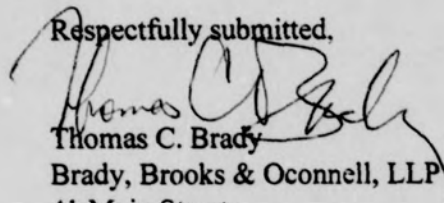
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**NOTICE OF INTENT TO PARTICIPATE OF  
SOUTHERN TIER WEST REGIONAL  
PLANNING AND DEVELOPMENT BOARD**

---

The Southern Tier West Regional Planning and Development Board ("STW") hereby provides notice of its intent to participate in this proceeding as a party of record. STW is a regional planning board representing the counties of Allegany, Cattaraugus and Chautauqua in New York State. Please place the undersigned attorney on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,



Thomas C. Brady  
Brady, Brooks & Oconnell, LLP  
41 Main Street  
P.O. Box 227  
Salamanca, New York 14779-0227

Counsel for the Southern Tier West  
Regional Planning and Development  
Board

August 6, 1997

### CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of August, 1997, a copy of the foregoing

Notice of Appearance was served upon the following people by first class mail, postage prepaid.

Richard A. Allen  
Zuckert, Scoutt, Kasenberger  
888 17<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20006-3939

Mark G. Aron  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23219

Donald G. Avery  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036-3003

Edward G. Banks, Jr.  
Maryland & Delaware Railroad  
106 Railroad Avenue  
Federalsburg, MD 21632

Janice G. Barber  
Burlington Northern Santa Fe Corporation  
777 Main Street  
3800 Continental Plaza  
Ft. Worth, TX 76102-5384

Michael M. Bennane  
House of Representatives  
P.O. Box 30014  
Lansing, MI 48909

Martin W. Bercoviei  
Keller & Heckman  
1001 G Street, N.W., Suite 500 West  
Washington, D.C. 20001

Hon. Eric Bush  
House of Representatives  
State Capitol  
Lansing, MI 48913

James A. Calderwood  
Zuckert, Scott & Rasenberger, L.L.P.  
838 17th Street, N.W., Suite 600  
Washington, D.C. 20006-3939

Gabriel Calvo  
The Ackerson Group  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Missy Cassidy  
Maryland Department of Transportation  
P.O. Box 8755  
Baltimore-Washington International Airport, MD 21240-0755

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

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

Steven A. Cohen  
Wachtell Lipton & Katz  
51 West 52nd Street  
New York, NY 10019

Paul D. Coleman  
Hoppel Mayer & Coleman  
1000 Connecticut Avenue, N.W., Suite 400  
Washington, D.C. 20036-5302

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

John M. Culter, Jr  
McCarthy Sweeney Harkaway  
1750 Pennsylvania Avenue, N.W., Suite 1105  
Washington, D.C. 20036

Hon. Alfonse D'Amato  
ATTN: Peter Phipps  
United States Senate  
Washington, D.C. 20510

Paul D. DeMariano  
The Port of Philadelphia & Camden, Inc.  
3460 North Delaware, Suite 200  
Philadelphia, PA 19134

Nicholas J. DiMichael  
Donelan, Cleary, et al.  
1100 New York Avenue, N.W. Suite 750  
Washington, D.C. 20005-3934

Kelvin J. Dowd  
Slover & Loftus  
1224 17th Street, N.W.  
Washington, D.C. 20036

Richard S. Edelman  
Highsaw Mahoney Clarke  
1050 Seventeenth Street, N.W., Suite 210  
Washington, D.C. 20036

John V. Edwards, Esq.  
Zuckert, Scoutt et al.  
888 17th Street, N.W., Suite 600  
Washington, D.C. 20006-3939

Daniel R. Elliott III  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107

Roy T. Englert, Jr.  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W., Suite 6500  
Washington, D.C. 20006

Gerald W. Fauth, III  
G W Fauth & Associates, Inc  
P O Box 2401  
Alexandria, VA 22301

John Gallagher  
Fieldston Publications, Inc.  
1800 Massachusetts Avenue, N.W., Suite 500  
Washington, D.C. 20036

Hon. Carl F. Gnodtke  
House of Representatives  
State Capitol  
Lansing, MI 48913

Donald F. Griffin  
400 N. Capitol Street, N.W., Suite 852  
Washington, D.C. 20001

James M. Guinivan  
Harkins Cunningham  
1300 19th Street, N.W., Suite 600  
Washington, D.C. 20036-1609

Hon. Robert F. Hagan  
Ohio 64th House District  
562 Madera Avenue  
Youngstown, OH 44504

Patrick C. Hendericks  
Iowa Legislative Director UTU  
317 E 5th Street, Suite 11  
Des Moines, IA 50309

G. W. Herkner, Jr.  
New Jersey Transit Rail Operations  
One Penn Plaza East  
Newark, NJ 07105

Hon. Sandra J. Hill  
House of Representatives  
State Capitol  
Lansing, MI 48913

James L. Howe III  
Norfolk Southern Corporation  
3 Commercial Place  
Norfolk, VA 23510-2191

Enka Z. Jones  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W., Suite 6500  
Washington, D.C. 20006

Hon. Wayne M. Jones  
Ohio House of Representatives  
Statehouse  
Columbus, OH 43215

Dean R. Kleckner  
223 Touhy Avenue  
Park Ridge, IL 60068

Kathryn A. Kusske  
Mayer, Brown & Platt  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Hon. Jacob Leventhal  
Administrative Law Judge  
Ferc, Office of Hearings  
888 First Street, N.E., Suite 11F  
Washington, D.C. 20426

John M. Livingood  
201 Glencolter Court  
Severna Park, MD 21146

C. Michael Loftus  
Slover & Loftus  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

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



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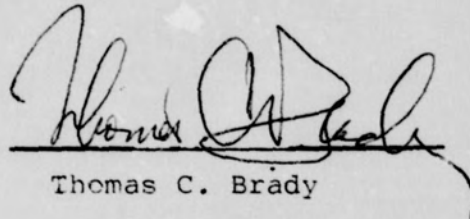
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Before The  
**SURFACE TRANSPORTATION BOARD**  
Washington, D.C.

Finance Docket No. 33388

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

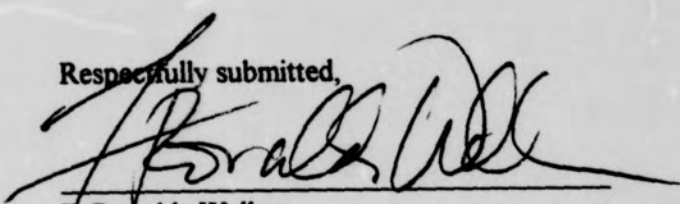
**NOTICE OF INTENT TO PARTICIPATE**

Please enter the appearance of the undersigned counsel on behalf of Citizens Gas & Coke Utility, which intends to participate and become a party of record in this proceeding.

Pursuant to 49 C.F.R. § 1104.12, service of all documents filed in this proceeding should be made upon the undersigned.

Date: August 1, 1997

Respectfully submitted,

  
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(317) 927-4750

**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 1997, a copy of the foregoing Citizens Gas & Coke Utility Notice of Intent To Participate was served by first-class, U.S. mail, postage prepaid upon the following as listed in Exhibit A.

A handwritten signature in black ink, appearing to read 'F. Ronalds Walker', written over a horizontal line.

