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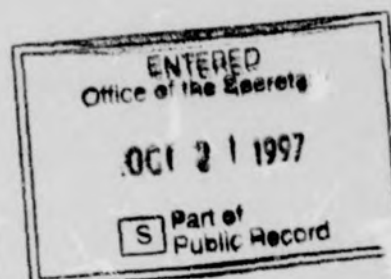
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BY HAND DELIVERY

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 under seal in the above-referenced proceeding, please find a separately packaged original and twenty-five (25) copies of the HIGHLY CONFIDENTIAL VERSION of the "Comments and Request for Conditions of Potomac Electric Power Company" (PEPC-4). In accordance with the Board's prior order, we have enclosed a Wordperfect 5.1 diskette containing this filing. Also enclosed for filing please find an original and twenty-five (25) copies of the REDACTED, PUBLIC VERSION of the "Comments and Requests for Conditions of Potomac Electric Power Company" (PEPC-5).

We have included an extra copy of each of these filings. Kindly indicate receipt by time-stamping these copies and returning them with our messenger.

Sincerely,

Christopher A. Mills  
An Attorney for Potomac Electric  
Power Company

Enclosures



BEFORE THE  
SURFACE TRANSPORTATION BOARD

PEPC-5

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

Finance Docket No. 33388

COMMENTS AND REQUEST FOR CONDITIONS  
OF POTOMAC ELECTRIC POWER COMPANY

ENTERED  
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Public Record

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POTOMAC ELECTRIC POWER COMPANY

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Dated: October 21, 1997

Attorneys for Potomac Electric  
Power Company

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND NORFOLK	)	
SOUTHERN RAILWAY COMPANY --	)	Finance Docket No. 33388
CONTROL AND OPERATING LEASES/	)	
AGREEMENTS -- CONRAIL INC. AND	)	
CONSOLIDATED RAIL CORPORATION	)	

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COMMENTS AND REQUEST FOR CONDITIONS  
OF POTOMAC ELECTRIC POWER COMPANY

INTRODUCTION

Potomac Electric Power Company ("PEPCO") hereby submits its Comments and Request for Conditions with respect to the proposed acquisition of Consolidated Rail Corporation ("Conrail") by CSX Corporation and its rail affiliates ("CSX") and by Norfolk Southern Corporation and its rail affiliates ("NS").

SUMMARY OF POSITION

PEPCO opposes the proposed acquisition of Conrail by CSX and NS because it would sharply reduce PEPCO's current competitive position vis-a-vis other electric utilities with which it competes. In particular, the assignment of Conrail's line serving PEPCO's Chalk Point and Morgantown Generating Stations to CSX will result in a CSX destination monopoly over rail service to the three largest of PEPCO's coal-fired power plants. This destination monopoly will result in competitive

harm to PEPCO because of the new dual CSX and NS service to be provided to the coal mines served by the former Monongahela Railway ("MGA") (now Conrail) in southwestern Pennsylvania, and to certain of PEPCO's utility competitors. PEPCO's destination captivity to CSX is particularly problematic due to the substantial premium CSX is paying for its share of Conrail -- a premium that is likely to be recovered from captive coal shippers.

If the Board is inclined to approve the transaction notwithstanding its competitive harm to PEPCO, the Board should impose three conditions to ameliorate such harm. The first condition would require CSX to grant trackage rights to NS between Bowie, MD and the Chalk Point and Morgantown plants near Herbert and Woodzell, MD, respectively, for the purpose of delivering shipments of coal to these plants in competition with CSX. In addition, the Board should require CSX to remove the acquisition premium over Conrail's pre-acquisition book value from all cost and other financial data that are relevant to the Board in making rail rate reasonableness determinations. Finally, the Board should require CSX and NS to extend dual service to Rochester & Pittsburgh's Mine 84 in the MGA region.

In support of its position, PEPCO presents the following Verified Statements which follow this Introduction:

Susann D. Felton

Vice President - Materials,  
Potomac Electric Power Company

Stan M. Kaplan

Director of Energy Market Analysis  
Fieldston Company, Inc.

Argument of Counsel follows the Verified Statements.



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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

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Finance Docket No. 33388

VERIFIED STATEMENT OF  
SUSANN D. FELTON

My name is Susann D. Felton. I am Vice President - Materials for Potomac Electric Power Company ("PEPCO"). My office address is 1900 Pennsylvania Avenue, N.W., Suite 414, Washington, D.C. 20068. I joined PEPCO in 1976 and since that time, have held a number of different positions within the Company. In my current position, I am accountable for overseeing PEPCO's departments of Fuels Procurement, Purchasing, Stores and Fuels By-Products, Material Control, Investment Recovery, and Materials Planning. I am responsible for, and have been actively involved in, PEPCO's fuel transportation arrangements.

**I. PEPCO'S INTEREST IN THIS PROCEEDING.**

PEPCO opposes the proposed acquisition of Consolidated Rail Corporation ("Conrail") by CSX Transportation, Inc. and its affiliates ("CSX") and Norfolk Southern Railway Company and its affiliates ("NS") because the manner in which various Conrail



lines are being divided between the two carriers is inconsistent with the public interest. There are several reasons for this. First, CSX and NS have decided between themselves that certain of PEPCO's competitors (including fellow members of the Pennsylvania-Maryland-New Jersey Interconnection pool ("PJM")) should have additional intramodal rail competition in the form of dual-carrier service at both origin and destination, while PEPCO should not. Rather, CSX and NS have decided that Conrail's lines serving PEPCO's two largest coal-fired power plants, the Chalk Point and Morgantown Generating Stations in southern Maryland, are to be given to CSX which will have a destination monopoly over rail movements of coal to these plants. This decision will place PEPCO at a competitive disadvantage in the electric generation market.

