STB FD 33388 11-17-97 D 183947

1(3)94-7

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48083-1220

CHARLES A. SPITULNIK
(202) 835-8196

November 17, 1997

Hon. 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

D

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 Sir:

Enclosed are an original and twenty-five (25) copies of the Reply of New York City Economic Development Corporation in Opposition to CSX's and NS's Motion to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions (NYC-12) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Sincerely,

Charles A. Spitulnik

Enclosure

cc: The Honorable Jacob Leventhal
All Parties of Record

Q52069-1

NYC-12[1]

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

REPLY OF NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION IN OPPOSITION TO CSX'S AND NS'S MOTION TO TREAT VARIOUS RESPONSIVE APPLICATIONS AS COMMENTS, PROTESTS OR REQUESTS FOR CONDITIONS

In accordance with Decisions Nos. 12 and 13 in this proceeding, the New York City Economic Development Corporation ("NYCEDC"), by and through its undersigned counsel, replies in opposition to the Motion of Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions (CSX/NS-148) ("Motion").[2]

On June 2, 1997, NYCEDC filed a Notice of Intent to Participate in this Proceeding (NYC-1). On August 22, 1997, NYCEDC filed a Description of Responsive

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[1] Due to an inadvertent numbering error, NYC has previously twice used the numbers NYC-10 and NYC-11 to identify documents. NYC resumes proper numbering here with NYC-12.

[2] Because the Motion was served by mail, Dennis Lyon, counsel for CSX has indicated that Applicants will not oppose a filing today, after the time for filing described in Decisions Nos. 12 and 13 has technically expired.

Application (NYC-2). Also on August 22, 1997, NYCEDC filed a Petition for Waiver and Clarification of Railroad Consolidation Procedures (NYC-3). On September 17, 1997, the Board granted NYCEDC's Petition for Waiver. Decision No. 33. Neither CSX nor NS raised any objection to or sought reconsideration of the agency's determination. Subsequently, on September 25, 1997, NYCEDC sought clarification of the Board's Order granting its Petition for Waivers (NYC-6). Again, Applicants remained silent. On October 1, 1997, the Board granted NYCEDC's requests. Decision No. 40.

On October 1, 1997, NYCEDC submitted the Verified Statement of Shirley Jaffe concerning Environmental and Historical Reporting Requirements (NYC-7). This filing was only required of parties planning to submit responsive applications. Again, neither CSX nor NS objected to NYCEDC proceeding as a responsive applicant.

NYCEDC opposes the Motion in all respects. The Motion is untimely -- it follows by too much time an array of filings by NYCEDC, all in conformity with the procedural schedule established by the STB in this proceeding, that makes clear NYCEDC's intent to seek relief in the form of a responsive application. Moreover, it entirely and completely disregards substantial STB precedent that permits entities other than rail carriers to file responsive applications. NYCEDC adopts by reference, and fully supports, the positions set forth by the State of New York in its Reply in Opposition to the Motion (NYS-14). For all the reasons set forth therein, and in NYCEDC's previous filings in this Proceeding, CSX's and NS's Motion to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions should be denied.

Dated: November 17, 1997

Respectfully submitted,

Charles A. Spitulnik
Rachel Danish Campbell
Jamie P. Rennert
HOPKINS & SUTTER
888 Sixteenth Street, NW
Washington, D.C. 20006
(202) 835-8000

Counsel for the New York City Economic Development Corporation

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 1997, a copy of the foregoing Reply of New York City Economic Development Corporation in Opposition to CSX's and NS's Motion to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions (NYC-12) was served by hand delivery upon the following:

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

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

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

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

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

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

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

Rachel Danish Campbell
Rachel Danish Campbell

P54986-1

STB FD 33388 11-17-97 D 183915

TRANSPORTATION • COMMUNICATIONS
INTERNATIONAL UNION

AFL-CIO, CLC

182991

ROBERT A. SCARDELLETTI
International President
MITCHELL M. KRAUS
General Counsel
CHRISTOPHER J. TULLY
Assistant General Counsel

LEGAL DEPARTMENT

November 17, 1997

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D

VIA HAND DELIVERY

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

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

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies of Errata Sheet to the Verified Statement of Richard A. Johnson (TCU-9) submitted with the Transportation·Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6) in the above-captioned matter.

Thank you for your attention to this matter.

Very truly yours,

Mitchell Kraus

Mitchell M. Kraus
General Counsel

MMK:fm
Enclosure
CC: The Honorable Jacob Leventhal
All Parties of Record (per Service List)

ENTERED
Office of the Secretary
NOV 17 1997
3 Part of Public Record

3 Research Place • Rockville, MD 20850 • (301) 948-4910 • FAX (301) 330-7662

ERRATA SHEET

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The following two paragraphs on pages 4 and 5 of the Verified Statement of Richard A. Johnson in this matter should read as follows:

> Seniority Districts - NS maintains that applying the N&W agreement with its point seniority system will be more efficient than the current Conrail seniority system which encompasses nineteen separate geographic seniority districts. NS indicates that the seniority system commonly used in the industry is that of point seniority and that the seniority system on Conrail is unique.[6]
>
> The Conrail seniority system reflects the complicated history of that carrier. Without describing that system in detail herein, it should be noted that employees originally hired by Conrail's predecessors have district seniority, and in addition they enjoy prior rights to jobs on the predecessor carrier lines on which they first established seniority. The prior right system was established because employees represented by BRC had to complete a four year apprenticeship program before establishing seniority, while TWU-represented carmen established seniority thirty days after date of hire. Imposing a point system on the pre-April 1, 1976, hires will cause great inequity with no apparent savings because of the resulting loss of prior right seniority.

---

[6]Deposition of R. Spenski, September 2, 1997, pp. 88-89.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1997, the Errata Sheet to the Verified Statement of Richard A. Johnson (TCU-9) submitted with the Transportation·Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6) was served by first-class mail, postage prepaid, on all Parties of Record in the above-captioned matter and upon Administrative Law Judge Jacob Leventhal.

Mitchell Kraus

Mitchell M. Kraus
General Counsel
Transportation·Communications
International Union
3 Research Place
Rockville, MD 20850
(301) 948-4910

Dated: November 17, 1997

18395

ERRATA SHEET

RECEIVED
NOV 17 1997
MAIL MANAGEMENT
STB

The following two paragraphs on pages 4 and 5 of the Verified Statement of Richard A. Johnson in this matter should read as follows:

Seniority Districts - NS maintains that applying the N&W agreement with its point seniority system will be more efficient than the current Conrail seniority system which encompasses nineteen separate geographic seniority districts. NS indicates that the seniority system commonly used in the industry is that of point seniority and that the seniority system on Conrail is unique.[6]

The Conrail seniority system reflects the complicated history of that carrier. Without describing that system in detail herein, it should be noted that employees originally hired by Conrail's predecessors have district seniority, and in addition they enjoy prior rights to jobs on the predecessor carrier lines on which they first established seniority. The prior right system was established because employees represented by BRC had to complete a four year apprenticeship program before establishing seniority, while TWU-represented carmen established seniority thirty days after date of hire. Imposing a point system on the pre-April 1, 1976, hires will cause great inequity with no apparent savings because of the resulting loss of prior right seniority.

---

[6]Deposition of R. Spenski, September 2, 1997, pp. 88-89.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1997, the Errata Sheet to the Verified Statement of Richard A. Johnson (TCU-9) submitted with the Transportation Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6) was served by first-class mail, postage prepaid, on all Parties of Record in the above-captioned matter and upon Administrative Law Judge Jacob Leventhal.

Mitchell Kraus

Mitchell M. Kraus
General Counsel
Transportation·Communications
International Union
3 Research Place
Rockville, MD 20850
(301) 948-4910

Dated: November 17, 1997

STB FD 33388 11-14-97 D 183905

183905

183905

SLOVER & LOFTUS
ATTORNEYS AT LAW
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CHRISTOPHER A. MILLS
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D

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November 14, 1997

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
ATTN: STB Finance Docket 33388
1925 K Street, N.W.
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find the original and twenty-five (25) copies of the Reply of The State of New York in Opposition to CSX's and NS' Motion to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions (NYS-14). In accordance with the Board's prior order, we have enclosed a Wordperfect 5.1 diskette containing this filing.

We also have included an extra copy of the Reply. Kindly indicate receipt and filing by time-stamping the copy and returning it with our messenger.

Sincerely,

Kelvin J. Dowd
An Attorney for
The State of New York

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KJD:cef
Enclosures

18390

NYS-14

BEFORE THE
SURFACE TRANSPORTATION BOARD

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	Finance Docket No. 33388

**REPLY OF
THE STATE OF NEW YORK
IN OPPOSITION TO CSX'S AND
NS' MOTION TO TREAT VARIOUS
RESPONSIVE APPLICATIONS AS COMMENTS,
PROTESTS OR REQUESTS FOR CONDITIONS**

On November 10, 1997, Applicants CSX and NS[1] filed a "Motion to Treat Various Responsive Applications As Comments, Protests or Requests for Conditions" (CSX/NS-148) ("Motion"). Among the targets of the Motion is the October 21, 1997 Joint Responsive Application of the State of New York and the New York City Economic Development Corporation (Finance Docket No. 33388 (Sub-No. 69)) (NYS-11/NYC-10).

In accordance with Decision Nos. 12 and 13 in this proceeding, the State of New York, acting by and through its Department of Transportation ("New York"), hereby replies in

[1] "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc. "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

opposition to the Motion. As set forth below, the Motion is an untimely, unmeritorious and transparent attempt to secure a procedural advantage by denying New York the right to close the evidentiary record on its own application for affirmative relief. It should be denied.

I

THE MOTION IS UNTIMELY

On August 22, 1997, in compliance with the governing procedural schedule, New York filed a Description of Anticipated Responsive Application (NYS-3). This pleading served as notice to CSX, NS and all other parties of New York's intent to submit a responsive application, and the specific relief that would be sought.[2] CSX and NS raised no objection.

Also on August 22, 1997, New York filed a Petition for Waiver of certain regulatory requirements imposed by 49 C.F.R. Part 1180, in connection with its responsive application. While CSX and NS opposed a similar petition filed by another party,[3] they were silent as to New York.

On September 11, 1997, the Board granted New York's Petition for Waiver. Noting that "NYS anticipates filing a responsive application seeking trackage rights on behalf of a

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[2]The trackage rights described in NYS-3 were in all meaningful respects identical to those formally requested in the Joint Responsive Application.

[3]See Applicants' Reply In Opposition to Canadian Pacific Parties' Request (CSX/NS-59), filed September 2, 1997.

third-party carrier,"[4] the Board found:

> The waiver requests respecting "applicant carriers" are reasonable and we will grant them as we have done in previous merger proceedings. We believe that provision of such information would be burdensome to petitioners [including NYS] and is not necessary for a proper evaluation of their responsive applications. Moreover, sufficient data for the primary applicants should be available in the primary application.
>
> If we approve the primary application and condition our approval thereof by granting any or all of the responsive applications to be filed by KGC, NYS and NYSEG, that approval will amount to a requirement that applicants allow a carrier designated by KGC, NYS, or NYSEG to conduct the authorized trackage rights operations.

Decision No. 29, at 3. Neither CSX nor NS raised any objection to or sought reconsideration of the agency's determinations.

On October 1, 1997, in compliance with Decision No. 29, New York submitted the Verified Statement of James A. Utermark, addressing New York's qualification for an exemption from the environmental reporting requirements of 49 C.F.R. Part 1105. Such a filing was only required of parties planning to submit responsive applications. Again, neither CSX nor NS objected to New York proceeding as a responsive applicant.

The subject Motion does not challenge New York's Joint Responsive Application based on the substantive merits of that Application, per se. Rather, CSX and NS complain that New York and the other parties targeted by the Motion "are not rail

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[4]Decision No. 29, at 2.

carriers and do not seek authority from the Board to act on their own behalf and, therefore, the conditions they request are not properly the subject of a responsive application." Motion, at 2. However, CSX and NS have known for nearly three (3) months that New York is not a rail carrier, and that it does not seek trackage rights on its own behalf. During that time, three (3) public filings by New York <u>and</u> a formal Board decision presented CSX and NS with the fact of New York's status as a responsible applicant. Time and again, CSX and NS remained silent, and allowed the proceedings to continue apace. New York respectfully submits that it is now too late for them to change course.

From its inception, this proceeding has been characterized by orderly expedition, with all parties operating under guidelines which, <u>inter alia</u>, require the timely assertion of claims and objections. <u>See</u>, <u>e.g.</u>, Decision No. 10, served June 27, 1997 at 7. Indeed, on two (2) occasions the Board has admonished Applicants for belated arguments that could and should have been raised earlier, and precluded their assertion. <u>See</u> Decision No. 32, served September 12, 1997 at 2; Decision No. 34, served September 18, 1997 at 2. In this instance, CSX and NS could have raised their challenge to New York's right to pursue a responsive application nearly three (3) months ago, well before New York's October 21 filing deadline. Not only did they fail to do so, they continued to maintain their silence in the face of three (3) New York filings and a Board decision that directly presented the issue. Wholly apart from the merits of the CSX-NS

Motion -- which as shown below are non-existent -- the pleading is inexcusably untimely and should be denied. Cf. Midwestern Rail Properties, Inc. -- Purchase (Portion) -- Chicago, Rock Island and Pacific Railroad Company, 366 ICC 915, 922 (1983).

II

THE MOTION IS WITHOUT LEGAL MERIT

The Board's regulations governing railroad control proceedings clearly define a responsive application as one seeking "affirmative relief either as a condition to or in lieu of the approval of the primary application," including requests for "trackage rights, purchases,... etc.". 49 C.F.R. Part 1180.3(h). Nothing in these rules restricts responsive applications for trackage rights to rail carriers, or to a party that "seeks authority for itself to act...." Motion, at 5 (emphasis in original).[5] Indeed, the ability of non-carrier parties such as New York to seek the prescription of trackage rights in favor of a nominee is well-established both within and without the rail merger/control context. See Finance Docket No. 32760, Union Pacific Corp., Et Al. Control and Merger -- Southern Pacific Rail Corp., Et Al., Decision No. 44, served August 6, 1996 at 232-233; Finance Docket No. 32549, Burlington Northern Inc., Et Al. -- Control and Merger -- Santa Fe Pacific Corp., Et Al., Decision No. 38, served August 23, 1995 at 26

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[5]In their Motion, CSX and NS claim that this limitation is "generally assumed." Motion at 5. However, they cite no authority for this assumption, and there is none.

n.34; City of Milwaukee v. Chicago & North Western Railway, 279 ICC 521, 526 (1950). See also United States v. New York Central Railroad, 272 U.S. 457 (1926). New York's Responsive Application falls squarely within these rules and precedents.

In their Motion, CSX and NS acknowledge that governing precedent supports New York's right to proceed as a responsive applicant. However, they assert that "confusion" arising from these precedents requires the Board to revisit and overrule them. Motion, at 3. According to the movants, allowing New York to pursue a responsive application would result in "administrative duplication and inefficiency" (Motion, at 7-8), and would be "unfair" to parties that elected to file comments. Id. at 8-10. Neither claim has any merit.

The movants' "inefficiency" argument is focused on the possibility that a "follow-up proceeding" might be necessary if the Board decides to grant New York's application, but cannot resolve operational or other potential issues until after the carrier that would exercise the requested trackage rights is identified. See Decision No. 29, supra. However, follow-up proceedings concerning a granted responsive application in a major railroad control case are hardly rare,[6] and the Board's earlier rulings confirming the rights of non-carrier responsive applicants were made with full awareness of the possibility.

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[6]See, e.g. Finance Docket No. 32760, supra, Decision No. 57, served November 20, 1996 at 7-8; Decision No. 47, served September 10, 1996 at 12-14; Finance Docket No.32549, supra, Decision No. 40, served September 21, 1995 at 2-10.

Moreover, the prospect that such proceedings might be needed after the Board's final decision[7] if CSX raises objections to New York's selected trackage rights operator, provides no basis to deprive New York of its right to file rebuttal evidence in support of its application before the Board's decision is made. Such a deprivation, of course, is the obvious motivation behind the Motion.

The movants' belated concern for "fairness" to other parties that chose to proceed through the comments medium likewise rings hollow.[8] Certainly since the BN-Santa Fe proceedings, prospective participants in railroad control cases have been on notice that a request for trackage rights promoted through comments does not carry a right to submit rebuttal evidence:

> [T]he absence of a provision in the procedural schedule allowing rebuttal filings by parties requesting conditions that are not in the form of responsive applications was not the result of Commission oversight.
>
> The relief responsive applicants seek is different from the relief that parties simply requesting conditions seek. Traditionally,

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[7]If any presumption is warranted, it is that follow-up filings will not be necessary. In granting New York's petition seeking waiver of many of the same data submission requirements to which CSX and NS now refer (Motion, at 8), the Board agreed that requiring New York to prepare and file such information "is not necessary for a proper evaluation of [its] responsive application[]." Decision No. 29, supra at 3.

[8]Notably, none of the unnamed commentors whose cause CSX and NS purport to champion have raised any objection to New York's status as a responsive applicant.

> applicants, whether they are primary or responsive applicants, have the right to close the evidentiary record on their case. Therefore, responsive applicants can answer arguments made in opposition to their application in rebuttal filings. Parties seeking conditions, on the other hand, come to the Commission as part of and in opposition to the primary application, and the primary applicants respond to those parties in their rebuttal in support of the primary application.

Finance Docket No. 32549, supra, Decision No. 16, served April 20, 1995 at 11.

With the regulatory landscape so plainly marked, no legitimate claim of unfairness can arise where one party complies with the more rigorous and costly regulatory requirements that attend responsive applications -- and secures a right of rebuttal -- while another knowingly elects the less burdensome and more flexible comments course, and thereby limits itself to a single evidentiary filing. See Finance Docket No. 32760, supra, Decision No. 31, served April 19, 1996 at 3 ("Parties... chose their means of presenting their arguments with knowledge of the restriction on rebuttal filings.").

Finally, CSX and NS assert that New York's concurrent request for confirmation that 49 U.S.C. §11321(a) would override any erstwhile limits on Metro-North's contractual rights that might impede implementation of New York's responsive relief, is outside the scope of a responsive application. Motion, at 10. New York's raising of the issue is entirely consistent with CSX's and NS' own treatment of the same issue in their Primary

Application. See Volume 1 at 91-92. Any objection on their part, therefore, is unfounded.

* * *

For all the reasons set forth herein, CSX's and NS' Motion to Treat Various Responsive Applications As Comments, Protests or Requests for Conditions should be denied.

Respectfully submitted,

THE STATE OF NEW YORK BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION

By: Dennis C. Vacco
Attorney General of the State of New York
Stephen D. Houck
Assistant Attorney General
George R. Mesires
Assistant Attorney General
120 Broadway, Suite 2601
New York, New York 10271

William L. Slover
Kelvin J. Dowd
Jean M. Cunningham
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys and Practitioners

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, NW.
Washington, D.C. 20036

Dated: November 14, 1997

CERTIFICATE OF SERVICE

I certify that I have this 14th day of November, 1997, served copies of the foregoing Reply of the State of New York in Opposition to CSX's and NS' Motion to Treat Various Responsive Applications as Comments, Protests or Requests for Conditions (NYS-14) upon all parties listed on the Restricted Service List in this proceeding by telefax and upon all other parties of record in this proceeding by first class United States mail, postage prepaid.

Kelvin J. Dowd

STB FD 33388 11-13-97 D 183909

183989

Eight State Rail Preservation Group

J. WALDOCK 107 GRANT COURT, OLEAN, NY 14760 (716) 372-0854

RECEIVED
NOV 13 1997
MAIL MANAGEMENT STB

FAX TO: Surface Transportation Board 202-565-9016 -9016-
DATE: October 21, 1997
FROM: Jeanne Waldock, President and Spokesperson Eight StatesRPG
PAGES: 3

Jeanne Waldock

Ms. Linda J. Morgan, Chairman, Dennis Watson, or Nancy Beiter, Cong. Affairs
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

COMMENTS
Re: Finance Docket No. 33388

D

The largest increases in train traffic on the east-west, northeastern corridors will be occuring in the States of Ohio, NY, and PA, with bottlenecks in Cleveland, Buffalo and Pittsburgh. Therefore, may we suggest that Conrail's former Erie-Lackawanna be kept open at least from Akron, OH, Meadville, PA, Jamestown, N.Y., to the Port of New York/New Jersey to lessen congestion, and help provide better service and less complaints to you from industry and businesses.

Besides saving industries that rails serve, jobs saved, and headaches for you, if another middle, east-west railroad is preserved for competition, you will preserve railroads rather than have doubles and triples ruin our roads. American Assn. of State Highway Officials gave evidence that the primary cause of pavement damage increased exponentially (as a 4th power) as axle weight was increased. The heaviest trucks with most weight on their axles cost us most road damage.

1. Railroads steel wheels on steels rails move with at least 4-times less friction than truck/car tires on cement or mcadam. Perhaps, as much as 10-times less. Less friction for locomotion needs less fuel (oil) therefore, railroads use less fuel. Oak Ridge says highways consume 72% of U.S.energy, railroads less than 20%.

2. U.S. was. responsible for more than 1/4 of world's petroleum consumption in 1990. Much U.S. energy-dependency comes from war-prone Persian Gulf. (OR)

3. Greater greenhouse gas emissions from cars/trucks have been claimed to change our climate by 2500 climate scientists (President Clinton NYT 6-29-97)

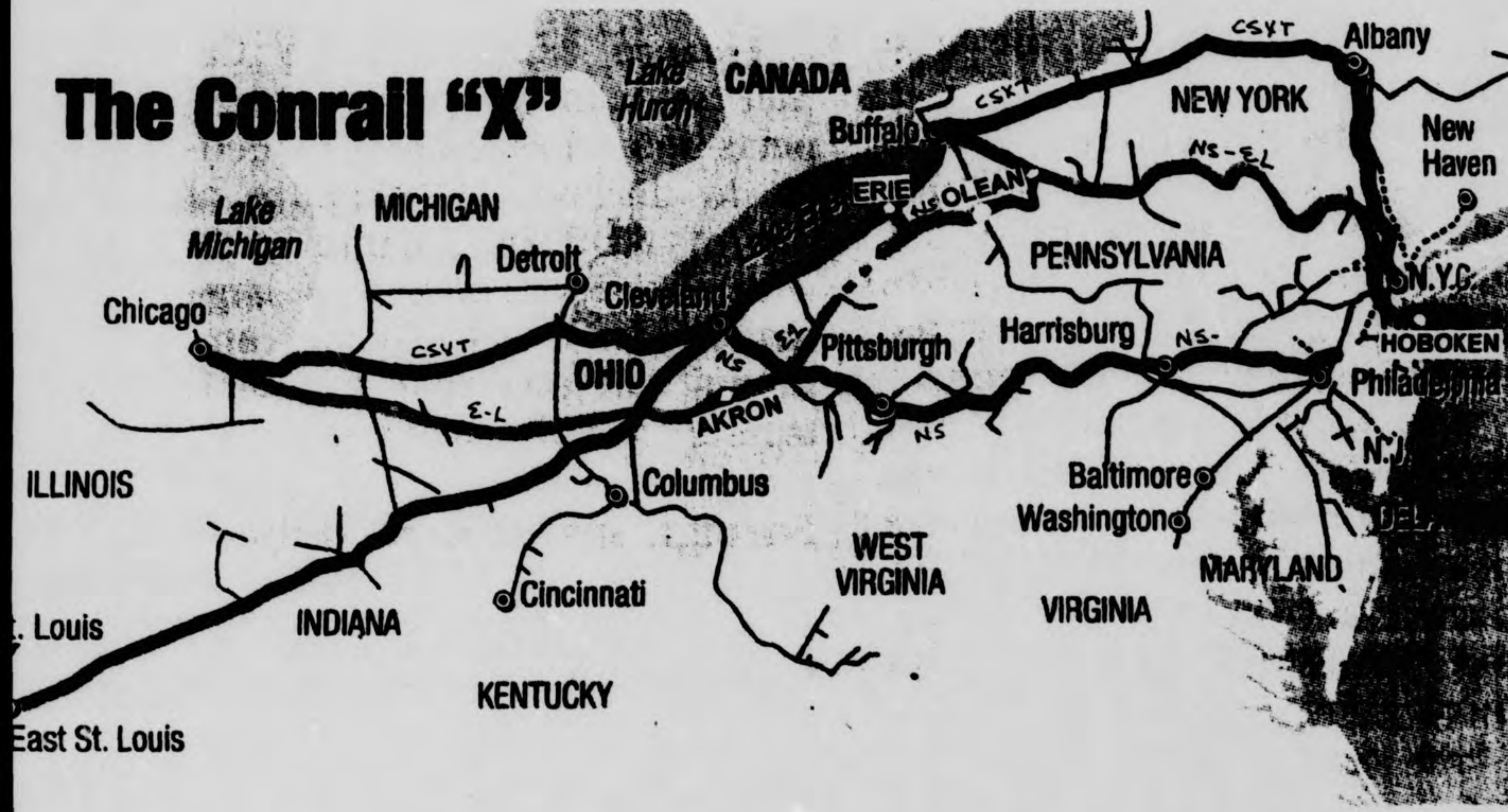
4. The ECONOMIST, 5-10-97, in its `Coming Car Crash'states "Over-capacity (cars/trucks) will have risen from 18m vehicles to 22m units---equivalent to 80 of the world's 630 car assembly factories standing idle by year 2000."

Ms. Morgan, for these and many more reasons, it would seem that not just two, but three northeast, east-west through-railroads will be needed in the future for competition, for our country's less dependence on Persian Gulf oil, and for our great need for better competitive modes of transportation . We do appreciate your consideration for preserving Conrail's former Erie-Lackawanna competition.

(25 copies plus original will be sent overnight to arrive the 22nd)

ENTERED
Office of the Secretary
NOV 17 1997
5 Part of Public Record

The Conrail "X"



Eight State Rail Preservation Group

J. WALDOCK 107 GRANT COURT, OLEAN, NY 14760 (716) 372-0854-FAX-OR-PH-

Busy cities

These cities are on rail routes that would experience some of the largest increases in train traffic if Conrail breakup plan devised by Norfolk Southern Corp. and CSX Corp. passes regulatory muster.

Towns	Increase per day
Deshler	+40 trains
Fostoria	+31 trains
Bucyrus	+16 trains
Vermilion	+21 trains
Berea	+40 trains

TOM LYNN/ The Journal of Commerce

Eight State Rail Preservation Group

J. WALDOCK 107 GRANT COURT, OLEAN, NY 14760 (716) 372-0854

FAX TO: Surface Transportation Board 202-565-1592 or 202-565-9003
DATE: October 21, 1997 PAGES 3 Jeanne Waldock
FROM: Jeanne Waldock, President and Spokesperson Eight States RPG

Ms. Linda J. Morgan, Chairman, Dennis Watson, or Nancy Beiter, Cong. Affairs
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

COMMENTS
Re: Finance Docket No. 33388

The largest increases in train traffic on the east-west, northeastern corridors will be occurring in the States of Ohio, NY, and PA, with bottlenecks in Cleveland, Buffalo and Pittsburgh. Therefore, may we suggest that Conrail's former Erie-Lackawanna be kept open at least from Akron, OH, Meadville, PA, Jamestown, N.Y., to the Port of New York/New Jersey.to lessen congestion, and help provide better service and less complaints to you from industry and businesses.

Besides saving industries that rails serve, save jobs, and headaches for you, if another middle, east-west railroad is preserved for competition, you will preserve railroads rather than have doubles and triples ruin our roads. American Assn. of State Highway Officials gave evidence that the primary cause of pavement damage increased exponentially (as a 4th power) as axle weight was increased. The heaviest trucks with most weight on their axles cost us most road damage.

1. Railroads steel wheels on steels rails move with at least 4-times less friction than truck/car tires on cement or mcadam. Perhaps, as much as 10-times less. Less friction for locomotion needs less fuel(oil), therefore, railroads use less fuel Oak Ridge says highways consume 72% of U.S.energy, railroads less than 20%.

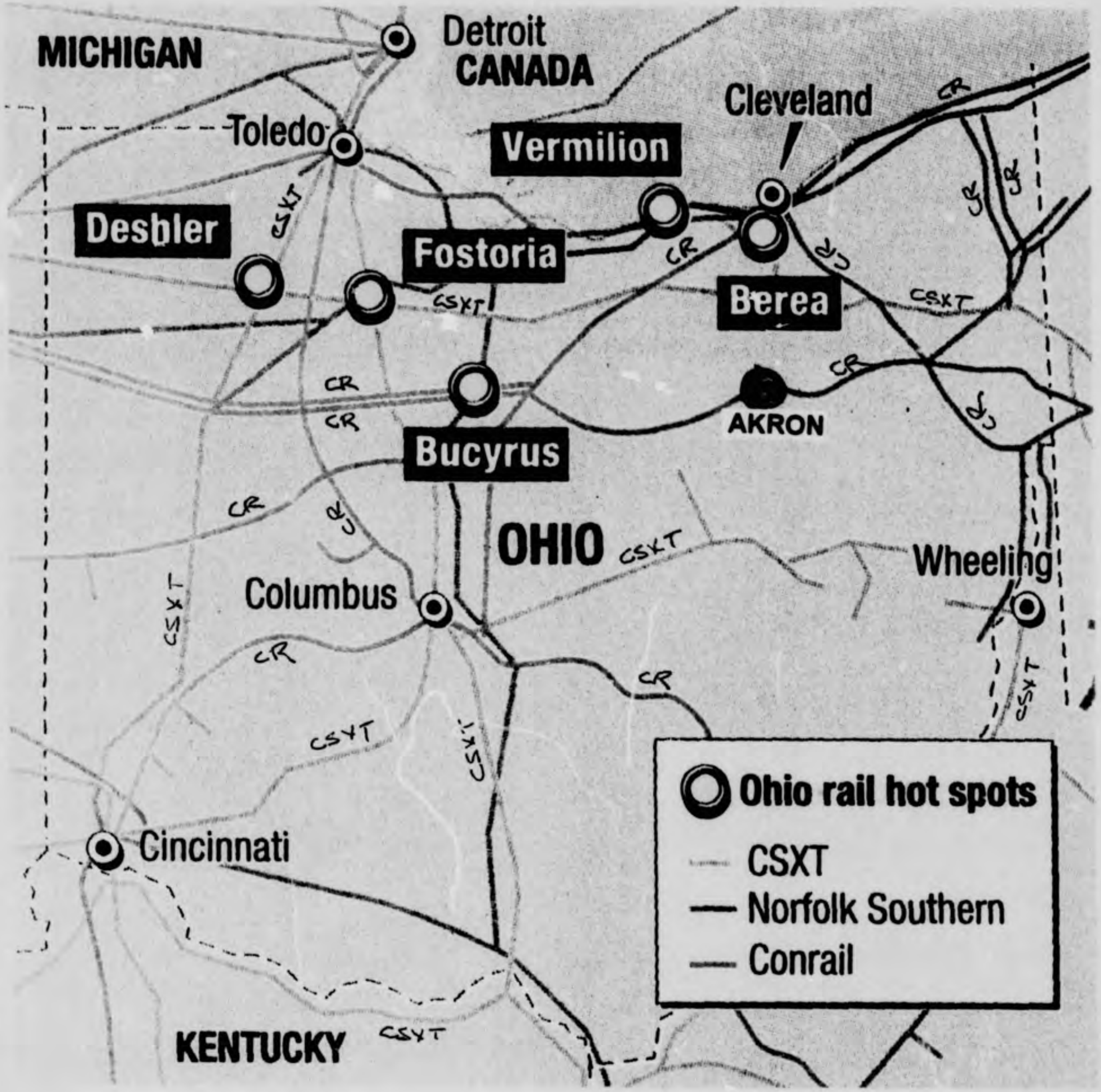
2. U.S. was. responsible for more than 1/4 of world's petroleum consumption in 1990. Much U.S. energy-dependency comes from war-prone Persian Gulf. (OR)

3. Greater greenhouse gas emissions from cars/trucks have been claimed to change our climate by 2500 climate scientists (President Clinton NYT 6-29-97)

4. The ECONOMIST, 5-10-97, in its `Coming Car Crash'states, "Over-capacity (cars/trucks) will have risen from 18m vehicles to 22m units---equivalent to 80 of the world's 630 car assembly factories standing idle by year 2000."

Ms. Morgan, for these and many more reasons, it would seem that not just two, but three northeast, east-west through railroads will be needed in the future for competition, for our country's less dependence on Persian Gulf oil, and for our great need for better competitive modes of transportation . We do appreciate your consideration for preserving Conrail's former Erie-Lackawanna competition.