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The Honorable Linda Morgan  
Surface Transportation Board  
Mercury Building  
1925 K Street, N.W.  
Washington, DC 20423

The Honorable Gus Owen  
Surface Transportation Board  
Mercury Building  
1925 K Street, N.W.  
Washington, DC 20423

Edward D. Greennerg, Esq.  
Gallard, Kharasch & Garfinkle, P.C.  
1054 31st St., N.W.  
Washington, DC 20007

Grayson G. Kelley, Esq.  
NC Department of Justice  
1 S. Wilmington St.  
Raleigh, NC 27602

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

Heidi Edens, Esq.  
Providence and Worcester Railroad Co.  
75 Hammond St.  
Worcester, MA 01610

## Exhibit A

Mr. Patrick B. Simmons  
Director of the Rail Division  
NC Department of Transportation  
1 S. Willmington St., Room 557  
Raleigh, NC 27611

K. D. Sturgis, Esq.  
Assistant Attorney General  
NC Department of Justice  
P.O. Box 629  
Raleigh, C 27602

Kenneth E. Siegel, Esq.  
ATA Litigation Center  
2200 Mill Road  
Alexandria, VA 22314-4677

Theresa M. Brennan, Esq.  
Pennsylvania Power & Light co.  
Two North Ninth Street  
Allentown, PA 18101-1179

A. Scott Cauger, Esq.  
Niagara Mohawk Power Corp.  
300 Erie Blvd. West  
Syracuse, NY 13202

Mr. William P. Hernan, Jr.  
United Railway Supervisor Assoc.  
P.O. Box 180  
Hilliard, OH 43206-0180

Mr. Mortimer B. Fuller, III  
Chairman  
Buffalo & Pittsburgh Railroad, Inc.  
71 Lewis Street  
Greenwich, CT 06830

Mr. Andrew W. Muller, Jr.  
President  
Reading Blud Mountain & Northern Railroad Company  
P.O. Box 218  
Port Clinton, PA 19549

Mr. Charles W. Chabot, President  
Buffalo & Pittsburgh Railroad, Inc.  
201 N Penn St.  
Punxsutawney, PA 15767

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

**Exhibit A**

Mr. William W. Whitehurst, Jr.  
W. W. Whitehurst & Associates, Inc.  
12421 Happy Hollow Rd.  
Cockeysville, MD 21030

Randolph L. Seger, Esq  
Robert B. Scott, Esq.  
McHale Cook & Welch, P.C.  
320 N. Meridian Street, Suite 1100  
Indianapolis, IN 46204



STB

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33388

8-11-97

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181117

# EXXON CHEMICAL AMERICAS

A Division of Exxon Chemical Company  
A Division of Exxon Corporation



181117

Office of the Secretary

AUG 12 1997

Part of  
File # 181117

August 4, 1997



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

Re: Finance Docket No 33388; CSX Corp., et al, Norfolk Southern Corp., et al, -  
-- Control and Operating Leases/Agreements - Conrail Inc, et al Transfer of  
Railroad Line by Norfolk Southern Railway Co. To CSX Transportation, Inc.

Dear Secretary Williams:

This is to notify the Board and all known interested parties that it is the intent of Exxon Company, U.S.A. and Exxon Chemical Americas to participate in the above referenced proceeding. Please enter the following individual to the service list on behalf of Exxon Company, U.S.A. and Exxon Chemical Americas.

Mr. Steve M. Coulter  
Exxon Company, U.S.A.  
Room L1-554  
P. O. Box 3272  
Houston, Texas 77253-3272  
(281) 870-6783

Sincerely,

*MS Coulter for SM Coulter*

Steve M. Coulter

LVC:dod

Attachment

cc: All other parties



### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Intent to Participate was served, by first class mail, postage prepaid, this fourth day of August, 1997, upon all known parties in Finance Docket 33388.

MSWich for SM Coulter  
Steve M. Coulter

**STB FINANCE DOCKET NO. 33388**

The attached letter was sent to the following:

25 copies

Office of the Secretary

Case Control Unit

Attn: STB Finance Docket No. 33388

Surface Transportation Board

1925 K Street, N.W.

Washington, DC 20423-0111

1 copy

Administrative Law Judge Jacob Leventhal

Federal Energy Regulatory Commission

888 First Street, N.E. - Suite 11 F

Washington, DC 20246

1 copy

Dennis G. Lyons, Esq.

Arnold & Porter

555 12th Street, N.W.

Washington, DC 20004-1202

1 copy

Richard A. Allen, Esq.

Zuckert, Scoutt & Rasenberger, L.L.P.

888 Seventeenth Street, N.W.

Washington, DC 20006-3939

1 copy

Paul A. Cunningham

Harkins Cunningham

1300 Nineteenth Street, N.W.

Suite 600

Washington, DC 20006

STB

FD

33388

8-11-97

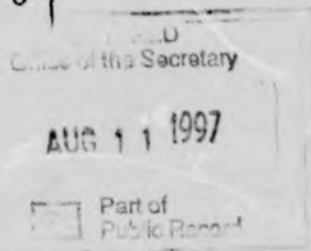
D

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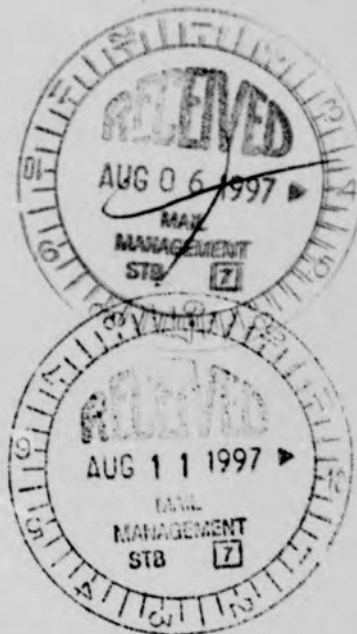


DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

181101



August 5, 1997



Mr. Vernon A. Williams  
Office of the Secretary, Case Control Unit  
Surface Transportation Board  
1925 K Street, NW.  
Washington, D.C. 20423-0001

Dear Mr. Williams:

This letter is to serve notice that the Department of Agriculture (USDA) intends to participate as a party of record in *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*, the Surface Transportation Board Finance Docket No. 33388.

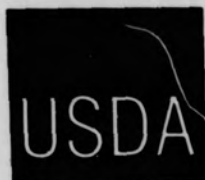
CSX and Conrail (CR) are important to many shippers of agricultural products. A combined CSX-CR-Norfolk Southern would be the third largest grain hauling railroad and the second largest rail hauler of grain mill products.

On behalf of USDA, please add the following name to the service list in this proceeding as a party of record: Eileen S. Stommes, Director, Transportation and Marketing Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 4006-South Building, Washington, D.C. 20090-6456.

Sincerely,

Michael V. Dunn  
Assistant Secretary  
Marketing and Regulatory Programs





**United States  
Department of  
Agriculture**

Agricultural  
Marketing Service

PO Box 96456  
Washington, DC 20090-6456



**CERTIFICATE OF SERVICE**

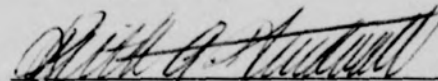
I, Keith A. Klindworth, certify that on this 11th day of August, 1997, I caused a copy of the United States Department of Agriculture's Notice of Intent to Participate in STB Finance Docket No. 33388, by first-class mail, postage prepaid, on the following parties:

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

Richard A. Allen  
Zuckert, Scoutt, and Rasenberger, L.L.P.  
Suite 600  
888 17th Street, N.W.  
Washington, D.C. 20006

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

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

  
Keith A. Klindworth



Be Resourceful. Recycle!

STB

FD

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8-8-97

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181107



OHIO STEEL INDUSTRY ADVISORY COMMISSION / OHIO DEPARTMENT OF DEVELOPMENT  
P.O. Box 1001 COLUMBUS, OH 43266-1001 (614) 466-4551 FAX (614) 644-1789

August 6, 1997

Office of the Secretary  
1997 Case Control Branch  
Attn: STB Finance Docket No. 33388  
U.S. Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20424-0001

**Re: Notification of Intent to Participate**

Mr. Secretary:

The Ohio Steel Industry Advisory Council hereby files a **Notification of Intent to Participate** in proceedings of the above-reference docket number, the proposed Conrail acquisitions, as a party of record. The Certificate of Service is enclosed as requested.

Please direct all correspondence to Mr. Charles S. Hesse whose address and telephone number are listed below. If you have any questions, they may be directed either to me or Mr. Hesse.