More acutely with respect to PEPCO, the proposed Conrail acquisition, as presently structured, will have a significant negative impact on PEPCO's ability to plan and implement its strategy for compliance with Phase 2 of the Clean Air Act Amendments of 1990 ("CAAA"). As a result of the Conrail transaction, CSX will exclusively serve the three largest of PEPCO's four coal-fired plants, and thus can preclude NS-originated coals from competing at these plants. As more fully discussed below, this concentration of monopoly power in CSX will severely limit PEPCO's ability to procure low-sulfur compliance coal or mid-sulfur near compliance coal (bundled with sulfur dioxide emission

allowances) at certain NS-served mines in implementing its CAAA Phase 2 compliance strategy.

Finally, the transaction threatens to burden captive shippers such as PEPCO with the tremendous acquisition premium that CSX and NS appear to be paying to acquire the Conrail assets. The most likely source of recovery of this premium, which I understand exceeds \$4 billion, is captive shippers, particularly coal shippers. CSX's prior actions with respect to the one PEPCO plant it presently serves at destination, the Dickerson Generating Station, indicate that this is more than a passing concern.

In light of these factors, the Board should deny the Conrail Control Application. Alternatively, it should condition its approval in a manner that is sufficient to offset the transaction's anti-competitive effects on PEPCO. Specifically, it should impose a condition requiring CSX to grant NS trackage rights over the Conrail lines serving the Chalk Point and Morgantown plants (which would involve distances of 48.5 and 58.0 train-miles, respectively, over lines used primarily if not exclusively to serve these plants) to enable NS to deliver coal to these plants in competition with CSX. In addition, the Board should require that the substantial acquisition premium be excluded from any future rate reasonableness analysis that might be performed by the Board.

## II. BACKGROUND

PEPCO is an investor-owned electric utility that is engaged in the production, distribution and sale of retail electric power to 1.9 million people in the Washington, D.C. metropolitan area. PEPCO's 640-square-mile service territory includes the District of Columbia and major portions of Montgomery and Prince George's Counties in Maryland. PEPCO also sells electricity at wholesale to Southern Maryland Electric Cooperative, Inc. ("SMECO") under a long-term contractual arrangement.

### A. Generating Facilities

PEPCO wholly owns and operates six electric generating stations in Maryland, Virginia, and the District of Columbia.<sup>1</sup> In total, these plants provide PEPCO with the capacity to generate approximately 6,100 MW of electric power. Approximately 90% of this generation is produced at four coal-fired power plants. All of the coal burned at these four plants, which are described below, is delivered by rail.<sup>2</sup>

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<sup>1</sup> In addition, PEPCO owns a 9.72 percent undivided interest in the 1,700 megawatt ("MW") Conemaugh Generating Station, which is located near Johnstown, Pennsylvania. The Conemaugh Station is operated by Pennsylvania Electric Company as agent for the collective owners.

<sup>2</sup> In addition to the coal-fired plants, PEPCO owns and operates two small oil-fired plants in Washington, DC. These include the Benning Station, comprised of two oil-fired steam units with a total output of approximately 550 MW; and the Buzzard Point Station, comprised of sixteen oil-fired combustion units with a total capacity of approximately 252 MW.



1. Chalk Point Generating Station

The Chalk Point Station is located on the Patuxent River at Swanson Creek (near Herbert) in Prince George's County, MD. This Station includes two coal-fired steam units; two oil- and gas-fired steam units; two oil-fired combustion turbines; four gas- and oil-fired combustion turbines; and the gas- and oil-fired SMECO combustion turbine.<sup>3</sup> The total net output of the Chalk Point Station is approximately 2,423 MW.

The Chalk Point Station consumes approximately 1.5 million tons of coal annually. At present, this coal comes from two primary sources: origins served by CSX in its "B&O" rate districts in northern West Virginia, and origins in west-central Pennsylvania served by Conrail. Chalk Point is served exclusively by Conrail.

2. Morgantown Generating Station

PEPCO's Morgantown Generating Station is located on the Potomac River just southeast of the bridge carrying U.S. Route 301 over the Potomac River, near Newburg and Woodzell in Charles County, MD. This station includes two coal/oil-fired steam units and six oil-fired combustion turbines. The total net output of these eight units is 1,412 MW.

The Morgantown station consumes approximately 2.5 million tons of coal annually. As in the case of the coal consumed at the Chalk Point Station, we purchase this coal from

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<sup>3</sup> The SMECO unit is operated and maintained by PEPCO.

CSX-served (former B&O) origins in northern West Virginia, and from Conrail-served origins in west-central Pennsylvania. Like the Chalk Point Station, the Morgantown Station is served exclusively by Conrail. A large portion of the Morgantown (and Chalk Point) coal moves in private railcars supplied by PEPCO.