(25 copies plus original have been sent overnight to arrive the 22nd)

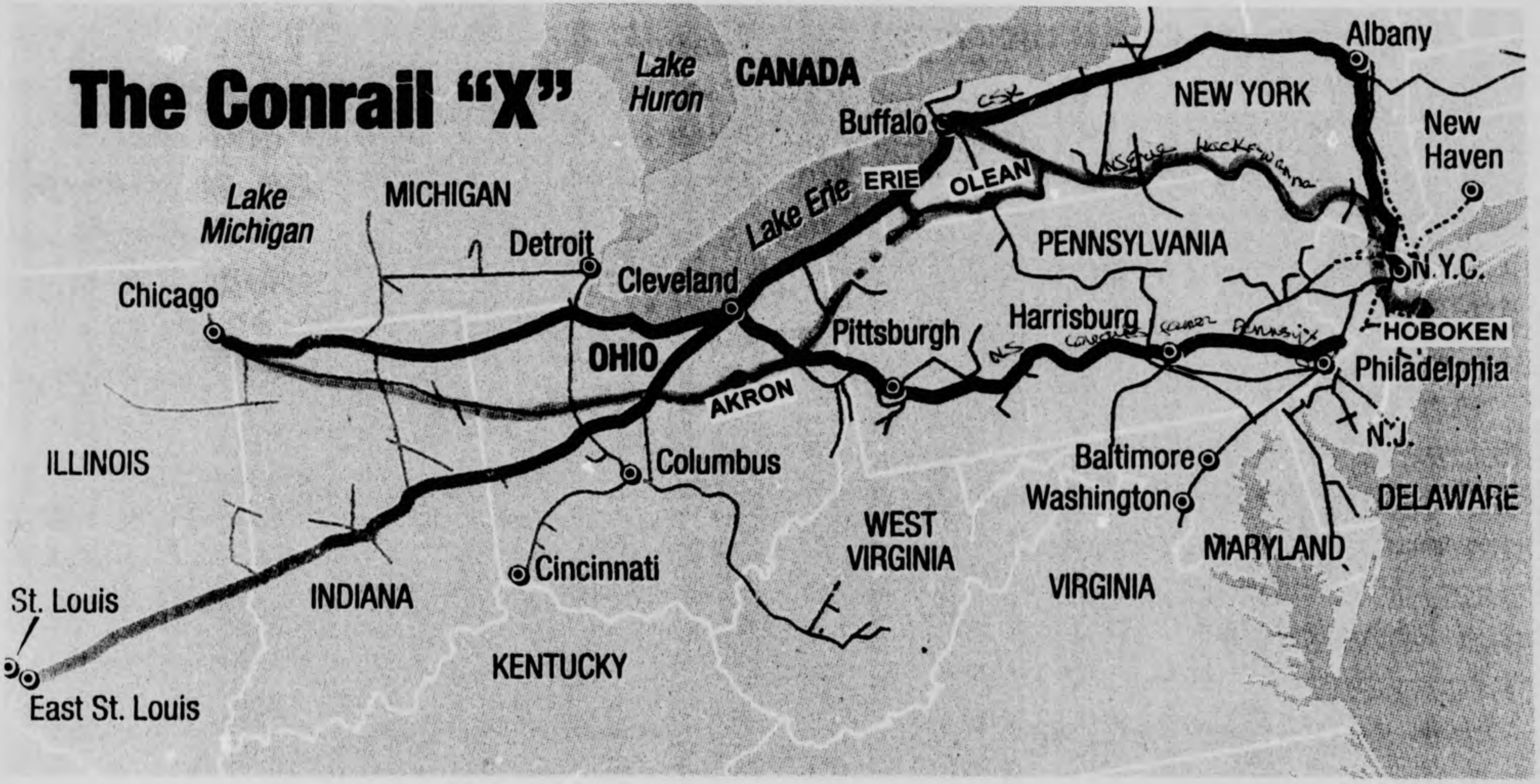


Busy cities

These cities are on rail routes that would experience some of the largest increases in train traffic if Conrail breakup plan devised by Norfolk Southern Corp. and CSX Corp. passes regulatory muster.

Towns	Increase per day
Deshler	+40 trains
Fostoria	+31 trains
Bucyrus	+16 trains
Vermilion	+21 trains
Berea	+40 trains

TOM LYNN/ The Journal of Commerce


The Conrail "X"
Lake Huron
CANADA
Lake Michigan
MICHIGAN
Detroit
Chicago
Cleveland
Lake Erie
ERIE
Buffalo
OLEAN
Albany
NEW YORK
New Haven
PENNSYLVANIA
N.Y.C.
HOBOKEN
Harrisburg
Pittsburgh
Philadelphia
OHIO
AKRON
ILLINOIS
Columbus
N.J.
Baltimore
Washington
DELAWARE
WEST VIRGINIA
MARYLAND
INDIANA
Cincinnati
VIRGINIA
St. Louis
KENTUCKY
East St. Louis

CONRAIL

Attached to the NYS-DOT – Conrail 1982 Southern Tier Agreement

At the same time as this letter - application for abandonment of the S.T. extension was at ICC. JW

L. STANLEY CRANE
CHAIRMAN AND
CHIEF EXECUTIVE
OFFICER

October 12, 1982

Mr. W.C. Hennessey
Commissioner
NYS Department of Transportation
1220 Washington Avenue
Albany, NY 12232

Dear Mr. Hennessey:

In response to your question about the status of the main line west of the New York State border, in the territory known as the Southern Tier Extension in our agreement, I would like to offer the following. First of all, it is our goal to leave a potentially operative mainline railroad between the western border of New York State and Akron for a potential acquirer under this agreement. The following is a description of this territory and what we envision for it.

1. Between the New York State line and Meadville, Pennsylvania, there now is a double track signalled railroad, only one track of which is being used. We are planning to leave in place, but not maintain, the second track and signals.

2. Between Meadville and Shenango the current single track TCS system would remain unchanged.

3. Between Shenango and Pymatuning the current two track automatic block signal territory may be converted to a single track system, either TCS or APB.

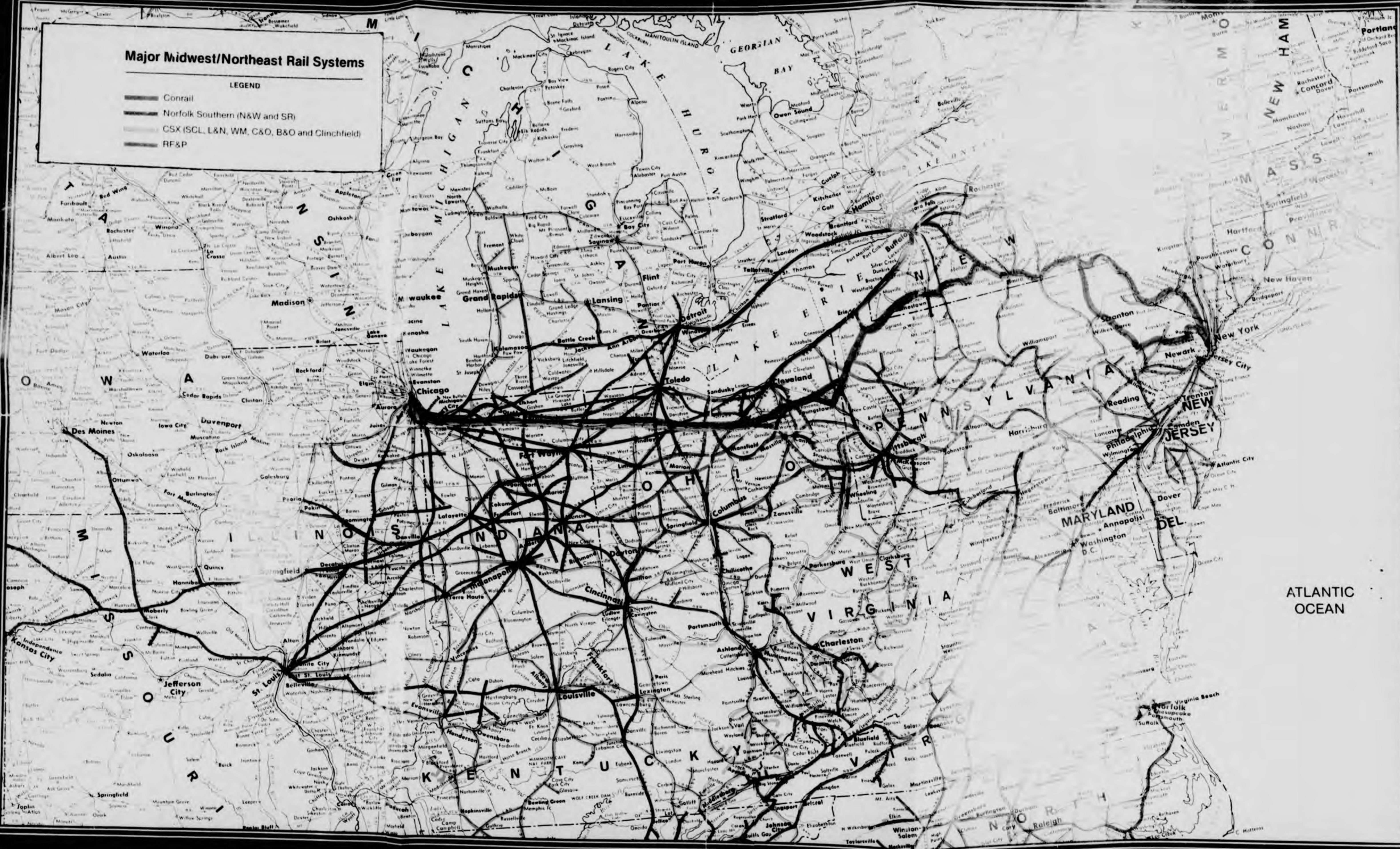
4. West of Pymatuning, toward Akron, the signals are in disrepair on this two-track system. We now have a single track system, under MBS rules, and will retain segments of the second track at Pymatuning, Johnsons (near Latimer), and Leavittsburg for future use as passing sidings. Such a system should be fully capable of handling six through freight trains in each direction daily. Generally, in selecting the track to be removed

in double track territory, Conrail will retain the track over which Conrail currently operates, which is usually the track with the higher speed capability or FRA track standard.

Sincerely,

L. Stanley Crane

L. Stanley Crane


Major Midwest/Northeast Rail Systems
LEGEND
Conrail
Norfolk Southern (N&W and SR)
CSX (SCL, L&N, WM, C&O, B&O and Clinchfield)
RF&P
ATLANTIC OCEAN
PENNSYLVANIA
OHIO
INDIANA
ILLINOIS
KENTUCKY
WEST VIRGINIA
MARYLAND
DEL
NEW JERSEY
LAKE ERIE
LAKE MICHIGAN
LAKE HURON
GEORGIAN BAY
Chicago
Detroit
Cleveland
Pittsburgh
New York
Philadelphia
Washington D.C.
St. Louis
Cincinnati
Louisville
Indianapolis
Columbus
Toledo
Buffalo
Baltimore
Norfolk

ATLANTIC OCEAN
LAKE MICHIGAN
LAKE HURON
GEORGIAN BAY
LAKE ERIE
LAKE ONTARIO
MANITOULIN ISLAND
LONG ISLAND
MICHIGAN
INDIANA
OHIO
KENTUCKY
PENNSYLVANIA
NEW YORK
VERMONT
NEW HAMPSHIRE
MASS.
CONN.
R.I.
NEW JERSEY
MARYLAND
DEL.
VIRGINIA
NORTH
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Grand Rapids
Muskegon
Lansing
Flint
Saginaw
Bay City
Pontiac
Detroit
Windsor
Port Huron
Ann Arbor
Battle Creek
Kalamazoo
Jackson
Toledo
Sandusky
Cleveland
Fort Wayne
Lafayette
Kokomo
Marion
Muncie
Anderson
Indianapolis
Richmond
Dayton
Springfield
Columbus
Mansfield
Findlay
Lima
Chillicothe
Cincinnati
Covington
Newport
Portsmouth
Ashland
Huntington
Charleston
Louisville
Frankfort
Lexington
Evansville
Henderson
Owensboro
Bowling Green
Hopkinsville
Middlesboro
Bristol
Kingsport
Johnson City
Erie
Buffalo
Rochester
Syracuse
Utica
Rome
Watertown
Kingston
Elmira
Ithaca
Binghamton
Schenectady
Albany
Troy
Poughkeepsie
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Scranton
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Williamsport
Altoona
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Harrisburg
Reading
Lancaster
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Nashua
Concord
Haverhill
Lowell
Lawrence
Salem
Lynn
Fall River
New Bedford
Newport
Rutland
Barre

STB FD 33388 11-13-97 D 183871

183871

D

LEBOEUF, LAMB, GREENE & MACRAE

L.L.P.

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TELEX 440274 FACSIMILE (202) 986-8102

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PORTLAND, OR
SALT LAKE CITY
SAN FRANCISCO
BRUSSELS
MOSCOW
ALMATY
LONDON
(A LONDON-BASED MULTINATIONAL PARTNERSHIP)

WRITER'S DIRECT DIAL:
(202) 986-8050
E-Mail Address: mfmcbrid@llgm.com

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NOV 13 1997
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November 13, 1997

VIA HAND DELIVERY

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

Re: CSX Corporation/Norfolk Southern Corp. -- Control and Leases/Agreement -- Conrail; Finance Docket No. 33388

Dear Secretary Williams:

It has been brought to my attention that there is a minor transcription error in Exhibit 2 (the Verified Statement of Mr. Thomas D. Crowley) to the "Joint Comments, Evidence, and Request for Conditions of Atlantic City Electric Company and Indianapolis Power & Light Company"(ACE-, et al.-18). Please find enclosed an original and 25 copies of an erratum documenting the correction, along with a diskette containing the document in WordPerfect 5.1 format.

We apologize for any confusion.

ENTERED
Office of the Secretary
NOV 14 1997
5 Part of Public Record

Very truly yours,

Michael F. McBride

Michael F. McBride

Attorney for Atlantic City Electric Company and Indianapolis Power & Light Company

Enclosures

cc: All Parties on Service List

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
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

ERRATUM TO VERIFIED STATEMENT OF THOMAS D. CROWLEY ON BEHALF OF ATLANTIC CITY ELECTRIC COMPANY AND INDIANAPOLIS POWER & LIGHT COMPANY (ACE, ET AL.-18, EXHIBIT 2)

Atlantic City Electric Company and Indianapolis Power & Light Company ("ACE, et al.") hereby submit this Erratum to the Verified Statement of Thomas D. Crowley, Exhibit 2 to the "Joint Comments, Evidence, and Request for Conditions of Atlantic City Electric Company and Indianapolis Power & Light Company" (ACE, et al.-18). ACE, et al. submit the following erratum:

(1) In footnote 17 on page 25 of the Public Version of ACE, et al. Exhibit 2 (and footnote 22 of the Highly Confidential version of ACE, et al. Exhibit 2), strike "CSX October 16, 1996 tender offer of $71 per share multiplied by 86.475 million shares" and replace with "CSX October 16, 1996 tender offer

documenting the October 14, 1996 closing share value of $71 per share multiplied by 86.475 million shares."

Respectfully submitted,

Michael F. McBride

Michael F. McBride
Bruce W. Neely
Brenda Durham
Joseph H. Fagan
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009-5728

Attorneys for Atlantic City Electric Company and Indianapolis Power & Light Company

November 13, 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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 13th day of November, 1997, a copy of the foregoing "Erratum to Verified Statement of Thomas D. Crowley on Behalf of Atlantic City Electric Company and Indianapolis Power & Light Company(ACE, et al.-18, Exhibit 2)," by first-class mail, postage prepaid, upon all parties of record and by facsimile upon each of the following persons:

John V. Edwards, Esq.
Patricia Bruce, Esq.
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, DC 20006-3939
VIA FACSIMILE

Drew A. Harker, Esq.
Susan Cassidy, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004-1202
VIA FACSIMILE

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

Gerald P. Norton, Esq.
Harkins Cunningham
1300 19th Street, N.W.
Suite 600
Washington, D.C. 20036
VIA FACSIMILE

Brenda Durham

Brenda Durham

STB FD 33388 11-13-97 D 183872

ORIGINAL

183872

LAW OFFICES

MCFARLAND & HERMAN

20 NORTH WACKER DRIVE-SUITE 1330

CHICAGO, ILLINOIS 60606-2902

TELEPHONE (312) 236-0204

FAX (312) 201-9695

mchermn@aol.com

THOMAS F. MCFARLAND, JR.
tmcfarlnd@aol.com

STEPHEN C. HERMAN
schrmn@aol.com

November 7, 1997

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D

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

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

Dear Mr. Williams:

I am hereby serving on all parties of record copies of comments dated October 21, 1997, in behalf of Eight State Rail Preservation Group. Those comments were previously filed with the Board and were served on counsel for applicants. However, the Group's President neglected to send copies of the comments to all parties at the time.

By virtue of serving these comments on all parties, Eight State Rail Preservation Group intends to clarify its status as an active party of record, represented by undersigned counsel.

ENTERED
Office of the Secretary
NOV 14 1997
5 Part of Public Record

Very truly yours,

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.
Attorney for Eight State Rail Preservation Group

TMcF:kl:enc:d:\wp7.0\592\ltrstb1

cc: Mrs. Jeanne Waldock

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 1997, I served a copy of Comments of Eight State Rail Preservation Group, dated October 21, 1997, on all parties of record by first-class mail, postage prepaid.

Thomas F. McFarland Jr.

Thomas F. McFarland, Jr.

STB FD 33388 11-10-97 D 183794

183794

JONES, DAY, REAVIS & POGUE

NLS-3

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

TELEPHONE: 202-879-3939
TELEX: DOMESTIC 892410
TELEX: INTERNATIONAL 64363
CABLE: ATTORNEYS WASHINGTON
FACSIMILE: 202-737-2832
WRITER'S DIRECT NUMBER:

(202) 879-7629

November 10, 1997

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D

VIA HAND DELIVERY

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

Re: STB Finance Docket No. 33388

Dear Mr. Williams:

National Lime & Stone Company (National) hereby submits an errata notice correcting the Verified Statement of Ronald W. Kruse. Mr. Kruse's Verified Statement was submitted to the Board as an attachment to National's protest filed in this proceeding on October 21, 1997. On page 3, line 1 of Mr. Kruse's Verified Statement, the phrase "over 3,000,000 tons" should be changed to "approaching 3,000,000 tons."

If you have any questions regarding this matter, please do not hesitate to call me.

ENTERED
Office of the Secretary
NOV 10 1997
3 Part of Public Record

Very truly yours,

K. Driver

Kenneth B. Driver

cc: Official Service List
Thomas Palmer, Esq.
Clark Evans Downs, Esq.

WAGREG01: 184632_1.WPD

STB FD 33388 11-7-97 D 183763

ENRS-9

183763

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

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Office of the Secretary
NOV 07 1997
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November 7, 1997

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Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control and Operating Leases/Agreements—Conrail, Inc., et al.

Dear Secretary Williams:

Enclosed please find an original and 25 copies of a Supplemental Errata to the Comments, Evidence and Request for Conditions filed by Erie-Niagara Rail Steering Committee on October 21, 1997, in the above-referenced proceeding. A copy of the Supplemental Errata is enclosed on a 3.5-inch diskette in WordPerfect 6.0 format.

Verified Statement of Gerald W. Fauth III

At page 17: In line 3 of Table 2, "28-126-15" should read "28-128-15."

At page 19: In line 5 of the second full paragraph, "STCC-126-15" should read "STCC 28-128-15."

At page 19: In line 3 of the third full paragraph, "$22,475,240" should read "$21,972,440."

At page 20: In line 1 of Table 3, "$22,475,240" should read "$21,972,440."

At page 20: In line 3 of Table 3, "$7,382,240" should read "$7,885,040."

At page 22: In line 6 of Table 5, "$5,967,000" should read $5,976,400."

At page 22: In line 7 of Table 5, '$5,082,309" should read $5,130,709."

At page 22: In line 10 of Table 5, "$4,462,720" should read "$4,947,160."

At page 22: In line 11 of Table 5, "$186,833,744" should read "$187,375,984."

At page 22: In line 12 of Table 5, "72.95% should read "73.34%."

Respectfully submitted,

Karyn A. Booth

Karyn A. Booth
Attorney for
Erie-Niagara Rail Steering Committee

cc: Highly Confidential Restricted Service List
4898-020

STB FD 33388 11-5-97 D 183733

183733

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

October 21, 1997

D

The Honorable Vernon A. Williams
Office of the Secretary
Case Control Branch
Attn: STB Docket No. 33388
U.S. Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 33388 -- Concurrence of the North Jersey Transportation Planning Authority with the State of New Jersey, New Jersey Department of Transportation and New Jersey Transit in a Joint Petition Pertaining to Finance Docket No. 33388, as Initiated by CSX Corporation and CSX Transportation, Inc. and Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Secretary Williams:

Attached please find a copy of a Resolution passed on October 14, 1997 by the Board of Trustees of the North Jersey Transportation Planning Authority (NJTPA), the Metropolitan Planning Organization for the northern 13 counties of New Jersey pertaining to issues to be reviewed by the U.S. Surface Transportation Board under STB Finance Docket No. 33388.

The Resolution by the NJTPA Board of Trustees fully endorses and supports the filings and petitions submitted to the STB under Finance Docket 33388 by the State of New Jersey and its subsidiaries – the New Jersey Department of Transportation and NJ Transit.

Thank you for your consideration of all issues submitted by the State of New Jersey and its subsidiaries.

Sincerely,

J. William Van Dyke

J. William Van Dyke
Chairman, NJTPA

C: NJTPA Board of Trustees

RESOLUTION # A-170: APPROVAL TO ENDORSE THE STATE OF NEW JERSEY'S NEGOTIATIONS WITH CSX AND NORFOLK SOUTHERN RAILROADS REGARDING THE LIST OF NJTPA REGIONAL ISSUES RELATED TO THE CONRAIL MERGER/ACQUISITON AND THE STATE'S FILINGS RELATED TO THESE MATTERS WITH THE U.S. DEPARTMENT OF TRANSPORTATION SURFACE TRANSPORTATION BOARD ON FINANCE DOCKET 33388

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

WHEREAS, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) calls for greater emphasis by MPOs in economic development and intermodal and freight transportation as a part of the metropolitan planning process; and

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

WHEREAS, on July 8, 1997 the NJTPA Board of Trustees directed its Chairman to forward the necessary correspondence to the United States Surface Transportation Board in order to activate its status as a Party-of-Record regarding the proposed Conrail merger/acquisition; and

WHEREAS, the NJTPA, working in partnership with the New Jersey Department of Transportation, has produced a comprehensive report (*Conrail-CSX-Norfolk Southern Merger Report*) on the impacts of the proposed Conrail merger/acquisition on the State of New Jersey highlighting the importance of freight railroads to the economic development of the State and its various counties; and

WHEREAS, a meeting was held on July 28, 1997 between the leadership of the state's three MPOs, NJDOT and New Jersey Transit at which time Commissioner Haley asked the MPOs to identify and forward to him those regional issues raised by the Conrail merger/acquisition; and

WHEREAS, the NJTPA conducted a thorough survey of its member agencies to identify regional issues related to the restructuring of the state's rail systems following the Conrail merger/acquisition; and

WHEREAS, the list of regional issues was endorsed by the NJTPA Board of Trustees at its September 22, 1997 meeting and was forwarded to NJDOT Commissioner Haley for purposes of negotiations with NS Corp. and CSX Corp; and

WHEREAS, the Commissioner of NJDOT has written to the Chairman of the NJTPA outlining a list of issues that have been included and are being addressed in the State's negotiations which includes all of the key issues raised by the NJTPA that fall under the jurisdiction of the STB, and also satisfactorily addresses those issues not within the jurisdiction; and

WHEREAS, STB jurisdictional issues that are not resolved through negotiation are being included in a petition by the State to the STB for review,

NOW, THEREFORE, BE IT RESOLVED that the NJTPA Board of Trustees hereby endorses the State of New Jersey's negotiations with CSX and Norfolk Southern and further endorses issues that are forwarded in its filing to the United States Department of Transportation's Surface Transportation Board Finance Docket No. 33388.

BE IT FURTHER RESOLVED that copies of this resolution and the accompanying document be forwarded to 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 14th day of October 1997.

Certification

I hereby certify the above is a true copy of a resolution Adopted by the North Jersey Transportation Planning Authority at its regularly scheduled meeting held on October 14, 1997.

Joel S. Weiner
Executive Director, NJTPA

One Newark Center, 17th floor, Newark, NJ 07102
(973) 639-8400; fax (973) 639-1953

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

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October 28, 1997

Honorable 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 certify that I, as Chairman of the North Jersey Transportation Planning Authority (NJTPA) and acting on behalf of the Board of Trustees of the NJTPA as a Party of Record before the U.S. Surface Transportation Board Finance Docket No. 33388, have sent copies of a resolution endorsing filings put forward before the STB by the State of New Jersey, with an accompanying cover letter to all other Parties of Record in this matter.

The original Resolution and its cover letter were sent to the U.S. Surface Transportation Board on October 21, 1997 in compliance with the STB's deadline for filings in this matter. Copies will have been sent to other Parties of Record by First Class Mail, as of October 29, 1997.

Sincerely,

J. William Van Dyke

J. William Van Dyke
Chairman

STB FD 33388 11-3-97 D 183678

183678

AKSC-8

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

ERRATA TO

**COMMENTS, EVIDENCE, AND
REQUEST FOR CONDITIONS AND OTHER RELIEF**

submitted on behalf of

AK STEEL CORPORATION

Frederic L. Wood
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for AK Steel Corporation

November 3, 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

ERRATA TO

**COMMENTS, EVIDENCE, AND
REQUEST FOR CONDITIONS AND OTHER RELIEF**

submitted on behalf of

AK STEEL CORPORATION

AK Steel Corporation ("AK Steel") hereby submits this Errata to the Comments, Evidence, and Request for Conditions and Other Relief submitted on behalf of AK Steel,[1] filed on October 21, 1997 in the above-captioned proceeding. AK Steel submits the following errata:

(1) On page 5 of the Comments, in the only paragraph on the page, and in the last sentence of footnote 7, all of the references to "Hart Dep. Ex. 14" should be changed to "Hart Dep. Ex. 13."

[1] The Comments were submitted in two versions: one (AKSC-6) filed under seal with confidential and highly confidential material included, and the other (AKSC-7) filed with the confidential and highly confidential material redacted for filing in the public record. The errata all relate to public material, so only one version of this pleading is being submitted.

(2) On page 9 of the Comments, in the third paragraph, Lines 3-4, strike the phrase "to be transferred".

(3) On page 12 of the Comments, first paragraph, line 2 change "if" to "of".

(4) On page 13, the name under the signature line in the certificate of service should be changed from "Aimee L. DePew" to "Frederic L. Wood."

Respectfully submitted,

Frederic L. Wood

Frederic L. Wood
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

Attorneys for AK Steel Corporation

November 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ERRATA TO COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS AND OTHER RELIEF OF AK Steel Corporation has been served by first class mail, postage prepaid, on all parties of record in this proceeding this 3d day of November, 1997.

Aimee L. DePew

Aimee L. DePew

STB FD 33388 11-3-97 D 183679

183679

ENRS-8

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
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OFFICE: (202) 371-9500

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November 3, 1997

D

Via Hand Delivery
Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al.—Control and Operating Leases/Agreements—Conrail, Inc., et al.

Dear Secretary Williams:

Enclosed please find an original and twenty-five (25) copies of an Errata to the Comments, Evidence and Request for Conditions filed by Erie-Niagara Rail Steering Committee on October 21, 1997, in the above referenced proceeding. A copy of this Errata is also enclosed on a 3.5-inch diskette in WordPerfect 6.0 format.

Comments and Request for Conditions

At page 12: In the last line of the first full paragraph, "$156 per cae" should read "$156 per car."

At page 17: In line 12 of the first full paragraph, "unusually" should read "usually."

At page 19: In line 10 of the first full paragraph, "proposal be subject to . . ." should read "proposal would be subject to . . ."

At page 29: In line 5 of the first full paragraph, "would have be determined . . ." should read "would have to be determined . . ."

At page 41: In lines 13 and 14 of the first full paragraph, "North Jersey/Philadelphia, and South Jersey . . ." should read "South Jersey/Philadelphia, and North Jersey . . ."

Respectfully submitted,

Karyn A. Booth

John K. Maser III
Frederic L. Wood
Karyn A. Booth

Attorneys for
Erie-Niagara Rail Steering Committee

cc: All Parties of Record

4898-020

STB FD 33388 11-3-97 D 183680

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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

D

— CONTROL AND OPERATING LEASES/AGREEMENTS —

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

ERRATA TO

COMMENTS AND REQUEST FOR CONDITIONS

submitted on behalf of

INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

ENTERED
Office of the Secretary
NOV - 4 1997
5 Part of Public Record

John K. Maser III
Jeffrey O. Moreno
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Attorneys for Institute of Scrap Recycling Industries, Inc.

November 3, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
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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

ERRATA TO

COMMENTS AND
REQUEST FOR CONDITIONS

submitted on behalf of

INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.

The Institute of Scrap Recycling Industries, Inc. ("ISRI") hereby submits this Errata to the "Comments and Request for Conditions submitted on behalf of Institute of Scrap Recycling Industries, Inc." (ISRI-6), filed on October 21, 1997 in the above-captioned proceeding. ISRI submits the following errata:

(1) On page 17 of the Comments, Lines 25-26, strike "Two of Royal Green's largest customer destinations are the NorthStar steel mills located in Youngstown and Canton, Ohio." and replace with "Two of Royal Green's customer destinations are in Youngstown and Canton, Ohio."

(2) On page 3 of the Verified Statement of Jonathan Simon, Lines 5-7, strike "Compounding this injury is the fact that Royal Green's competitors in these shared asset areas will have single-line hauls to Royal Green's two largest rail customers: NorthStar's Youngstown and Canton, Ohio mills." and replace with "Compounding this injury is the fact that Royal Green's competitors in these shared asset areas will have single-line hauls to two of Royal Green's customers in Youngstown and Canton, Ohio."

(3) On page 4 of the Verified Statement of Jonathan Simon, Lines 6-7. Strike "We own our own," and replace with "In addition, we operate a." The sentence should read as follows: "In addition, we operate a fleet of 72 rail cars, which we use in conjunction with Conrail cars, to transport scrap."

Respectfully submitted,

John K. Maser III
Jeffrey O. Moreno
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Attorneys for Institute of Scrap Recycling Industries, Inc.

November 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ERRATA TO COMMENTS AND REQUEST FOR CONDITIONS OF INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC. has been served by first class mail, postage prepaid, on all parties of record in this proceeding this 3rd day of November, 1997.

Aimee L. DePew

Aimee L. DePew

183449

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October 15, 1997

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423

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

Comments and Requests for Conditions by the Pennsylvania House Transportation Committee

Dear Mr. Williams:

On behalf of the Transportation Committee of the Pennsylvania House of Representatives, I enclosed for filing an original and twenty-five copies of PA House -2 consisting of statements by the Transportation Committees of the Senate and House of Representatives of the Commonwealth of Pennsylvania. Since the Transportation Committee of the Pennsylvania Senate did not file a separate Statement of Intent to Participate in this proceeding, its report has been incorporated into and made a part of the filing in this transaction by the Transportation Committee of the Pennsylvania House of Representatives. Also enclosed is a 3 ½" computer disk containing the pleading in Word 7.0 format. Should you have any questions regarding this submission, please contact the undersigned.

ENTERED
Office of the Secretary
OCT 29 1997
5 Part of Public Record

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

Richard R. Wilson

RRW/klh
Enclosures
xc: The Honorable Jacob Leventhal
Representative Richard A. Geist
All parties of record

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October 23, 1997

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423

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

Comments and Requests for Conditions by the Pennsylvania House Transportation Committee

Dear Mr. Williams:

Enclosed please find corrected copies of the letters of transmittal submitting the Comments and Requests for Conditions by the Pennsylvania House Transportation Committee which were filed in the above captioned proceeding on or about October 16, 1997.

These letters have been corrected to include the case name and STB Finance Docket Number.

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

RRW/klh

xc: The Honorable Jacob Leventhal
Representative Richard A. Geist
All parties of record

183449

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

TRANSPORTATION, CHAIRMAN
COMMERCE AND ECONOMIC DEVELOPMENT
RULES

October 15, 1997

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423

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

Comments and Requests for Conditions by the Pennsylvania House and Senate Transportation Committees

Dear Mr. Williams:

Enclosed you will find the Comments and Requests for Conditions which are being jointly filed with the Board on behalf of the Transportation Committees of the Senate and House of Representatives of the Commonwealth of Pennsylvania. The proposed acquisition and division of Conrail by Norfolk Southern Corporation and CSX Transportation, Inc., if approved, will have extremely serious impacts on the Commonwealth of Pennsylvania. Our constituents have communicated to us their concerns about loss of employment, family dislocations, loss of vendor contracts and the absence of state wide rail to rail competition.

We are aware that the proposed transaction does contain specific benefits for Pennsylvania but as legislators, we do not view this transaction in the isolation of a single regulatory proceeding. We view it in the context of continued consolidation of the U.S. railroad industry and the likelihood that there will be further mergers resulting in two transcontinental rail systems which could leave many Commonwealth businesses and shippers subject to a railroad monopoly and excluded from major sources of raw materials and markets.

From this perspective, we request the Board to impose necessary competitive access conditions that will assure effective rail competition throughout the Commonwealth. We also seek legally enforceable and administratively reviewable conditions to assure that if the economic assumptions upon which this transaction are based do not materialize, the Commonwealth will have adequate recourse in the event applicants do not to proceed with projects and commitments which provide many of the public interest benefits claimed for this transaction.

Sincerely yours,

J. Doyle Corman

J. Doyle Corman, Chairman
Senate Transportation Committee

Richard A. Geist

Richard A. Geist, Chairman
House Transportation Committee

J. Barry Stout

J. Barry Stout, Minority Chairman
Senate Transportation Committee

Richard D. Olasz

Richard Olasz, Minority Chairman
House Transportation Committee

Enclosure

xc: Governor Thomas Ridge
All parties of Record

STB FD 33388 10-24-97 D 183301

18330/

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WRITER'S DIRECT DIAL
(202) 973-7605

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October 24, 1997

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

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

Dear Mr. Williams:

Enclosed please find CSX/NS-118 (Applicants' Reply "Emergency Appeal by Transtar, Inc., Elgin, Joliet and Eastern Railway Company and Wisconsin Central, Inc.") to be filed in the above-referenced docket.

Accompanying this letter are 25 copies of CSX/NS-118, as well as a formatted WordPerfect diskette.

Thank you for your assistance in this matter. Please contact me (202-973-7605) if you have any questions.

Sincerely,

Gerald P. Norton

Enclosures

183301

CSX/NS-118

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

APPLICANTS' REPLY TO "EMERGENCY APPEAL BY
TRANSTAR, INC., ELGIN, JOLIET AND EASTERN RAILWAY
COMPANY AND WISCONSIN CENTRAL, INC."

CSX, NS, and Conrail,[1] collectively "Applicants," hereby reply to the "emergency"[2] appeal ("App.") of Elgin, Joliet and Eastern Railway Company ("EJE"), and Wisconsin Central Railroad ("WC"), collectively "Appellants," filed October 21, 1997, concerning their motions to compel responses to their third sets of discovery requests (EJE-8; WC-7) calling for Applicants to produce confidential documents of Indiana Harbor Belt Railroad ("IHB").

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[1] "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc.; "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company; and "Conrail" refers collectively to Conrail Inc. and Consolidated Rail Corporation.

[2] Although they apply the label "emergency" to their appeal, Appellants have not identified any "emergency" or other circumstances warranting a more expedited process than that already applicable to discovery appeals.

I. SUMMARY

Appellants' third sets of document requests, served late in the discovery process, sought a wide range of numerous confidential IHB documents, including its 100% traffic tape and shipper contracts.

As discussed below, the discovery sought is objectionable on multiple grounds. The appeal is moot because Appellants concede they cannot use the documents, and is premature because the ALJ has not had an opportunity to rule on all objections raised to Appellants' requests.