Sincerely,

*H. V. Kelly*

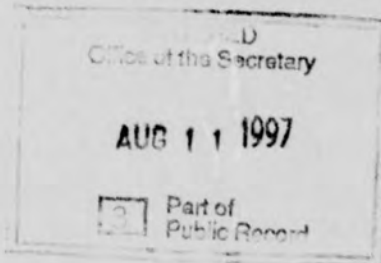
Harold V. Kelly  
Co-Chairman,  
Ohio Steel Industry Advisory Council

Harold V. Kelly  
Executive Vice President  
Republic Engineered Steels, Inc.  
410 Oberlin Road, S.W.  
Massillon, OH 44647

330-837-7045 (O)  
330-837-6170 (F)

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

216-543-7425 (O)  
216-543-9725 (F)



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Notification of Intent to Participate was served by Federal Express delivery, prepaid, this 6<sup>th</sup> day of August, 1997 upon:

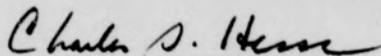
Richard A. Allen  
Zuckert, Scout, Rasenberger  
888 17<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20005-3939

Paul A. Cunningham  
Harkins Cunningham  
1300 19<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036

Judge Jacob Levanthal  
Office of Hearings  
Federal Energy Regulatory Commission  
888 1<sup>st</sup> Street, N.E.  
Suite 11F  
Washington, D.C. 20426

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

Also, the undersigned hereby certifies that the original Notification of Intent to Participate and 25 copies were served upon the U.S. Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20424-0001 by Federal Express overnight delivery this 6<sup>th</sup> day of August, 1997



Charles S. Hesse  
(For the Ohio Steel Industry Advisory Council)

STB

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8-8-97

D

181106

**PITTSTON**

Vaughn R. Groves  
Vice President & General Counsel

181106

Pittston Coal Company  
448 Northeast Main Street  
P.O. Box 5100  
Lebanon, Virginia 24266  
Direct Dial 540-889-6225  
Facsimile 540-889-6160  
e-mail vgroves@pittstonminerals.com

181106

PCCO

August 6, 1997

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
Attention STB Finance Docket #33388  
1925 K Street, NW  
Washington, DC 20423-0001



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

Dear Mr. Secretary:

Pittston Coal Company, on its own behalf and on behalf of its direct and indirect subsidiary corporations, including, but not limited to, Pittston Coal Sales Corp., Vandalia Resources, Inc. and Appalachian Mining, Inc., hereby notifies the Surface Transportation Board, pursuant to Decision number 12 served July 23, 1997, in this above-captioned Docket, that Pittston Coal Company intends to participate in this proceeding as a full party of record. Please add Pittston Coal Company to the service list in this proceeding, at the following address:

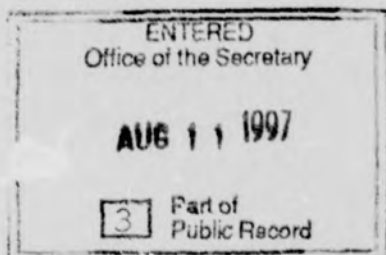
Pittston Coal Company  
P. O. Box 5100  
Lebanon, Virginia 24266  
Telephone (540)889-6000  
Fax (540)889-6160

Thank you for your attention to this matter.

Sincerely,

**PITTSTON COAL COMPANY**

Vaughn R. Groves



VRG:mm



**CERTIFICATE OF SERVICE**

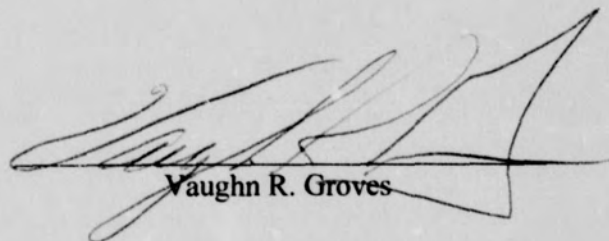
I, Vaughn R. Groves, hereby certify that I have this 6th day of August, 1997, caused copies of the foregoing document to be served by first-class mail upon Administrative Law Judge Jacob Leventhal and upon counsel for Applicants, as follows:

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

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

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

Richard A. Allen, Esq.  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, NW  
Washington, DC 20006-3939



Vaughn R. Groves

STB

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33388

8-8-97

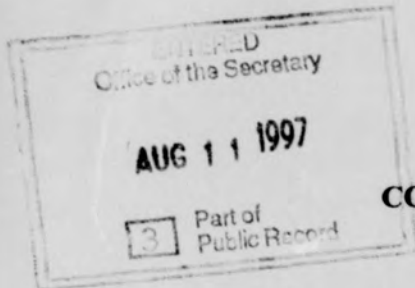
D

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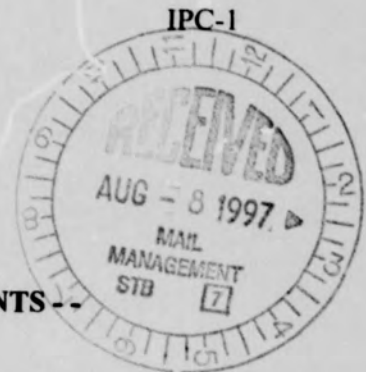
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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20423**



**STB FINANCE DOCKET NO. 33388  
CSX CORPORATION, et al.  
CONTROL AND OPERATION LEASE AGREEMENTS --  
CONRAIL, INC., et al.**



**NOTICE OF INTENT  
TO PARTICIPATE**

D

Indiana Port Commission, a body corporate in the State of Indiana, headquartered in Indianapolis, Indiana (IPC) advises the Board of its intent to participate in the proceeding as its interests may appear and asks that the appearance of its Executive Director and its Representative be entered. IPC has selected the acronym "IPC" for the identification of such filings as it may make.

Respectfully submitted  
Indiana Port Commission  
Frank G. Martin, Jr.  
Executive Director  
150 W. Market Street, Suite 603  
Indianapolis, IN 46204  
Tel. 317-232-9200, Fax 317-232-0137

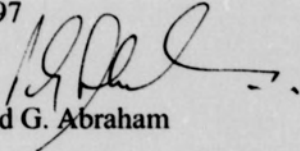
David G. Abraham  
Registered Representative  
7315 Wisconsin Ave., Suite 400W  
Bethesda, MD 20814  
Tel. 301-657-3070, Fax 301-657-3862

Dated: August 5, 1997

**CERTIFICATE OF SERVICE**

Copies of the foregoing Notice this day were served by me by mailing copies thereof, first class postage prepaid, to counsel for each applicant and A. L. J. Leventhal.

Dated at Bethesda, MD this 5<sup>th</sup> day of August, 1997

  
David G. Abraham

STB

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8-8-97D

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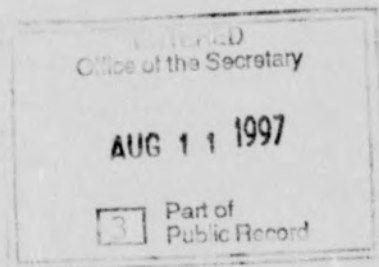
BEFORE THE  
SURFACE TRANSPORTATION BOARD

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 CONSOLODATED RAIL CORPORATION - TRANSFER OF  
RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX  
TRANSPORTATION, INC.

**NOTICE OF INTENT OF  
AMERICAN PUBLIC TRANSIT ASSOCIATION  
TO PARTICIPATE IN PROCEEDING**

Daniel Duff  
Chief Counsel  
Mattie C. Condray  
Senior Counsel  
American Public Transit Association  
1201 New York Ave., NW  
Washington, DC 20005  
202-898-4000





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 CONSOLODATED RAIL CORPORATION - TRANSFER OF  
RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX  
TRANSPORTATION, INC.

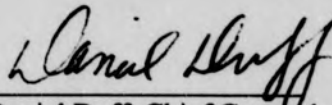
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**NOTICE OF INTENT OF  
AMERICAN PUBLIC TRANSIT ASSOCIATION  
TO PARTICIPATE IN PROCEEDING**

---

Pursuant to Decision No. 6 herein, served by the Surface Transportation Board on May 30, 1997, the American Public Transit Association ("APTA") hereby provides notice to the Surface Transportation Board and Primary Applicants of its intent to participate as a party of record in this proceeding. APTA is a private, nonprofit trade association that represents the North American transit industry. Accordingly, please place the named attorneys, at the address provided, on the service list to receive all pleadings and decisions in this proceeding.