### 3. Dickerson Generating Station

The Dickerson Station consists of three coal-fired steam units, one oil-fired combustion turbine, and two gas- and oil-fired combustion turbines. The total net output of the Dickerson Station is approximately 837 MW. The Dickerson Station consumes approximately 1.2 million tons of coal annually as fuel for its three, 182 MW steam-electric turbines.

CSX exclusively serves the Dickerson Station. At present, all of this coal comes from CSX-served origins in the B&O rate districts of northern West Virginia. CSX transports this coal in carrier-supplied railcars.

CSX currently provides transportation service to the Dickerson Station pursuant to common carrier rates, which CSX provided to PEPCO on December 13, 1996 in response to PEPCO's formal, written request. These rates took effect following the expiration of our rail transportation contract with CSX, which contract was in effect from July of 1986 through December 31, 1996. The common carrier rates to Dickerson, imposed by CSX following expiration of our contract, are

higher than the expiring contract rates. These common carrier rates are the subject of a rate reasonableness proceeding

that is currently pending before the Board in Docket No. 41989, Potomac Electric Power Company v. CSX Transportation, Inc.

4. Potomac River Generating Station

The Potomac River Generating Station is PEPCO's smallest coal-fired facility. This station, which is located on the Potomac River in Alexandria, Virginia, is comprised of five small coal-fired steam units. The total capacity of these units is approximately 482 MW. Destination rail service to the Potomac River Station is provided exclusively by NS.

PEPCO's Potomac River Station receives approximately 900,000 tons of coal annually from NS-served mine origins in western Virginia. All shipments to Potomac River are direct via NS in carrier-owned cars. Due to physical space constraints at the plant site, NS is limited to utilizing trains comprised of a maximum of sixty cars when making coal deliveries.

\* \* \* \*

The Dickerson, Chalk Point and Morgantown Stations are baseload power plants; that is, they normally operate at a high percentage of their available generation capacity.<sup>4</sup> The Dickerson Station operates at the highest average capacity factor of all three plants, due in large measure to the fact that it is located closest to the West Virginia coal fields that are its present source of fuel supply.

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<sup>4</sup> Three of the five Potomac River coal-fired units are also baseload units; the other two are presently cycling units.

These plants' baseload status means that

. However, during certain "shoulder" periods, i.e., the late-night hours in the spring and fall, when both the PEPCO and PJM systems have excess capacity, they have to compete with other generation facilities for load (particularly for off-system sales). Even during these periods, however,

B. PEPCO's Coal Transportation Arrangements  
for the Chalk Point and Morgantown Plants.

The plants of specific concern to PEPCO in this proceeding are the Chalk Point and Morgantown Stations in southern Maryland. Exclusive destination rail service to both of these plants is presently provided by Conrail via its Pope's Creek Secondary line. This line connects with Amtrak's Northeast Corridor, over which Conrail has operating rights, at Bowie, MD.

Single-line Conrail movements of coal to Chalk Point and Morgantown are routed via Harrisburg, PA, Perryville, MD (where Conrail's line from Harrisburg connects with the Northeast Corridor), and Baltimore to Bowie, and thence over the Pope's Creek Secondary line to the plants. Joint CSX-Conrail movements to these plants are moved by CSX over the former B&O main line through Cumberland and Brunswick, MD to Benning Yard in northeast

Washington, DC, where CSX and Conrail maintain an interchange. From Benning, Conrail moves the coal over its freight line to Landover, MD, thence over Amtrak's Northeast Corridor to Bowie, and thence over the Pope's Creek Secondary to the plants. These lines are shown graphically on the schematic attached hereto as Exhibit SDF-1.

At present, approximately                      of the coal consumed at both Chalk Point and Morgantown is originated by CSX, and approximately                      is originated by Conrail. This situation obviously will change if the Conrail control transaction is approved without conditions, as CSX will replace Conrail as the sole rail carrier serving both of these plants.

C. PEPCO's Clean Air Act Compliance Strategy.

PEPCO is presently in the process of developing its plans for compliance with Phase 2 of the CAAA, which becomes effective on January 1, 2000. These plans will likely entail a shift of coal sources to either a low-sulfur compliance product at the Chalk Point and Morgantown plants, which are its two largest generation facilities (and possibly at the Dickerson Station as well), or to mid-sulfur coals bundled with sulfur dioxide (SO<sub>2</sub>) emission allowances.

The principal new coal sources for these plants are low-sulfur compliance coals<sup>5</sup> produced in southwestern West Vir-

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<sup>5</sup> In general, the CAAA require utilities that burn coal as fuel to reduce their SO<sub>2</sub> emissions at their plants to a level not greater than 1.2 pounds of SO<sub>2</sub> per million btu's. Coal that



ginia and western Virginia (which I will refer to as "Central Appalachian" coals), and Pittsburgh #8 Seam coals produced at southwestern Pennsylvania mines served by the former Monongahela Railway (which I will refer to as "MGA" coals). MGA coals are a mid-sulfur, near-compliance product that provide an economically viable alternative to compliance coals when bundled with SO<sub>2</sub> emission allowances.

D. PJM Membership

PEPCO is a member of the regional PJM power pool. PEPCO follows the practices of PJM in scheduling and dispatching its generation facilities so that the resulting generation schedule, unit dispatch, and energy interchange provide the lowest cost energy to meet system load in a manner that is consistent with reliable service requirements for the entire pool. To that end, PJM operates as a centrally dispatched, single large system with a common economic dispatch of generation on a pool-wide, lowest-cost basis.