In any event, Appellants have not remotely met the Board's stringent standard for discovery ruling appeals. They have not shown that their requests plainly satisfy the Board's standards for discovery in terms of relevance, need, burden, and confidentiality. Nor have they shown that the ALJ would have committed reversible error if he had concluded that they did not meet those standards.

Finally, these requests sought discovery from the wrong party; they should have been addressed to IHB itself, which is a separately represented party of record in this proceeding. This discovery cannot properly be sought through Conrail (or the other Applicants). Given the particular circumstances of the Conrail/IHB relationship, neither IHB nor IHB documents should be deemed within Conrail's "control" under Board Rule 1114.30(a)(1) merely because of its ownership of 51% of IHB's stock, and the ALJ did not commit reversible error in concluding that they were not.

II. FACTUAL BACKGROUND[3]

IHB is a railroad operated independently of the Applicants. Conrail owns 51% of IHB's common stock. The remaining 49% is owned by Soo Line Railroad, a subsidiary of Canadian Pacific Railway Co. ("CP/Soo"). CP/Soo competes with Conrail, CSX, and NS, and is a party of record in this proceeding. As CP/Soo's counsel stated at the conference on October 16, 1997, CP/Soo agrees that discovery of IHB documents and personnel cannot be made through Conrail (10/16/97 Tr. 8-9, 53-55). (Appellants omit any reference to CP/Soo's position, which was a factor in the ALJ's decision (10/16/97 Tr. 57).)

IHB operates a separate railroad, including scores of locomotives and freight cars, from its own offices in Hammond, Indiana, and its own railroad facilities, with its own 800 plus employees. Its labor agreements are separate from those governing Conrail employees, and are separately negotiated by IHB. Its day-to-day operations are under the direction and control of a General Manager who is an IHB employee, paid by IHB. It has its own in-house counsel, who has entered an appearance for IHB in this proceeding.

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[3]Given the expedited nature of the motion proceedings under the Discovery Guidelines, in which a party has only two business days to respond to a motion to compel, it has been the common practice of parties to rely upon factual representations by counsel made orally or in briefs (see, e.g., CSX/NS-107), rather than through live testimony, affidavits or other formal evidence. Appellants offered no objection to that course before the ALJ and cannot now be heard to object to the form of the factual record.

IHB serves as an origin or destination carrier for movements it interchanges with other carriers, including UP/SP, BNSF, NS, CSX, and Conrail. In addition, many railroads have trackage rights agreements allowing them to operate over IHB's lines, including not only Conrail and CP/Soo, but also CSX, NS, WC, EJE, and IC. The commercial relationships of Conrail and IHB as interconnecting railroads are governed by agreements negotiated at arm's length, as they are with other railroads with whom IHB connects.

IHB and Conrail also compete with one another. When they have been in adverse positions they have sought dispute resolution through arbitration. Conrail does not dictate to or unilaterally exercise dominion over IHB.

IHB has been a party of record in this proceeding since June 27, 1997 (Exh. A), a status noted by the Board in Decision No. 21, served August 19, 1997, at 12. Appellants could have made timely requests to IHB for discovery months ago. IHB could then have voiced its own concerns about relevance, burden and confidentiality, for example, and could have explored alternative means of providing relevant information that was requested. It is not Applicants' province to do that. Conrail and its counsel do not and cannot speak for IHB, and service of papers on counsel for Conrail is not equivalent to service of papers on counsel for IHB.

III. <u>PROCEEDINGS BEFORE THE ALJ</u>

Appellants filed their initial motion to compel on October 8, 1997, even though Applicants had not yet had the opportunity provided by the Discovery Guidelines to object or otherwise respond to Appellants' requests. Because Appellants had not given timely notice as required by the Discovery Guidelines, at a hearing on October 9, the ALJ deferred until the next scheduled hearing (October 16) the merits of the issues. In Decision No. 45, served October 16, 1997, the Board rejected Appellants' appeal from that ruling, sustaining the ALJ's application of the Guidelines.

At the hearing on October 16, the ALJ sought initially to address Applicants' objections to each of the requests on grounds other than the "IHB control" issue (on which Appellants sought a "generic," abstract ruling), recognizing the possibility that disposition of the motions on other grounds might make it unnecessary to reach that issue of first impression (10/16/97 Tr. 17, 19).

Initially, Judge Leventhal considered the first set of requests served by EJE, calling for extensive financial information, and concluded that it was premature and that EJE had not shown a need for discovery of that information (<u>id</u>. at 33-34). Appellants do not challenge that ruling (App. 2 n.3).

Then, the ALJ turned to Applicants' objections -- other than the absence of "control" -- to Appellants' third sets of requests. In the course of considering the issues of relevance, need and burden raised by each of those requests, the ALJ suggested that Appellants consider narrowing their requests and seeking the documents directly from IHB, whose documents were involved and who would have to bear the principal search burdens.[4] Appellants agreed, and the ALJ continued the hearing until the next day (10/16/97 Tr. 42-44).

At Appellants' request, the ALJ then heard argument on the "IHB control" issue, including argument from CP/Soo which vigorously opposed Appellants' requests (id. at 53-55). The ALJ concluded that Conrail does not "control" IHB for purposes of discovery (id. at 57-58), and "reserved" decision on the requests, since a continuation of the hearing the next day was contemplated (id. at 58, 60).

Later that day, Appellants pursued their requests directly with counsel for IHB, and reported to the ALJ that they had satisfactorily resolved matters with IHB so that there would be no need to continue the hearing on October 17 (Exh. B). As a result, the ALJ never had occasion to rule on Applicants' objections on grounds other than the "IHB control" issue, or to finally rule on their motions to compel.

Appellants tuck away in a conclusory footnote the concession that they belatedly contacted IHB about discovery, and that IHB was willing to provide responsive documents or information (App. 10 n.8). In fact, as the attached letter from

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[4]Counsel for IHB had a court appearance and a deposition on October 16, and was unable to be at the hearing (10/16/97 Tr. 42).

counsel for IHB to counsel for Appellants shows (Exh. C), IHB substantially responded to six of Appellants' eight requests, on the understanding that it was in full satisfaction of Appellants' requests.[5]

Subsequently, it appeared that there may not have been a mutual understanding between Appellants and IHB, but Appellants did not ask the ALJ to resume the hearing and rule on Applicants' other objections to Appellants' motion to compel concerning the particular requests.[6]

IV. ARGUMENT

A. There Is No Live Issue Properly Before The Board

The threshold issue is whether there is a ripe, live controversy requiring decision. Appellants' appeals demonstrate there is not. On their first appeal they asserted that, unless an order was issued before October 16, requiring Applicants to produce the information sought virtually forthwith, there would

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[5]Following the ALJ's suggestion at the hearing on October 9, 1997, another party who had initially sought to require Conrail to produce IHB documents and information (Four Cities Consortium) pursued its requests directly with IHB, and was sufficiently satisfied that it withdrew its motion to compel IHB production through Conrail (Exh. D).

[6]Counsel for Appellants also represents Illinois Central Railroad ("IC"), and Appellants made some allusion to Applicants' responses to IC's first set of discovery requests, which Appellants did not join (App. 5 n.5). Applicants served their responses to the IC requests on September 30, 1997. Under the Board's rules, IC had 10 days in which to file a motion to compel. 49 C.F.R. § 1114.30(a). No such motion was filed. Accordingly, there was no issue properly before the ALJ concerning the IC requests and there is none properly before the Board.

be no time for "any productive use" of the information (EJE-9; WC-8 at 2, 5). Subsequently, Appellants made their filings on October 21, 1997 (e.g., EJE-10; WC-9; WC-10). Appellants' appeal identified no continuing need for the documents they seek.[7] Since they cannot be used, there is no basis for requiring them to be produced.[8] Hence, there is no need for the Board to resolve what Appellants concede is a question of first impression (App. 6 n.6).

Moreover, the appeal has another threshold deficiency: it is interlocutory and premature because the ALJ has ruled on only one of the objections to Appellants' requests: the control issue. Appellants have never secured a final ruling on their motion to compel or the other objections. Appellants could easily have done so by giving notice on Monday, October 20, that they wanted to be heard at the discovery conference on October 23 with respect to the other objections so as to obtain an

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[7]Appellants cannot expect to be allowed to make a late or supplemental filing of evidence or comments based on the fruits of these requests. Their failure to obtain a final resolution of a legitimate dispute over their requests in time to use such materials in their October 21 filings is entirely of their own making. It has been clear since June that IHB is a separate party of record in this proceeding. Appellants could have sought discovery from IHB directly at any time, without raising the significant legal issue presented by seeking such discovery through Conrail. Further, the issue of Conrail's duty to provide discovery from IHB was explicitly raised seven weeks ago in Applicants' response to other discovery requests (CSX/NS-58, p. 5).

[8]The Board's discovery powers should not be invoked to impose on Applicants (and ultimately IHB) the burdens of responding to discovery that could not be used productively because of Appellants' own failures to proceed with due diligence in compliance with the applicable rules and Guidelines.

appealable ruling as to their sufficiency apart from the "IHB control" issue. They chose instead to appeal, requiring the Board to decide in the first instance issues that are normally and properly the province of the ALJ.

Appellants compound the impropriety of their request by asking the Board to rule not only on their discovery requests, but to order Applicants to "respond to all discovery requests, tendered by any party to this proceeding, seeking information within the possession or custody of the IHB" (App. 5 n.5, 11; emphasis added). There is absolutely no basis for such an advisory ruling in the abstract on an issue that ordinarily turns on the particular facts. That is especially so where Appellants concede there is no controlling authority.

B. Appellants Have Not Met The Appeal Standard

In Decision No. 6, served May 30, 1997, the Board specified that appeals from Judge Leventhal's rulings will be subject to the "stringent standard" of 49 C.F.R. § 1115.1(c).[9] Such appeals "are not favored" and will be granted "only in exceptional circumstances." To prevail, Appellants must

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[9]Decision No. 6, at 7, stated:

"Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." See Union Pac. Corp., Union Pac. R.R Co. and Missouri Pac. R.R. Co. -- Control -- Chicago and N.W. Transp. Co. and Chicago and N.W. Ry. Co., Finance Docket No. 32133, Dec. No. 17, at 9 (ICC served July 11, 1994) (applying the "stringent standard" of 49 C.F.R. 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).

establish that an appeal must be granted to correct "a clear error of judgment" or to prevent "manifest injustice." Appellants have not met this standard.

1. Appellants Have Not Shown That Their Requests Plainly Satisfy The Governing Standard For Such Document Requests

Appellants' appeal suggests that the only issue requiring decision is whether (and in what circumstances) Conrail can be deemed to "control" IHB for purposes of discovery and can be obliged to produce documents of IHB. But, as noted, that was only one of the issues Applicants raised. The requests are objectionable on several grounds. Appellants requested Applicants to produce IHB operating information and documents, including: all IHB contracts with shippers; IHB 100% traffic tapes; IHB traffic density charts; IHB timetables; all IHB slow orders; track speed data for all IHB line segments owned or operated by IHB; IHB rail yard capacities and configurations; signal systems on each IHB segment; and analyses of congestion, delays or traffic flow problems on IHB. Most of this is commercially sensitive or otherwise highly confidential.

The Board recently stated the governing standards for such discovery requests in Decision Nos. 34 and 42:

> [T]he standard against which the relevance of commercially sensitive information is judged is necessarily higher than the standard against which the relevance of less sensitive information is judged. "Disclosure of extraordinarily sensitive information should not be required without a careful balancing of the seeking party's need for the information, and its ability to generate comparable information from other sources, against the likelihood of

> harm to the disclosing party." See Decision No. 34, Slip Op. at 2 n.9. [Decision No. 42, Slip Op. at 8.]

Under Decision No. 42 it was Appellants' burden to show before the ALJ that their requests met those standards. If the ALJ had ruled that they did not, the Board would not consider that issue de novo. Rather, Appellants' burden on appeal would have been to show that that ruling was a clear error of judgment or resulted in manifest injustice. They cannot lessen their burden by appealing before the ALJ rules on the issues raised under Decision No. 42. Appellants fail even to address that standard.

To prevail, Appellants would have to show that (1) they have a pressing need for this extensive discovery from Applicants at this time, (2) such discovery is substantially relevant to an issue the Board must consider and decide as part of its decision whether to approve the application, and (3) need and relevance outweigh the burdens of searching for and producing the documents sought, and the risks entailed by production of confidential information. Appellants failed to address these matters. Nor have they shown the ALJ would have committed reversible error in concluding that they had not met those standards.

Appellants have plainly failed to demonstrate that they had a need for the IHB discovery in question from Applicants when they served their requests. The documents and information that Appellants seek, if they exist, are the property, and within the control, of IHB. Yet, Appellants made no timely attempt to secure this discovery from IHB. Absent a showing that these documents would have been unavailable upon timely discovery to IHB (the indisputably best source of such evidence) -- and the evidence is to the contrary -- Appellants cannot demonstrate that they had a need to obtain them from or through Applicants.

Indeed, Appellants have not demonstrated <u>any</u> substantial need for the particular documents covered by the discovery requests in issue, and certainly not the compelling need required to justify discovery of sensitive documents such as shipper contracts and traffic tapes.[10]

2. The IHB Documents Requested Are Not Under The <u>"Control" Of Conrail For Discovery Purposes</u>

In seeking discovery of IHB documents and information through Conrail, Appellants rely on Board Rule 1114.30(a)(1), providing that a party must produce documents within its "possession, custody or control." However, they cite no decisions of the Board (or of the Interstate Commerce Commission ("ICC")) to the effect that Section 1114.30(a)(1) requires a corporation to produce documents belonging to and within the possession, custody, and control of another corporation in which it has a 51% stock interest, particularly where the remaining 49% is held by a competitor. Nor have they cited any federal court discovery holdings to that effect. Precedent aside, Appellants have not established facts demonstrating such control.

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[10]These were the only matters involved in this appeal as to which IHB did not provide a voluntary response (<u>see</u> Exh. C).

a. The Case Law Does Not Warrant A Finding of "Control"

Appellants concede they have been unable to identify any decision holding that Conrail has an obligation to produce IHB documents in discovery (or to require IHB to do so). We are aware of no such decisions. The decisions of the Board and the ICC that Appellants cite did not involve Rule 1114.30(a)(1) or discovery.[11]

Moreover, Appellants' references to two court cases (both clearly distinguishable[12]) that do concern discovery overlook abundant learning that these issues are "highly fact-specific," and that there is no "over arching rule." Wright, Miller & Marcus, Federal Practice & Procedure Civil 2d § 2210, at 397, 399 (1994). The case for finding "control" for this purpose is said to be strongest where the corporate affiliates are alter

[11]In Decision No. 12 at 8, in this proceeding, served July 23, 1997, in referring to Conrail's control of IHB the Board was merely summarizing the proposed disposition of Conrail assets in the Chicago area as set forth in the Application. In Rio Grande Indus. -- Purchase and Related Trackage Rights -- Soo Line R.R., 6 I.C.C. 2d 854 (1990), the ICC determined that no issue of unlawful control of IHB would arise by another railroad's acquisition of 50% of Soo's 49% interest in IHB because Conrail's 51% was a controlling interest. This does not bear on (let alone automatically determine) whether documents of such a "controlled" railroad are subject to discovery through the railroad owning its stock.

[12]In Comeau v. Rupp, 810 F. Supp. 1127 (D. Kan. 1992), the issue did not involve corporate affiliates, but rather government agencies; the court held that sanctions were not warranted when one agency had failed to produce documents within the control of another agency. In Scott v. Arex, Inc., 124 F.R.D. 39 (D. Conn. 1989), the Magistrate held that the officer-"owner" of a small corporation was obliged to produce documents of the corporation. The motion was evidently unopposed (id. at 42), with the owner not claiming that the documents were not within his control.

egos, where the facts would warrant "piercing the corporate veil," and where the party has acted as an agent for the nonparty in connection with the matter at hand. Id. None of that is the case here.

b. The Facts Do Not Warrant A Finding of "Control" For Discovery Purposes

The fact that Conrail owns 51% of the stock of IHB does not itself suffice to establish that Conrail is entitled to demand that documents or data generated by IHB in the ordinary course of its separately managed business, that are in the possession, custody and control of IHB, be produced to Conrail to respond to discovery. Appellants have not shown or even asserted that Conrail and IHB are "alter egos"; that Conrail had acted as the agent of IHB in this proceeding; that IHB traffic files are intermingled with Conrail's; or any other facts warranting disregard of the corporate and day-to-day separation between Conrail and IHB.

As counsel for CP/Soo explained, it does not view Conrail as having the "control" of IHB required for Conrail to be used as a vehicle for discovery of IHB documents. According to CP/Soo, Conrail personnel also affiliated with IHB would be required to respond to discovery requests for IHB documents not as Conrail employees, but as officials of a totally separate corporate entity, with duties to a minority stockholder. CP/Soo confirmed that IHB is operated independently of Conrail, and that it is operated with neutrality. CP/Soo added that IHB owns its own equipment, has contracts with Soo, Conrail and third parties, and deals with the world as an independent entity (10/16/97 Tr. 53-55).

Against this, Appellants' factual submission consisted largely of statements in court opinions in litigation concerning the application of a Conrail insurance policy to a claim against IHB based on events occurring more than a decade ago.[13] Since those events CP/Soo has replaced the former minority owner (the bankrupt Milwaukee Railroad), and the relationship of the parties today is not the same as in the early 1980s.

Appellants do not dispute that day-to-day control of IHB's operations is in its General Manager, in Hammond, Indiana, where its operational records (including the documents sought by Appellants) are located. As the Official Railway Guide description of IHB cited by Appellants makes clear, except for three Conrail personnel who also have IHB titles,[14] the other 23 IHB officials listed -- responsible for the operating, labor relations, personnel, real estate, industrial equipment, marketing and sales, claims, law, accounting and treasury departments -- are in Indiana or Illinois. The fact that Conrail may have agreed to perform certain non-operational administrative functions for IHB for a fee is evidence of an arm's length

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[13]See Winston Network, Inc. v. Indiana H. B. R.R., 944 F.2d 1351 (7th Cir. 1991).

[14]We note that CP/Soo, the minority stockholder, characterized these officials as "basically figureheads" (10/16/97 Tr. 55).

relationship, not of control. Appellants' reliance upon the location of such matters as the corporate seal reflects an elevation of form over substance.[15]

Moreover, the prevailing case law in other agencies and in the courts rejects the position urged by Appellants, in which any company owning more than 50% of the stock of another is deemed to "control" its documents for discovery purposes.[16] Compare Chaveriat v. Williams Pipe Line Co., 11 F.3d 1420, 1426-27 (7th Cir. 1993) (fact that party could have obtained material if it had tried hard, but did not do so, does not mean it is within its "control").

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[15]Appellants' assumption that Conrail exercises control of IHB's activities for the benefit of Conrail is belied by its acknowledgement that IHB currently provides "neutral intermediate switching services" (App. 9). In other words, despite Conrail's ownership of 51% of IHB's stock, IHB does not favor Conrail over the other railroads that operate over it or use its services.

[16]See, e.g., Williams Natural Gas Co., 72 F.E.R.C. (CCH) ¶ 61,170, at 61849 (1995) (defines "control" in similarly worded FERC discovery rule as right "to use or dispose of the records sought;" applying that standard, FERC found that company served with discovery did not have "control" relationship with several commonly owned companies, even though all were housed in the same building as company served with discovery, because it did not have right or access to records of those commonly owned companies). See also Gerling Int'l Ins. Co. v. IRS, 839 F.2d 131, 140-41 (3d Cir. 1988) ("Where the litigating corporation is the parent of the corporation possessing the records, courts have found the requisite control where 'a subsidiary corporation acts as a direct instrumentality of and in direct cooperation with its parent corporation, and where the properties and affairs of the two [were] . . . inextricably confused as to a particular transaction' . . .").

CONCLUSION

The appeal should be denied. It is moot and not properly before the Board. The discovery requests in issue seek confidential IHB documents that have not been shown to be needed to provide substantial relevant evidence. Beyond that, if the Board reaches the "control" issue, there is no basis for requiring Conrail to produce those documents from IHB.

Respectfully submitted,

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<u>Counsel for CSX Corporation and CSX Transportation, Inc.</u>

October 24, 1997

EXHIBIT A

180407

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

D

INDIANA HARBOR BELT RAILROAD'S
NOTICE OF INTENT TO PARTICIPATE

Indiana Harbor Belt Railroad Company (IHB) hereby gives notice that it intends to participate as a party of record (POR) in the above-captioned proceeding and that it will use the acronym "IHB." The representative of the party to be served is:

Roger A. Serpe
General Counsel
Indiana Harbor Belt Railroad Company
175 West Jackson Boulevard
Suite 1460
Chicago, Illinois 60604-2704
(312) 715-3868

Respectfully submitted,

Roger A. Serpe

Roger A. Serpe
Indiana Harbor Belt Railroad Company
175 W. Jackson Boulevard
Suite 1460
Chicago, Illinois 60604-2704
(312) 715-3868

Date: June 27, 1997

Counsel for Indiana Harbor Belt Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 1997, I served a copy of the foregoing Indiana Harbor Belt Railroad Company's Notice of Intent to Participate by first class mail, postage prepaid, upon:

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

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.
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Harkins Cunningham
1300 19th Street, N.W., Suite 600
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Roger A. Serpe
Roger A. Serpe

EXHIBIT B

OPPENHEIMER WOLFF & DONNELLY

Two Prudential Plaza
45th Floor
180 North Stetson Avenue
Chicago, IL 60601-6710

(312) 616-1800
FAX (312) 616-5800

Brussels
Chicago
Minneapolis
New York
Paris
Saint Paul
Washington, D.C.

October 17, 1997

VIA TELEFAX

The Honorable Jacob Leventhal
Presiding Administrative Law Judge
Federal Energy Regulatory Commission
888 First Street, N.E., Suite 11F
Washington, D.C. 20462

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 Judge Leventhal:

During the discovery conference held before you on October 16, 1997, you directed me to contact Roger Serpe, General Counsel for the Indiana Harbor Belt Railroad Company ("IHB"), to determine whether he and I could reach some mutually-satisfactory agreement as to a voluntary production by IHB of the documents which Wisconsin Central Ltd. and the Elgin, Joliet & Eastern Railway Company have sought in WC-7, "Third Set of Requests to Produce Documents of Wisconsin Central Ltd." and EJE-8 "Third Set of Requests to Produce of Transtar, Inc. and Elgin, Joliet and Eastern Railway Company," respectively.

Mr. Serpe and I were able to discuss these issue after the close of business yesterday. Although he was unable at that time to contact his client and determine the precise nature of the documents possessed by them, he and I were able to sufficiently narrow the scope of the information sought by my clients such that we believe we can resolve any issues that remain outstanding later this morning. Therefore, he and I agreed that there is no need for a telephone discovery conference to be held before you at 10:00 EDT this morning.

I have contacted the counsel listed below to inform them that the conference will not be needed.

With this letter I am also confirming that my agreement with Mr. Serpe is not intended to indicate any waiver of any rights which EJE and/or WC might have to appeal Your Honor's rulings made during the discovery conference yesterday, particularly with regard to the issue of whether Conrail is in "control" of the IHB for purposes of 49 C.F.R. §1114.30.

Thank you for your assistance in resolving these issues. Please contact the undersigned if you have any questions.

Very truly yours,

Thomas J. Healey

CC: John V. Edwards, Esq.
Drew A. Harker, Esq.
David H. Coburn, Esq.
Gerald Norton, Esq.
Roger A. Serpe, Esq.

TJH/ple

EXHIBIT C

INDIANA HARBOR BELT RAILROAD COMPANY
175 West Jackson Boulevard, Suite 1460
Chicago, Illinois 60604

ROGER A. SERPE
GENERAL COUNSEL

TELEPHONE (312) 715-3868
FAX (312) 715-3869

October 17, 1997

Thomas J. Healey, Esq.
Oppenheimer Wolff & Donnelly
Two Prudential Plaza
45th Floor
180 North Stetson Avenue
Chicago, IL 60601 - 6710

RE: STB F. D. No. 33388, CSX Corporation, et al.
-- Control and Operating Leases / Agreements
-- Conrail Inc. , et al

Dear Mr. Healey:

In response to WC - 7, "Third Set Of Requests to Produce Documents of Wisconsin Central Ltd." and EJE - 8 "Third Set of Requests to Produce of Transtar, Inc. and Elgin, Joliet and Eastern Railway Company," respectively and pursuant to our agreement the IHB is providing the following information as full and complete compliance with all outstanding discovery requests propounded by Wisconsin Central, EJ&E and Transtar, Inc. concerning IHB's present operations. The IHB considers this information to be confidential and pursuant to said designation understands that the use, on your behalf, of any of the information provided herein will be redacted from any public filings.

2. Enclosed is a copy of IHB' s traffic density chart reflecting total annual tonnage by line segment for the year 1996.

3. Enclosed is a copy of a current IHB timetable.

4. Enclosed is a copy of slow orders for IHB.

5. Please refer to IHB timetable provided herein.

6. Enclosed is a copy of IHB's track diagrams.

7. Please refer to IHB timetable provided herein.

Should you have any question regarding these responses please feel free to contact me.

Sincerely,

Roger A. Serpe

Roger A. Serpe

EXHIBIT D

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III

October 15, 1997

VIA FACSIMILE

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

Re: F.D. No. 33388, CSX Corporation, et al. -- Control and Operating Leases/Agreements -- Conrail Inc., et al.

Dear Judge Leventhal:

On behalf of the Cities of East Chicago, Indiana; Hammond, Indiana; Gary, Indiana; and Whiting, Indiana (collectively the "Four City Consortium"), this is to advise that the Four City Consortium has reached an agreement with the Indiana Harbor Belt Railroad Company ("IHB") under which the IHB will be furnishing certain information sought by the Consortium in connection with its Notice of Deposition of IHB's General Manager, Charles A. Allen. Accordingly, the Consortium hereby withdraws its Notice of Deposition and represents that at this time it has no further need of discovery with respect to IHB's facilities and present operations. We also withdraw this item from the agenda for tomorrow's discovery conference.

With respect to the Consortium's motion to compel responses to certain of its Second Set of Interrogatories and Document Production Requests, for present purposes the Consortium is satisfied with the information it now has with respect to the IHB lines covered by Interrogatory No. 1. In addition, CSX has furnished a satisfactory supplemental response to Interrogatory No. 7. Accordingly, the Consortium also withdraws its motion to compel responses to these questions from the agenda for tomorrow's discovery conference.

Sincerely yours,

Christopher A. Mills

CAM/mfw

cc (via facsimile): Gerald P. Norton, Esq.
David H. Coburn, Esq.
John V. Edwards, Esq.
Roger Serpe, Esq. (IHB Gen. Counsel)
Restricted Service List

CERTIFICATE OF SERVICE

I, Gerald P. Norton, certify that, on this 24th day of October, 1997, I caused a copy of the foregoing document to be served by overnight mail and/or facsimile on William C. Sippel of Oppenheimer, Wolff & Donnelly at Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, Illinois 60601, counsel for Elgin, Joliet and Eastern Railway Company and Wisconsin Centrail Railroad, and by first class mail, postage prepaid, or by a more expeditious manner of delivery on all parties appearing on the restricted service list established pursuant to paragraph 3 of the Discovery Guidelines in Finance Docket No. 33388.

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

Gerald P. Norton

STB FD 33388 10-24-97 D 183298

183298

U. S. Department of Justice

Antitrust Division

RECEIVED
OCT 24 1997
MAIL MANAGEMENT
STB

325 7th Street, N.W., Suite 500
Washington, DC 20530

October 24, 1997

ENTERED
Office of the Secretary
OCT 27 1997
Part of Public Record

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

Re: Conrail Control Case -- STB Finance Docket No. 33388

Dear Secretary Williams:

Yesterday we determined that certain redacted phrases and passages in the Public Version of the Comments we filed on October 21 are not highly confidential and therefore may be set out in the Public Version of our Comments. We notified all Parties of Record of our determination and clearly identified the declassified phrases and passages in a Memorandum dated October 23, 1997.

In order to maintain the accuracy of the Board's public records we propose to substitute the enclosed revised Public Version of our Comments for the Public Version of ~~our~~ Comments that we filed on October 21. Accordingly, I am enclosing for filing an original and 25 copies of the revised Public Version of the Comments of the United States Department of Justice (DOJ-1). I am also enclosing one 3.5 inch disk containing these revisions in Word Perfect 6.1 format.

Thank you for your assistance in this matter. If you have any questions please feel free to call me at 202-307-6357.

Sincerely yours,

Michael P. Harmonis

Michael P. Harmonis
Attorney
Transportation, Energy and Agriculture Section

Enclosures

cc: The Honorable Jacob Leventhal

As Revised
23Oct.97

183298

PUBLIC (REDACTED) VERSION

RECEIVED
OCT 24 1997
MAIL MANAGEMENT
STB

DOJ-1

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

D

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

ENTERED
Office of the Secretary
OCT 27 1997
5 Part of Public Record

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief
Donna N. Kooperstein, Assistant Chief

Michael P. Harmonis
Attorney

Transportation, Energy &
Agriculture Section
Antitrust Division
U.S. Department of Justice
325 Seventh Street, N.W.
Washington, D.C. 20530

(202) 307-6357

October 21, 1997

As Revised
23Oct.97

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

COMMENTS OF THE UNITED STATES
DEPARTMENT OF JUSTICE

CSX Corporation ("CSX"), Norfolk Southern Railway Company ("NS"), and Conrail Inc., collectively the "Applicants," have applied to the Board for authorization of the acquisition of control by CSX and NS of Conrail, and for the division of Conrail's assets between them. The United States Department of Justice hereby submits comments as to the likely competitive impact of the proposed transaction, along with the testimony of one witness, Dr. Peter A. Woodward.

PRELIMINARY POSITION OF THE DEPARTMENT OF JUSTICE

Based on the information currently in the record and on its own investigation, the Department believes that the unconditioned acquisition of Conrail and the division of its assets by and between CSX and NS would raise significant competitive problems in at least three markets involving coal-fired electrical utility plants, in which the effective number of competing coal shippers would decline from two to one. The Department therefore has concerns that approval of the transaction as proposed will result in a substantial lessening of competition in these three markets, and likely will urge the Board to impose specific conditions in the form of short segments of trackage rights to prevent the competitive harm.

These comments describe the proposed transaction and the applicable legal standards, discuss the economic framework in which we have analyzed the proposed merger, and summarize the results of the Department's analysis, which is described in greater detail in the testimony of our witness.

DESCRIPTION OF THE PROPOSED TRANSACTION

In what may be the largest railroad breakup in the nation's history, CSX and NS plan to purchase Conrail for $10.2 billion. Together these three railroads accounted for $13.3 billion in sales in 1996. Conrail operates 10,701 miles of track in the East and Midwest. CSX and NS, respectively, operate 18,500 and 14,300 miles of track in the Southeast and Midwest. After the breakup, CSX and NS each would operate more than 20,000 route miles in the eastern United States.

NS and CSX plan to divide Conrail's principal routes, which form an "X" crossing in Ohio, with each railroad operating two of the four legs of the "X". CSX will acquire most of Conrail's main rail line from St. Louis through Indianapolis and Cleveland to New York, Boston, and Montreal. CSX also will acquire most of Conrail's routes in Ohio, Indiana, and Illinois. NS will acquire Conrail's main line from Chicago to Pittsburgh and Philadelphia as well as two lines connecting New York to the current NS line at Buffalo and most lines in Michigan, Maryland, Delaware, and

Pennsylvania. NS and CSX each will gain a route connecting its lines in the Southeast with New York, North America's largest consumer market. CSX and NS will jointly operate tracks and terminals in the New York metropolitan area, New Jersey, and Detroit, as well as in parts of Philadelphia.

While the proposed transaction would create new rail competition, most notably in major markets in New York, New Jersey, and Philadelphia, CSX and NS acknowledge that there also would be markets where shippers would see their options decline from two rail carriers to one. See CSX/NS-18, Vol. 1 at 4. In an attempt to remedy the acknowledged competitive concerns in these markets, CSX and NS have agreed to provide one another with trackage and/or haulage rights, which they contend would permit the continuation of two-rail carrier service wherever possible. See id.

LEGAL STANDARD

The ICC Termination Act of 1995 ("the Act") sets out the framework under which the Board must review and analyze this merger. See 49 U.S.C. §§ 11321-27. In proceedings involving rail consolidations, mergers and acquisitions of control, the Act requires the Board to consider a number of elements in making its essential finding of whether the transaction is consistent with the public interest. 49 U.S.C. § 11324. One element of the public interest is whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. 49 U.S.C. § 11324(b)(5).

It is thus necessary for the Board to determine whether a proposed merger or acquisition of control will produce an anticompetitive effect in any defined market. Although the Board does not sit as an antitrust court in determining compliance with the antitrust laws, the Board must define the economic markets that would be affected by a proposed transaction and then evaluate its competitive effects in order to reach its ultimate public interest determination. The policies embodied in the antitrust laws must be considered in conducting an appropriate balancing test to determine the public interest. See FMC v. Aktiebolaget Svenska Amerika Linien, 390 U.S. 238, 243-46 (1968); Northern Lines Merger Cases, 396 U.S. 491, 511-13 (1970).

It is in this framework that the United States Department of Justice offers its preliminary comments and the testimony of its witness. The testimony of Dr. Peter A. Woodward, an economist with the Department of Justice, analyzes the competitive effects of the proposed transaction.

FRAMEWORK FOR ANALYSIS

The core issue in this competition analysis is whether the proposed transaction likely would create or enhance market power or facilitate its exercise. Market power is the ability of a seller profitably to maintain prices above competitive levels (or reduce quality or service below competitive levels) for a significant period of time. The result of the exercise of market power is a transfer of wealth from buyers to sellers and/or a misallocation of resources. A merger can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms, or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output.

The first step in determining whether a proposed merger would be likely to create, enhance, or facilitate the exercise of market power is to define the markets within which the merging parties compete. In this case, the definition of a market begins with the basic service provided by the railroad -- the transportation of a particular commodity from a particular origin to a particular destination. Conrail, CSX, and NS compete for significant amounts of traffic in a large number of markets, and in some of the markets where they compete, they are the only rail carriers who are or potentially could be providing service.