Respectfully submitted,



Daniel Duff, Chief Counsel  
Mattie C. Condray, Senior Counsel  
American Public Transit Association  
1201 New York Avenue, NW  
Washington, DC 20005  
202-898-4000

Dated: August 7, 1997

STB

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8-7-97

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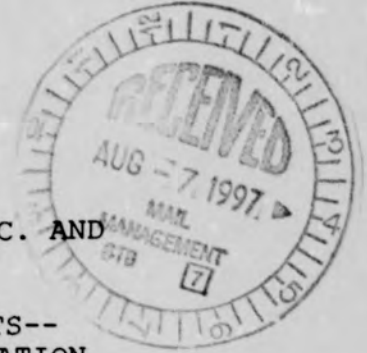
181103

181103  
**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

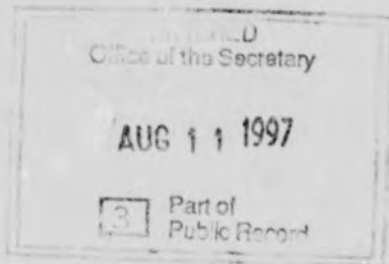
CSX CORPORATION AND CSX TRANSPORTATION, INC. AND  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
--CONTROL AND OPERATING LEASES/AGREEMENTS--  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION



D

**NOTICE OF INTENT TO PARTICIPATE**

Pursuant to Decision No. 12, served in these proceedings on July 23, 1997, the undersigned hereby gives notice that he intends to participate as a Party Of Record ("POR") in the captioned proceedings, and he accordingly requests that his name and address be included on the official service list to be compiled by the Office of the Secretary. This POR is: G. Paul Moates, Sidley & Austin, 1722 Eye Street, N.W., Washington, D.C. 20006. Mr. Moates can be reached at (202) 736-8175, and his telecopy number is (202) 736-8711.



Respectfully submitted,

*G. Paul Moates*

G. Paul Moates  
SIDLEY & AUSTIN  
1722 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 736-8175

DATED: August 7, 1977

CERTIFICATE OF SERVICE

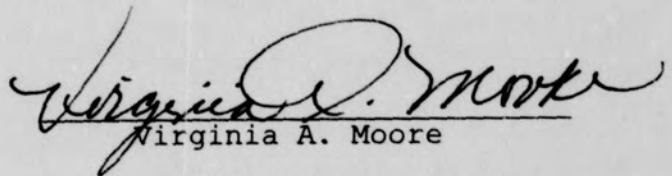
I, Virginia A. Moore, hereby certify that a copy of the foregoing Notice of Intent To Participate of G. Paul Moates was served on this date, first-class mail with postage prepaid, on the following:

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

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

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

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

  
Virginia A. Moore

DATED: August 7, 1997

STB

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8-7-97

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**WEINER, BRODSKY, SIDMAN & KIDER**

ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628-2044

ENTERED

Office of the Secretary

AUG 11 1997

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Part of

Public Record

August 7, 1997

181100

H. GERRY ANDERSON\*  
RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JENNIFER A. COHN  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LE'NER  
FAUL C. OAKLEY  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY E. WEINER  
ROSE-MICHELE WEINRYB\*  
JOSEPH F. YENOUSKAS

\*NOT ADMITTED IN D.C.

**BY HAND**

Hon. Vernon A. Williams

Secretary

Case Control Branch

ATTN: STB Finance Docket No. 33388

Surface Transportation Board

1925 K Street, N.W.

Washington, D.C. 20423-0001

~~RECEIVED~~

~~JUL 21 1997~~

~~SURFACE~~

CIND No. 1

~~TRANSPORTATION BOARD~~

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

Dear Secretary Williams:

On May 16, 1997, we filed on behalf of our client, Central Railroad Company of Indiana ("CIND"), a request that Christopher J. Burger, president of CIND, be placed on the service list of the above-referenced proceeding as a party of record ("Request"). In accordance with Decision No. 6 by the Surface Transportation Board ("Board"), dated May 30, 1997, regarding the submission of formal filings to the Board in this proceeding, enclosed are 25 copies of this Request and a certificate of service. Also enclosed is a 3.5 inch disk containing this Request formatted in Word Perfect. This pleading and the accompanying disk are designated as CIND No. 1, in accordance with 49 C.F.R. § 1180.4(a)(2).

Material should be sent to the following addresses:

Mr. Christopher J. Burger, President  
Central Railroad Company of Indiana  
500 North Buckeye  
Kokomo, Indiana 46903-0554  
(765) 459-3196 (telephone)  
(765) 457-4107 (facsimile).



WEINER, BRODSKY, SIDMAN & KIDER, P.C.

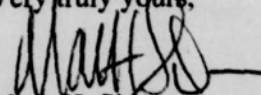
Hon. Vernon A. Williams

2

August 7, 1997

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,



Mark H. Sidman

Enclosure

cc: Christopher J. Burger, Central Railroad Company of Indiana

## **CERTIFICATE OF SERVICE**

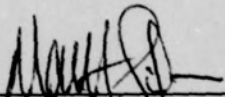
I hereby certify that on August 7, 1997, a copy of the foregoing Request was served by first-class mail, postage pre-paid, on the following addressees:

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

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

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

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

  
\_\_\_\_\_  
Mark H. Sidman, Esq.

STB

FD

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8-7-97

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181099

181099

**WEINER, BRODSKY, SIDMAN & KIDER**  
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797  
(202) 628-2000  
TELECOPIER (202) 628-2011



August 7, 1997



D

H. GERRY ANDERSON\*  
RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JENNIFER A. COHN  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LEIDNER  
PAUL C. OAKLEY  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY F. WEINER  
ROSE-MICHELE WEINRYB\*  
JOSEPH F. YENOUSKAS

\*NOT ADMITTED IN D.C.

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

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

Dear Secretary Williams:

On behalf of our client, Louisville & Indiana Railroad Company ("LIRC"), we request that Peter A. Gilbertson, chairman of LIRC, be placed on the service list of the above-referenced proceeding as a party of record ("Request"). In accordance with Decision No. 6 by the Surface Transportation Board ("Board"), dated May 30, 1997, regarding the submission of formal filings to the Board in this proceeding, enclosed are 25 copies of this Request and a certificate of service. Also enclosed is a 3.5 inch disk containing this Request formatted in Word Perfect. This pleading and the accompanying disk are designated as LIRC No. 1, in accordance with 49 C.F.R. § 1180.4(a)(2).

Material should be sent to the following addresses:

Mr. Peter A. Gilbertson  
Louisville & Indiana Railroad Company  
Suite 350  
53 W. Jackson Boulevard  
Chicago, IL 60604  
(312) 362-1888 (telephone)  
(312) 362-1402 (facsimile)

WEINER, BRODSKY, SIDMAN & KIDER, P.C.

Hon. Vernon A. Williams

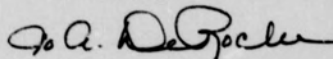
- 2 -

August 7, 1997

Jo A. DeRoche, Esq.  
Weiner, Brodsky, Sidman & Kider, P.C.  
1350 New York Avenue, N.W.  
Suite 800  
Washington, D.C. 20005-4797  
(202) 628-2000 (telephone)  
(202) 628-2011 (facsimile)

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,



Jo A. DeRoche

cc: Peter A. Gilbertson, Louisville & Indiana Railroad Company

\\94037\\001\\trmw206let.doc

# **CERTIFICATE OF SERVICE**


I hereby certify that on August 7, 1997, a copy of the foregoing Request was served by first-class mail, postage pre-paid, on the following addressees:

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

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

Richard A. Allen, Esq.  
Zuckert Scoutt & Rasenberger, I L.P.  
Suite 600  
888 Seventeenth Street., NW.  
Washington, DC 20006-3939

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

  
Jo A. DeRoche, Esq.