Other utility PJM members include Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company (the immediately preceding three utilities being subsidiaries of General Public Utilities Corporation), PECO Energy Company, Pennsylvania Power & Light Company, and Public Service Electric and Gas Company.

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meets this requirement is referred to as "compliance" coal.

E. Impact of Fuel Costs on Ratepayers.

It is of great importance to PEPCO and its customers that the delivered cost of the fuel used to generate electricity be at the lowest possible level. Fuel costs are passed through to PEPCO's customers under fuel adjustment clauses mandated by the Maryland and District of Columbia Public Service Commissions. The rates PEPCO pays for rail transportation of coal are a major component of the delivered cost of fuel at its coal-fired power plants (on the order of        at the Chalk Point and Morgantown Stations). Changes in these rail rates thus directly affect the size of PEPCO's customers' electricity bills.

III. HARM TO PEPCO RESULTING FROM THE CONRAIL TRANSACTION

PEPCO will be competitively disadvantaged as a result of the Conrail control transaction as it is presently structured. In particular, because CSX and NS have determined that certain regions and certain shippers will benefit from additional competition while PEPCO will not, PEPCO will see its competitive standing hindered relative to other electric utilities, including other PJM members.

A. Competitive Effects of the Disposition of Conrail Lines

The Conrail Control Application indicates that CSX will acquire Conrail's Pope's Creek Secondary line. Thus, CSX will gain exclusive control over coal deliveries to our Chalk Point and Morgantown Stations, and therefore will become the sole destination carrier at the three largest of our four coal burning

stations (Chalk Point, Morgantown and Dickerson). These three plants account for approximately 88% of the coal used by PEPCO to generate electricity. (The Chalk Point and Morgantown plants alone consume approximately 4 million tons of coal annually. We expect this level of consumption to remain relatively constant through the year 2000.)

In addition, CSX and NS have determined that they will replace the present exclusive Conrail access to the MGA coal origins in southwestern Pennsylvania with new, joint CSX and NS access. While this would appear on the surface to be a competitive benefit from the transaction, in fact joint CSX and NS access to the MGA origins will benefit only those utilities with dual CSX/NS service at destination. This includes some PJM-member utilities that can burn MGA coals, and that will also receive new, competitive service at destination following consummation of the Conrail control transaction.

For example, Atlantic City Electric Company and PECO Energy have power plants that are presently served exclusively by Conrail. I understand that these Conrail-served plants are located within the South Jersey Shared Assets Area, and thus will have direct service available from both CSX and NS after the merger. In addition, I have read press reports to the effect that CSX and NS have entered into settlement agreements with two other PJM members, Pennsylvania Power & Light Company and Delmarva Power, which apparently involve either some form of dual access to their plants or an agreement that the carriers will



offer separate proportional rates for joint CSX/NS movements to these plants.<sup>6</sup> I am not privy to the details of these settlements, but it appears that they may improve these utilities' competitive transportation situation vis-a-vis PEPCO. Utilities such as PEPCO -- which will remain captive to a single rail carrier at destination -- will not benefit from the joint service to MGA mines because the destination carrier can use its monopoly to prevent the other originating carrier from competing effectively by means of an interline movement.

The competitive benefit that some utilities will receive from the Conrail transaction means they are likely to enjoy relatively lower rail rates than PEPCO. This will enable them to compete more effectively for off-system sales,

-- possibly at the expense of PEPCO coal-fired generation.<sup>7</sup>

PEPCO has first-hand evidence of the effects of destination captivity. The CSX monopoly at the Dickerson Station has

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<sup>6</sup> These settlements are referred to by CSX's Vice President of Coal Sales and Marketing, Raymond Sharp, at page 16 of his Verified Statement in the Conrail Control Application (Volume 3A, page 363).

<sup>7</sup>

. Hopefully, the Board will prescribe reasonable rail rates for the Dickerson Station in PEPCO's pending rate case,

enabled that carrier

. As I previously indicated, upon the expiration of PEPCO's rail transportation contract with CSX at the end of 1996, CSX

. CSX has also been unwilling to offer competitive rates to Dickerson from origins served by other carriers. For example, Dickerson's fuel specifications can be met by coals from Conrail-served origins in central and western Pennsylvania, and in the past we have requested joint Conrail/CSX rates for transportation of these coals to Dickerson.

Further evidence of CSX's potential power as a destination monopolist at Chalk Point and Morgantown lies in recent discussions we have had with NS concerning possible interline movements of coal from NS-served origins to Chalk Point and Morgantown after the Conrail control transaction is consummated.

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<sup>8</sup> We have moved small volumes of Conrail-originated coal to Dickerson for test-burn purposes. Such test burns are necessary in developing a CAAA Phase 2 compliance strategy.

PEPCO's destination captivity to CSX at Chalk Point and Morgantown is of even greater concern due to the large premium being paid by CSX and NS to acquire Conrail. We are very skeptical that the acquiring carriers will be able to recoup this premium through new intermodal traffic, which I understand is highly competitive, or through cost savings and efficiencies. The many reports of the problems Union Pacific is presently having (and the expense it is incurring) in attempting to integrate its operations with those of the Southern Pacific cause us further concern in this area. We believe the most likely vehicle for recovery of the premium is the rates charged to captive coal shippers such as PEPCO.