The market, however, may not be limited to rail carriers. Intermodal competition in the form of truck, barge, or sometimes pipeline movements may allow shippers with few rail alternatives to substitute another mode of transportation for the shipment of a commodity from a particular origin to a particular destination. If another mode of transportation is a close substitute for rail, a single rail carrier alone likely would not possess market power in the movement of that commodity; the rail carrier's ability to raise rates would be constrained by the shippers' ability to use another mode.

For some commodities, however, transportation by truck cannot compete with rail because the distance the commodity is shipped is great, the volume of the commodity shipped is large, or the value of the commodity as compared to its weight is small. Water competition is often limited by the geographic location of the shipper or receiver, and sometimes by seasonal factors.

Source competition is also a potential factor in market definition. Source competition could allow a shipper to avoid a supra competitive rail rate between two points by using alternative rail carriers to ship a commodity from a different source or to a different destination. Where there is neither effective intermodal competition nor source competition, the proposed transaction, by reducing the number of rail competitors, likely will increase the merged carrier's market power and result in competitive harm.

In some situations, it may be in the public interest to allow a merger that reduces competition if the transaction is necessary to achieve significant efficiencies, and those efficiencies are great enough to outweigh the higher prices or lower quality that would otherwise occur from the loss of competition. The burden of proving such efficiencies is on the proponents of the merger. See FTC v. University Health, Inc., 938 F.2d 1206, 1222-24 (11th Cir. 1991). Given the difficulty of accurately predicting merger benefits, efficiency claims should be carefully examined, particularly where the potential competitive harm from the merger is great. Claimed efficiencies should be rejected if equivalent or comparable savings can be achieved by other means. See University Health, 938 F.2d at 1222 n.30; Horizontal Merger Guidelines, issued in 1992, revised in 1997 § 4.

SUMMARY OF EVIDENCE

As the Applicants recognize, the unconditioned acquisition and division of the Conrail assets by CSX and NS would raise significant competitive concerns in particular markets, reducing the rail options of shippers in these markets from two carriers to one. See CSX/NS-18, Vol.1 at 4. The Applicants address these competitive concerns by agreeing to provide each other with trackage and/or haulage rights that are said to give many of the affected shippers access to a second railroad. See id. It is the Applicants' position that their agreement on trackage and hauling rights is appropriate to the circumstances, ensuring that "[a]dverse competitive effects from the transaction are essentially non-existent." Id.

The Applicants, however, have not gone far enough, for their remedies would leave either CSX or NS in sole control of a number of critical rail links, and that presents potential problems for certain shippers. Nowhere do Applicants explain why the public interest would be better served by denying the affected shippers continuation of effective two-rail carrier service.

Dr. Woodward in his Verified Statement identifies three significant markets in which the number of competitors effectively would decline from two to one as a result of the proposed transaction. These markets involve coal shipments moving to receivers in Indianapolis and Maryland. The total volume of traffic in these two-to-one markets is well over $100 million.

Indianapolis Power & Light Company. IP&L's coal-fired Stout plant is situated in downtown Indianapolis on a line of the Indiana Railroad, which is 89% owned by CSX. Stout procures its coal from Indiana mines 110 miles to the south of Indianapolis. Some 90% of that coal in 1996 was originated and delivered by Indiana Railroad, with the remainder originated from mines in the same area by Indiana Southern Railroad and delivered by Conrail via switching service provided by Indiana Railroad. Indiana Railroad (CSX) and Conrail thus compete for coal shipments to Stout, with that competition spurred on by IP&L's ability to build-out from Stout to nearby Conrail lines. Pursuant to the terms of the proposed transaction, however, CSX would acquire Conrail's lines into Indianapolis, and so the CSX-Conrail competition for coal shipments that IP&L now enjoys at Stout would vanish. NS would receive trackage rights into Indianapolis, but NS may not effectively replace the Conrail competition. First, NS does not have Conrail's convenient access to the nearby Indiana coal, which means its delivered costs are higher, which means NS likely could not offer competitive rates on coal shipments to Stout. Second, NS likely would suffer operational problems (slowdowns and the like) in using CSX's congested Indianapolis switching facilities. Conrail too must depend on a competitor for switching services, but its threat to receive a build-out (a threat that NS cannot use as a lever) helps to ensure effective cooperation.

Potomac Electric Power Company. PEPCO operates four coal-fired plants, each served by a single railroad that supplies that plant's full supply of coal. Conrail serves PEPCO's plants in Chalk Point and Morgantown, Maryland. CSX serves PEPCO's plant in Dickerson, Maryland, and NS serves the PEPCO plant in Alexandria, Virginia. Morgantown and Dickerson are by far PEPCO's two most efficient plants, with their relative efficiencies being such that PEPCO readily can substitute power from Conrail-served Morgantown for power from CSX-served Dickerson, and vice versa. CSX and Conrail therefore could constrain each other from imposing significant price increases in the future on coal shipments to Dickerson and Morgantown. Pursuant to the terms of the proposed transaction, however, Conrail would transfer its Morgantown and Chalk Point lines to CSX. CSX then would become the sole rail shipper to PEPCO's three most efficient plants, with PEPCO losing Conrail as a significant constraint on CSX's pricing.

PSI Energy, Inc. PSI is an electrical utility company serving customers in Indiana, Ohio, and Kentucky. PSI operates a number of coal-fired power plants, including its Gibson plant at Carol, Indiana. Much of Gibson's coal comes from the Cyprus-Amax mine in nearby Keensburg, just across the Illinois border. NS originates and delivers the Cyprus-Amax coal to Gibson over the only active rail line to Carol. Conrail has trackage rights over this line, and so it can and does compete with NS in delivering coal from Keensburg to Gibson. Pursuant to the terms of the proposed transaction, however, Conrail would transfer its Keensburg-Gibson rights to NS, thus eliminating the Conrail-NS competition that PSI now enjoys at Gibson.

Having thus identified three markets where shippers will see their rail options effectively decline from two to one Dr. Woodward explains why the surviving carrier in each one of these markets (either CSX or NS) likely will have the ability profitably to raise prices above competitive levels. Dr. Woodward also analyzes the extent to which the CSX-NS agreement on trackage and/or haulage rights provides a competitive remedy. He concludes that the agreement would not be an adequate remedy because the Conrail competition eliminated as a result of the proposed transaction would be replaced with an inadequate substitute or not be replaced at all. Finally, Dr. Woodward explains how the Board could remedy the affected markets by restoring the eliminated Conrail competition through limited application of trackage, connection, and build-out rights. All three of Dr. Woodward's remedies would maintain two-carrier competition in these markets without reducing the claimed efficiency gains that CSX and NS otherwise would achieve from the transaction.

CONCLUSION

The Department submits for the record the testimony of Dr. Peter A. Woodward, who has evaluated the competitive effects of the proposed transaction. Based on the evidence in the record to date and on its own investigation, the Department has concerns that the transaction as proposed will result in a merger to monopoly in at least two markets and the significant lessening of competition in a third market. The Department reserves the right to further comment on the anticompetitive effects and the adequacy of conditions proposed by other parties.

Respectfully submitted,

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October 21, 1997

REDACTED VERSION

VERIFIED STATEMENT

OF

PETER A. WOODWARD

My name is Peter A. Woodward. I am an economist with the Antitrust Division of the United States Department of Justice (DOJ). This is my third appearance before the Surface Transportation Board (STB) or its predecessor agency.[1] Attached is a copy of my curriculum vitae. This statement evaluates the competitive effects of the proposed division of Conrail assets to CSX Corporation (CSX) and Norfolk Southern Corporation (NS).[2] In particular, it identifies three electric utilities, PSI Energy, Incorporated (PSI), Indianapolis Power & Light Company (IP&L), and Potomac Electric Power Company (PEPCO), for which the elimination of Conrail is likely to cause these shippers to pay higher prices for railroad transportation of the coal they purchase. Under the plan of the merger, PSI's Gibson generating station will lose 1 of only 2 railroad competitors and IP&L's EW Stout plant (currently served by 2 railroads) will lose competition from Conrail that is not replaced by another railroad. PEPCO will lose 1 of 2

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[1]I filed testimony on competitive effects and also on trackage and haulage rights in the ICC proceeding <u>Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company</u>, Finance Docket No. 32549, Decision No. 38 (ICC served Aug. 23, 1995) (<u>BN/SF</u>).

[2]STB Finance Docket No. 33388. Since my statement concerns competitive effects from combinations of particular Conrail lines with CSX and other Conrail lines with NS, I refer to the division of Conrail as a merger.

railroads serving its most efficient generating stations. The statement also suggests conditions on the merger that would remedy this loss of competition.

This statement contains 5 parts. Part 1 specifies the analytical framework I use to evaluate how competition is affected by this railroad merger. I use the DOJ/FTC Horizontal Merger Guidelines[3] as the starting point for the analysis. Part 2 reports the geographic area measures that are used in the analysis as well as the product definitions. Part 3 describes the PSI, IP&L, and PEPCO generating stations adversely affected by the merger as currently structured. Part 4 explains why the utilities operating these stations are likely to face transportation cost increases. Part 5 proposes conditions the STB could grant that would remedy these competitive problems.[4]

1. The Merger Guidelines framework

The economic principles underlying this statement are those of the Merger Guidelines:

> The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time...[5]

The Merger Guidelines apply generally-accepted economic principles to a merger in order to identify markets in which the merger is likely to lead to higher prices for consumers.

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[3]Horizontal Merger Guidelines, issued April 2, 1992 and revised April 8, 1997 by the DOJ and the U.S. Federal Trade Commission (FTC).

[4]This statement does not evaluate the likelihood that the benefits of almost $1 Billion claimed by the parties to the merger will be realized. Any such benefits can likely be achieved even after providing the specific remedies proposed here to the likely competitive harms identified.

[5]Merger Guidelines, p. 2.

Market power can only be understood in the context of an economically-meaningful relevant market. To find such a market, the Merger Guidelines seek to identify

> ...a group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm...that was the only present and future producer or seller of those products in that area likely would impose at least a "small but significant and nontransitory increase in price..."[6]

Purchasers in these markets will be forced to accept this price increase, unless the competition between firms within the market prevents the increase. Any merger that reduces competition between sellers in a market as defined above, creates or enhances market power.

This definition of a market is implemented by evaluating whether a price increase (as defined above) would be profitable to a (hypothetical) monopolist seller. The increase would not be profitable if buyers shifted sufficient purchases to other products, thus reducing the monopolist's sales by enough to eliminate the profitability of the price increase. Buyers might also respond to the price increase by purchasing the product from locations at which the price did not increase. This again, if done in sufficient volume, would make the price increase unprofitable.

Starting from the products sold and areas served by each of the merging firms, the market will be defined once the set of products and geographic areas has been expanded enough so that a price increase would be profitable to a monopolist seller of these products in these areas. At this point, current market participants are identified. To this list are added "uncommitted entrants", or firms that would be likely to enter "within one year and without the expenditure of significant sunk costs of entry and exit, in response to a 'small but significant and nontransitory' price

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[6]Merger Guidelines, p. 4.

increase."[7] The competitive significance of each of these firms is measured by its market share if it is already in the market, or its predicted market share, if it were likely to enter the market in the event of a price increase. The collective competitiveness of all current market participants and uncommitted entrants is measured by the Herfindahl-Hirschman Index (HHI), calculated by squaring each firm's market share, and then summing. If the post-merger value of the HHI is 1800 or more, an increase in the HHI of 100 points or more is likely to create or enhance market power or facilitate its exercise.[8] The construction of the HHI gives a more-than-proportionate importance to large market shares, and increases the most with a merger of two equal-sized firms to monopoly, reflecting the belief that this merger would, all other things equal, have a greater adverse impact on competition than one in which there remained 2 or more firms in the market. In situations in which most or all of the firms in the market have sufficient capacity to serve a significant amount of total market sales, and no significant disadvantage in obtaining these sales, the analysis considers the number of competitors rather than their market shares. Again, however, it is likely that a reduction in the number of competitors in a market from 2 to 1 is likely to harm competition more than a reduction from 3 to 2 or from 4 to 3.

2. Participants in the market for transportation to a generating station and the effect of competition in this market

For the PSI, IP&L, and PEPCO generating stations considered in this statement, coal is the most cost-effective fuel used. The stations use other fuels such as oil and natural gas, but these cost from 2 to 3 times more than coal per unit of energy produced and tend to be used only

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[7]Merger Guidelines, p. 11.

[8]Merger Guidelines, p. 16.

when lower-cost sources of electricity are unavailable. Consequently, only providers of coal transportation are potentially in the market. My analysis assumes that all railroads that serve a particular generating station are in the market for transportation to this station, as long as each of the railroads has similar access to the type of coal used in the generating station. Generating stations located on or near waterways sometimes receive coal from barges. And it is always physically possible to ship at least some coal in by truck. But trucks are less economical at transportation of bulky, high-volume commodities like coal because a single truck can carry only between one-fourth and one-third as much as a single railroad car. Many shippers do not have the ability to handle the enormous number of vehicles large-volume movement by truck requires. In addition, large-volume movements by trucks are often not feasible because of local traffic considerations. Trucks are also less competitive with railroads when the commodity transported has a low value-to-weight ratio. The transit time disadvantage of railroads generates smaller inventory carrying cost as the value of the product is lower. As discussed below, trucks and barges do not appear to be competitive with railroads for shipment of coal to the generating stations of PSI, IP&L, and PEPCO under consideration.

Once all suppliers of transportation have been identified in a particular market, it is necessary to determine in which of these markets the parties to the proceeding are competitors and whether the merger will lead to increased market power by either CSX, NS or any other railroads. If, at pre-merger prices, trucks or barges represent competitive modes of transportation, then rail transportation does not constitute a market and even a merger of all supplying railroads is not likely to lead to increased market power. If the number of independent railroads remains sufficiently high after the merger, the merger is also not likely to increase market power.[9]

3. Generating stations of PSI, IP&L, and PEPCO

a. PSI

PSI Energy is a subsidiary of Cinergy Corporation, a utility serving customers in Indiana, Ohio, and Kentucky. Cinergy is a member of the East Central Area Reliability Interconnection network[10] (ECAR). PSI's most economical electricity comes from its Gibson and Cayuga, Indiana generating stations. The most efficient stations in the rest of the Cinergy network, Zimmer and East Bend, are similar in efficiency and utilization to the top PSI stations.[11] PSI dispatches power according to the relative costs of each generating station, which are affected by delivered fuel cost and plant efficiency.[12] PSI's Gibson station, the largest in the Cinergy system and located in the southwest corner of the state, at Carol, consumed about 6.8 million tons of coal in 1996.[13] About ********* tons of this coal comes from the Cyprus-Amax mine, located in Keensburg, Illinois, just across the Illinois border. This proximity to the coal mine has, in the

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[9] This statement uses both the number of railroads as well as their market shares, as the appropriate measures of competition, depending on the particular circumstances.

[10] An interconnection network is a collection of generating stations operated by different member utilities that are connected by transmission lines and metered so that electric power can be generated by one member utility's generating station and sold to another member utility.

[11] Interview of **************, *********************, PSI, and *****************, ************************, on September 19, 1997

[12] ibid.

[13] Interview of **********, *********************************; Cinergy FERC 1996 Form 1, p. 402.1.

past, given Gibson access to very inexpensive delivered coal.[14]

The only line railroad line into the Gibson station is part of the NS system. NS transports all of the coal that the station consumes. Conrail, however, has trackage rights over the part of this line from Keensburg into Gibson, making it a competitive alternative to NS for coal originating in the Cyprus-Amax mine. As late as December, 1994, Conrail actually delivered coal from Keensburg to the Gibson station, using the trackage rights over NS. The current NS track over which Conrail has trackage rights originally belonged to Penn Central (now Conrail).

NS's predecessor, Southern, used to operate a second line to Carol, but this line had been unused from 1972 to at least 1990, when PSI tried unsuccessfully to buy it from NS.[15] PSI had intended to use this line to connect to CSX via a short line, the Poseyville and Owensville Railroad, in order to obtain lower rail rates. PSI also tried to reduce transportation costs into Gibson by filing complaints with the ICC in 1971 and 1979. PSI claimed that the rates charged by Conrail (which was then the only railroad serving Gibson) were too high. The ICC imposed a rate ceiling in response to the 1971 complaint but did not grant any relief to PSI in response to the second complaint. The ICC did, however, conclude that Conrail had market dominance over transportation into Gibson.[16]

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[14]************** interview , op cit.

[15]Coal Week, September 17, 1990, p. 3. At this point, PSI was receiving coal from both NS and Conrail but it is unclear whether the benefit to PSI from 2-railroad competition was as great as it was in 1994. This benefit is discussed in the next section.

[16]1981 WL 22782, *1 (I.C.C.)). The ICC did this reluctantly, noting that it was possible to use alternative methods of transporting coal into the station. PSI claimed that it had investigated other methods such as a conveyor belt but that it preferred rail transportation.

b. IP&L

IP&L, a subsidiary of IPALCO Enterprises, Incorporated, operates the EW Stout generating station in Indianapolis. Conrail and CSX are the only class 1 railroads currently serving Indianapolis and this city represents by far the largest of the "2 to 1" points identified by the parties to the merger.[17] Under the remedy proposed by the parties to this "2 to 1" competitive overlap, NS will receive trackage rights over CSX to Indianapolis into Conrail's Hawthorne Yard (which CSX will acquire, as well as the Conrail lines in Indianapolis) at which point CSX will switch the NS cars to customers such as IP&L.[18] The Stout station is served directly by only 1 railroad, the Indiana Railroad, but is also served by Conrail via reciprocal switch. The Indiana Railroad is owned by CSX.[19] The Stout plant is about 2½ miles from a Conrail branch line and about 3 miles from the Indianapolis Union Belt Railroad (owned by Conrail).[20] In 1996, the plant consumed about 1.25 million tons of coal, all transported by railroad and originating in Indiana mines located about 110 miles south of the plant. The Indiana Railroad supplied 90 percent of the coal from these mines while Conrail supplied the remaining 10 percent through an

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[17]McClellan V.S., p. 46 (Volume 1 of the Application at 548).

[18]Indianapolis Switching Agreement (Exhibit X of the Transaction Agreement).

[19]The Indiana Railroad is owned by Midland United Corporation which is 89 percent owned by CSX. (Applicants' Response to First Set of Interrogatories, First set of Requests for Production of Documents, and First Set of Requests For Admissions to Applicants From Indianapolis Power & Light., p. 25). My analysis assumes that CSX can prevent the Indiana Railroad from acting contrary to CSX's interests.

[20]Interview of *********************, ****************, and ************,*********************** IP&L, on October 7, 1997.

interline with the Indiana Southern Railroad which serves mines in the same area.[21] IP&L is a member of the ECAR interconnection network.

c. PEPCO

PEPCO operates 4 generating stations, each served by a single railroad that supplies all of the station's coal. PEPCO's Morgantown and Chalk Point, Maryland, plants are served by Conrail and in 1996 consumed 2.5 million and 1.5 million tons of coal, respectively. The Morgantown plant is located on the Potomac River and the Chalk Point plant is on the Patuxent River, both of which flow into the Chesapeake Bay. PEPCO's Dickerson, Maryland, plant is served by CSX and in 1996 consumed 1.2 million tons of coal. PEPCO's Alexandria, Virginia, plant, served by NS, last year consumed 730 thousand tons of coal.[22] While they are all fueled by coal, PEPCO's 4 generating stations vary considerably in their efficiency and utilization rates. The Dickerson and Morgantown plants are by far the most efficient and most heavily-utilized PEPCO plants. In 1996 these plants operated at capacity factors of 67.7 and 70 percent, respectively, and had the lowest fuel costs and total expenditures per KWH.[23] At the other extreme, the NS-served Alexandria plant is the least efficient of the 4, and operated at a capacity factor of only 39.3 percent, while the Chalk Point plant operated at only 26.9 percent.[24]

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[21]********* and ******interview, op cit, and interview with IP&L counsel, October 3, 1997.

[22]Interview of ************************, PEPCO, *********************, PEPCO, and PEPCO counsel, on August 11, 1997.

[23]ibid; 1996 PEPCO FERC Form 1, various pages.

[24]According to PEPCO representatives, the Alexandria plant is the least efficient PEPCO station. It is unclear why this plant was operated more extensively than Chalk Point, which according to the data is more efficient. But it seems quite

PEPCO is a member of the PJM Interconnection Association (PJM), and in 1996 purchased almost as much electricity as it generated. PEPCO also sold significant amounts of electricity for resale, rather than to final consumers.[25]

4. Market definition and competitive effects of the merger on *****, IP&L, and PEPCO

Competition between 2 railroads to supply coal to a generating station is likely to lead to lower railroad rates than a monopoly railroad would charge, if there are no other competitive modes of transportation. If this competition is eliminated by a merger, the only remaining competition would be from other fuels. But these fuels are far more expensive than coal, at current transportation prices. Railroad witnesses in this proceeding acknowledge the beneficial competitive effects of railroad competition at the generating station level.[26] The introduction of a second railroad to a generating station can result in millions of dollars of savings in annual transportation costs.[27] Consequently, the relevant geographic market could be as small as railroad transportation of coal to a particular generating station.

In some situations, however, it is appropriate to expand this market to include transportation of coal to other generating stations in the utility's network. If stations are

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clear that Dickerson and Morgantown are significantly more efficient and more utilized by PEPCO than Alexandria and Chalk Point.

[25]1996 PEPCO FERC Form 1, p. 401.

[26]Fox V.S., p. 13, Sansom V.S., p. 9-10.

[27]See, for example, savings to Houston Lighting and Power resulting from a build-out to Union Pacific (Coal Week, February 24, 1997, p. 1). The rate premium owing to monopoly may be 30 percent or more, according to Ward Uggerud, Chairman of the Alliance for Rail Competition, as quoted in Coal Week, September 8, 1997, p. 8.

connected adequately so there are no transmission limitations, and if they are close together, so that losses of electricity due to transmission are small, a utility may be able economically to substitute the electricity generated by one station for that generated by another. This substitution is limited by the relative efficiencies of the plants, since an efficient plant that faces high transportation costs might still operate at a lower overall cost than a less-efficient plant with low transportation cost. Finally, substitution can occur, of course, only when there is surplus generation capacity available. If these conditions are met, however, it may be appropriate to expand the relevant antitrust market to include all of a utility's generating stations. Obtaining a monopoly of rail transportation into only one of a utility's generating stations may not enable the monopolist to raise price, given the constraint provided by the utility's other plants.

When plants within a utility's network can substitute for one another, sole-served generating stations within the network can create competition between railroads. According to NS witness Prillaman,

> A utility can often secure better terms at a soley [sic] served generating plant by threatening to alter its "dispatch priorities." The utility tells the railroad that, without a favorable deal for the plant in question, the utility will produce less power at that plant and shift generation to one or more of its other plants.[28]

NS witness Fox says much the same thing:

> Plant dispatch competition is often also available to a utility...The utility plays one transportation provider against the other. Because of economic dispatch protocols, the level of burn at any one plant is determined by its rank among all the other plants operated by that utility. The plants are ranked primarily by marginal delivered fuel prices...Thus the net effect of the dispatch protocol is to significantly reduce coal demand at plants that have high rail rates. This

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[28]Prillaman, V.S., p. 8. He goes on to mention power purchases from other utilities as an additional competitive factor.

potent competitive situation is available to most utilities.[29]

If a merger gives a single railroad a large share of a utility's total coal purchases, particularly a large share at the utility's most efficient and most highly-utilized plants, it is likely to gain considerable market power. The utility's ability to substitute one generating station for another is reduced if a single railroad gains exclusive access to most of the utility's generating capacity, particularly if the remaining capacity is less efficient.

The above analysis indicates that geographic markets may be broader than rail transportation of coal to an individual generating station. I now consider whether the appropriate geographic market may be larger still, and include, via the electrical interconnection network, multiple electric utilities. When electric power can be purchased from other utilities or even non-utility producers, the price of this power may be low enough to constrain the market power of transportation suppliers to the utility's own plants. Participation in interconnection associations enables utilities to benefit, to a certain extent, from the competition between suppliers of bulk power.[30] In particular, during periods of low association electricity demand, the appropriate antitrust market for competitive analysis may be the entire electrical interconnection network. During these periods, all generating stations in the network can potentially supply power to one

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[29] Fox V.S., p.11.

[30] On the general competitiveness of such power production, see Frankena, M. and B. Owen, Electric Utility Mergers: Principles of Antitrust Analysis, 1994, p. 29. Also see p. 78 for a discussion of an instance when no power was available for sale. PEPCO's use of high-cost generating stations is a clear indication that this is the only alternative PEPCO often has. Transmission constraints also limit the competition available over the network. See, for example, Squires, J., "Electric Power Restructuring: Implications for Railroads," 64 Journal of Transportation Law, Logistics and Policy, 518 (1997).

another, and consequently the providers of transportation of coal (and possibly even nuclear fuel) to all of these stations may be in the market, although their relative efficiencies will still affect the ability of each to compete.

It should be stressed, however, that at other periods of time, economical power will be unavailable. Any factor that increases demand across a network, such as hot weather, will reduce the availability of low-cost power. Electricity may be available during high demand periods, but only at high cost. For example, in July of 1997, the PJM produced a record amount of electricity, but the price of power reached $156.50 per megawatt-hour, more than 8 times the variable cost of power from PEPCO's efficient Dickerson plant ($19.10).[31] Both the overall average and on-peak average price of power from PJM in this month ($28.70 and $37.10, respectively, per megawatt hour[32]) were more expensive than the variable cost from the Dickerson plant. When power costs this much, it can not substitute effectively enough for that from a utility's own generating stations to restrain the suppliers of transportation to those stations from raising prices if they have significantly increased their control of transportation to these stations.

Because utilities and railroads typically sign long-term supply contracts of one year or more, a railroad could not perfectly price discriminate across different periods of the year according to whether it was competing with (1) only those providers of fuels to a particular generating station[33], (2) providers of fuels to a particular utility's generating stations, or (3) all

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[31]1996 PEPCO FERC Form 1, p. 403.

[32]PJM Interconnection July Operating Highlights.

[33]For spot market sales, however, the railroad could discriminate in this manner. Anticipating a high cost of power from the network, a railroad with a monopoly over a utility's generating stations could set a high price for spot sales with

providers of fuels to the interconnection network. But it is likely that a railroad (or any other competitor) would recognize that, overall, it had increased market power if the amount of competition it faced decreased in any of the possible antitrust markets, and raise its price accordingly to take advantage of this reduction of competition. This proposition is supported by the various witnesses cited above and shippers cited below who all say that competition is enhanced by an increased number of competitors at the generating station, utility, or interconnection network level. They believe that there is an overall effect, and this effect causes, on balance, lower prices for the utility even if at times of the year there are sufficient competing sources of electricity to make redundant the competition at a single generating station or even at all of a utility's generating stations.

4a. The loss of one of only two competitors at the generating station level is likely to harm competition for coal shipments to PSI

PSI's Gibson station has benefited from past competition between Conrail and NS. In 1994, competition from NS reduced PSI's cost of railroad transportation by *** to **** percent as NS took away the business from Conrail. Conrail had been supplying PSI about ** tons of coal annually from the mine. NS signed a long-term contract with PSI that expires in ******. NS's current rate could increase at least *** percent before PSI would shift to truck transportation.[34] PSI could not defeat such a rate increase with power generated elsewhere on the Cinergy network or power purchased from ECAR because of Gibson's inherent efficiency and

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the expectation of little competition from the network.

[34]Interviews of *****************, ****************, PSI, on August 14 and September 19, 1997.

proximity to a coal mine. And PSI's unsuccessful attempt to purchase the unused NS line into Gibson instead of developing other means of transporting coal suggests that these means are uneconomic, particularly in view of the ICC's past finding that the owner of the operating line into Gibson possessed market dominance.

The lack of other transportation options for PSI's Gibson station combined with evidence of the benefit it has enjoyed from past competition between NS and Conrail indicate that PSI has two, and only two, economical transportation options for its coal shipments. Yet the Conrail rights that maintain this competition are being transferred to NS as part of the merger.[35] This transfer of Conrail rights to NS rather than to CSX is contrary to the general policy regarding Conrail rights that specifies that existing Conrail trackage rights over NS will be transferred to CSX.[36] The transfer of the Keensburg-Carol rights to NS is listed as an explicit exception to this policy. Given a lack of alternatives, PSI is therefore likely to face an increase in rail rates caused by the merger.

4b. Incomplete relief provided by NS to Conrail's exit from Indianapolis is likely to harm competition for coal shipments to IP&L

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[35]Introduction to the Application, p. 39; NS operating plan, p. 39; Exhibit PP--Agreement for Assignment of CRC Rights: Specifically excluded from this Agreement (giving Conrail rights over NS to CSX) are Conrail's current trackage rights over NSR between Carol, IL and Keensburg, IL. (p. 3) and Attachment 1 to the Transaction Agreement, p. 7. These citations all erroneously indicate that Carol is in Illinois, and not Indiana. But Conrail's current possession of the trackage rights to Carol, Indiana are clearly indicated on maps included in the filing: Exhibit 1, Map A (indicating existing Conrail trackage rights), the Conrail system map showing the Proposed allocation of Conrail lines and rights as well as Page 61 of the NS operating plan which shows some Conrail traffic on the line.

[36]NS operating plan, p. 17.

The transaction is likely to reduce transportation competition at IP&L's Stout plant because of inadequate replacement of existing Conrail competition by NS. Since the only transportation competition to the Stout plant is now provided by the Indiana Railroad (owned by CSX) and Conrail, it is critical to ensure that the competition the parties intend for NS to provide will be able to replace existing Conrail competition. NS will be able to serve the Stout plant, using switching provided by CSX, but NS is unlikely to replace the competition lost by the disappearance of Conrail for two reasons. First, NS will not get Conrail's convenient access to the nearby Indiana coal fields since it will not be able to connect with the Indiana Southern at Indianapolis, as Conrail does now. NS can connect with the Indiana Southern at Oakland City, Indiana,[37] in the southern part of the state, but NS has a circuitous route from there to Indianapolis of at least 300 miles. Other NS-served mines, such as ones in Illinois or Kentucky, may have suitable coal, but they are at least twice as far from Indianapolis as the mines on the Indiana Southern. A final alternative uses CP Rail, which connects with the Indiana Southern at Beehunter, Indiana, a point north of Oakland City, and significantly closer to Indianapolis. CP could presumably then connect with NS which would take to coal to Lafayette, Indiana at which point NS would travel 85 miles over CSX track to Indianapolis. This alternative (or a CP-NS interline from mines that CP serves directly in Indiana[38]) again involves significant circuity and is at least twice as long as the current Conrail route. This additional distance is likely to raise the price NS will charge to ship coal to IP&L. For example, using 1995 average coal revenue per

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[37] The Official Railway Guide, September/October 1997 issue, p. C104.

[38] 1995 STB Waybills sample.

ton-mile[39] of $.028, and assuming that this reflects a mark-up over variable cost of 100 percent, then variable cost is $.014 per ton-mile. If NS must haul the coal 100 miles farther than Conrail does now, the extra cost to NS would be $1.40 per ton, a significant amount compared to the current price that IP&L is paying per ton of $******.[40] Even if the mark-up over variable cost is 200 percent, then the variable cost is $.093 per ton-mile so the extra cost to NS would be a still-significant $.93 per ton. My conclusion that NS will be significantly disadvantaged by the extra distance is shared by Indiana Southern, as its representative told me that route circuity will not permit either an Indiana Southern/NS or Indiana Southern/CP Rail/NS routing to be competitive with the shorter Indiana Railroad routing[41].

A second disadvantage will be the likely operational problems NS will face in Indianapolis. NS will have to use CSX facilities in Indianapolis. These may be congested and the interchange between NS and CSX is overall likely to be worse than the current interchange between Conrail and the Indiana Railroad[42]. There is also the potential for CSX to use biased dispatching or excessive switching fees to lessen the ability of its only Indianapolis rival, NS, to compete. Currently, of course, Conrail also relies on a competitor, Indiana Railroad, to provide switching services. But Conrail had an important lever that NS will lack, and that is the ability to receive a build-out from IP&L. Currently, IP&L can construct a line to Conrail for approximately $******* and it can also construct a line to the Indianapolis Union Belt Railroad

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[39]Prillaman V.S., p. 20. (Attachment LIP-8).

[40]IP&L interview, op cit.

[41]Interview of ***************, ***********************, Indiana Southern Railroad, on October 9, 1997.

[42]IP&L interview, op cit.; *********** interview, op cit.

(owned by Conrail) for approximately $*******. The threat of a build-out has, according to IP&L, served as an effective means of ensuring cooperation between the Indiana Railroad and Conrail so that Conrail is a competitive alternative to the Indiana Railroad. This threat has also provided an effective ceiling on switching charges from the Indiana Railroad.[43] If the Indiana Railroad did not cooperate, IP&L could build out to Conrail in order to receive coal from Indiana Southern, and bypass the Indiana Railroad altogether. Since the NS rights over CSX to Indianapolis are only bridge rights, NS will not be able to connect to any build-out from IP&L in the Indianapolis area. Consequently, there is no threat of a build-out to encourage operational cooperation or reasonable switching charges from CSX.

Past competition between Conrail and the Indiana Railroad has significantly reduced coal transportation costs for IP&L. In 1996, Conrail, the Indiana Railroad, and trucks were competing for coal deliveries to the Stout plant. The Indiana Railroad matched Conrail's price and won 90 percent of the business, but the competition from Conrail reduced prices about *** percent below the truck price. Had there been no competition from Conrail, the Indiana Railroad would have merely matched the higher truck rate, and not undercut it.[44] This episode strongly indicates that truck[45] competition will not prevent an increase in railroad rates after the merger.

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[43] IP&L interview, op cit.

[44] IP&L interview, op cit. Both this estimate of savings of *** percent and *****'s estimate of savings of 30 to 40 percent resulting from competition between 2 railroads at a generating station are consistent with the 30 percent savings reported in footnote 27 above.

[45] Barges can not be used at the Stout plant, because of the absence of a navigable river in Indianapolis, according to a letter from *********, IP&L, to ******. (Provided to me by IP&L).