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City of Chicago  
Richard M. Daley, Mayor

Department of  
Streets and Sanitation

Eileen Carey  
Commissioner

City Hall, Room 700  
121 North LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4611  
(312) 744-5317 (FAX)  
(312) 744-2971 (TTY)

<http://www.ci.chi.il.us>

ENTERED  
Office of the Secretary

AUG 11 1997

3 Part of  
Public Record

NEIGHBORHOODS



03 August 1997

SURFACE TRANSPORTATION BOARD of  
THE UNITED STATES OF AMERICA  
Office of the Secretary  
Case Control Unit  
1925 K Street N.W.  
Washington D.C. 20423-0001

Re: STB Finance Docket # 33388  
CSX Transportation Corp.  
Norfolk Southern Railway Corp.  
proposal for control of:  
Consolidated Railway (Conrail)



#### Members of the Board:

The Department of Streets & Sanitation of the City of Chicago, wishes to know from the applicants what effect the captioned docketed action should have on the public railroad crossings of the involved lines, within the City of Chicago, Illinois.

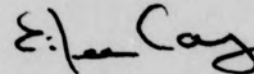
#### We specifically wish to know:

- 1) Can any at grade crossings be abandoned and if so who will pay the cost of their removal?
- 2) Which at grade crossings will have an increase in the number of daily train movements or an increased time of train occupancy?
- 3) Should improvements to the crossing protection be needed as a result of the foregoing, who will assume the cost?
- 4) Can any subways (viaducts) be daylighted as a result of this action?
- 5) Will the connection track called for in "Sub-No.9" (Page 15) necessitate any new or expanded crossings or cause any landlocked parcels which may become a site for flydumping or other undesirable activities?
- 6) Please provide more information regarding the location of the the site of the connecting track in "Sub-No. 11" (Page 16) as this site may not be within the City Limits of Chicago.



Please forward the responses and supportive data to Mr. Samuel D. Polonetzky, P.Eng., Coordinating Engineer of this Department (1-312-744-5974) who will evaluate our final responses.

Sincerely



Eileen Carey

SDP:sdp  
CC:

Administrative Law Judge Jacob Leventhal,  
Federal Energy Regulatory Commission  
888 First St. NE — Suit 11F  
Washington DC 20426

Dennis G Lyons Esq.,  
Arnold & Porter  
555 12th St. NW  
Washington DC 2004-1202

Richard A. Allen Esq.,  
Zuckert, Scott, & Rasenberger LLP.  
888 17th St. NW — Suit 600  
Washington DC 2006-3939

Paul A. Cunningham Esq.  
Harkins Cunningham  
1300 19th St. NW — Suit 600  
Washington DC 20036

Bernard Morris, Chief Railroad Engineer,  
Illinois Commerce Commission  
527 Capitol Ave  
Springfield Illinois 62706

James Heffernan, Deputy Commissioner  
Bureau of Electricity

John Donovan, General Supt. — E.W. & C

David Ochal, First Deputy Commissioner  
Department of Streets & Sanitation

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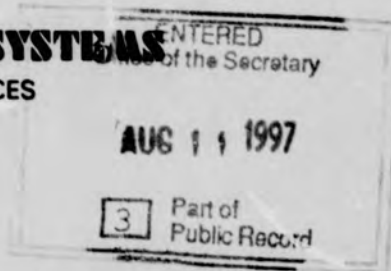
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**HEAVY LIFT CARGO SYSTEMS**

SHIPPING AND LOGISTICS SERVICES

August 5, 1997



181097

RESPOND TO:

P.O. Box 51451  
Indianapolis, IN 46251-0451

317+767-0473  
FAX 487-7203

via EXPRESS MAIL (USPS), OVERNIGHT SERVICE (EI579269648US)

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



Dear Secretary Williams:

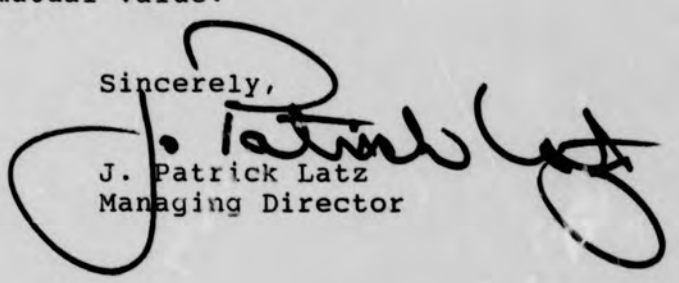
re: Finance Docket No. 33388, CSX Corporation and CSX  
Transportation, Inc.; Norfolk Southern Corporation  
and Norfolk Southern Railway Company - Control and  
Operating Leases/Agreements - Conrail, Inc., and  
Consolidated Rail Corporation.

Your attention and consideration is being solicited regarding  
the above named Proceeding before The Surface Transportation  
Board.

There is, for your review and consideration, an original doc-  
ument along with twenty-five ( 25) copies if HEAVY Lift Cargo  
Systems Notice of Intent to Participate in this Proceeding.  
Further, you shall find a 3.5 - inch diskette, formatted for  
WordPerfect 5.X for Windows, which can be converted to WordPerfect  
7.0, containing the Pleading.

Your considerations shall be of mutual value.

Sincerely,

  
J. Patrick Latz  
Managing Director

JPL/ab

enc.

cc: All Counsel of Record  
The Honorable Jacob Leventhal

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

---

HEAVY LIFT CARGO SYSTEMS  
NOTICE of INTENT to PARTICIPATE

J. Patrick Latz  
Managing Director  
HEAVY Lift Cargo Systems  
P.O. Box 51451  
Indianapolis, IN 46251-0451

317+767-0473

August 5, 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

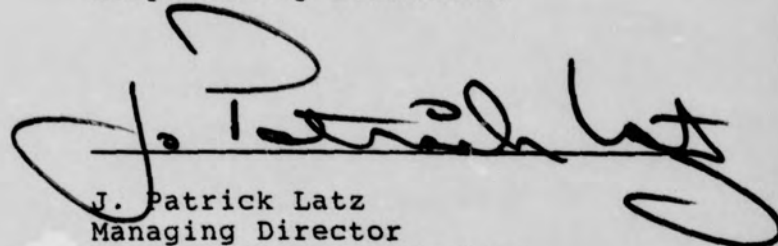
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HEAVY LIFT CARGO SYSTEMS  
NOTICE of INTENT to PARTICIPATE

HEAVY Lift Cargo Systems (hereinafter referred to as "HEAVY LIFT") hereby provides its Notice of Intent to participate as an active party in this Proceeding. It would be appreciated if the following individual is included in The Official Service List for The Proceeding so that copies of all pleadings and decisions are served to him:

Mr. J. Patrick Latz  
Managing Director  
HEAVY Lift Cargo Systems  
P.O. Box 51451  
Indianapolis, IN 46251-0451

Respectfully submitted,



J. Patrick Latz  
Managing Director  
HEAVY Lift Cargo Systems  
P.O. Box 51451  
Indianapolis, IN 46251-0451

317+767-0473

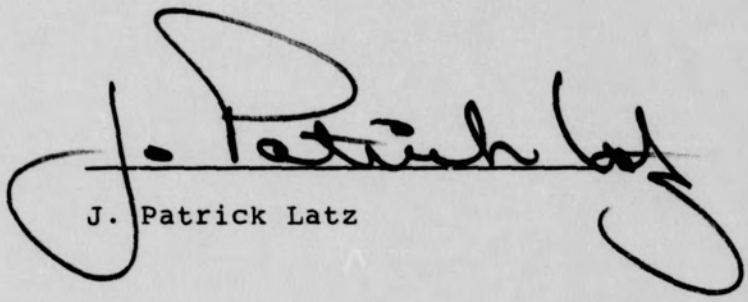
CERTIFICATE of SERVICE

I hereby certify that on this 5th day of August, 1997, I served by means indicated below a copy of the foregoing HEAVY Lift Cargc Systems Notice of Intent to Participate on the following:

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

(by first-class mail with proper postage affixed)

Counsel for all know parties of record  
(by first-class mail with proper posatge affixed)



J. Patrick Latz

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**WEINER, BRODSKY, SIDMAN & KIDER**  
ATTORNEYS AT LAW

PROFESSIONAL CORPORATION

1350 NEW YORK AVENUE, N.W., SUITE 800  
WASHINGTON, D.C. 20005-4797  
(202) 628-2000  
TELECOPIER (202) 628-2011



August 7, 1997

ENTERED  
Office of the Secretary

AUG 11 1997

3 Part of  
Public Record

181096

H. GERRY ANDERSON\*  
RICHARD J. ANDREANO, JR.  
JAMES A. BRODSKY  
JENNIFER A. COHN  
JO A. DeROCHE  
CYNTHIA L. GILMAN  
DON J. HALPERN  
CHRISTOPHER E. KACZMAREK  
MITCHEL H. KIDER  
SUSAN L. KORYTKOWSKI  
SHERRI L. LEDNER  
PAUL C. OAKLEY  
MARK H. SIDMAN  
RUGENIA SILVER  
HARVEY E. WEINER  
ROSE-MICHELE WEINRYB\*  
JOSEPH F. YENOUSKAS

\*NOT ADMITTED IN D.C.