B. Impacts of the Conrail Transaction on  
PEPCO's CAAA Compliance Strategy.

As I indicated earlier in my testimony, PEPCO's principal strategy or alternative for compliance with Phase 2 of the 1990 Clean Air Act Amendments is to switch to lower-sulfur compliance or mid-sulfur, near compliance coal (the latter bundled with SO<sub>2</sub> emission allowances), particularly at our Chalk Point and Morgantown Stations. The principal sources of fuel that we are considering for this purpose are MGA origin mines (near compliance sources) in southwestern Pennsylvania, and Central Appalachian origin mines (compliance sources). Most of the MGA origin mines are to be jointly served by both CSX and NS after the Conrail control transaction is consummated.<sup>10</sup> Both CSX and NS serve Central Appalachian mines that produce compliance coals (although not the same mines), and both can originate such coals.

As the Conrail Control transaction is presently structured, CSX will exclusively serve the three largest of PEPCO's four coal-fired plants, and thus will effectively control our CAAA Phase 2 compliance strategy. CSX can preclude NS-originated coals from competing as fuel at these plants by reason of its monopoly service at destination. CSX will favor its own origins, and the fact that NS also serves some of the same origins (in the

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<sup>10</sup> An exception is Rochester & Pittsburgh Mining Company's Mine 84, which also produces Pittsburgh Seam coal but which is located just north of the former MGA lines. Mine 84 is to be served exclusively by NS.

MGA region), or serves different origins with desirable compliance coals (in the Central Appalachian region), will be largely irrelevant.

The proposed change in rail service to the MGA region is particularly significant for PEPCO. PEPCO has not previously burned MGA coals at its power plants, other than small test burns to determine whether they are suitable for use in its boilers (they are). The same is true of some other utilities, although Conrail-served utilities in the PJM region already burn MGA coals. However, MGA coals are an increasingly important source of fuel to PEPCO for CAAA Phase 2 compliance purposes. Yet, because CSX and NS have chosen to extend competitive service to the MGA origins and to some destinations, PEPCO will be competitively disadvantaged as a result of the Conrail division.

Absent the Conrail merger, PEPCO would still have available the same CAAA-compliance coal sources (as would other utilities with which it competes). The compliance sources would be served by three railroads: Conrail (the MGA region), CSX (Central Appalachia), and NS (Central Appalachia, but different mines). The MGA origin coals are particularly attractive for PJM utilities, because they are geographically much closer to their power plants than the Central Appalachian origins. Absent a Conrail merger, those utilities who are able to use MGA origin coal for compliance purposes would be subject to Conrail's origin service monopoly at the mines, which would neutralize any competition that exists at destination.



The Conrail control transaction changes the competitive playing field considerably. Due to CSX's and NS's decision to extend direct, competitive service to both the MGA mines and some utility destinations, some coal shippers will enjoy an increase in rail competition after the transaction, while others (including PEPCO) will not. By structuring the transaction as they have, CSX and NS are altering the competitive balance and adversely affecting PEPCO's present and future competitive position as it attempts to plan its CAAA Phase 2 compliance strategy.

PEPCO believes that the Board, and not the two giant rail carriers that will remain in the East, should be the one that determines who should get additional competition, and how best to preserve the present competitive balance in the Middle Atlantic utility coal transportation market as the deadline for compliance with Phase 2 of the CAAA approaches. We submit that the only way to preserve PEPCO's present relative competitive position is to condition any approval of the transaction on CSX's granting of trackage rights to NS from Bowie, MD to the Chalk Point and Morgantown plants over Conrail's Pope's Creek Secondary line to enable NS to serve these plants in competition with CSX.

Such trackage rights would enable NS (which, along with CSX, will have operating rights over Amtrak's Northeast Corridor) to operate MGA-origin coal trains via Harrisburg, Perryville, Baltimore and Bowie (which is the route that Conrail presently uses). It would also enable NS to operate Central Appalachian-

origin coal trains via Alexandria-Benning-Landover-Bowie (which, in part, is the route that Conrail presently uses for interline CSX-Conrail movements). CSX would also be able to operate MGA-origin coal trains using the present interline route via Cumberland-Benning-Bowie (which will become a single-line route), and Central Appalachian-origin coal trains via Alexandria-Benning-Landover-Bowie.<sup>11</sup>

C. Other Competitive Options for PEPCO.

Prior to the announcement of the subject transaction, PEPCO was considering the construction of a barge unloading facility at the Morgantown Station. This facility would have enabled PEPCO to receive both CSX and NS originated coals at Morgantown without Conrail's involvement, thus neutralizing Conrail's leverage as the exclusive destination carrier at both Chalk Point and Morgantown. In particular, NS-origin Central Appalachian coals could have moved via rail to Lambert's Point (NS's coal transloading terminal near Norfolk, VA) and then to the Morgantown plant via barge. CSX-origin Central Appalachian coals could have moved via rail to either Newport News, VA or Baltimore and then to the plant via barge.

The pre-merger benefit of the barge unloader was that it potentially provided two competitive transportation alternatives to Conrail in delivering

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<sup>11</sup> The destination portion of each of these routes is shown on Exhibit SDF-1 attached.

coal to Morgantown.<sup>12</sup> These alternatives were CSX/barge, and NS/barge.