There remains, in principle, the possibility that electricity from other IP&L generating stations or the ECAR interconnection network might constrain the Indiana Railroad from raising prices post-merger. As discussed above, at particular times, power from a utility's other plants or the interconnection network may be inexpensive enough to constrain coal transportation prices at a generating station. But the overall costs of the network and the other stations are so high that IP&L could not use either of these alternatives to prevent the Indiana Railroad from raising the price of transportation to the Stout plant.[46]

The lack of effective non-rail competition for coal transportation to the Stout plant and the inability of IP&L to use other generating stations or the interconnection network to substitute for electricity from Stout suggests that there is no constraint on the Indiana Railroad's current prices to Stout except competition from Conrail. And this competition is not being adequately replaced by NS after the merger. NS will have to haul coal at least twice as far to Stout as Conrail does today, and may face congestion problems in Indianapolis. Since a longer distance increases the variable cost of transporting coal--and the distance will be significantly longer--it is likely to lead to higher transportation bids from NS as it competes against the Indiana Railroad for coal shipments to Stout. Anticipating this, and the lack of competition from other modes of transportation, the Indiana Railroad is likely to raise its own bids for this transportation. Compounding this cost disadvantage to NS is the possibility of operational problems in Indianapolis that IP&L will no longer be able to minimize through the threat of a build-out.

4c. Reduced competition at the utility level is likely to harm competition for coal shipments to PEPCO

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[46]IP&L interview, op cit.

When the proposed transaction occurs, CSX, which already serves the PEPCO plant at Dickerson, will acquire the Conrail line to the PEPCO plants at Morgantown and Chalk Point.[47] NS will continue to serve the PEPCO plant at Alexandria. Consequently, CSX will become the sole railroad serving 3 of PEPCO's 4 generating stations, including the most efficient ones at Dickerson and Morgantown. As noted above, PEPCO currently only uses railroads to supply coal to its generating stations, and not trucks or barges, so these alternative methods of transportation are not competitive at current railroad prices. Use of trucks would probably require a transload from another railroad (presumably NS) and a long haul through congested urban areas to the PEPCO generating stations. Since both the Morgantown and Chalk Point plants can be reached by water from coal loading docks in Baltimore or the Norfolk, Virginia area, barges are potential competitors to railroads for delivering coal to these plants. The relevant issue is whether barges (though not now competitive) would become competitive with rail transportation if the railroad transportation price increased after the merger.

PEPCO's ability to use a threat of NS-supplied barges to prevent a price increase from CSX appears, however, to be limited. Using barges to unload coal at Morgantown would require permits both to build an unloading facility and to operate barges in environmentally-sensitive areas. Dredging would also be required. In addition, the facility would cost millions of dollars and take at least 3 years to build. So PEPCO will have no transload competition for 3 years or more, even if it is able to construct the unloading facility. Finally, independent of capital costs, loading costs associated with a transload would increase the variable cost of supplying coal to

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[47]Sansom V.S., p. 9; Attachment 1 to the Transaction Agreement, p. 3.

PEPCO by approximately $** per ton.[48]

In 1993, however, PEPCO did examine the barge alternative and used this threat in negotiations with the railroads. In particular, PEPCO looked into the possibility of using CSX to ship coal to Baltimore or to Newport News, Virginia for transfer to a barge that would deliver the coal to Morgantown. PEPCO examined a similar operation involving NS delivery of coal to Lamberts Point (near Norfolk) for transload to barge.[49] PEPCO advised Conrail of these possible alternatives for PEPCO's coal requirements and believes that Conrail made a rate reduction at Morgantown and Chalk Point in response to this threat. This possibility of rail-barge competition still exists, of course, with NS, but PEPCO believes that having two rail-barge alternatives (CSX and NS) led to a significantly more serious threat to Conrail in the past than one rail-barge alternative (NS) will have against CSX.[50] PEPCO provides several reason for this belief, any one of which would support the prediction that NS will not provide the constraint on CSX that CSX had on Conrail in the past. First, NS may have insufficient capacity at Lamberts Point to load the additional coal that PEPCO would require. Second, PEPCO believes that NS has inferior access to the types of coals PEPCO uses than CSX does. In 1993, NS showed significantly less interest in a rail-barge transload than CSX did. In 1997, in response to PEPCO's request for a rate to Lamberts Point for a transload, NS has not quoted a rate that is low enough to make a transload worthwhile. Finally, while the basic plan today for construction

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[48]Interview of ***********, PEPCO, on October 6.

[49]ibid.

[50]PEPCO interviews on August 11, October 6, op cit; Interview of ********, PEPCO, *******************, PEPCO, and PEPCO counsel, on October 10, 1997.

and operation of a barge unloading facility at Morgantown may be unchanged from 1993's plan, greater environmental sensitivity--which PEPCO experiences at some of its generating stations now--may reduce the chances of receiving the necessary permits for the facility.[51] At this point, given (1) the reluctance of NS to quote a competitive rate for a rail-barge transload, (2) a number of reasons why NS is less competitive than CSX was for the transload, and (3) a general proposition from economic theory that, even in bidding situations, one can not rely on one bidder to act as competitively as two bidders would, it seems reasonable to conclude that barge competition from NS will not constrain rail rates after the merger as much as barge competition may have done in the past.

If environmental restrictions prevent PEPCO from building a transload facility or NS is unwilling or unable to provide PEPCO a rate to Lamberts Point that both overcomes the transload variable cost penalty and gives PEPCO an incentive to make the significant investment necessary to build the facility, then a rail-barge transload will not be competitive with all-rail transportation for PEPCO. In that case, based on 1996 tonnage used, the merger would increase CSX's share of PEPCO's coal purchases from 20 percent to 88 percent, while NS will supply the remaining 12 percent. If a rail-barge transload is not competitive with railroad transportation, then the merger will increase concentration dramatically (generating an increase in the HHI of 2727 points), and suggesting great cause for competitive concern.

While, at the utility level, the merger would appear to represent a reduction in the number of competitors from 3 to 2, the capacity limitations and relative inefficiency of the NS-served Alexandria plant make it more nearly a "2 to 1" merger. This is because the merger will make

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[51]PEPCO interview, October 10, op cit.

CSX the sole supplier to PEPCO's two most efficient plants, Dickerson and Morgantown, as well as to what is arguably PEPCO's third most efficient plant, Chalk Point. As a monopoly railroad serving these plants, CSX will face less of a competitive constraint than exists today and could, unilaterally, expand its economic rents by raising coal transportation rates.

Currently, Dickerson and Morgantown have PEPCO's lowest costs of fuel per KWH of $.014 and $.016, respectively, significantly lower than Alexandria's fuel cost of $.020 (Chalk Point's cost is also low, at $.017) and one of these 2 lowest-cost plants is now served by CSX and the other by CSX's competitor Conrail. An alternative measure of cost is total expenditures per KWH. By this measure, Morgantown and Dickerson are still the leaders, with expenditures per KWH of $.0182 and $.0191, respectively, and far below Alexandria's $.0295. (Chalk Point's expenditures per KWH are $.0273). A railroad seeking to expand its economic rents could, if it controlled access to both of these plants, raise coal transportation rates to take advantage of PEPCO's inability to substitute generation at other generating stations because of these stations' higher cost. Finally, Alexandria has the lowest capacity of the PEPCO plants.[52] Consequently, PEPCO's ability to use power from NS-served Alexandria as a substitute for power from the CSX-served plants will be limited, even if PEPCO ignored the cost penalty at Alexandria. For these reasons, during periods when CSX's only competition at PEPCO will be NS, CSX will likely have both an incentive and ability profitably to raise rates to PEPCO[53].

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[52]The expenditure and capacity information is taken from the 1996 PEPCO FERC Form 1, various pages.

[53]I am aware that PEPCO is now involved in a rate case involving a recent CSX rate increase at Dickerson (STB Docket No. 41989) and that PEPCO's position in that proceeding is that other PEPCO plants, including both the Conrail and NS-served plants, can not constrain CSX from imposing a significant rate

5. The likely harm to competition can be remedied by the limited application of trackage rights

The competition that has benefited PSI at Gibson can easily be maintained if the STB requires that CSX rather than NS receive the Conrail rights (under existing terms) between Keensburg and Carol. This will maintain the two-railroad competition that currently exists. Competition at IP&L's Stout plant can be maintained by increasing the competitiveness of NS to the level currently provided by Conrail. This can be done by imposing three conditions. The first is to give NS the right to connect with the Indiana Southern at Indianapolis. Second, the lever of a build-out by IP&L should also be maintained by granting NS the right to serve any build-out that IP&L wishes to make to an existing Conrail line. Finally, if a build-out is made, NS should not be required to use the Hawthorne yard, since had Conrail connected to this build-out it would not have needed to run trains through this yard. NS should be granted the right to run trains over CSX from the recommended connection with Indiana Southern directly to the point of any build-out from IP&L.

Competition at PEPCO's plants could be maintained by a grant to NS of trackage rights to serve the Morgantown and Chalk Point plants. This remedy would actually serve to increase

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increase at Dickerson (PEPCO interview, op cit, and *********** V.S. from this proceeding, provided to me by PEPCO). Before the merger, CSX may be able to raise the Dickerson plant rail rate significantly if there is no competition at pre-increase prices. But eventually it is likely that the Conrail-served plants will constrain further CSX price increases. If CSX gains exclusive service to these plants, this constraint will disappear and the only constraint will be the weaker one provided by NS at Alexandria. As explained earlier in my analysis of plant, utility network, and interconnection association competitive constraints, the fact that monopolization over service to an individual generating station may lead to market power does not imply that market dominance over service to a utility's network of plants will not further enhance this market power.

competition beyond the current level since both NS and CSX would serve the same low-cost generating stations. But maintaining a second railroad as a constraint on CSX's ability to raise rates to the most efficient PEPCO plants when PEPCO has no other equally-efficient electricity sources seems to require this remedy. An exact replacement of the lost Conrail competition would require that the Conrail line to Morgantown and Chalk Point be granted to NS rather than to CSX. This relief would require a significant change in the merger agreement that might undermine the seemingly logical partition of Conrail. On the other hand, the operational logic of the agreement is maintained by simply adding the ability of NS to serve PEPCO at these 2 stations. None of the recommended conditions regarding service to the 3 utilities are likely to reduce the ability of CSX and NS to achieve the claimed efficiencies resulting from the merger.

I, Peter A. Woodward, declare under penalty of perjury that the foregoing statement is true and correct. Further, I certify that I am qualified to file this statement. Executed on October 21, 1997.

Peter A Woodward

Peter A. Woodward

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Assistant Analyst, Fiscal Analysis Division, Congressional Budget Office, Washington, D.C., 1982-1984.

Testimony:

Verified Statements on Competition and Trackage Rights, ICC Finance Docket 32549 (Burlington Northern-Santa Fe Pacific Merger), May 10 and June 9, 1995.

Volume of Commerce Estimation, U.S. vs. J. Bruil, et. al., December 3, 1993.

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182926

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

COMMENTS OF

AMERICAN FARM BUREAU FEDERATION
AMERICAN FEED INDUSTRY ASSOCIATION
NATIONAL CATTLEMEN'S BEEF ASSOCIATION
NATIONAL CORN GROWERS ASSOCIATION
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Due: October 21, 1997

October 21, 1997

We the undersigned farm and food organizations appreciate the opportunity to file comments with the Surface Transportation Board with regards to the proposed joint acquisition of Conrail by CSX Corporation and Norfolk Southern Corp.

We have systematically evaluated the merger being proposed, its likely impacts and its importance for agriculture. An evaluation study by Sparks Companies, Inc. (***Railroad Restructuring: The Conrail Merger with Norfolk Southern Corp. and CSX Corp.***, October 1997) is attached for your review and use. Its findings provide the basis in part for the following comments.

<u>The Merger is Important to Agriculture</u>

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

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

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

Not only are railroads important to agriculture, especially grains, but agriculture is an important source of business for the railroads, as well. Farm products are the second most important commodity (behind coal) in terms of tonnage, while food products are fifth. Access to efficient transportation services at competitive rates is vitally important to our farmer members throughout the affected region, and nationwide.

Third, the Conrail system is the product of a succession of earlier mergers, responding to economic trends toward urbanization and a service economy, and competition from new highways and highly competitive trucks. It appears unlikely that Conrail would continue as a separate rail company in the absence of the merger proposed. Thus, our members concern is not whether the merger is, by itself, good or bad, but whether it is better or worse than the purchase of Conrail by a single railroad, and how any merger agreement of the magnitude of that proposed could be implemented.

Merger Objectives

In our evaluation of the information supplied by the railroads in support of their proposal, it appears that their objectives are highly positive. This transaction promises to increase the level of competition between railroads, giving many shippers a choice between two competing Class I railroads, each of which is willing to exert strong efforts to win business away from its rival, as well as from other systems. Key elements include:

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

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

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

  ◊ ***Rail to Rail Competition.*** Currently, CSX and NS compete throughout the Southeast and Midwest. Conrail, on the other hand, faces only limited rail competition in some parts of its service territory. The transaction is designed to eliminate this anomaly, allowing CSX and NS to expand the scope of their competitive efforts into important new commercial areas.

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

CSX and NS portend significant benefits not only for themselves, but for the consuming public as well.

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

Other expectations of beneficial changes include:

- more single-line service.
- new and improved routes.
- more reliable service.
- improved equipment utilization and availability.
- reduced terminal delay.
- increased capital investments.

Implementation

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

Overall, such investments would benefit agriculture across the region, and across the nation. They would mean greater opportunities for agricultural investment, stronger markets and greater returns to agricultural investment and more competitive positions for US agricultural products in both domestic and export markets.

Recommendation

While the proposed merger promises to provide significantly more benefits than costs for agriculture, there should be no misunderstanding that a re-structuring of this magnitude will be neither easy nor simple. The potential for future conflict in interpretation of the agreement in terms of route and other allocations, shared facilities, expected investments and other commitments is real and it is important. Recent examples involving other railroad mergers suggest that the implementation of the restructuring is nearly as important as the concept itself. The agriculture sector has had an unhappy experience with previous rail restructurings which also have promised potentially large benefits. Unfortunately, this may mean that logistical problems could be repeated unless strong oversight action is taken by the Surface Transportation Board.

We propose that the Board be much more watchful from the very beginning of the implementation to ensure that the proposed operating plan actually is carried out as promised. More specifically, we would propose that the Board conduct periodic public hearings and require an annual report that evaluates how well the transition is proceeding, especially as it relates to agriculture.

We suggest that the report be organized generally as follows:

I. General Overview.

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

II. Service.

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

III. Operating Savings and Other Cost Reductions.

For each carrier, to what degree have these been realized relative to those expected, and relative to the baseline period.

IV. Increased Competition.

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

V. Other Impacts.

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

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

VI. Increased Services for Agriculture.

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

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

VII. Conclusions.

In conclusion, the proposed three-way merger is the better option for agriculture in light of an uncertain future for Conrail. The additional competition offered by this proposal may in fact prevent some of the service problems which have resulted from recent mergers. Strong oversight by the Surface Transportation Board will be needed in the short term to ensure that past merger service problems are minimized.

Thank you very much for your consideration of our comments. We look forward to working closely with you in the future on issues concerning this extremely important aspect of our industry.

Sincerely,

American Farm Bureau Federation

American Feed Industry Association

National Cattlemen's Beef Association

National Corn Growers Association

National Pork Producers Council

OCT 21 1997

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

Railroad Restructuring: The Conrail Merger with Norfolk Southern Corp. and CSX Corp., Sparks Companies, Inc., October 1997

SUBMITTED AS AN EXHIBIT TO BE FILED WITH COMMENTS OF

AMERICAN FARM BUREAU FEDERATION
AMERICAN FEED INDUSTRY ASSOCIATION
NATIONAL CATTLEMEN'S BEEF ASSOCIATION
NATIONAL CORN GROWERS ASSOCIATION
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182926

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RAILROAD RESTRUCTURING:
The Conrail Merger with Norfolk Southern Corp. and CSX Corp.

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RAILROAD RESTRUCTURING:
The Conrail Merger with Norfolk Southern Corp. and CSX Corp.

Contents

RAILROAD RESTRUCTURING: The Conrail Merger with Norfolk Southern Corp. and CSX Corp.

Preface

US agriculture and the industries that serve it long have depended on efficient transportation systems to move the nation's food raw materials from areas of abundance – made possible by extensive natural resources and an accommodating climate – to the great population centers, first in the United States, and more recently around the world.

US agriculture today is among the most competitive in the world for a broad range of food products. It not only provides this country's consumers with high quality food at near the lowest prices found anywhere, but also consumers in many other countries, as well. While a major component of that achievement is the efficiency of the nation's farms, another major aspect is the ability to move raw materials from the surplus to the deficit areas in a timely and highly efficient manner. The country has continued to make required investments in the transportation and supporting infrastructure that enables efficient movement of farm inputs (machinery, fuel and fertilizers) from the great industrial centers to rural farming areas and in turn move the commodities – grains, oilseeds, cotton and meat – and high value products (perishable fruits and vegetables) to the urban centers, sometimes half a continent away.

The nation's railway system emerged in the last century to connect the far reaches of the country. Then, the inland waterways system developed, and much more recently the interstate highway system was constructed, all supporting highly sophisticated modes of transportation to meet most needs, moving goods at most any distance and in a timely and efficient manner.

In more recent times, growth and expansion of the nation's agriculture and food sectors have come to depend on gaining access to foreign markets and being able to deliver low-cost, high-quality products. Those markets are characterized by growing numbers of consumers with rising incomes devoted to improving long inadequate diets, resulting in persistent expansion in global food demand. The ability of the US to gain and maintain market share in those markets depends on the competitiveness of our entire food system, not just to the farm gate but well beyond, to delivery of product to shipboard or to the ultimate user. A key part of that competitive ability obviously is an efficient transportation system.

It thus is with great interest and considerable economic investment that agriculture and the food industry view structural changes in the nation's transportation system. The recent announcement of joint acquisition of Conrail, Inc. by CSX Corporation and Norfolk Southern Corp. attracts such interest because of its scope and potential effect on the movement of farm inputs, raw materials, and food products around a large portion of the United States, including all of agriculture east of the Mississippi River and throughout much of the Midwest.

This is a report of a review and evaluation of the proposed joint rail acquisition, specifically focused on what it might ultimately mean for agriculture and the food system, broadly defined. It is not a statistical evaluation, with point estimates of impacts and benefits, but rather a qualitative review of expected changes, key issues and their likely importance for agriculture in the future.

RAILROAD RESTRUCTURING: The Conrail Merger with Norfolk Southern Corp. and CSX Corp.

I. Introduction

This is a study of the agricultural impacts of the joint acquisition of Conrail, Inc. by CSX Corporation and Norfolk Southern Corporation, three rail systems that occupy a key strategic position both geographically and economically for the nation's agriculture.

Understanding the impacts of the merger requires understanding of three dimensions of the current US agricultural system. The first is the importance of transportation to modern agriculture in the United States, and, in particular, in the "merger region"—those 32 states affected that include 179 million people and enormous agricultural operations that produce grain, oilseeds, livestock and many other commodities and process these into food for domestic and export use. The report examines both the US transportation system and the agricultural production and processing systems most immediately affected by the merger.

The second key dimension to understanding the current merger proposal is an understanding of the key economic forces involved. The Conrail system is itself the product of a succession of earlier mergers as the eastern and central region and its infrastructure accommodate economic trends toward urbanization and a service economy, and as competition from new highways and highly competitive trucks has expanded. It is unlikely that Conrail would continue as a separate rail company, and highly likely that it would have been purchased by one or the other of the parties to the current merger. Thus, the current study is not whether the merger is, by itself, good or bad, but whether it is better or worse than the purchase of Conrail by a single railroad.

The third dimension to the current evaluation is the fact that it must anticipate the future. The facts of the merger are clear – the current routes and facilities can be seen, and the history of each of the railroads and the region are well known. It also is clear that both Norfolk Southern and CSX have agreed to operate certain parts of the entire system, to invest in new facilities, and to make numerous other changes that can be evaluated only in the fullness of time. As a result, the study proceeds in five steps. Following this introduction, Section II describes the agricultural transportation system briefly, and the key agricultural production sectors of the region. Section III describes the merger, and indicates changes expected in the system as a result. Section IV describes the impacts expected from the merger, relying heavily on the descriptions provided by the parties themselves. Section V provides a qualitative evaluation of the merger, including expected impacts on agriculture. Additional detail, statistics and maps are presented in the Appendices.

II. Agriculture and the Transportation System

The three major railroads affected by the joint acquisition – Conrail, Inc. (CR), Norfolk Southern Corporation (NS) and CSX Corporation – operate in the eastern and midwestern part of the United States, including roughly the states east of the Mississippi plus Missouri, Iowa and Minnesota that are linked into the system. The region is enormously important to the nation—some 32 states containing 179.3 million people. It sends and receives enormous amounts of rail freight. This geographic territory encompasses major agricultural production areas, a large proportion of the food processing, major domestic consuming centers and a large proportion of the facilities for export of farms and food products. It includes nearly 70% of US grain and oilseed production, as well as the highly important livestock and poultry production areas of the mid-South and Southeast, the fruit and vegetable areas of the South, and the northeast dairy and fruit areas.

The Transportation Function

Food production location seldom coincides closely with food consumption centers, and the system depends critically on transportation to maintain our quality of life, both in the cities and in rural areas. This has become especially true in recent decades as a large proportion of the world's people have moved from rural areas to increasingly concentrated urban centers. The result has been growing dependence on transportation functions – with the availability of low cost, highly efficient transportation critical to location choices throughout the system, from the farm gate to the urban consumer.

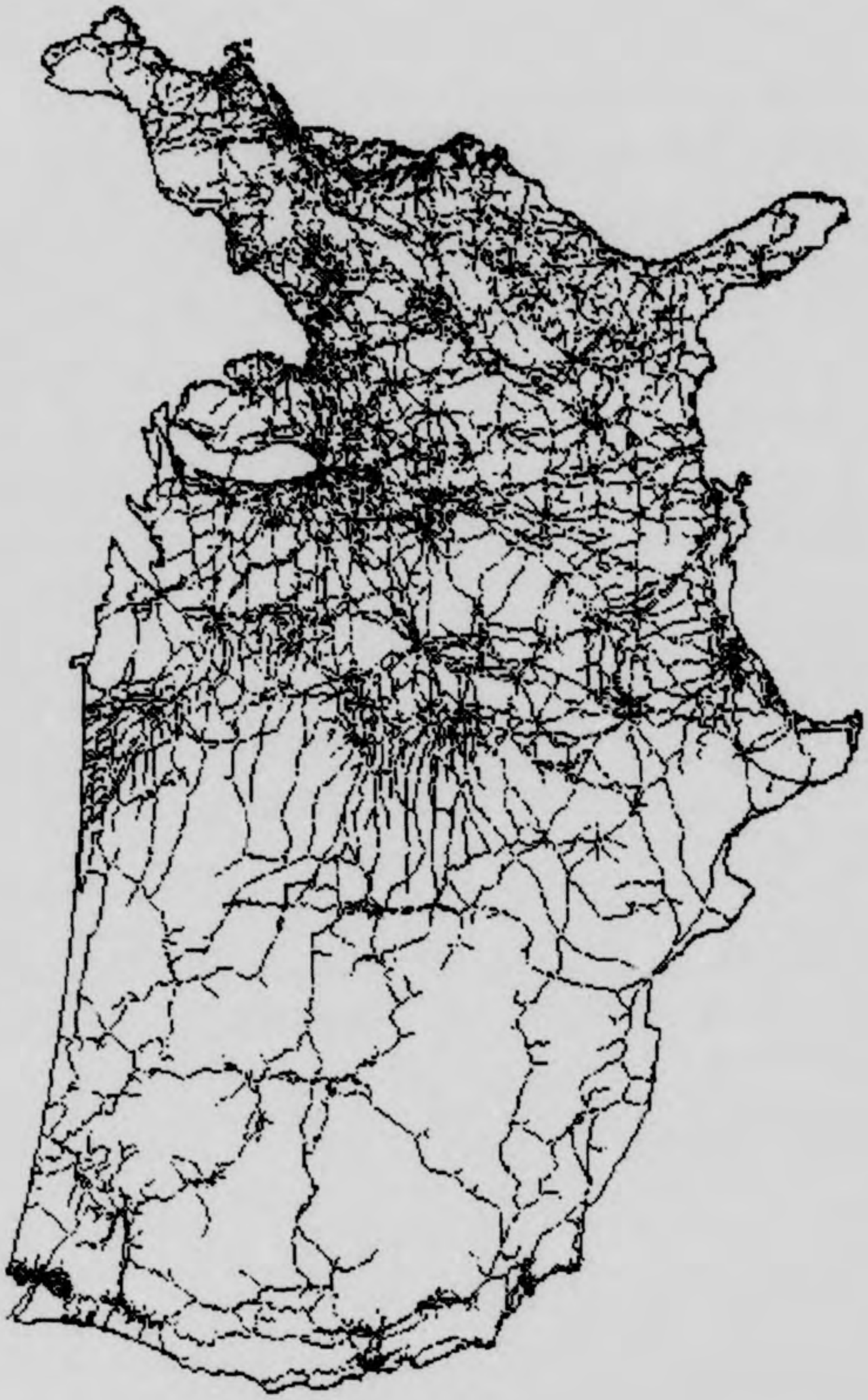
The modern US transportation is extremely complex, with five major components—air cargo, trucks, railroads (Map 1), barges (Map 2) and ocean-going vessels. Each has specific characteristics and advantages for major commodities, determined largely by economics, including the value of the product, its perishability, its value/weight ratio and the distance to be covered. Key factors include:

- **Product value** – obviously, high value products can sustain higher transportation costs than low value, bulky products can.

- **Value/perishability** – high value seafood products, for example, move by air to preserve freshness, an enormously valuable characteristic. Similarly, meats tend to move by truck and train since they can be chilled in transit and their value preserved, with the most appropriate transportation system tailored to weight and distance requirements.

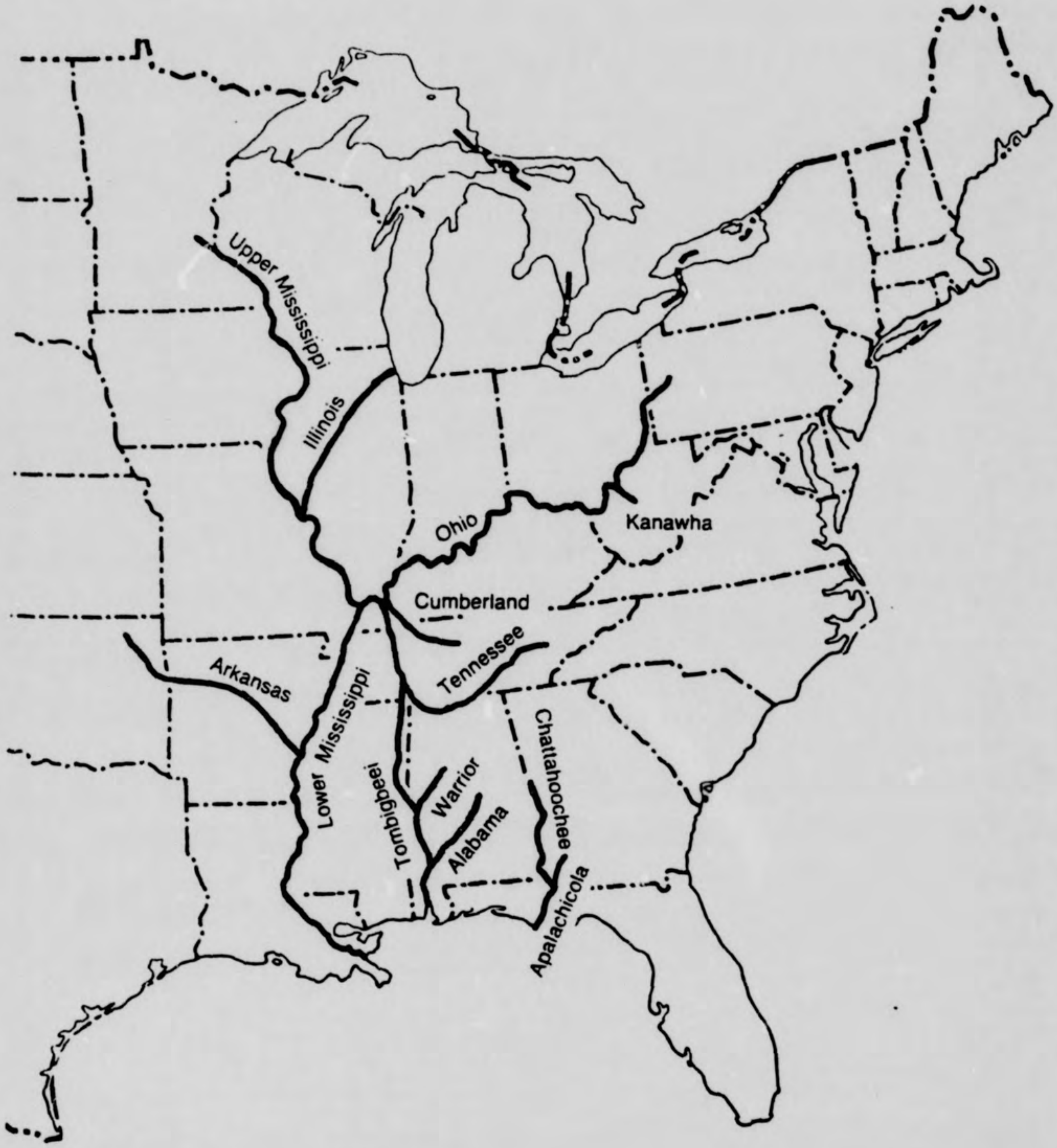
- **Value/weight** – grains tend to move by rail, barge and truck because they are low value per unit, relatively bulky and not perishable.

In practice, many other criteria, including cost, enter into the equation, and, over time, the domestic agricultural system in the United States has evolved in response to shifting economic



Map 1. The Railroad Network of the United States

Map 2. Commercially Navigable Waterways of the Central United States



conditions to produce the system we now have. Some of the highly valuable products (fruits and vegetables, and cut flowers, for example) move by air. Much greater volumes are moved by truck. At the same time, the bulkier, vastly greater quantities of major field crop commodities move by rail, barges on the inland waterway system, and by ocean going vessels to foreign markets. Each product requires a separate set of considerations, and, consequently, different levels of investment in the transportation functions.

Importance of Transportation to US Industry

The transportation function of US industry encompasses an enormous amount of activity across the economy – in 1993, 2,346 trillion ton-miles of movement for all products (Table 1). A major share of that activity, just under 34% is for agricultural and related products (788.5 trillion ton miles of product movement).

Table 1. US Shipment Characteristics by Commodity Type, 1993 Agricultural and Related Goods

	Value	*Tons*	*Ton-Miles*	*Average Miles Per Shipment*
	mil $	*mil $*	*mil $*	
Farm Products	142,442	636.6	276,260	220
Forest Products	1,700	30.5	3,635	222
Fresh Fish/Other Marine Products	11,062	3.0	1,746	159
Food or Kindred Products	856,884	859.8	270,984	102
Tobacco Products	60,640	3.2	931	146
Textile Mill Products	102,189	24.8	11,341	711
Lumber or Wood Products	126,662	663.4	120,669	227
Pulp, Paper, or Allied Products	195,002	217.2	100,721	186
Leather or Leather Products	50,645	2.4	2,182	941
Total, Agricultural and Related Goods	1,547,226	2,440.9	788,469	204
Total all goods	5,846,329	9,686.6	2,346,714	424

Source: Census of Transportation, Communication, and Utilities
US Department of Commerce Bureau of the Census

Within agriculture, farm products account for 35% of total product movement (1993 data), while food products account for 34%. Lumber and pulp and paper products account for an additional 18%, with textiles, leather and other products accounting for the balance.

The bulk of US product movement is by single-mode – truck, air, rail, and by water, but some 14% of total movement is by multiple modes, but the share for each of the multiple mode movement tends to be small (Table 2). The combination of inland water and deep water transport is the largest, and covers 4% of total movement. Rail and water combinations account for 3% of the movement, while truck and water and truck and rail movement each account for just under 2% of the total.

Private and for hire truck movement account for about 37% of total product movement in the United States, while rail movement includes 41% of the total. And, shipping on inland waterways and the Great Lakes includes just under 8% of total movement.

Table 2. US Shipment Characteristics by Mode of Transport, All Goods, 1993

	Value	Tons	Ton-Miles	Average Miles Per Shipment
	mil $	mil	mil	
Single Modes				
Parcel	563,277	18.9	13,151	734
Private Truck	1,755,837	3,543.5	235,897	52
For-hire Truck	2,625,093	2,808.3	629,000	472
Air	5,200	0.1	139	1,180
Rail	247,394	1,544.1	942,561	766
Inland Water	40,707	362.5	164,371	n/a
Great Lakes	1,173	33.0	12,395	534
Deep Sea Water	67	n/a	n/a	n/a
Pipeline	89,849	483.6	n/a	n/a
Total Single Modes	5,328,597	8,794.0	1,997,514	364
Multiple Modes				
Private & for-hire truck	22,565	34.1	4,639	197
Truck and air	133,887	3.0	3,870	1,423
Truck and rail	83,082	40.6	37,675	1,403
Truck and water	9,392	68.0	40,610	1,417
Truck and pipeline	349	n/a	n/a	n/a
Rail and water	3,636	79.2	70,219	627
Inland water and Great Lakes	2,448	13.5	n/a	n/a
Inland water and deep sea	19,682	109.9	95,215	1,903
Total Multiple Modes	275,041	348.3	252,228	1,326
Other/unknown	242,691	544.3	96,972	229
Total	5,846,329	-265,006	2,323,901	424

Source: Census of Transportation, Communication, and Utilities
US Department of Commerce, Bureau of the Census

US transportation of selected farm, food, and forest products amounted to just over 672 trillion ton miles in 1993, with much of that that movement highly concentrated among a few products (Table 3). Field crops, for example, accounted for 37% of the total, while lumber and wood products added 18%. By contrast, fresh fruits and vegetables made up just under 3% of total movement. Meat, poultry and dairy products accounted for 8.1%, while mill and bakery products added another 10.6%.