**BY HAND**

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

CERA No. 1

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

Dear Secretary Williams:

On May 16, 1997, we filed on behalf of our client, Central Railroad Company of Indianapolis ("CERA"), a request that Christopher J. Burger, president of CERA, be placed on the service list of the above-referenced proceeding as a party of record ("Request"). In accordance with Decision No. 6 by the Surface Transportation Board ("Board"), dated May 30, 1997, regarding the submission of formal filings to the Board, enclosed are 25 copies of this Request and a certificate of service. Also enclosed is a 3.5 inch disk containing this Request formatted in Word Perfect. This pleading and the accompanying disk are designated as CERA No. 1, in accordance with 49 C.F.R. § 1180.4(a)(2).

Material should be sent to the following addresses:

Mr. Christopher J. Burger, President  
Central Railroad Company of Indianapolis  
500 North Buckeye  
Kokomo, Indiana 46903-0554  
(765) 459-3196 (telephone)  
(765) 457-4107 (facsimile).

WEINER, BRODSKY, SIDMAN & KIDER, P.C.

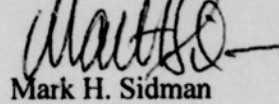
Hon. Vernon A. Williams

2

August 7, 1997

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mark H. Sidman", with a long horizontal flourish extending to the right.

Mark H. Sidman

Enclosure

cc: Christopher J. Burger, Central Railroad Company of Indianapolis

## **CERTIFICATE OF SERVICE**

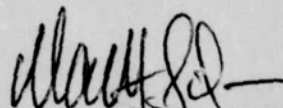
I hereby certify that on August 7, 1997, a copy of the foregoing Request was served by first-class mail, postage pre-paid, on the following addressees:

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

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

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

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

  
\_\_\_\_\_  
Mark H. Sidman, Esq.



STB

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One Newark Center, 17th floor, Newark, NJ 07102  
(201) 639-8400; fax (201) 639-1953

J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director

July 11, 1997

Secretary Vernon A. Williams  
Office of the Secretary  
Case Control Branch  
Attn: STB Docket # 33388  
U.S. Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-001



To the Secretary:

This letter is to notify you that the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), acting within its mandate under the Intermodal Surface Transportation Efficiency Act to protect and enhance mobility issues in its Metropolitan Planning Organization region, has passed the attached resolution at its July 8<sup>th</sup>, 1997 meeting declaring that it will request standing as a Party-of-Record in the matter of the acquisition of Consolidated Railway Corporation, Conrail – STB Finance Docket #33388.

The NJTPA Board of Trustees, therefore, submits to the U.S. Surface Transportation Board this request to be given standing in the above-mentioned case. Once granted status as Participant and Party-of-Record by the Surface Transportation Board, the NJTPA intends to submit materials related to issues and claims that have been raised with its jurisdiction regarding the Conrail acquisition.

Respectfully submitted,

J. William Van Dyke  
Chairman, NJTPA

Enclosure

C: NJTPA Board of Trustees  
Those attached below



*One Newark Center, 17th floor, Newark, NJ 07102  
(201) 639-8400; fax (201) 639-1953*

*J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director*

**OFFICIAL NORTH JERSEY TRANSPORTATION  
PLANNING AUTHORITY RESOLUTION TRANSMITTAL**

**TO:** Hon. Christine Todd Whitman, Governor, State of New Jersey  
Rodney Slater, US Secretary of Transportation  
Hon. William Daley, US Secretary of Commerce  
United States Surface Transportation Board  
NJ Congressional Delegation  
Hon. John J. Haley, Commissioner, NJDOT  
Hon. Gualberto Medina, Commissioner, NJ Department of Commerce  
Hon. Andrew R. Ciesla, Chairman of the NJ Senate Transportation Committee  
Hon. Alex DeCroce, Chairman of the Assembly Transportation & Communications Committee  
Shirley DeLibero, Executive Director, NJ Transit  
John Coscia, Executive Director, Delaware Valley Regional Planning Commission  
Tim Chelius, Director, South Jersey Transportation Planning Organization  
North Jersey Transportation Planning Authority Board of Trustees

**FROM:** Joel S. Weiner, Executive Director, NJTPA  
**DATE:** July 12, 1997

Enclosed for your information is a copy of a resolution adopted by the North Jersey Transportation Planning Authority (NJTPA) on July 8, 1997. This Resolution Activates The Status Of The NJTPA As a Party-Of-Record To The Surface Transportation Board On The Conrail Merger.

**RESOLUTION # A-161:    ACTIVATING STATUS AS A PARTY-OF-RECORD  
TO THE SURFACE TRANSPORTATION BOARD  
ON THE CONRAIL MERGER**

**WHEREAS**, the North Jersey Transportation Planning Authority, Inc. (NJTPA) is the Metropolitan Planning Organization (MPO) responsible for coordinating all regional planning involving transportation in northern New Jersey; and

**WHEREAS**, the Intermodal Surface Transportation Efficiency Act (ISTEA) provided MPOs with new and important responsibilities including requirements to specifically consider access to ports, intermodal transportation facilities, major freight distribution routes and methods to enhance the efficient movement of freight; and

**WHEREAS**, CSX Corp. and Norfolk Southern Corp. have filed with the United States Surface Transportation Board on June 23, 1997 in order to acquire and split up the Conrail system; and

**WHEREAS**, the proposed merger of Conrail with CSX Corp. and Norfolk Southern Corp. will produce a lasting impact on the economic and transportation infrastructure of the State of New Jersey for years to come, including its industries, other business sectors, consumers, major transportation networks and terminals, other freight and passenger transportation carriers and neighboring regions with economic linkages to New Jersey; and

**WHEREAS**, the Board of Trustees of the NJTPA is concerned with the ability to efficiently move people and goods through our region and effectively compete in the global economy; and

**WHEREAS**, the NJTPA, on behalf of the New Jersey Department of Transportation and the two other MPOs in New Jersey, commissioned a study on January 13, 1997 in order to analyze the impact of the proposed merger of Conrail with another Class I railroad on New Jersey; and

**WHEREAS**, part of the study's analysis consisted of performing an extensive survey of rail shippers, terminal operators, Class I and short line railroad operators, and other interested parties which helped to provide guidance in formulating a set of findings and principles that are contained in the report; and

**WHEREAS**, the NJTPA on April 14, 1997 endorsed the study's *Technical Report* and *Principles Report* which included an analysis of issues including, but not limited to: competitive access/trackage rights, on-time delivery, diversions to trucks, shared passenger freight capacity issues, ability to serve national and global markets, terminal facility needs, and short line railroad issues; and

**WHEREAS**, the NJTPA Central Staff has initiated outreach efforts with NJTPA members agencies and affiliate organizations in order to understand the regional concerns and specific local impacts of the Conrail merger;

**NOW, THEREFORE, BE IT RESOLVED**, that the North Jersey Transportation Planning Authority hereby directs its Chairman to forward the necessary correspondence to the United States Surface Transportation Board in order to activate the NJTPA's status as a Party-of-Record regarding the proposed Conrail merger with CSX Corp. and Norfolk Southern Corp.;

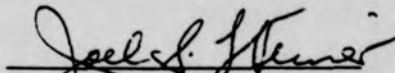
**BE IT FURTHER RESOLVED**, that the North Jersey Transportation Planning Authority directs its Central Staff to begin the preparation of a written statement identifying the various concerns and issues of its member agencies and constituent organizations regarding the Conrail merger;

**BE IT FURTHER RESOLVED**, that copies of this resolution be forwarded to the United States Surface Transportation Board; Rodney Slater, U.S. Secretary of Transportation; William Daley, U.S. Secretary of Commerce; Governor Christine Todd Whitman; John Haley, Commissioner of the NJ Department of Transportation; Gualberto Medina, Commissioner of the NJ Department of Commerce; NJ Transit Executive Director Shirley DeLibero; the respective Chairmen of the Delaware Valley Regional Planning Commission (DVRPC) and the South Jersey Transportation Planning Organization (SJTPO); Andrew Ciesla, Chairman of the NJ Senate Transportation Committee; Alex DeCroce, Chairman of the Assembly Transportation and Communications Committee; all members of the NJ Congressional Delegation; and all members of the North Jersey Transportation Planning Authority Board of Trustees.