NS uses its Lambert's Point facility primarily as an export coal facility. As Mr. Stan Kaplan indicates in his accompanying Verified Statement on behalf of PEPCO, NS's export coal generally moves at higher rates, and with higher profit margins, than its domestic utility coal. Mr. Kaplan also indicates that the Lambert's Point export facility may suffer capacity constraints in the future. Obviously, if NS had to choose between moving PEPCO coal to Lambert's Point at competitive rates or moving export coal at higher rates, it would choose the latter.

PEPCO was able to use the threat of constructing a barge unloader at Morgantown to gain some leverage in negotiating a rail transportation contract with Conrail for coal movements to Chalk Point and Morgantown in late 1993.

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<sup>12</sup> The barge unloader would not have directly benefitted Chalk Point.



I should note that the Morgantown barge unloader project was put on hold after PEPCO negotiated its present rail contract with Conrail,<sup>13</sup> and that the feasibility of permitting and constructing a barge unloader at Morgantown has not been adequately investigated. PEPCO has yet to conduct the kind of detailed engineering, environmental and economic studies that would be necessary to make an informed decision as to whether the barge unloader project should be pursued. (The outcome of the instant proceeding will, of course, influence the economic evaluation).

In any event, the CSX/NS agreement to acquire Conrail

. CSX will have access to both Central Appalachian compliance coal reserves (which are available in greater quantities than similar reserves served by NS) and Pittsburgh #8 Seam reserves (through its access to the former MGA origins). NS will also have access to the Pittsburgh Seam coals, but its ability to compete will be limited due to CSX's destination monopoly at our three largest plants and CSX's ability to provide single-line rail service from the same origin areas NS serves.

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<sup>13</sup> This contract expires at the end of 1998.

While PEPCO would still be able to generate some measure of transportation competition at Morgantown through the construction of a barge unloader, the societal waste of resources entailed in the construction of essentially duplicative transportation facilities -- and the possible environmental consequences associated with disturbing the Potomac River estuary's Maryland shoreline -- could be avoided if NS were given trackage rights over the lines being acquired by CSX from Bowie, MD to the Chalk Point and Morgantown plants. Such trackage rights would provide PEPCO with the same two-carrier destination access that the Applicants are giving to some of our competitors, and would enable PEPCO to make effective use of the new two-carrier competition being provided to most of the MGA mines.

D. Competitive Rail Service at Mine 84.

I have previously alluded to Rochester & Pittsburgh's Mine 84 which is located in the MGA region but not included among the mines that CSX and NS propose to serve jointly. The coal produced at Mine 84 is similar to that produced at the other MGA-origin Pittsburgh #8 Seam mines.

. Other than the historical accident that it was not served by the former MGA itself, we see no logical reason why this mine should be excluded from joint access by both CSX and NS.

The benefits to PEPCO of joint service to Mine 84 will be significant only if the Board grants the NS trackage rights condition requested by PEPCO, thus enabling joint service at Chalk Point and Morgantown as well as the MGA origin mines. However, we understand that Mine 84's owners are seeking joint CSX and NS access to that mine, and for the reasons indicated above PEPCO supports such relief.

IV. THE ACQUISITION PREMIUM.

I understand that CSX and NS are paying approximately \$10 billion for the assets of Conrail, which represents a \$4 billion premium over Conrail's book value. I further understand that CSX and NS contend that they will recover this premium from revenues gained from increased intermodal traffic and through efficiencies gained as a result of the acquisition.

PEPCO is extremely dubious that the huge premium resulting from the acquisition of Conrail can be recouped in the manner claimed by the applicants. Certainly the recent Western rail mergers have not resulted in the kind of efficiencies originally projected. For example, I strongly doubt that the Union Pacific's efforts to integrate Southern Pacific's facilities and operations with its own are resulting in any efficiencies or cost savings. If CSX's and NS' projections are overly optimistic, then PEPCO sees only one source for recovery of the premium: higher rates for captive shippers.

The premium problem could be particularly troublesome for PEPCO. The three largest of its four coal-fired plants will all be served by CSX if the transaction in its present form is consummated, and CSX will also serve all of the coal producing regions which are the primary sources for PEPCO's CAAA Phase 2 compliance plans. CSX will thus have the ability (and doubtless the incentive) to raise PEPCO's coal rates as a means of helping recover its share of the premium. NS will, likewise, have the ability (and doubtless the incentive) to raise PEPCO's coal rates to the Potomac River Station, which is captive to the other railroad that will be burdened with this premium.

Captive shippers such as PEPCO should not be forced to shoulder a disproportionate share of the burden of premium recovery in the form of higher rail rates. To prevent this from happening, the Conrail control transaction should be conditioned in such a way as to hold the applicants to their representations

and to prevent CSX and NS from collecting excessive rates from PEPCO. Such a condition would require that the acquisition premium be excluded from any future rate reasonableness analysis that might be performed by the Board.

PEPCO is very concerned about the acquisition premium issue because of our ongoing rate case against CSX regarding coal service to the Dickerson Station. If we are successful in obtaining the prescription of reasonable rates for Dickerson, those rates may be at risk when CSX absorbs the cost of acquiring its portion of Conrail. I understand that the book value of a carrier's assets is relevant in determining rail costs for purposes of determining the jurisdictional threshold in coal rate cases, and that the jurisdictional threshold is relevant in determining the extent to which a rail carrier may increase prescribed rates in the future. The acquisition premium will surely find its way into CSX's rate base absent the Board's intervention to prevent this from occurring at the outset.