Table 3. US Shipment Characteristics by Commodity Type, 1993
Selected Agricultural Goods

	Value	*Tons*	*Ton-Miles*	*Average Miles Per Shipment*
	mil $	*mil*	*mil*	
Farm Products				
Field Crops	82,458	565.6	251,428	153
Fresh Fruits or Tree Nuts	13,840	13.1	7,158	451
Fresh Vegetables	23,014	28.6	10,920	68
Livestock or Livestock Products	11,802	11.6	2,585	73
Poultry or Poultry Products	2,931	3.5	730	70
Misc. Farm Products	8,398	14.2	3,439	386
Forest Products				
Misc. Forest Products	1,359	26.0	3,049	268
Fresh Fish/Other Marine Products				
Fresh Fish or other Marine Products	10,882	3.0	1,719	154
Food or Kindred Products				
Meat, Poultry, or Small Game	167,434	88.5	36,922	119
Dairy Products	79,372	78.8	17,161	82
Canned or Preserved Fruits, Vegetables, or Seafood	170,848	122.7	51,121	206
Grain Mill Products	75,963	205.9	62,917	105
Bakery Products	48,049	28.8	8,153	74
Sugar	13,365	28.1	15,558	175
Confectionery or Related Products	28,430	8.5	4,723	338
Beverages or Flavoring Extracts	135,797	177.1	36,870	43
Misc. Food Preparations	137,626	121.4	37,559	145
Lumber or Wood Products				
Primary Forest or Wood Raw Materials	16,124	459.8	46,024	68
Sawmill or Planing Mill Products	41,682	118.7	37,876	146
Millwork or Prefab Wood Products	47,348	39.4	20,976	183
Misc. Wood Products	19,877	43.7	15,322	447
Total, Selected Goods	1,136,599	2,187.0	672,210	143
Total, all goods	5,846,329	9,686.6	2,346,714	424

Source: Census of Transportation, Communication, and Utilities
US Department of Commerce, Bureau of the Census

How Farm and Food Products Are Moved

The importance of transportation modes can be seen in Table 4. For farm products, nearly 20% of total movement is by truck, primarily by for-hire truckers. However, just over 46% of total movement is by rail, with 28% by inland waterway. An additional 7% of total movement is by multiple and unknown modes.

Food and kindred products, by contrast, move primarily by truck (more than 65%). Only about 27% of the total is by rail, 2% by inland water, and just over 3% moving by multiple modes.

Lumber and wood products also tend to move primarily by truck, with more than 72% of the total moving by truck, or by combinations of truck and rail and truck and water. Just under 26% of the lumber and wood product movement was by rail in 1993.

Table 4. US Shipments by Commodity Type and Mode, Selected Agricultural Goods, 1993

	Value	*Tons*	*Ton-Miles*	*Average Miles Per Shipment*
	mil $	*mil*	*mil*	
Farm Products				
Single Modes				
Private Truck	50,318	127.0	12,297	45
For-hire Truck	46,666	173.7	37,297	442
Rail	20,697	174.9	118,336	689
Inland Water	9,860	81.0	72,617	888
Total Single Modes	128,517	556.7	240,638	364
Total Multiple Modes	1,828	2.8	1,962	1,346
Total, Farm Products	140,481	620.3	256,861	220
Food or Kindred Products				
Single Modes				
Private Truck	500579	472.5	50072	49
For-hire Truck	300969	270.6	123573	406
Rail	29559	75.8	72036	1,059
Inland Water	1617	8.5	4674	733
Total Single Modes	835,007	827.7	250,524	104
Multiple Modes				
Private & for-hire truck	1,571	1.5	332	n/a
Truck and rail	2,636	1.9	3,190	719
Truck and water	1,460	3.9	3	1,406
Inland water and deep sea	1,838	3.8	5,020	2,297
Total Multiple Modes	7,747	11.1	8,631	1,108
Total, Food Products	856,774	859	266,778	102
Lumber or Wood Products				
Single Modes				
Private Truck	60,481	312.8	22,850	71
For-hire Truck	48,019	270.3	57,721	312
Rail	9,294	36.9	30,443	972
Total Single Modes	119,605	620.2	111,116	227
Multiple Modes				
Private & for-hire truck	318	9.7	n/a	n/a
Truck and rail	939	1.7	2,394	1,641
Truck and water	129	0.2	294	1,921
Total Multiple Modes	1,386	11.6	2,688	1,683
Total, Lumber Products	125,976	654	117,872	227

Source: Census of Transportation, Communication, and Utilities.
US Department of Commerce, Bureau of the Census

To describe the importance of key products in terms of their dependence on rail transportation in each of the states in the region, rail tonnage (exports and imports) for the three most important products for each state in the region was examined (Table 5). Since the categories are highly aggregated (farm products, food products, etc.) and since these states are highly industrial areas, the inclusion of farm, food or lumber products is quite significant. For the United States, for example, coal is by far the most important product shipped with 40% of total tonnage (712.8 million tons in 1995). Farm products are second in importance (173.8 million tons, 10% of the total). Food products are fifth in importance (6%, 100.9 million tons) and lumber products are eighth (3%, 62.6 million tons).

Table 5. Population and Rail Transport, Selected States, Key Agricultural Products

State	Population	Selected Top Exports			Selected Top Imports		
		Farm	Food	Lumber	Farm	Food	Lumber
	mil	rail shipments, million tons					
Alabama	4.3			4.1	3.4		4.0
Arkansas	2.4		1.9	3.1	3.9	1.7	1.6
Connecticut	3.3					0.3	0.3
Delaware	0.7	0.0			0.5	0.4	
Florida	14.2						4.3
Georgia	7.2			6.9			7.1
Illinois	11.8	18.5	20.4		18.4	18.6	
Indiana	5.8	10.3	3.1				
Iowa	2.8	21.9	11.7		9.8	2.2	
Kansas	2.6	1.0					
Kentucky	3.9			2.7	9.8	2.9	
Louisiana	4.3			2.7	9.8	2.9	
Maine	1.2			1.1			0.8
Maryland	5.0				1.3		
Massachusetts	6.1		0.2			1.5	
Michigan	9.6	3.2					
Minnesota	4.6	20.5	4.1		9.4		
Mississippi	2.7	1.2	1.8	7.3	3.7	1.7	3.7
Missouri	5.3	4.8	6.4		6.4	4.1	
New Hampshire	1.2					0.2	0.2
New Jersey	8.0					2.9	
New York	18.1		1.1		2.9	3.0	
North Carolina	7.2			2.7	6.9		
Ohio	11.2	7.8					
Pennsylvania	11.9					4.1	
Rhode Island	1.0	0.0	0.0			0.1	0.0
South Carolina	3.7			4.3			3.6
Tennessee	5.3		3.1		3.7	2.7	
Vermont	0.6			0.1		0.2	0.2
Virginia	6.6			1.4	2.1	2.0	
West Virginia	1.8						
Wisconsin	5.1	2.6	2.2		5.4		
Region Net	179.3	91.8	55.9	36.3	97.3	51.7	25.7

Source: American Association of Railroads.

Considering states for which selected agricultural shipments were among the five most important, the region imports slightly more than it exports. Nine large agricultural states are the major exporters, including Iowa (22 million tons), Minnesota (20 million), Illinois (18 million) and Indiana (10 million). Key exporters are more numerous with 16, including Illinois (18 million tons) and Iowa, Kentucky, Louisiana and Minnesota, each with between 9.4 million and 9.8 million tons of imports.

The region exports a slightly greater tonnage of food products than it imports, with food exports among the top five products shipped for 12 of the 32 states, including Illinois, Iowa, Missouri and Minnesota. Key food importing states numbered 18, with Illinois far and away the largest (18.6 million tons), followed by Missouri, New York, Kentucky, Louisiana and New Jersey with far smaller amounts.

For eleven states, lumber and wood products are among their largest export categories with Mississippi and Georgia the largest, followed by South Carolina, Alabama, Arkansas, Kentucky and Louisiana. States including lumber imports among their most important categories also were eleven in number, with Georgia the largest followed by Florida, Alabama, Mississippi and South Carolina.

Regional Agricultural Production

Value of Agricultural Production

The 32 states that comprise this region include both large and small producing areas, but taken together account for a very significant share of the nation's total agricultural value (57%). The top three states are in the Corn Belt (Iowa, Illinois and Minnesota) and account for 26% of the total value of agricultural production for the region (Table 6). North Carolina is the most important Southeastern state in terms of value of agricultural production with 7.2% of the regional total.

Value of production for the region is relatively concentrated, with the largest five states accounting for just over 40% of the regional total. The next nine states in terms of importance account for just over 38% of total production, with the balance scattered among the remaining 18 states, including ten states that account for less than 1% of regional sales value.

While it is beyond the scope of this report to attempt to describe in detail all of the key movements that support our agricultural production and marketing system, several key components will be described in detail. Because of the importance of rail transportation to grain and oilseed movement to processing, to export markets and to domestic consumption in the United States, both production patterns and patterns of net shipments will be described in detail. For other key products – livestock, fruits and vegetables and lumber, production levels and importance to the region will be the key focus.

Table 6. Value of Agricultural Production, Selected States

State	1993	1994	1995	1996	Regional Share
	mil dollars				(%)
Iowa	9,301.0	12,404.5	11,433.4	13,968.6	10.7
Illinois	8,121.6	9,452.2	8,064.1	10,276.7	7.9
Minnesota	6,163.4	8,213.7	7,918.3	9,551.3	7.4
North Carolina	6,984.0	7,815.6	8,104.3	9,364.2	7.2
Kansas	7,750.7	8,528.4	8,017.2	8,903.2	6.9
Arkansas	4,832.4	5,799.4	5,475.0	6,534.2	5.0
Georgia	4,740.6	5,559.8	5,821.0	6,456.6	5.0
Florida	6,325.9	6,320.7	6,199.9	6,437.4	5.0
Indiana	5,333.1	5,529.6	5,235.4	6,133.3	4.7
Missouri	4,467.4	5,189.1	4,721.2	5,921.7	4.6
Ohio	4,801.3	5,339.4	5,299.9	5,669.5	4.4
Pennsylvania	4,092.5	4,218.3	4,165.2	4,636.4	3.6
Mississippi	2,886.5	3,485.8	3,431.6	3,993.7	3.1
Kentucky	3,778.2	3,855.3	3,594.1	3,988.7	3.1
Alabama	3,389.9	3,653.7	3,473.1	3,831.0	2.9
Michigan	3,670.5	3,773.7	4,003.3	3,816.1	2.9
New York	3,090.3	3,162.0	3,100.6	3,311.9	2.5
Virginia	2,371.1	2,582.5	2,617.7	2,756.5	2.1
Tennessee	2,457.7	2,661.3	2,638.2	2,647.5	2.0
Louisiana	1,917.9	2,297.7	2,224.8	2,552.0	2.0
Maryland	1,517.0	1,606.6	1,588.9	1,819.6	1.4
South Carolina	1,347.2	1,619.9	1,576.9	1,807.6	1.4
New Jersey	799.4	899.0	902.5	935.7	0.7
Wisconsin	1,011.1	858.5	883.8	860.3	0.7
Delaware	673.4	745.6	754.8	855.4	0.7
Vermont	515.2	533.9	526.4	577.4	0.4
Maine	522.5	540.6	512.4	548.9	0.4
Massachusetts	498.2	514.7	497.2	527.3	0.4
Connecticut	534.9	539.7	508.6	520.4	0.4
West Virginia	476.7	507.0	480.9	471.5	0.4
New Hampshire	170.4	177.1	172.6	181.9	0.1
Rhode Island	88.8	90.8	89.1	92.3	0.1
Regional Total	104,630.8	118,476.1	114,032.4	129,948.8	100.0
National Total	190,240.7	207,849.2	203,647.4	226,212.0	

Grain and Oilseeds

The region is a major producer and consumer of grain and oilseeds, and depends heavily upon rail transportation for movement of these products (Chart 1). Because of the key Corn Belt states included, nearly 70% of US grain and oilseeds are produced within the region.

The importance of grain and oilseeds to the region can be seen from Table 7. While 26 of the states across the region are important grain/oilseed producers, six produce 5% or more of the national total. These include Iowa and Illinois (12% and 14%, respectively), along with Indiana, Minnesota, Kansas and Ohio. For the region, production has grown significantly over the past eight years (up nearly 20%), with much of the increase in the key producing states.

Chart 1. US Grain and Oilseed Production, 1985-97

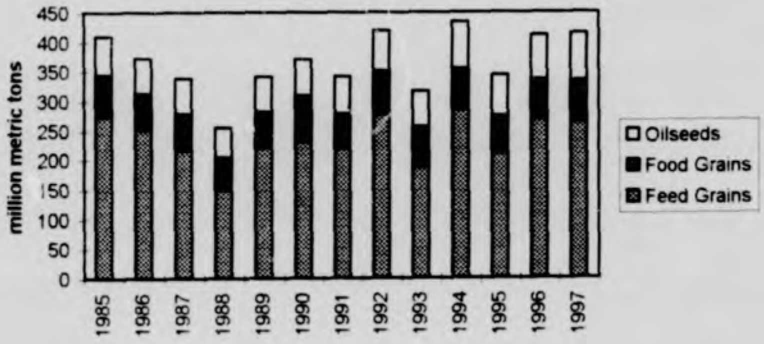


Table 7. Grain and Oilseed Production, Selected States

State	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	97 Share
	million bushels								(%)
Alabama	26.0	31.8	41.4	27.9	38.7	26.6	39.0	40.9	0.3
Arkansas	137.7	153.7	190.8	155.0	193.3	180.1	193.6	180.8	1.2
Delaware	32.6	33.3	31.9	24.2	34.1	25.0	36.0	26.7	0.2
Florida	7.3	7.1	10.6	8.4	8.5	6.5	11.5	9.7	0.1
Georgia	65.4	93.2	106.9	72.6	87.9	60.0	80.0	86.0	0.5
Illinois	1741.7	1602.1	2151.5	1760.3	2306.6	1566.5	1960.6	1898.1	12.1
Indiana	905.8	710.0	1109.0	976.2	1115.1	824.6	912.9	1014.8	6.5
Iowa	1913.2	1803.6	2272.8	1166.1	2389.1	1824.1	2154.1	2199.4	14.0
Kansas	789.7	798.9	962.2	884.9	899.2	728.9	1283.1	1030.6	6.6
Kentucky	173.7	171.3	236.7	191.9	225.0	195.9	224.2	209.7	1.3
Louisiana	75.7	68.0	89.8	60.9	78.4	60.7	118.2	107.5	0.7
Maine	1.4	2.1	1.9	1.7	1.6	2.1	1.6	2.4	0.0
Maryland	86.1	77.8	92.3	64.2	85.3	69.0	99.7	68.8	0.4
Michigan	312.3	350.3	319.8	318.9	361.4	337.9	302.4	365.4	2.3
Minnesota	1075.7	1140.8	1046.4	563.1	1258.7	1117.5	1228.7	1256.4	8.0
Missouri	422.6	453.2	601.5	376.9	545.8	368.7	618.6	549.8	3.5
New Jersey	14.5	14.7	15.8	13.6	16.9	12.2	18.0	14.9	0.1
New York	71.2	72.7	61.0	69.8	80.6	74.8	81.0	91.7	0.6
North Carolina	130.0	158.1	162.8	120.7	156.8	130.8	158.8	151.3	1.0
Ohio	616.3	533.3	716.4	592.1	740.8	585.2	536.3	712.0	4.5
Pennsylvania	141.6	103.3	153.3	125.9	161.6	125.2	161.8	131.9	0.8
South Carolina	40.5	51.7	57.7	38.9	56.1	51.1	61.0	62.9	0.4
Tennessee	89.5	93.0	131.4	96.6	123.1	117.2	136.7	127.5	0.8
Virginia	71.2	64.9	76.5	48.2	75.3	61.5	75.9	65.0	0.4
West Virginia	5.9	3.7	6.1	4.4	4.5	4.6	4.8	5.1	0.0
Wisconsin	407.6	445.1	360.9	274.6	503.4	409.2	398.9	470.6	3.0
United States	13121.6	13262.3	15543.3	11666.5	15972.8	12844.9	15576.4	15678.6	100.0

General Flow of Grain/Oilseeds

Chart 2 illustrates the principal routes by which the majority of grain and oilseeds move within the United States. Grain and oilseeds may be shipped from the farm to the country elevator, river elevator, subterminal elevator, terminal elevator or processor. The processor can obtain oilseeds from the farm, country elevator, subterminal elevator or terminal elevator. For the exporter, the US port elevator may receive grain and oilseeds from the subterminal, terminal or river terminals.

- **Farm Operations.** The basic operations performed at the farm are harvesting, drying, aerating, storing and out loading. Although a large percentage of soybeans are delivered to the country elevator at harvest or shortly thereafter, on-farm storage is used to hold soybeans until farmers are ready to sell it, especially if harvest prices are depressed. Soybeans are usually stored in steel bins that are well supported to hold the weight. The storage bins are sealed by sheathing, well ventilated (aeration systems), and as nearly vermin-proof as possible.

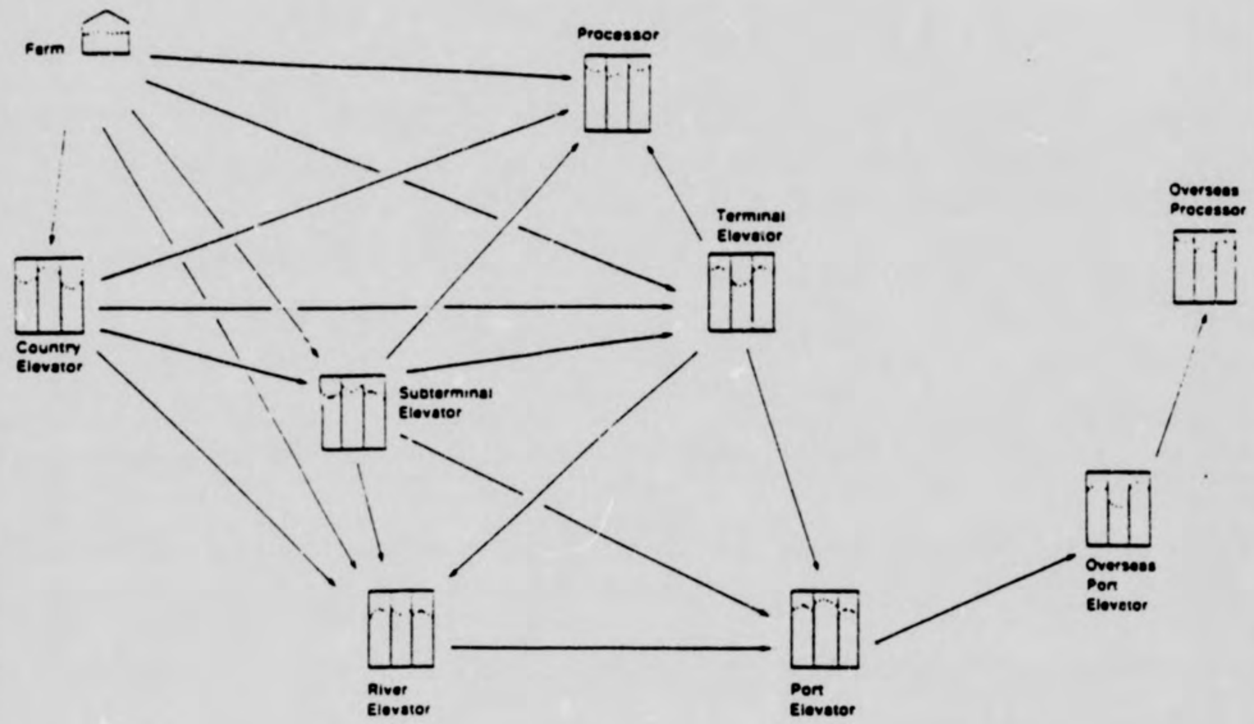
  The critical decision made at the farm level is the timing of harvest. Ideally, soybeans should be harvested at 15% moisture as this level is optimal for storage and handling. As a result, most of the quality testing at the farm level consists of moisture testing with many farmers owning moisture testing devices. Those farmers who do not own testing devices take samples of soybeans to a local grain elevator for testing.

- **Country Elevator Operations Process.** Grain and soybeans are harvested by a combine, which has a storage tank on board from which accumulated soybeans are periodically transferred to a truck. Combining permits the soybeans to be shipped directly to the country elevator from the field. Transportation can be in the form of a single (12,000-18,000 bushels), dual (21,000-30,000 bushels), or tri-axel (30,000-60,000 bushels) farm truck or semi tractor-trailer (54,000 bushels) using the extensive farm to market road system developed in the farm belt.

  Since the country elevator manager frequently buys soybeans directly from the farmer and then resells to either the domestic processor or export firm (third party), the premium or discount schedule that is stated in the farmer's sales contract with the elevator is dictated by the third party's specifications. Purchasing the soybeans from the elevator, the third party will state in the sales contract all premium and discount schedules along with other maximum or minimum requirements.

  For outgoing shipments from the country elevator, grains and soybeans can flow from the bin, which has either a hopper bottom or a flat bottom with slide gates, onto a conveying system that moves it to an elevating "leg". It is then elevated to the distributor head, which is a movable device that dispenses grain into a hopper scale. To maintain a continuous flow, a garner is positioned above the scale to serve as an accumulator. Another garner is positioned below the scale to handle the surge of grain when the gates at the bottom of the scale are opened.

Chart 2. General Flow of Grain from the Farm Through the System



- **Country Elevators to Terminals.** Since a subterminal elevator operates very much like a terminal elevator, subterminal elevators will be treated as a terminal elevator in this section. Terminal elevators perform a variety of services, including grain storage between harvest and/or shipment from country points until the grain is needed, drying or blending of grain quality, and merchandising to exporters, processors, or other domestic users. The term "terminal elevator" refers to the fact that these facilities are typically located in major transportation "hubs" with access to major rail lines, the river transportation system or both.

  Terminal elevator operators buy grain from many sources, including country elevators. Depending on the terminal elevator's facilities and location, grain may be received by rail, truck, or barge. The terminal elevator operator, in turn, sells grain to processors, or exporters. A terminal elevator will typically have storage capacity for 50,000 to 110,000 tons of grain or oilseeds.

River terminals transfer grain from truck or rail to barges that typically hold 1,500 tons of grain or soybeans. When the grain comes to a river terminal by truck, the truck is driven onto the unloading platform and secured. In the case of a truck with a hopper bottom, the traps are opened and the grain runs out the truck's bottom. A typical hopper bottom semi-trailer can hold 54,000 pounds at a gross weight of 80,000 pounds weight restriction. With other types of trucks, the tailgates have to be removed or opened, and grain is dumped into the unloading pit. River terminals, which by the nature of their location and function, are difficult to bypass, particularly during times when the cost of barge freight is low.

Barge carriers have kept pace with the competition by introducing both larger and more efficient barges and by using more powerful tugboats. Barge rates, which are fully negotiable, also have helped keep the barge industry competitive, especially for the large export shipper.

Rail shippers prefer to ship grain in unit trains of 25 to 125 cars. A covered hopper can range from 4,400 to 5,250 cubic feet in capacity, where the norm in the industry is 4,750 cubic feet. The 4,750 cubic feet covered hopper with a 268,000 pounds weight restrictions can transport up to 198,000 pounds of soybeans.

Grain loaded into a barge typically is sampled for grading within the elevator facility. Loaded barges can be sampled for grading by using a "probe" sample, but this usually does not yield a representative sample of the quality of the grain throughout the entire barge.

Samples extracted from incoming and outgoing grain are checked for a number of factors related to quality, including moisture, test weight, damage, shrinkage and breakage of seeds, adulteration, odor, and oil content that are specified in the buyer's contract.

The terminal elevator buys grain and oilseed directly from the country elevator and resells to either the domestic processors or export firms. The buyer of the soybeans will determine the specifications of the sales contract. Given the specification requirements, the samples are tested to verify that the purchaser is receiving the grade and quality that has been agreed upon in the contract.

Net Shipments of Grain and Oilseeds

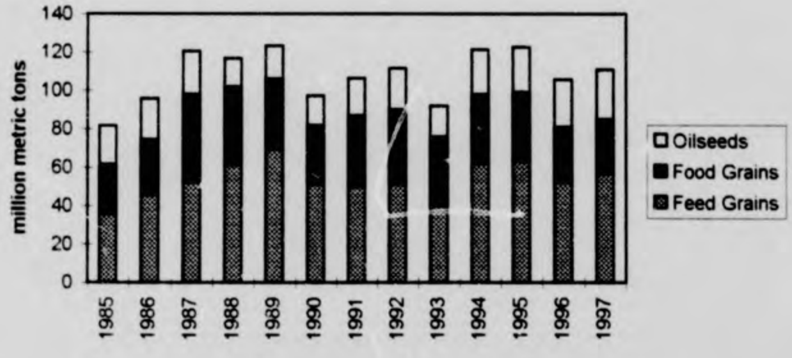
Net shipments of grain and oilseeds will total about 190 million tons this crop year, with the bulk of the shipments originating or terminating in 19 key states across the region (Table 8). Iowa is the nation's largest shipper with more than 29 million tons, more than 15% of the total. Illinois is a close second with more than 26 million tons, followed by Kansas, Minnesota and Indiana. The nine major grain and oilseed exporting states account for nearly 123 million tons, more than 60% of the US total.

Table 8. Net Shipments of Grains and Oilseeds, Selected Major States

State	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
					million tons				
Ohio	4.8	6.4	4.7	6.4	4.5	5.6	5.7	0.4	4.8
Indiana	13.0	13.1	8.3	16.8	16.3	17.0	12.7	11.5	14.9
Illinois	28.9	26.0	24.2	30.9	31.9	36.5	26.3	27.4	26.2
Michigan	6.0	5.6	6.9	5.4	5.8	6.3	7.4	4.5	6.7
Wisconsin	-0.6	1.2	2.4	-0.6	-1.5	1.4	2.8	-0.5	2.3
Minnesota	17.9	14.7	18.3	11.5	5.4	14.1	20.8	14.4	16.0
Iowa	27.6	25.9	26.7	25.2	15.4	28.0	33.4	24.8	29.3
Missouri	5.1	3.9	3.7	5.8	2.4	4.3	1.5	5.0	3.4
Kansas	13.0	15.6	14.8	15.0	17.1	16.1	13.1	18.8	19.0
North Carolina	-7.6	-8.9	-7.9	-9.0	-10.2	-10.8	-9.9	-12.3	-12.2
South Carolina	-0.5	-1.1	-1.1	-1.0	-1.5	-1.1	-0.9	-0.9	-0.8
Georgia	-5.0	-6.0	-5.1	-5.1	-5.8	-6.3	-6.1	-6.4	-6.3
Florida	-2.6	-2.7	-2.6	-2.6	-2.6	-2.8	-2.5	-2.6	-2.6
Alabama	-6.5	-7.1	-6.9	-7.7	-7.3	-8.4	-7.8	-8.0	-7.2
Kentucky	2.7	2.3	2.3	3.3	2.7	3.1	2.9	2.8	2.8
Tennessee	-4.6	-5.1	-5.2	-4.6	-5.3	-4.8	-4.2	-4.6	-4.6
Mississippi	-1.6	-1.9	-2.2	-1.6	-2.4	-1.8	-2.1	-1.0	-1.1
Arkansas	-3.7	-4.4	-4.4	-4.1	-4.3	-4.3	-3.4	-4.4	-4.7
Louisiana	-68.5	-61.7	-63.9	-65.9	-51.5	-68.7	-71.1	-58.8	-69.3
United States	174.5	161.8	175.3	178.5	159.8	197.8	185.4	175.4	190.0

The largest importing state in the region is Louisiana, reflecting the large movement of grain and oilseed products into world export channels through Gulf ports (Chart 3). With more than 69 million tons in imports this year, this state alone accounts for more than 36% of total net shipments for the United States.

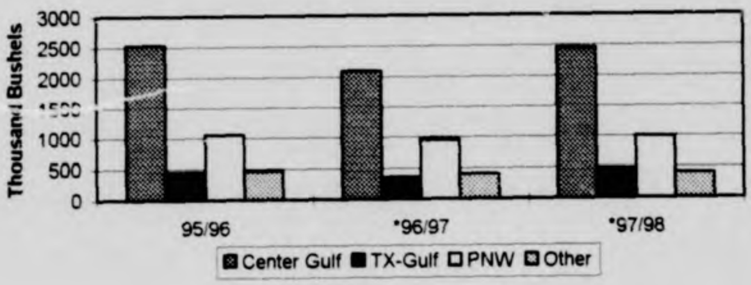
Chart 3. US Grain and Oilseed Exports, 1985-97



North Carolina is the largest of the grain and oilseed importing states, with 12.2 million tons projected for 1997/98. Georgia, Tennessee and Arkansas also are large importers with between 4.6 and 6.3 million tons each. The nine importing states (excluding Louisiana) account for nearly 40 million tons of grains and oilseeds annually, about 21% of total US grain and oilseed net shipments.

The vast bulk of US exports move through the region's ports – US Gulf ports, for example, account for 60% of the total, while others also contribute. Charts 4 and 5 depict the flows of state grain and oilseed production to various export positions. Atlantic ports account for 2%, and ports on the Great Lakes account for 4% of the total (Chart 6). This movement has grown significantly as exports have become more important in recent years. For example, in 1985, 1.2 million carloads of grain and oilseeds were shipped by rail, but 306,000 of those to export (26%). This year, more than 1.4 million carloads will be shipped, with 495,000 of those to export – more than 35% of the total, and the vast bulk of those through ports within the region affected by the merger.

Chart 6. US Grain and Oilseed Exports by Major Port



Cattle and Calves

The region also is very important in the production of livestock, and sales of cattle and calves there amounted to $8.6 billion in 1996 (Table 9). The nation produced more than 41.3 billion pounds of cattle and calves that year, with just under 41% of that in the 32 state region served by the merging lines. In terms of value, the region accounted for 38.5% of the national total, reflecting the predominance of cattle and calf breeding operations and the smaller number of cattle feeding operations in the Southeast relative to other US states. The region accounted for 34% of the national inshipments in 1996, with two states, Kansas and Iowa accounting for well over half of that total.