This resolution shall take effect this 8<sup>th</sup> day of July 1997.

**Certification**

I hereby certify that the above is a true copy of a  
Resolution adopted by the North Jersey Transportation  
Planning Authority at its regularly scheduled meeting held on  
July 8, 1997.

  
Joel S. Weiner  
Executive Director, NJTPA





*One Newark Center, 17th floor, Newark, NJ 07102  
(201) 639-8400; fax (201) 639-1953*

*J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director*

July 11, 1997

Mr. Richard A. Allen  
Zuckert, Scoutt & Rasenberger, LLP  
Suite 600  
888 Seventh Street, NW  
Washington, DC 20006-3939

Dear Mr. Allen:

This letter is to notify you that the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), acting within its mandate under the Intermodal Surface Transportation Efficiency Act to protect and enhance mobility issues in its Metropolitan Planning Organization region, has passed the attached resolution at its July 8<sup>th</sup>, 1997 meeting declaring that it will request standing as a Party- of- Record in the matter of the acquisition of Consolidated Railway Corporation, Conrail – STB Finance Docket #33388.

The NJTPA Board of Trustees, therefore, submits to the U.S. Surface Transportation Board this request to be given standing in the above-mentioned case. Once granted status as Participant and Party-of-Record by the Surface Transportation Board, the NJTPA intends to submit materials related to issues and claims that have been raised with its jurisdiction regarding the Conrail acquisition.

Respectfully submitted,

J. William Van Dyke  
Chairman, NJTPA

Enclosure

C: NJTPA Board of Trustees





*One Newark Center, 17th floor, Newark, NJ 07102  
(201) 639-8400; fax (201) 639-1953*

*J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director*

July 11, 1997

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

Dear Judge Leventhal:

This letter is to notify you that the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), acting within its mandate under the Intermodal Surface Transportation Efficiency Act to protect and enhance mobility issues in its Metropolitan Planning Organization region, has passed the attached resolution at its July 8<sup>th</sup>, 1997 meeting declaring that it will request standing as a Party-of-Record in the matter of the acquisition of Consolidated Railway Corporation, Conrail – STB Finance Docket #33388.

The NJTPA Board of Trustees, therefore, submits to the U.S. Surface Transportation Board this request to be given standing in the above-mentioned case. Once granted status as Participant and Party-of-Record by the Surface Transportation Board, the NJTPA intends to submit materials related to issues and claims that have been raised with its jurisdiction regarding the Conrail acquisition.

Respectfully submitted,

J. William Van Dyke  
Chairman, NJTPA

Enclosure

C: NJTPA Board of Trustees



*One Newark Center, 17th floor, Newark, NJ 07102  
(201) 639-8400; fax (201) 639-1953*

*J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director*

July 11, 1997

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

Dear Mr. Cunningham:

This letter is to notify you that the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), acting within its mandate under the Intermodal Surface Transportation Efficiency Act to protect and enhance mobility issues in its Metropolitan Planning Organization region, has passed the attached resolution at its July 8<sup>th</sup>, 1997 meeting declaring that it will request standing as a Party- of- Record in the matter of the acquisition of Consolidated Railway Corporation, Conrail – STB Finance Docket #33388.

The NJTPA Board of Trustees, therefore, submits to the U.S. Surface Transportation Board this request to be given standing in the above-mentioned case. Once granted status as Participant and Party-of-Record by the Surface Transportation Board, the NJTPA intends to submit materials related to issues and claims that have been raised with its jurisdiction regarding the Conrail acquisition.

Respectfully submitted,

J. William Van Dyke  
Chairman, NJTPA

Enclosure

C: NJTPA Board of Trustees



One Newark Center, 17th floor Newark, NJ 07102  
(201) 639-8400, fax (201) 639-1953

J. William Van Dyke, Chairman  
Joel S. Weiner, Executive Director

July 11, 1997

Mr. Dennis G. Lyons, Esq.  
Arnold & Porter  
555 12<sup>th</sup> Street, NW  
Washington, DC 20004-1202

Dear Mr. Lyons:

This letter is to notify you that the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), acting within its mandate under the Intermodal Surface Transportation Efficiency Act to protect and enhance mobility issues in its Metropolitan Planning Organization region, has passed the attached resolution at its July 8<sup>th</sup>, 1997 meeting declaring that it will request standing as a Party-of-Record in the matter of the acquisition of Consolidated Railway Corporation, Conrail – STB Finance Docket #33388.

The NJTPA Board of Trustees, therefore, submits to the U.S. Surface Transportation Board this request to be given standing in the above-mentioned case. Once granted status as Participant and Party-of-Record by the Surface Transportation Board, the NJTPA intends to submit materials related to issues and claims that have been raised with its jurisdiction regarding the Conrail acquisition.

Respectfully submitted,

J. William Van Dyke  
Chairman, NJTPA

Enclosure

C: NJTPA Board of Trustees

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33388

7-18-97

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180687



SCOTT L. KING

Mayor

SUZETTE RAGGS

Deputy Mayor

## CITY OF GARY

### LAW DEPARTMENT

401 Broadway • 4th Floor

Gary, Indiana 46402

(219) 881-1400 / Fax (219) 881-1362

HAMILTON L. CARMOUCHE

Corporation Counsel

REBECCA L. WYATT

City Attorney

July 15, 1997

*[Handwritten signature]*



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

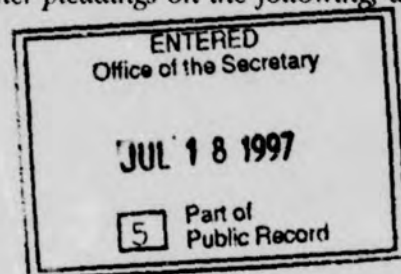
RE: *Finance Docket No. 33388, CSX Corporation and CSX Transportation Company, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation Company*

Dear Secretary Williams:

*This document shall serve as the Notice of Intent to Participate in the above entitled proceeding filed on behalf of the City of Gary, Indiana.*

*Pursuant to 49 C.F.R. §1180.4(c) (5) (v), the undersigned is requesting that the applicants serve a copy of their primary application and other pleadings on the following, as the representative of the City of Gary, Indiana:*

Hamilton L. Carmouche  
Corporation Counsel  
401 Broadway, 4th Floor  
Gary, IN 46402  
Phone: (219) 881-1400  
Fax: (219) 881-1362



*This letter is also to request the Board to place the City of Gary and the above representative on the list of all parties of record that will be prepared and issued under the provisions of 49 C.F.R. §1180.4(a) (4). In accordance with 49 C.F.R. §1180.4(a) (2), Gary selects the acronym "COGILD" (City of Gary, Indiana Law Department) for identifying all documents and pleadings it submits in this proceeding.*

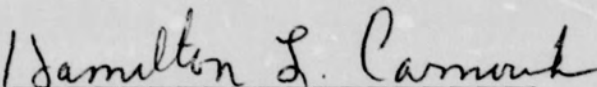
Honorable Vernon A. Williams

July 15, 1997

Page 2 of 2

*Enclosed you will find an original notice and twenty-five copies. I have attached a Certificate of Service as required. Copies of this notice will be sent to all other parties of record on the service list provided to our office by Board personnel once that list has been received.*

*Sincerely,*

  
HAMILTON L. CARMOUCHE  
Corporation Counsel

*HLC/gwen*

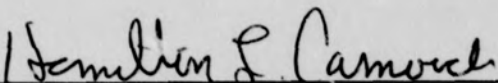
*Enclosures: (As stated above)*

*cc: Mayor Scott L. King  
Arlene D. Colvin, COS  
Michael Cervay, Fiscal Advisor*



CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of July, 1997, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record listed below by depositing the same in the United States Mail in an envelope properly addressed to each of them and with sufficient first-class postage affixed.