In addition, if the Board declines to impose the trackage rights condition permitting NS to serve Chalk Point and Morgantown,

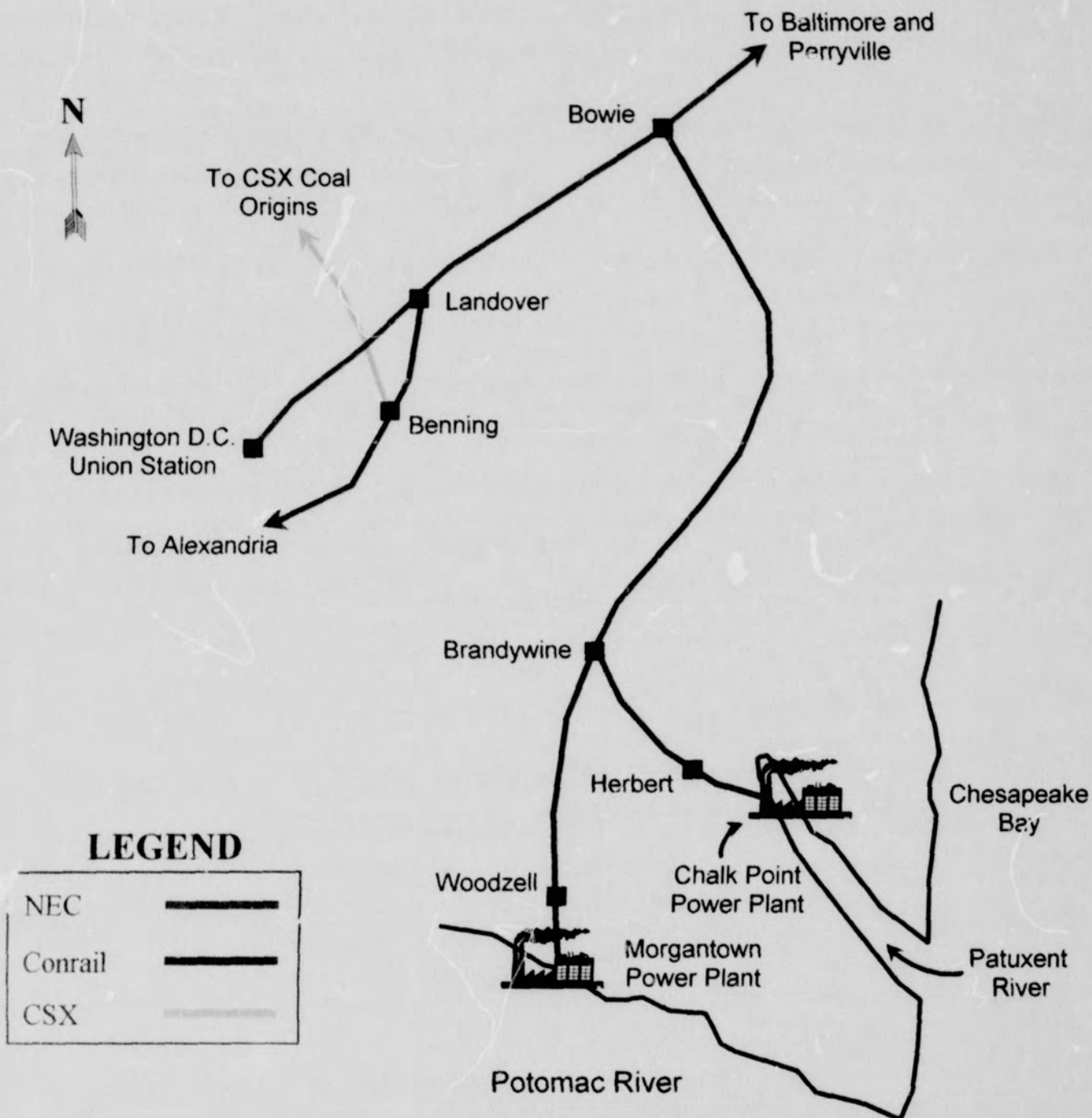
. To the extent the acquisition premium is included in CSX's cost of service for ratemaking purposes, a prescribed rate would be higher than if the premium were excluded.



V. CONCLUSION.

On behalf of PEPCO, I strongly urge the Board not to permit CSX and NS to determine, based on their own perceived self-interests, how the competitive rail transportation balance in the East should be altered. We request the Board's help in preserving a level competitive playing field for our Chalk Point and Morgantown plants. The conditions PEPCO has requested are necessary to this end, and we commend them for the Board's consideration.

# RAIL LINES SERVING PEPCO'S CHALK POINT AND MORGANTOWN PLANTS

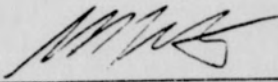


VERIFICATION

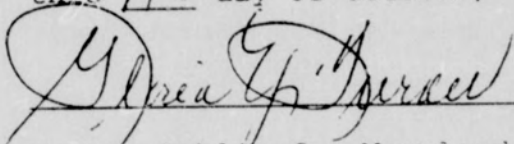
DISTRICT OF COLUMBIA

) ss:

Susann D. Felton, being duly sworn, deposes and says that she has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated, except as to those statements made on information and belief, and as to those, that she believes them to be true.