Chart 4. Corn/Soybean Flows Into Export Position

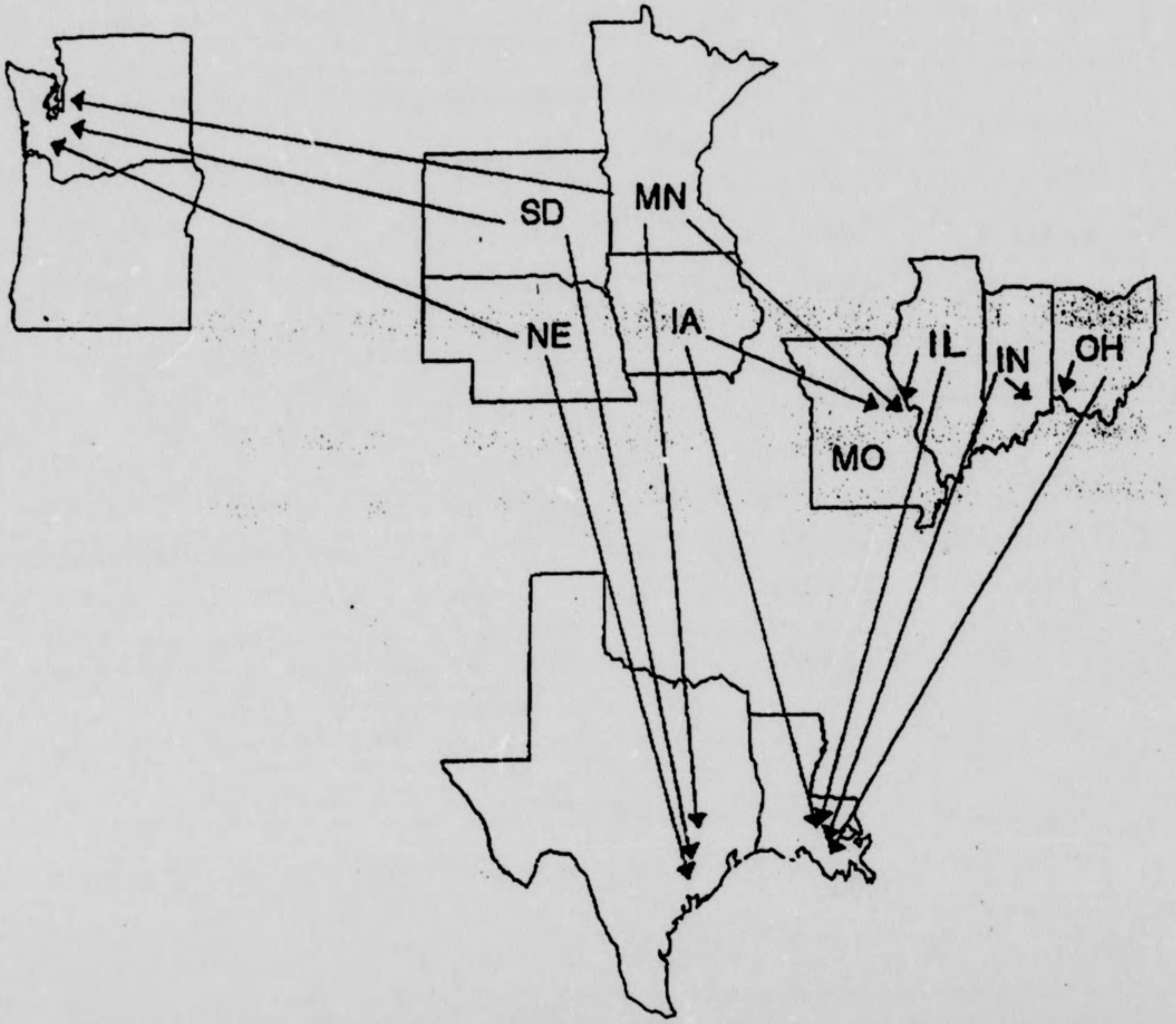


Chart 5. Wheat Flows to Export Positions

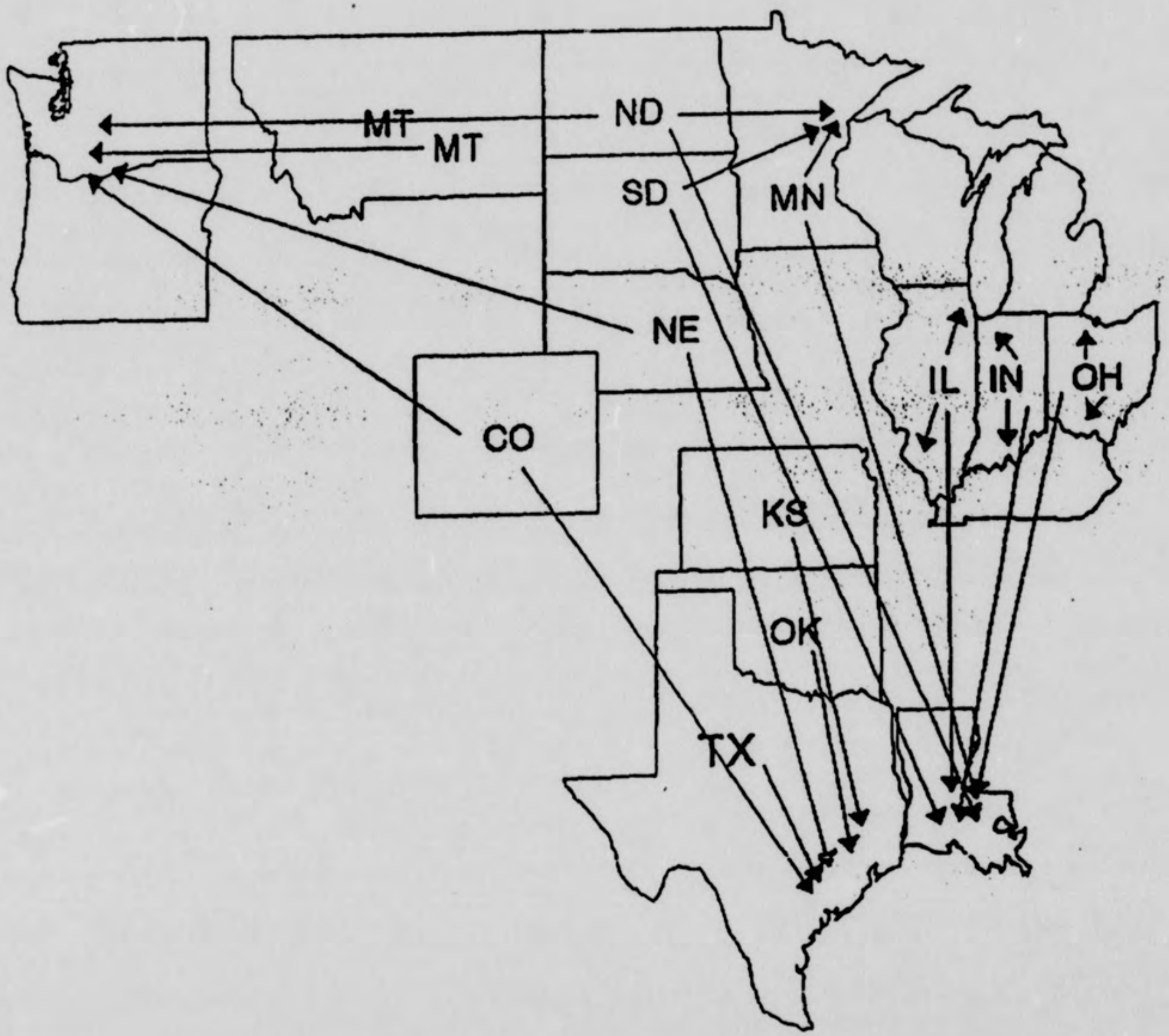


Table 9. Cattle & Calf Production and Inshipments, Selected States

State	Production		Value of Production		Inshipments	
	1995	1996	1995	1996	1995	1996
	mil pounds		mil $		1,000 head	
Alabama	545.0	535.2	283.9	223.1	47.0	45.0
Arkansas	545.3	519.8	265.8	206.4	100.0	100.0
Connecticut	22.2	19.9	10.8	9.5	6.0	6.0
Delaware	7.0	7.1	3.3	3.2	3.0	3.0
Florida	407.5	432.3	247.1	194.3	63.0	55.0
Georgia	502.4	511.0	241.9	192.1	126.0	111.0
Illinois	719.7	654.1	472.3	419.7	350.0	280.0
Indiana	343.7	318.5	193.3	165.6	169.0	96.0
Iowa	1,891.2	1,788.2	1,146.7	1,039.9	1,300.0	1,100.0
Kansas	3,735.1	3,605.5	2,269.9	2,084.3	4,400.0	4,297.0
Kentucky	788.4	756.5	421.0	326.5	450.0	470.0
Louisiana	264.8	256.9	134.1	108.0	2.0	2.0
Maine	31.4	26.8	17.5	12.0	6.0	6.0
Maryland	104.7	89.1	50.5	37.9	8.0	5.0
Massachusetts	18.1	17.5	8.7	8.1	1.0	1.0
Michigan	429.9	402.0	224.8	200.4	95.0	75.0
Minnesota	1,225.1	1,218.6	670.8	684.9	525.0	435.0
Mississippi	347.6	319.7	170.9	124.2	15.0	17.0
Missouri	1,187.2	1,175.0	715.5	593.3	40.0	40.0
New Hampshire	13.2	11.0	6.1	5.2	1.0	1.0
New Jersey	20.1	17.8	9.8	7.2	2.0	1.0
New York	315.7	309.1	149.9	100.1	19.0	23.0
North Carolina	343.2	328.2	180.9	149.6	10.0	13.0
Ohio	432.3	488.4	262.5	268.3	25.0	56.0
Pennsylvania	559.1	539.5	331.2	288.6	100.0	95.0
Rhode Island	1.9	2.4	0.9	1.2	0.3	0.3
South Carolina	189.0	181.6	95.0	74.8	20.0	10.0
Tennessee	658.7	630.0	341.4	258.7	67.0	71.0
Vermont	7,891.8	79.7	35.3	29.9	14.0	14.0
Virginia	535.5	545.5	277.9	234.1	10.0	8.0
West Virginia	154.1	112.3	73.8	37.4	28.0	26.0
Wisconsin	1,100.3	1,010.2	575.8	479.1	62.0	88.0
Regional Total	25,331.2	16,909.4	9,889.3	8,567.6	8,064.3	7,550.3
National Total	42,722.0	41,304.9	24,822.0	22,259.4	23,467.5	21,899.0

Hogs and Pigs

Because the region includes both the important hog production states in the Corn Belt and the Southeast, it accounts for the vast bulk of the nation's hog production and hog sales (Table 10). For example, in 1996 the region accounted for 84% of the value of hog production and an equal share of production tonnage.

Three states dominated regional hog production, Iowa with 27% of regional sales, North Carolina with 17% and Minnesota with just over 10%. While 11 of the 32 states have very small sales (less than $10 million), 21 have significant amounts of sales, ranging from $10.7 million in New York to $985 million for Illinois, and then to the super-producing states mentioned above.

Table 10. Hog & Pig Production and Inshipments, Selected States

State	Production		Value of Production		Inshipments	
	1995	1996	1995	1996	1995	1996
	mil pounds		mil $		1,000 head	
Alabama	179.0	147.0	64.5	69.7	1.0	41.0
Arkansas	376.8	375.7	155.1	192.9	30.0	30.0
Connecticut	2.2	3.2	0.8	1.5	0.0	0.0
Delaware	11.6	9.4	4.7	4.9	1.0	1.0
Florida	30.4	28.1	11.3	13.3	3.0	3.0
Georgia	340.1	323.3	137.4	159.5	26.0	33.0
Illinois	2,202.1	1,954.1	848.7	984.7	600.0	700.0
Indiana	1,772.3	1,587.8	684.7	790.1	334.0	341.0
Iowa	5,636.9	5,223.1	2,262.2	2,688.0	3,300.0	4,600.0
Kansas	562.7	642.7	219.0	327.6	230.0	330.0
Kentucky	290.3	271.9	117.0	141.4	103.0	112.0
Louisiana	22.6	19.6	8.0	9.0	2.0	2.0
Maine	3.9	2.4	1.5	1.2	0.0	0.0
Maryland	39.9	24.4	15.3	12.2	9.0	10.0
Massachusetts	4.4	4.0	1.6	1.9	0.0	0.0
Michigan	446.2	399.0	175.2	203.9	58.0	56.0
Minnesota	2,003.1	1,990.9	831.2	1,047.0	770.0	1,130.0
Mississippi	91.8	92.9	37.6	47.7	6.0	32.0
Missouri	1,460.9	1,249.9	579.5	624.0	519.0	823.0
New Hampshire	0.8	0.7	0.3	0.3	0.0	0.0
New Jersey	3.3	1.5	0.8	0.5	17.9	18.1
New York	22.4	24.9	8.3	10.7	4.0	9.0
North Carolina	3,156.7	3,399.3	1,322.1	1,803.7	203.0	125.0
Ohio	736.5	717.6	295.1	368.7	169.0	179.0
Pennsylvania	325.4	326.2	123.4	161.9	70.0	70.0
Rhode Island	1.0	1.0	0.4	0.4	0.0	0.0
South Carolina	138.6	129.4	54.3	64.6	78.0	60.0
Tennessee	220.2	200.4	84.2	98.1	65.0	84.0
Vermont	0.9	1.0	0.3	0.5	0.0	0.0
Virginia	154.4	161.0	63.6	84.0	17.0	19.0
West Virginia	11.3	9.2	3.8	4.0	3.0	2.0
Wisconsin	410.5	355.4	164.4	184.1	18.0	11.0
Regional Total	20,659.2	19,677.0	8,276.3	10,102.0	6,636.9	8,821.1
National Total	24,425.5	23,263.0	9,829.2	11,997.5	7,550.0	10,014.4

Inshipments of hogs and pigs are important for the region as well, with 8.8 million head shipped in 1996, 88% of the US total. Iowa, Minnesota and Missouri accounted for the largest movements of hogs and pigs, nearly 75% of the regional total. North Carolina, while a very important hog producer imports relatively few hogs and pigs – just over 1% of the regional total.

Broilers

US production of broilers in 1996 was heavily concentrated in 21 key states across the region, accounting for 31.4 billion pounds, with sales of $11.9 billion, nearly 97% of the nation's total (Table 11). Five states account for 71% of the region's sales, Georgia (18.5%), Arkansas (17.8%), Alabama (13.7%), North Carolina (11%) and Mississippi (10%). No other state accounted for as much as 5% of regional sales.

Table 11. Broiler Production, Selected States

State	Production		Value of Production	
	1995	1996	1995	1996
	mil pounds		mil $	
Alabama	4,230.0	4,191.8	1,438.2	1,634.8
Arkansas	4,982.9	5,659.5	1,768.9	2,122.3
Delaware	1,394.4	1,416.8	474.1	524.2
Florida	615.1	591.3	218.4	230.6
Georgia	5,136.0	5,654.6	1,771.9	2,205.3
Iowa	72.0	77.4	25.2	28.6
Kentucky	258.0	331.1	82.6	122.5
Maryland	1,360.2	1,385.6	462.5	512.7
Michigan	2.8	2.2	1.0	0.8
Minnesota	249.6	251.8	83.6	94.4
Mississippi	2,962.4	3,109.1	992.4	1,197.0
Missouri	800.5	1,059.1	280.2	397.2
New York	6.9	8.0	2.4	3.3
North Carolina	3,417.5	3,541.7	1,162.0	1,310.4
Ohio	215.0	243.0	67.7	88.7
Pennsylvania	607.0	653.8	203.3	245.2
South Carolina	680.4	786.3	234.7	306.7
Tennessee	572.0	603.0	185.9	232.2
Virginia	1,196.5	1,243.7	400.8	466.4
West Virginia	391.2	394.7	131.1	148.0
Wisconsin	104.3	152.3	34.9	57.9
Regional Total	29,254.7	31,356.8	10,021.8	11,929.2
National Total	30,471.4	32,289.3	10,473.7	12,318.7

Data excludes states producing fewer than 500,000 birds.

Fruits and Vegetables

While the region is a very important producer of fruits and vegetables, production is concentrated in Florida, especially for fruits. The region accounts for about just under 26% of the US total – about 31% of the national sales for fruits, and a smaller 27% for vegetables (Table 12). Florida accounts for nearly 60% of the region's fruit sales, but a much smaller 39% of its vegetable sales.

Table 12. Fruit and Vegetable Production Volume and Value, Selected States

State	*Fruits*				*Vegetables*				*Total Value of Production*	
	Volume		*Value*		*Volume*		*Value*			
	1994	*1995*	*1994*	*1995*	*1994*	*1995*	*1994*	*1995*	*1994*	*1995*
	1,000 short tons		*mil $*		*1,000 short tons*		*mil $*		*mil $*	
Alabama	8.3	10.8	4.2	6.4	n/a	n/a	n/a	n/a	4.2	6.4
Arkansas	14.4	22.2	7.8	11.6	61.2	44.4	16.4	17.1	24.2	28.7
Connecticut	14.4	12.0	8.6	7.4	16.0	13.5	8.0	7.6	16.6	15.0
Delaware	11.3	6.5	4.3	2.7	102.8	114.0	13.8	19.0	18.1	21.7
Florida	10,589.6	12,158.3	1,542.5	1,626.6	2,396.8	2,115.5	1,027.4	946.9	2,569.9	2,573.5
Georgia	92.5	95.5	37.2	45.0	811.1	1,092.6	212.1	312.3	249.3	357.3
Illinois	22.9	41.5	10.1	19.0	328.3	257.8	51.0	42.9	61.1	61.9
Indiana	25.2	39.4	11.3	18.0	n/a	327.7	n/a	48.1	11.3	66.1
Iowa	5.4	4.5	2.6	2.7	58.9	35.1	3.8	2.6	6.4	5.3
Kansas	2.5	2.9	1.0	1.6	n/a	n/a	n/a	n/a	1.0	1.6
Kentucky	3.2	9.0	1.4	4.9	n/a	n/a	n/a	n/a	1.4	4.9
Louisiana	9.6	7.2	8.9	8.0	n/a	n/a	n/a	n/a	8.9	8.0
Maine	26.0	31.0	9.0	11.1	n/a	n/a	n/a	n/a	9.0	11.1
Maryland	18.9	22.7	7.2	9.5	146.8	161.5	35.8	38.5	43.0	48.0
Massachusetts	127.1	110.2	112.3	98.3	n/a	n/a	n/a	n/a	112.3	98.3
Michigan	749.5	907.9	189.4	220.1	878.3	824.6	174.4	186.0	363.8	406.1
Minnesota	10.4	9.4	6.9	7.6	1,061.5	838.5	94.7	90.6	101.6	98.2
Mississippi	0.0	0.0	0.0	0.0	35.0	24.4	3.8	3.8	3.8	3.8
Missouri	21.6	25.3	9.4	9.9	100.9	95.6	10.5	14.1	19.9	24.0
New Hampshire	20.0	21.0	8.7	8.5	7.8	8.2	5.0	5.4	13.7	13.9
New Jersey	112.9	111.0	83.3	87.2	330.5	278.8	141.8	111.3	225.1	198.5
New York	775.1	753.8	192.7	190.5	1,118.7	1,114.0	206.4	214.9	399.1	405.4
North Carolina	157.7	168.4	53.4	55.1	n/a	n/a	n/a	n/a	53.4	55.1
Ohio	54.9	74.3	22.8	32.7	584.9	494.4	100.5	93.4	123.3	126.1
Pennsylvania	294.3	369.7	68.2	92.5	n/a	n/a	n/a	n/a	68.2	92.5
Rhode Island	2.4	2.0	1.5	1.2	3.8	3.2	2.2	1.7	3.7	2.9
South Carolina	123.9	122.8	43.6	41.5	146.2	n/a	53.4	n/a	97.0	41.5
Tennessee	5.3	8.9	2.4	4.5	81.2	69.3	38.8	28.7	41.2	33.2
Vermont	19.0	20.5	6.3	7.4	3.3	3.0	1.7	1.5	8.0	8.9
Virginia	155.0	208.5	29.4	44.5	193.9	171.0	78.9	73.9	108.3	118.4
West Virginia	72.5	90.8	13.8	21.2	n/a	n/a	n/a	n/a	13.8	21.2
Wisconsin	128.0	119.8	105.2	110.4	1,824.0	1,371.3	166.6	144.3	271.8	254.7
Regional Total	13,673.8	15,587.8	2,605.4	2,807.6	10,291.9	9,458.4	2,447.0	2,404.6	12,738.9	11,863.0
National Total	31,903.4	32,181.4	8,542.9	9,063.5	38,146.7	37,090.7	8,042.6	9,031.7	46,189.3	46,122.4

Value of fruit production in Florida was $1.6 billion in 1996, with $220 million in sales from Michigan and $190 million from New York the next largest producers. And, while every state in the region reported some fruit sales, each of the other states' amounts are quite small.

Timber Production

The nation produced nearly 845 million board feet of timber last year, with about 38% of that in two regions included in the merger area (Southern and Eastern regions of the United States), with a value of $134.4 million (Table 13). Most of that production came from the South (21%), with the remaining 17% from the Eastern states. In general, these products rely primarily on trucks and mixed modes, with just over 26% of this movement by rail.

Table 13. Timber Production, Selected States, 1996/97

State	*Production*	
	Volume	*Value*
	mil board ft	*mil $*
Southern States	180.3	26.8
Eastern States	143.2	16.5
Regional Total	323.5	43.2
National Total	844.9	134.4

Southern States includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, the Carolinas, Tennessee, and Virginia.
Eastern States includes Delaware, Indiana, Illinois, Iowa, Maryland, Michigan, Minnesota, New England, New Jersey, New York, Pennsylvania, Ohio, West Virginia, and Wisconsin.

III. The Conrail Joint Acquisition

Background

The nation today depends heavily on nine Class I railroads (a railroad with annual operating revenues of at least $256 million), down from eleven only two years ago. Today, these include:

- Burlington Northern Sante Fe Railway
- Conrail
- Canadian National
- Canadian Pacific Railway
- CSX Transportation
- Illinois Central
- Kansas City Southern Lines
- Norfolk Southern
- Union Pacific

These nine railroads now account for 73% of the nation's rail mileage, 89% of the railroad employees and 91% of its freight revenues. They account for 81% of the railcars and 95% of the annual revenue ton-miles. However, as important as the Class I rail system is, it has been in a state of nearly continual flux since World War II. As a result, the CSX-Norfolk Southern joint acquisition of Conrail cannot be clearly understood without examining the recent history of railroad restructuring in the United States, and especially in the Northeast.

In continuing efforts to reduce the region's isolation from the rest of the increasingly sophisticated national network, a long series of consolidations have taken place spanning the entire post-War period. Initial efforts were quite modest, with little more than local impact. The scale of consolidation escalated when the Delaware, Lackawanna and Western merged with Erie to form Erie Lackawanna (1960), and when Chesapeake and Ohio acquired Baltimore and Ohio (1963) to form what became the Chessie System.

In 1964, regional boundaries were breached when the Norfolk & Western (N&W) acquired Wabash and Nickel Plate, creating a system stretching from Norfolk to Kansas City. As a condition of that transaction, the Interstate Commerce Commission—now the Surface Transportation Board—directed that the financially weak Erie Lackawanna and Delaware and Hudson be included.

In the Southeast, Southern acquired Central of Georgia (1963), and Atlantic Coast Line and Seaboard Air Line merged in 1967. Subsequent actions were taken to create a two carrier competitive system in most of that region, in response to both rapid regional growth and growing competition from trucks brought by completion of the Interstate Highway system.

In the Northeast, rail carriers faced a more serious challenge. The competitive threat from trucks was at least as great, and the regional economy was being restructured into more of a service economy so that rail traffic was static or declining. Northeastern carriers continued to seek efficiencies through consolidation.

Penn Central Financial Failure

The Pennsylvania Railroad (PRR) and New York Central (NYC) had been the premier railroads in the nation for decades, reflecting the importance of the northeastern region in the overall economy. They dwarfed their lesser northeastern rivals in terms of size, market share and quality of their routes. Each had superb east-west routes between the Northeast and Midwest, a legacy of their passenger heritage.

Nevertheless, by the early 1960s, each had fallen on hard times. Trucks were making serious inroads into their freight traffic base, and losses were mounting on the extensive intercity passenger and commuter businesses operated by each. As a result, PRR and NYC agreed to merge to cut costs, and the Penn Central was born on February 1, 1968.

In hindsight, this decision was virtually suicidal. In essence, two weak railroads agreed to take on employee guarantees when traffic was declining, and to take on passenger services when losses were huge and growing. Penn Central filed for bankruptcy on June 21, 1970, the then largest bankruptcy in US history. Within several years, most northeastern railroads were in bankruptcy.

The mounting financial crisis led to growing service problems on Penn Central and the other bankrupt railroads. Lower speed limits were necessary as tracks deteriorated, and derailments mounted. The threat that the northeastern system would simply grind to a halt was very real. And, although the northeastern railroads were in decline, they were still vitally important in some key markets: the electric utility, steel, and automotive industries in the Northeast would have virtually been shut down without reliable rail service, and hundreds of thousands of commuters and intercity passengers continued to depend upon the bankrupt carriers.

Against this backdrop, the Federal Government intervened. The Regional Railroad Reorganization Act, passed in 1973, created the United States Railway Association (USRA) to restructure the bankrupt northeastern carriers. In its Final System Plan, USRA recommended that a streamlined Penn Central become the Consolidated Rail Corporation (Conrail) and that most of the remaining bankrupt carriers be acquired by Chessie System. As a result, "Unified" Conrail was born, essentially by default in April, 1976. The Federal planners concluded that the first goal of a northeastern rail reorganization was restoration of the rail carriers' financial viability, with a more competitive rail system awaiting another day, if it came at all. And, Conrail got off to a rocky start with both operating losses and the cost of rehabilitation proving greater than the planners had predicted. The reluctance of the solvent carriers to become involved was, at least in the short run, vindicated by that reality.

Between 1976 and 1981, the northeastern railroads – in the form of a federally-owned Conrail – were rebuilt. While service improved, financial problems continued. The Reagan Administration sought to remove CR from government support, threatening to liquidate the company if fundamental changes were not made.

The Staggers Act reduced economic regulation of the rail industry, giving CR and all other railroads far more freedom to adjust to the marketplace. Among other things, Staggers encouraged rail consolidations, and during the 1980s, most of the rail industry restructured into large, inter-regional systems. In the eastern United States, Chessie merged with Seaboard Coast Line to form CSX in 1980, and in 1982, N&W and Southern formed Norfolk Southern. The Staggers Act and these early 1980s mergers were followed by legislation permitting CR to restructure its routes, its labor contracts, and its passenger obligations.

Norfolk Southern Interest in Conrail

Spurred by legislative reforms, CR's financial affairs improved, as did its appeal to solvent carriers. When Conrail privatization was proposed by the Reagan Administration in 1984, Norfolk Southern offered to buy it. The NS proposal, while endorsed by Department of Transportation and the Department of Justice, was fought vigorously by both CR management and CSX, as well as by many state officials. After a two year effort, NS conceded defeat and CR was privatized in early 1987 in what was at that time the largest public stock offering ever.

Beginning in the early 1990s, NS sought to strengthen its access to the Northeast through a series of joint projects with CR. Most of these projects were initiated by NS, and it gradually became clear to NS that its interest in working with Conrail was one-sided. NS's interest in CR never waned, but hopes of an expanding alliance were clearly misplaced.

As a result, the CSX/CR merger announcement in October, 1996, was a severe disappointment to NS. Not only had a preferred partner (and second largest interline connection) rebuffed NS, but it had chosen an archrival of NS as its merger mate. NS understood the announcement as a substantial threat, and a danger to the future of competitive rail transportation in the eastern United States.

Already facing a larger CSX in the Southeast, NS was threatened with almost total domination as well as loss of much of its northeastern access. NS concluded that without a substantial northeastern network, it would be seriously disadvantaged. Northeastern access was of critical strategic importance and left NS with no choice but to fight to acquire Conrail.

The Acquisition

The first time NS studied a combination with Conrail in a major way was in the mid-1980s, when the federal government, which then owned Conrail, solicited bids to sell it, and NS was one of 15 bidders who responded. After studying the different proposals intensively, the Department of Transportation, with the conditional concurrence of the Department of Justice, recommended legislation to Congress authorizing the sale of Conrail to NS. CSX, however, strongly opposed that sale, as did Conrail. Although legislation authorizing the sale was approved by the Senate, it was blocked in the House; and NS therefore withdrew its bid. In 1986, Congress passed the Conrail Privatization Act, which resulted in a sale of Conrail in 1987 through a public stock offering.

Following CSX's and Conrail's announcement in October 1996, NS responded with a tender offer on October 23, 1996, to purchase all of Conrail's outstanding common shares for $100 per share in cash. This tender offer initiated a contest between NS and CSX for control of Conrail that lasted until early March 1997. The contest ended when CSX and Conrail indicated their general agreement to a CSX-NS acquisition and operational division of Conrail.

The objectives of the agreement are to create a structure that provides both CSX and NS with: comparable market shares; broad geographic coverage; a balanced portfolio of routes with comparable traffic densities; and fair access to important markets and terminals to serve those markets. Another important objective was to minimize service disruptions to customers.

CSX and NS currently operate rail networks that serve commercial areas throughout the Southeast and Midwest. To a large extent, both depend on Conrail to reach the mid-Atlantic and northeast regions (Map 3).

CSX:

- operates 18,504 route miles of railroad in 20 states east of the Mississippi River and in Ontario, Canada.

- 1,607 miles are operated under trackage rights, with the remaining mileage either owned or operated under contract of lease.

- CSX has principal routes to virtually every major metropolitan area east of the Mississippi. Key western points include Chicago, St. Louis, Memphis and New Orleans. Key eastern points include Miami, Jacksonville, Charleston, Norfolk, Washington, D.C. and Philadelphia. Other key points include Atlanta, Nashville, Cincinnati, Detroit, Pittsburgh, Baltimore, Charlotte, Birmingham and Louisville.

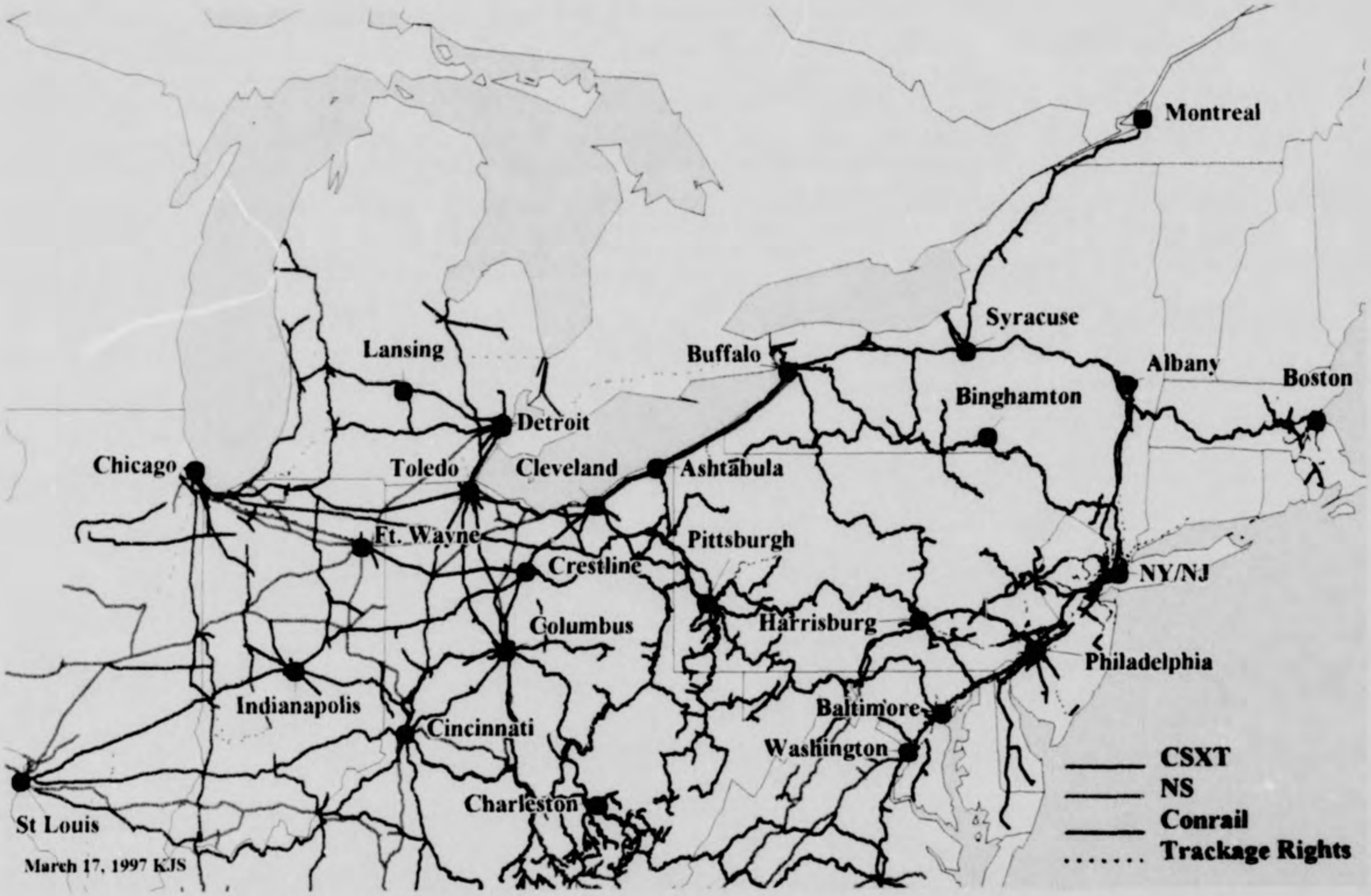
Norfolk Southern (Map 4):

- operates 14,282 route miles and 25,236 track miles in 20 states, primarily in the South and Midwest and Ontario, Canada.

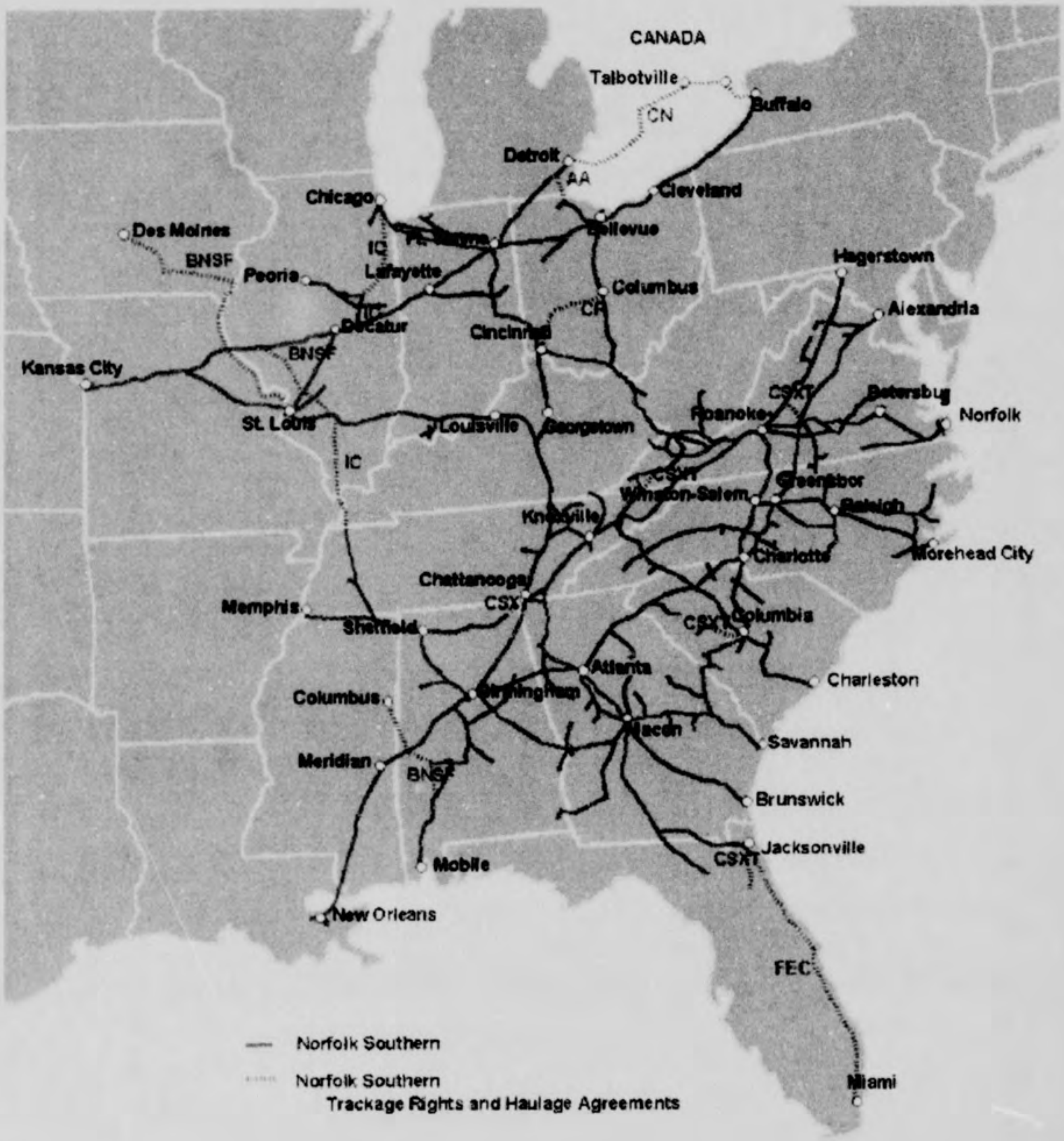
- 1,520 miles are operated under trackage rights, with the remaining mileage either owned or operated under contract or lease. NS is comprised of 68% main lines and 32% branch lines.

- NS has routes to virtually every major city in a region bounded by Kansas City and Des Moines on the West, Chicago (and Ontario, Canada) and Buffalo on the North to Jacksonville and New Orleans on the South. Major cities include (among others) Memphis, Chattanooga, Knoxville, St. Louis, Atlanta, and Mobile.

Map 3. Existing Northeast Rail Network



Map 4. Existing Norfolk Southern Rail Network



Conrail:

- 10,500 miles of railroad in the Northeast and Midwest, including 5,520 miles of mainline and 4,980 miles of branch lines.

- The primary network forms an "X" connecting Chicago and St. Louis in the West with Boston, New York and Northern New Jersey and Pittsburgh, Philadelphia, Baltimore and Washington, D.C. The hub of the "X" is Cleveland. Key lines that accommodate traffic flows between other parts of the Conrail system and Cincinnati, Columbus and/or Conrail points include:

  ◊ **Chicago Line** – Chicago to Albany with connections to New York and Boston.
  ◊ **Detroit Line** – Detroit and the Chicago line (at Toledo).
  ◊ **Michigan Line** – Detroit and Kalamazoo.
  ◊ **Kalamazoo Secondary Branch** – Kalamazoo to the Chicago line.
  ◊ **Montreal Secondary** – Syracuse to Adirondack Junction, Quebec.
  ◊ **Southern Tier** – Buffalo to New Jersey.
  ◊ **St. Louis Line** – to Indianapolis and the Indianapolis line.
  ◊ **Cincinnati Line** – to Columbus.
  ◊ **Columbus Line** – to Gallion, Ohio and the Indianapolis line.
  ◊ **Scottslawn Secondary Track** – to the Indianapolis line.
  ◊ **West Virginia Secondary Track** – from Columbus to Kanawha Valley, West Virginia.