  
\_\_\_\_\_  
HAMILTON L. CARMOUCHE,  
CORPORATION COUNSEL

Honorable Judge Jacob Leventhal  
Federal Energy Regulatory Commsn.  
888 1st Street N.E.  
Suite 11F  
Washington, D.C. 20426

Paul A. Cunningham  
Attorney for Conrail  
Harkins & Cunningham  
1300 - 19th St., N.W.  
Suite 600  
Washington, D.C. 20036

Richard A. Allen  
Attorney for CSX Corporation  
Zuckert, Scott & Rosenberger

Dennis G. Lyons  
Attorney for CSX  
Arnold and Porter  
555 - 12th Street, N.W.  
Washington, D.C. 20004-1202

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CHARLES L. LITTLE  
International President

BYRON A. BOYD, JR.  
Assistant President

ROGER D. GRIFFETH  
General Secretary and Treasurer

**united**  
**transportation**  
**union**



14600 DETROIT AVENUE  
CLEVELAND, OHIO 44107-4250  
PHONE: 216-228-9400  
FAX: 216-228-0937

**LEGAL DEPARTMENT**

CLINTON J. MILLER, III  
General Counsel

• KEVIN C. BRODAR  
Associate General Counsel

• ROBERT L. McCARTY  
Associate General Counsel

• DANIEL R. ELLIOTT, III  
Assistant General Counsel

July 14, 1997

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

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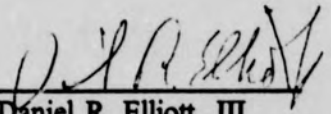
Re: Finance Docket No. 33388,  
CSX Corporation, *et al.*, Norfolk Southern Corp.,  
*et al.* -- Railroad Control Application --  
Conrail Inc., *et al.*

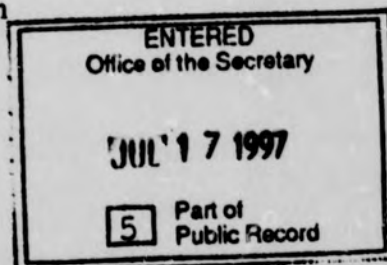
Dear Secretary Williams:

The United Transportation Union ("UTU"), through its undersigned counsel, hereby files notice of its intent to participate in the above-referenced case as a party of record. Service of all documents upon the UTU may be made to the undersigned counsel.

Enclosed are an original and 25 copies of this letter. Thank you for your attention to this matter.

Sincerely,

  
Daniel R. Elliott, III  
Assistant General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
(216) 228-9400  
FAX (216) 228-0937



### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Notice of Intent to Participate this 14<sup>th</sup> day of July, 1997 via first-class, postage pre-paid mail upon the following:

James C. Bishop, Jr.  
William C. Woolridge  
J. Gary Lane  
James L. Howe, III  
Robert J. Cooney  
George A. Aspatore  
Norfolk Southern Corp.  
Three Commercial Place  
Norfolk, VA 23510-9241

Richard A. Allen  
James A. Calderwood  
Andrew R. Plump  
John V. Edwards  
Zucker, Scoutt &  
Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Washington, DC 20006-3939

Bruce B. Wilson  
Constance L. Abrams  
Consolidated Rail Corp.  
Two Commerce Square  
2001 Market Square  
Philadelphia, PA 19103

Paul A. Cunningham  
Harkins, Cunningham  
1300 19th Street, N.W., Ste. 1600  
Washington, DC 20036

Mitch Kraus, Esquire  
Transportation Communications International Union  
3 Research Place  
Rockville, MD 20850

Mark G. Aron  
Peter J. Shudtz  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23219

Larry Willis, Esquire  
Transportation Trades Department  
AFL-CIO  
400 North Capitol Street, N.W., Ste. 861  
Washington, DC 20001

P. Michael Giftos  
Paul R. Hitchcock  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

Richard Edelman  
Highsaw, Mahoney & Clarke  
1050 17th Street, N.W., Ste. 210  
Washington, DC 20036

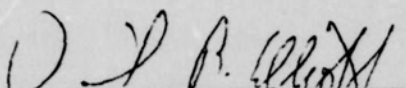
Dennis G. Lyons  
Richard L. Rosen  
Paul T. Denis  
Arnold & Porter  
555 12th Street, N.W.  
Washington, DC 20004-1202

The Honorable Jacob Leventhal  
Federal Energy Regulatory Comm'n  
888 First Street, N.E., Ste. 11F  
Washington, DC 20426

John M. Nannes  
Scot B. Hutchins  
Skadden, Arps, Slate,  
Meagher & Flom, L.L.P.  
1440 New York Avenue, N.W.  
Washington, DC 20005-2111

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

Timothy T. O'Toole  
Constance L. Abrams  
Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

  
Daniel R. Elliott, III



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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 33388**

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

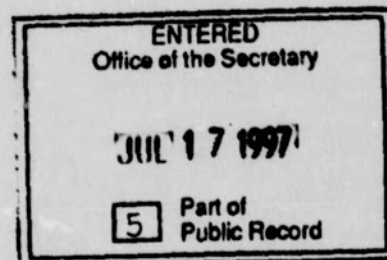
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**NOTIFICATION OF INTENT TO PARTICIPATE**

PPG INDUSTRIES, INC.  
ONE PPG PLACE  
PITTSBURGH, PA 15272

BY: R. J. Henefeld  
Manager Transportation-Rail  
Chemicals  
(412) 434-3532

July 15, 1997





**PPG Industries, Inc.**  
One PPG Place Pittsburgh, Pennsylvania 15272 USA

Distribution and Transportation Department  
Chemicals

July 15, 1997

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

Dear Mr. Williams:

PPG as required under Finance Docket 33388 is filing this notice as our intention to participate and become a party of record in this proceeding. It is our intention to receive all applications and decisions that are part of Docket 33388.

Enclosed are twenty five (25) additional copies of this Notification and copies have been sent to Honorable Jacob Leventhal, Dennis G. Lyons, Paul A. Cunningham and Richard A. Allen. Also enclosed is a self addressed envelope and an extra copy of this notification to be acknowledged as received by the Board and returned to PPG.

All information submitted for dissemination to all parties, should be forwarded to Ronald J. Henefeld at PPG Industries, One PPG Place, Pittsburgh, PA. 15272

Very truly yours

A handwritten signature in dark ink, appearing to read 'Ronald J. Henefeld', is written over a horizontal line.

Ronald J. Henefeld  
Manager Transportation - Rail  
Chemicals  
412-434-3532

CC: Honorable Jacob Leventhal  
Dennis G. Lyons  
Paul A. Cunningham  
Richard A. Allen



Responsible Care.<sup>®</sup>  
A Public Commitment

### CERTIFICATE OF SERVICE

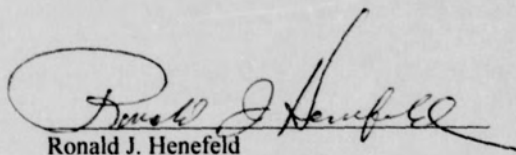
I hereby certify that I have this 15th day of July, 1997, served a copy of the foregoing notice upon the following persons, by first-class mail, postage prepaid, in accordance with the Board's Rules of Practice:

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

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

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

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



Ronald J. Henefeld