The Merger

The strategic aspect of the merger is the opportunity it presents for two major regional railroads, each lacking primary access to major regions of the United States to join with a third system to permit better service to all of the regions involved. These are described in detail in Appendix A.

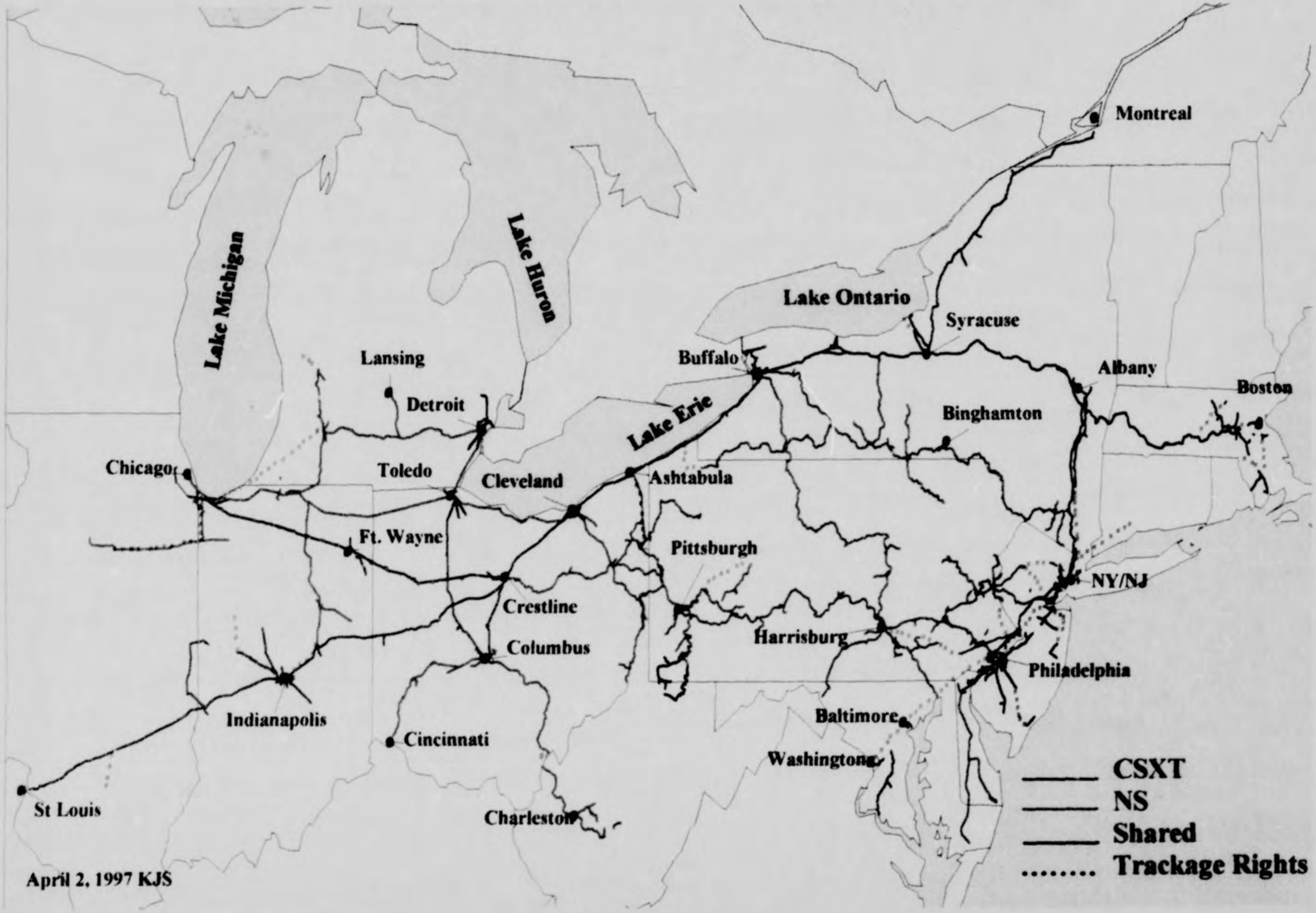
The new system includes several key components:

- **CSX and NS routes** that will be operated by each railroad, as was done before the merger.

- **Conrail lines to be operated by CSX**, including primarily nine primary routes and extensions (Map 5):

  ◊ NY/NJ to Cleveland;
  ◊ Crestline, Ohio to Chicago;
  ◊ Berea to East St. Louis;
  ◊ Columbus to Toledo;
  ◊ Bowie to Toledo;

Map 5. Proposed CSXT/NS Allocation of Conrail



- ◊ NY/NJ to Philadelphia;
- ◊ Washington, D.C. to Landover, Maryland;
- ◊ Philadelphia Terminal to Quakertown, PA; and
- ◊ Chicago Area, from Porter, IN to Ivanhoe, IN.

- **Conrail Lines to be operated by NS**, including eleven lines and extensions:
  - ◊ NJ terminal to Crestline;
  - ◊ Cleveland to Chicago;
  - ◊ Philadelphia to Washington, D.C.;
  - ◊ Michigan operations (Detroit shared assets area);
  - ◊ Eastern PA lines and extensions;
  - ◊ Indiana lines and extensions;
  - ◊ Buffalo to NY/NJ Terminal route and extensions;
  - ◊ Buffalo to Harrisonburg, and South;
  - ◊ Cincinnati to Columbus to Charleston;
  - ◊ Chicago South Illinois operations; and
  - ◊ Chicago market operations.

- **Lines exchanged** – NS will acquire Conrail's Streator Line (Osborn to Streator, Illinois and Conrail will acquire NS's line from Ft. Wayne, IN to Chicago. The Ft. Wayne to Chicago line will be operated by CSX.

- **Shared assets** – in three areas, Conrail properties and rights will be allocated jointly to CSX and NS under the agreement, including the following areas:
  - ◊ New Jersey Shared Assets Area;
  - ◊ South Jersey/Philadelphia shared Assets Area; and
  - ◊ Detroit Shared Assets Area.

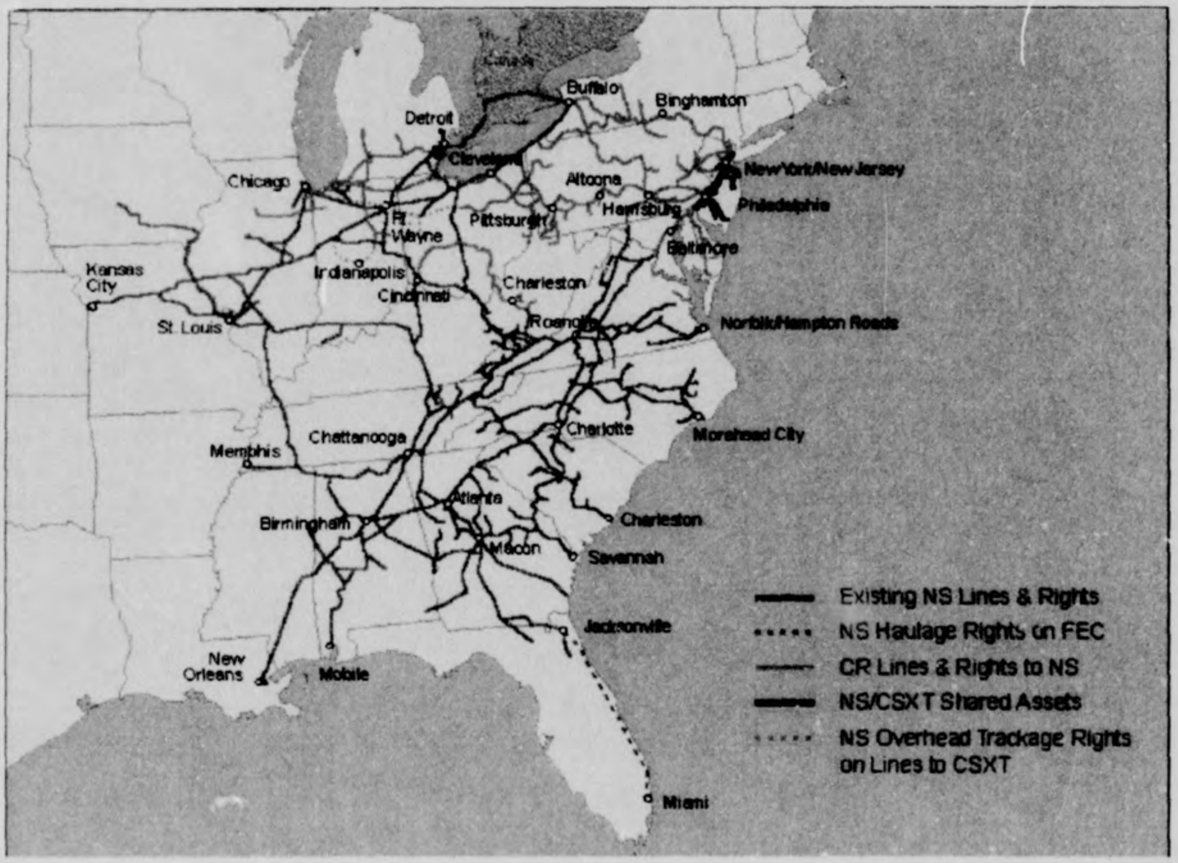
- **Other matters** – These include other assets to be shared under special arrangements, certain trackage rights, facilities and other Conrail interests that are to be allocated to NS and CSX.

Proposed Routes

NS proposes new single-line service routes for major corridors, as well as for a number of smaller routes such as the Butler-Cutoff Route, the Coal Routes and the Streator Line. Major routes include (Map 6; see Appendix B for additional route maps):

- **The Penn Route**, from Chicago to the Northeast – the NS's principal east/west artery for both carload and intermodal traffic.

Map 6. The New Norfolk Southern



- **The Southern Tier Route**, Northern New Jersey – Cleveland and Chicago. This route is expected to see significant increases in consolidated system traffic, and will provide NS a route to New England via Canadian Pacific Rail System through Binghamton, New York.

- **The Piedmont Route** – Northeastern-Southeastern points via Charlotte.

- **The Shenandoah Route** – Northeast-Southeast via Knoxville.

- **The Mid-South Route** – midwest to Southeast via Cincinnati.

- **Chicago – Southeastern Points**.

- **The Bridge Route** New England – Southeastern points.

CSX proposes a major consolidation of main-line operations, and changes in major service routes, including (Map 7; see Appendix C for additional route maps):

- **Northeastern Gateway Service Route** – Chicago to Albany.

- **Alternative Chicago Gateway** – Ft. Wayne-Cleveland Service Route.

- **Eastern Gateway Service Route** – Chicago to Baltimore, Washington, Philadelphia and New Jersey.

- **Michigan-Chicago Gateway Service Route** – primarily, involving more direct routing on existing CSX lines from Chicago to points in Michigan and Canada.

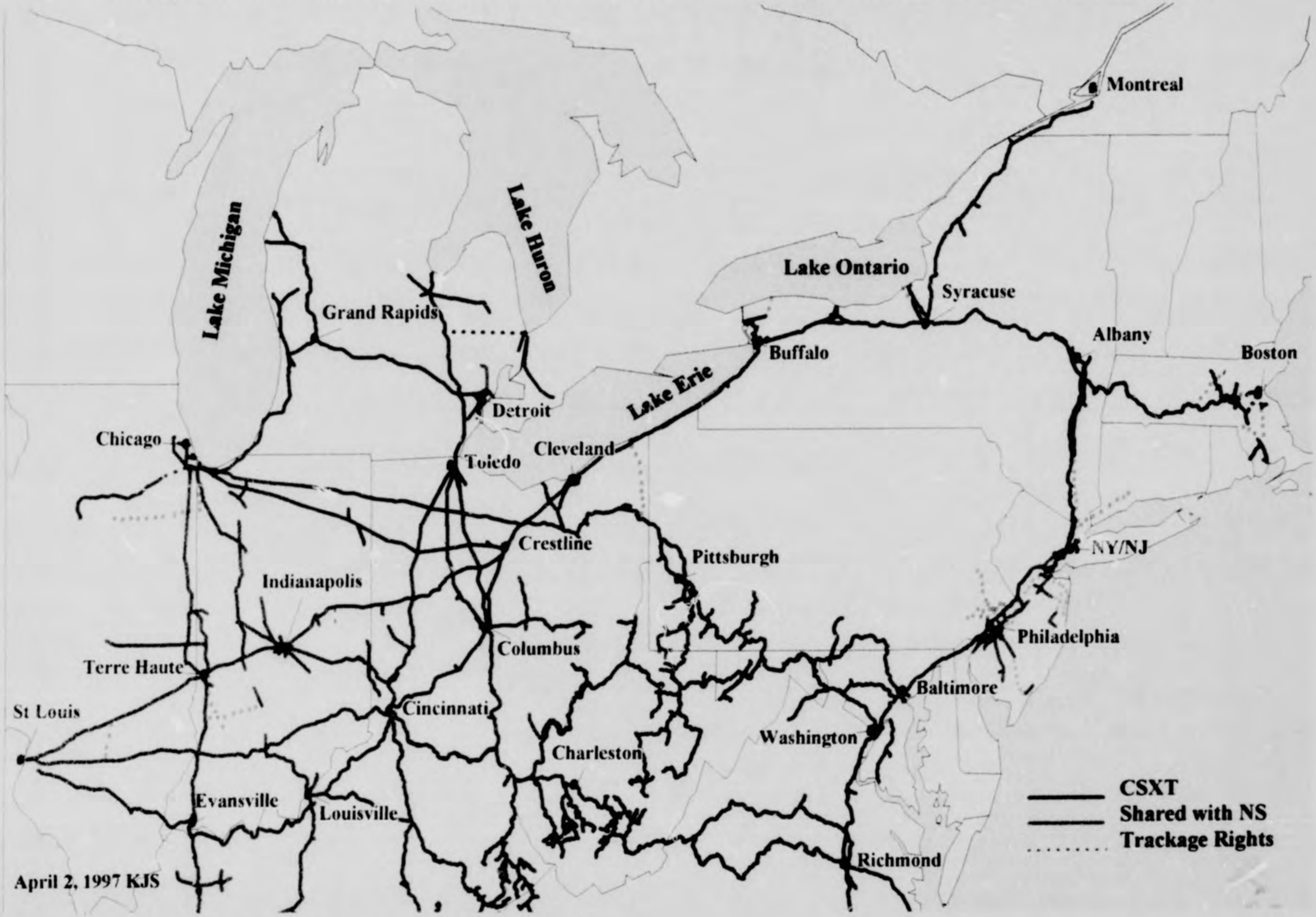
- **Chicago-Gateway-Southeast Service Route** – Chicago to Florida and other southeastern points.

- **St. Louis Gateway Service Route** – St. Louis to East Coast points, using much shorter and faster routes than existing CSX service.

- **Memphis Gateway Service Route** – combines Conrail's northeastern lines with CSX's present lines between Memphis and Cincinnati.

- **New Orleans Gateway Service Route** – creates a routing option for traffic from the West to points north of Philadelphia with single-line service from the New Orleans Gateway.

Map 7. CSXT Rail Lines in NE After Assignment of Conrail Lines



- **Atlantic Coast Service Route** – combines CSX's existing line between Florida and Philadelphia and Conrail's line between Philadelphia and Boston to create the first single-line service between New England and Florida.

- **Michigan-Florida Service Route** – from Michigan to Southern Florida.

- **Central Service Route** – links points in Tennessee, South Carolina, North Carolina and Virginia to Toledo, Detroit and Chicago, as well as points west to St. Louis.

- **Heartland Service Route** – combines Conrail and CSX lines to create new intermodal and automotive routes for double-stack and container traffic and multi-level auto racks.

Map 8 shows the CSX/NS system map after division on Conrail.

Proposed Abandonments

NS segments

- **Dillon-Michigan City Indiana** – 21.5 miles.
- **South Bend - Dillon, Indiana** – 21.5 miles.
- **Toledo-Maumee, Ohio** – 7.5 miles.
- **Toledo-Maumee River Bridge, Ohio** – 0.2 miles.

CSX segments

- **Danville Secondary, Danville to Paris, Illinois (Conrail)** - 29 miles.

Track Upgrades, New Construction and Other Capital Investments

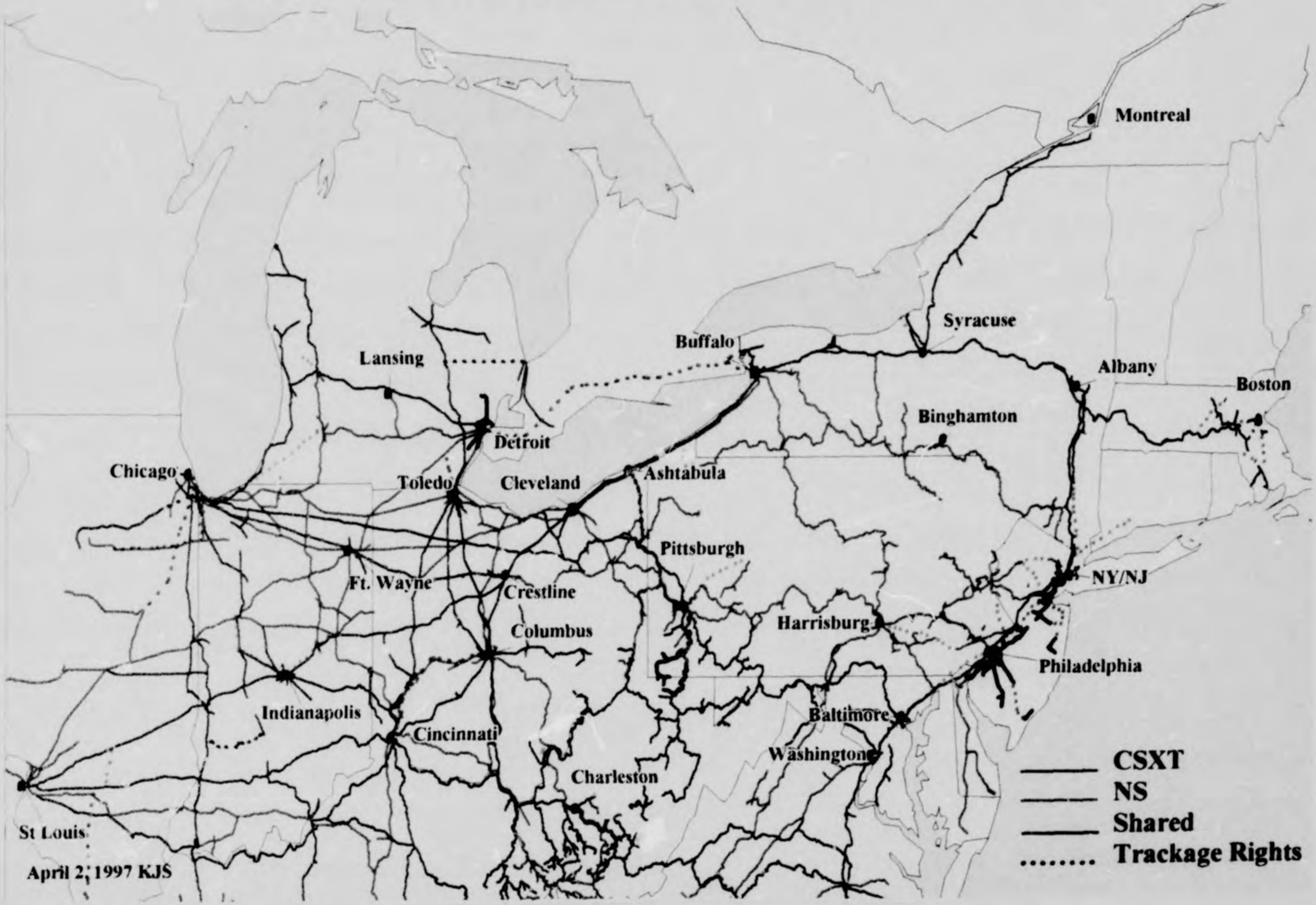
Both CSX and NS have proposed substantial investments for a number of upgrades, rehabilitation projects, new connections and other construction projects to be undertaken as a result of the acquisition. Together, proposed investment totals $988 million (CSX, $488 million; NS, $500 million).

CSX Upgrades and New Construction

Service Route Upgrades (Table 14)

- **Chicago Area/Northeastern Gateway Service Route** - New or upgraded connections, $196.2 million.

Map 8. CSXT/NS System Map After Conrail Division



- **Alternative Chicago Gateway-Ft. Wayne-Cleveland Service Route** - Track rehabilitation, $6.5 million.

- **Memphis Gateway Service Route** - Two additional sidings at Alice, IN and Harwood, IN, $2.4 million.

- **Atlantic Coast Service Route** - Clearance project, $19 million. Additional siding at Belmont, PA, $3.0 million.

- **Merchandise/Unit Train Yards** - Indiana Harbor Belt Railroad Company's (IHB) Blue Island Yard in Chicago rehabilitation, $10 million. Replace hump process controls at Avon Yard, Frontier Yard, and Selkirk Yard, $15 million. Yard expansion at Willard, $49.3 million. Rehabilitate track at Newell , $2.9 million.

- **Intermodal and Finished Vehicle Terminals Upgrades/Expansion** - $75.7 million

- **New and Upgraded Connections** - CSX will construct or upgrade connections and track at 14 points on its network in order to facilitate efficient traffic flows. These projects will cost an estimated $40.0 million.

- **Fueling/Service Facilities** - $15 million.

- **Mechanical Facilities** - $6 million

- **Information Systems and Upgraded Technologies** - $32 million in capital investment and $76 million in one-time expenses.

Summary of Capital Investments - $488 million will be invested as shown in Table 15.

Norfolk Southern Upgrades and New Construction

NS has indicated it plans to spend over $500 million on construction and upgrade projects related to the acquisition, including:

Corridor Upgrades

- **Penn Route** - Eliminate capacity constraints and increase reliability on the Penn Route and the Piedmont/Shenandoah Routes. Lehigh Line, $27.7 million; Harrisburg Line, $17.0 million.

- **Shenandoah Corridor** - Capacity improvements $12.1 million.

- **Mid-South Route** - Single-line capacity improvement project, $15.3 million.

Table 14. Planned CSX Connection Upgrades

Location	Comments	Est. Cost (millions)
Exermont, IL (East St. Louis)	Connect the parallel Conrail and CSX lines to allow trains originating at Conrail's Rose Lake Yard and westbound trains arriving from CSX lines to block swap with westbound trains from Indianapolis	$2.1
Lincoln Ave., IL (Chicago area)	Crossover from the Baltimore and Ohio Chicago Terminal Railroad Company (BOCT) lines to IHB lines for eastward trains	3.5
Rock Island Jct. IL (Chicago)	Upgrade the connection between Conrail and the Belt Railway Company of Chicago (BRC) to allow more direct movements between Bedford Park intermodal yard and the Lakefront mainline	2.0
75th St. S.W., IL (Chicago area)	Connect BOCT line at Forest Hill to BRC in southwest quadrant of 75th Street interlocking	2.5
Tolleston, IN (East Chicago area)	Rehabilitate connection between Conrail line and NS line in the southwest quadrant for movement of trains from IHB Blue Island to CSX's Ft. Wayne line	2.4
Haley, IN (Terre Haute)	Upgrade an existing connection to allow northbound CSX trains from Nashville to move eastbound on Conrail's line toward Indianapolis	2.0
Willow Creek, IN (East Chicago area)	Construct a connection in the southeast quadrant to allow progressive east-west movements between CSX's Garrett Subdivision and Conrail's Porter Branch, facilitating the movement of traffic between Porter, IN, Garrett, IN and Chicago points	4.5
Carleton, MI	Rehabilitate a connection between Conrail and CSX lines to facilitate CSX operations to/from shared areas in Detroit	1.2

Table 14. Planned CSX Connection Upgrades – continued

Little Ferry, NJ	Connect the Conrail line with the NYS&W to facilitate movement into the Little Ferry intermodal terminal	1.0
Crestline, OH	Connect Conrail lines to facilitate movements between Ft. Wayne and Cleveland	2.7
Greenwich, OH	Connect Conrail and CSX lines to allow CSX to progress between Cleveland and Chicago and between Indianapolis and Cumberland	4.3
Marion, OH	Rehabilitate an existing connection between Conrail and CSX to allow eastbound Conrail trains to proceed north on CSX's mainline toward Toledo	1.8
Sidney, OH	Construct a connection in southeast quadrant to allow west-south and north-east movements	6.0
Eastwick, PA	Rehabilitate connection and track at Eastwick between CSX's line and the Conrail line at Gray's Ferry Bridge and the 25th Street Viaduct to facilitate more efficient operations at Philadelphia.	4.0

Table 15. Planned CSX Capital Projects

Capital Projects	Cost
Service Route Upgrades	$234.1
Yards and Terminals	
Merchandise	77.2
Intermodal and Auto	75.7
New or Upgrade Connections	40.0
Facilities	
Fueling/Servicing	15.0
Mechanical Facilities	6.0
Technology	32.0
Contingency	8.0
Total	$488.0

- **Southwest Gateway Route** - Construction of seven new sidings, $33 million.

- **Additional Improvements** - $12.1 million.

- **Additional Track Upgrading** - $79.3 million.

- **Major Terminal Upgrades** - Intermodal facilities, $200 million; Construction Cost for Triple Crown Terminals, $20 million; Automotive Terminals, $30 million.

- **Special Projects** - $33.8 million.

- **Mechanical Facilities** - $102 million.

- **New Connections** - Consolidation of NS routes and the identified Conrail routes will require construction of new track connections at several points on the system. These connections, summarized below, will facilitate efficient use of the consolidated route structure. Total construction cost for these projects summarized below is estimated to be $25 million (Table 16).

Table 16. New NS Connections

Location	Comments	Estimated Cost
Alexandria, IN	Permits creation of a new efficient consolidated through route from Chicago to Cincinnati, Atlanta and the Southeast via Alexandria and Muncie, IN.	$1,400,000
Butler, IN	For direct through movement of traffic from NS Detroit line to Conrail Chicago Line. Creates an efficient new route. Helps free Conrail's Kalamazoo-Detroit Line for sale to a prospective passenger operator.	$ 1,460,000
Tolleston, IN	Connection to serve NS industry at Gary, IN from Conrail Line.	$ 200,000
Sidney, IL	Connection with Union Pacific to permit efficient handling of traffic between UP points in the Gulf Coast /Southwest and NS points in the Midwest and Northeast, and by-passing congestion at E. St. Louis.	$1,800,000
Kankakee, IL	To permit efficient through movements from Conrail Chicago mainline, and Chicago Terminal area to Kansas City and St. Louis Gateways.	$ 1,443,000

Table 16. New Connections – continued

Location	Comments	Estimated Cost
Tolono, IL	To connect with IC in order to permit efficient handling of traffic between IC points and NS points and bypassing congestion at E. St. Louis.	$1,550,000
Oak Harbor, OH	To create efficient access from the Detroit area to NS Bellevue Yard.	$2,967,000
Vermilion, OH	Connecting track between NS and Conrail to create an efficient new route from Conrail's Cleveland to Chicago mainline to NS' Cleveland to Buffalo mainline to and from eastern destinations and origins, including New York and Northern New Jersey via Buffalo.	$2,587,000
Buffalo, NY: Blasdell Gardenville Jct. (Ebenezer)	To permit efficient movement from NS Cleveland mainline to Conrail Buffalo line or Conrail Southern Tier avoiding CP-Draw.	$6,141,250
Hagerstown, MD	To provide continuous double track through Hagerstown in conjunction with increased traffic projections and elimination of a rail crossing at grade.	$ 1,035,000
Detroit, MI (Ecorse Jct.) (Connection)	To facilitate efficient movement westbound from Conrail's River Rouge Yard via Junction Yard Secondary to NS' Oakwood Yard at MP 136.	$ 586,000
Columbus, OH (MP 4)	To facilitate efficient movement from NS to Conrail Buckeye Yard.	$ 1,580,000
Bucyrus, OH	To facilitate efficient movement from Pittsburgh, PA to Columbus, OH.	$2,264,000
Total Estimated Construction Cost For Connections:		**$25,013,250**

IV. Acquisition Impacts

Objectives of the Merger

The stated objectives of the joint acquisition agreement were to create a structure that would provide better, more competitive service to the region and the nation. To do this, the Conrail system is to be operated as part of the competitive system serving the West and Midwest, South and East. Both CSX and NS are to have comparable market shares, broad geographic coverage, a balanced portfolio of routes with comparable traffic densities, and fair access to important markets and terminals to serve those markets.

In very broad terms, the agreement allocates to NS and CSX the operation of two "legs" of the Conrail "X" of rail routes. In addition, NS and CSX will share access to a number of areas (Shared Asset Areas), including Conrail lines and facilities in northern New Jersey, the Philadelphia area, southern New Jersey, the Detroit area, the Indianapolis area, and the Monongahela coal fields. (The term Penn Lines will be used to refer to the routes and other Conrail assets to be used and operated by NS and to NS's rights in the shared areas, and the term New York Central Lines to refer to the lines to be operated by CSX and CSX's rights in the shared areas.)

While NS and CSX will each serve shippers directly in the Shared Assets Areas, Conrail will provide certain services exclusively to NS and CSX in these areas, including switching services as a contractor for NS and CSX. Customers will continue to deal with two highly competitive carriers. All rates and charges to shippers and other railroads in the Shared Assets Areas will be established exclusively and separately by NS and CSX, in competition with each other (and with other modes). NS and CSX will serve shippers (and other railroads) directly or by using Conrail for switching and local service.

This division of Conrail operations will result in two strong and far-reaching rail networks that should be much more competitively balanced than if one of the competing systems operated Conrail by itself. One of the most important features of that balance concerns the division of east-west routes. There are four main routes between the Northeast and the Midwest, three of which are now owned by Conrail. These are largely the former New York Central's route from New England, New York and northern New Jersey through Albany, Syracuse, Buffalo and Cleveland to St. Louis; the "Southern Tier" route of the former Erie Lackawanna Railroad from New York through Binghamton, NY, to Erie, PA, connecting with NS in Buffalo, NY; the combination of the former Pennsylvania Railroad route from northern New Jersey and Philadelphia through Pittsburgh to Cleveland and the former New York Central line from Cleveland to Chicago; and CSX's Baltimore and Ohio Railroad route from Philadelphia and Baltimore through Pittsburgh to Chicago. Two of these are high speed, high capacity routes: the New York/New England-St. Louis route via Upstate New York and the Northeast-Chicago route via Pennsylvania. **The Conrail transaction results in NS and CSX each operating two of these four routes and one of the two high speed, high capacity routes.**

The Conrail transaction also will give both NS and CSX equal access to extremely important markets and the right to compete for rail traffic in those areas. The shippers in the largest of the Shared Assets Areas – northern New Jersey – as well as shippers in southern New Jersey, parts of Philadelphia and Detroit, will be gaining direct competitive service from two large Class I railroads for the first time in more than two decades. In addition, although NS will be allocated operation of Conrail's Monongahela coal fields properties, CSX will have the right to serve all current and future customers directly.

The CSX/NS acquisition of Conrail is expected to create two strong rail networks of broad and comparable scope that will compete vigorously to provide efficient service throughout the eastern United States. Results of the merger could include:

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

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

- **Near-Term and Long-Term Growth.** CSX and NS both project that the creation of new single-line routes will enhance their competitive positions, enabling them to divert traffic from other rail carriers, including one another. Moreover, by creating more efficient rail networks, CSX and NS will position themselves to win new traffic from trucks, both in the near term and on a long-term basis. The transaction could allow CSX and NS to become truly effective competitors for trucks, which handle the vast majority of freight in the East, thereby reducing the number of trucks on crowded eastern highways. The bright prospects for long-term traffic growth by these efficient eastern railroads portend significant benefits not only for CSX and NS but for the consuming public as well.

The creation of new single-line service, the efficiencies of expanded networks, and the development of more direct routes promise to generate additional benefits for the general public. New single-line service would enable CSX and NS to compete more effectively with trucks in lanes now dominated by motor carriers, such as the I-95 corridor. The efficiencies of the expanded networks and the increased traffic volumes they will handle promise to allow the new networks to reduce per unit costs. More direct routes made possible by combining the existing

CSX and NS systems with those portions of Conrail that they will operate will result in reduced car miles, better equipment utilization, reduced fuel consumption, and faster service for their customers.

Finally, one of the principal public benefits of the transaction promises to be the substantial increase in intramodal and intermodal competition it will bring to shippers in the eastern United States. These potential benefits are described more fully in subsequent sections.

The Proposed Operating Plans

Generally, the focus of the new rail system has been to build a successful two-carrier competitive structure in the Northeast. To achieve this, balance between the railroads' current operating structures had to be ensured. Both competing rail systems have the necessary traffic density to provide quality service and achieve low costs, and both are large enough to generate the cash flow required to maintain and improve fixed plant and equipment. With this balanced system as the model, certain objectives were pursued in designing the new NS and the new CSX.

Balance of historical revenues and market share. If one resulting carrier were substantially larger than the other, the larger one would be able to use its superior market and cost position to overwhelm its competitor over time. One indication of the competitively balanced networks created by the transaction is the estimated post-transaction share of historical eastern rail traffic (Table 17).

Table 17. NS and CSX Market Shares

Commodity	Total Revenue		Market Shares	
	NS	CSX	NS	CSX
	mil $		%	
Agriculture & Consumer	621.3	719.5	46.3	53.7
Coal, Coke & Iron Ore	1,892.6	1,872.6	50.3	49.7
Paper, Clay & Lumber	774.7	789.7	49.5	50.5
Chemicals	840.1	1,201.1	41.2	58.8
Metals & Construction	766.4	844.0	47.6	52.4
Automotive	841.7	796.8	51.4	48.6
Intermodal	712.7	580.2	55.1	44.9
Total	6,449.5	6,803.9	48.7	51.3

Source: 1995 QCS Report and Rail Traffic Diversion Study - Norfolk Southern

These shares will change over time as each carrier tries to outdo the other for business. But the starting point is remarkably close and gives each carrier a good traffic base as the new competitive era begins.