  
\_\_\_\_\_  
Susann D. Felton

Subscribed and sworn to before me  
this 17th day of October, 1997.

  
\_\_\_\_\_  
Notary Public for Maryland.

My commission expires \_\_\_\_\_

Gloria L. Turner  
Notary Public, State of Maryland  
Commission Expires March 1, 1999





BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK SOUTHERN	)	
CORPORATION AND NORFOLK SOUTHERN	)	FINANCE DOCKET NO. 33388
RAILWAY COMPANY -- CONTROL AND	)	
OPERATING LEASES/AGREEMENTS -- CONRAIL	)	
INC. AND CONSOLIDATED RAIL CORPORATION	)	
	)	
	)	

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**VERIFIED STATEMENT OF  
STAN M. KAPLAN**

**I. Qualifications, Purpose, and Organization**

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**A. Qualifications**

My name is Stan M. Kaplan. I am Director of Energy Market Analysis for the Fieldston Company, Inc., a provider of energy and transportation consulting and information services. My business address is 1800 Massachusetts Avenue, NW, Suite 500, Washington, D.C. 20036.

I direct or otherwise participate in many of Fieldston's consulting assignments involving coal supply, coal transportation by rail, truck and barge, power market analysis, and natural gas. This work frequently involves assisting electric utilities with planning for coal procurement and transportation; renegotiating coal supply and transportation contracts; and support to utilities involved in fuel contract prudence reviews, contract arbitration and litigation.

I received an A.B. in History from Rutgers University in 1974 and a M.A. in Public Affairs from the Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, in 1977. Over the past 19 years (since 1978) I have worked continuously in the fuel supply and

transportation field as a utility executive, regulator, and consultant. My resume is attached as Exhibit SK-1. In addition to the information in my resume, I will describe here aspects of my experience that are particularly relevant to my testimony.

In 1984 I joined Fieldston Company, a consulting company particularly known for its expertise in coal transportation. In addition to work on coal transportation-related consulting assignments, I developed the *Fieldston Coal Transportation Manual*, a guide to the logistics and economics of moving coal by rail, water, and truck.

In July 1985 I joined the Public Utility Commission of Texas (PUCT) as a coal supply and transportation analyst. I later became Manager of Fuel Analysis for the PUCT. In this position I was responsible for directing the PUCT staff studies of the prudence of utility coal supply and transportation contracts. These studies involved detailed reviews of the process by which utilities arrived at their fuel supply and transportation contracts and their administration of the agreements. These reviews also often made recommendations to the utilities for improving the management of fuel and transportation procurement, and to the Commission on areas where further investigation or oversight was needed.

In addition to prudence reviews I directed a variety of other fuel-related work, including coal price and rail rate forecasts, evaluations of fuel stockpile levels, and evaluations of the fuel supply for proposed power plants. During my tenure with the PUCT I filed testimony on numerous occasions in dockets involving most of the major generating utilities serving Texas.

In October of 1987 I became Manager of Fuels Planning and Supply for the municipal generating utility operated by the City of Austin, Texas. In that position I was responsible for the City's involvement in coal, rail, oil, natural gas, and nuclear fuel procurement for wholly and jointly owned power plants. I was also responsible for contract administration, price forecasting and planning. My assignments included evaluating competitive rail strategies for the Fayette Power Project, including a spur alternative; assisting with the negotiation of a long-term rail contract for Fayette; and work related to administration of the rail agreement.

My work at Austin entailed building the utility's fuel staff essentially from scratch; creating the utility's fuel accounting function; managing construction of a natural gas spur pipeline that broke a decades-long monopoly on gas transportation to the City's power plants; and testifying in electric rate cases.

In June 1993 I left the Austin utility to re-join Fieldston Company in my current position. At Fieldston I have participated in or directed numerous studies of coal transportation and supply for utilities and coal companies in the eastern and western U.S.

In addition to my testimony before the PUCT, I have previously filed verified statements before the Interstate Commerce Commission and Surface Transportation Board, and made many presentations and published articles on coal and natural gas supply, transportation and storage (see Exhibit SK-1).

## **B. Purpose**

The purpose of my testimony is to demonstrate that Potomac Electric Power Company ("PEPCO") will be put at economic risk by the Conrail control plan proposed by Norfolk Southern Railway Co. ("NS") and CSX Transportation, Inc. ("CSX"). Specifically, NS and CSX have chosen to selectively grant enhanced competitive access to certain power plants owned by utilities that are actual or potential competitors with PEPCO, while simultaneously reducing the competitive leverage available to PEPCO. In PEPCO's case, this would be accomplished by assigning the Conrail lines serving its Morgantown and Chalk Point plants to CSX, which alone would be able to serve these plants. This combination may put PEPCO at a delivered coal price disadvantage vis-a-vis these favored utilities. The likely outcome for PEPCO is

In order to prevent this economic damage to PEPCO's ratepayers and shareholders, the STB should modify the Conrail control plan to preserve the present competitive balance for PEPCO's Morgantown and Chalk Point plants. The current Conrail control plan puts CSX and NS in the position of "kingmakers," deciding which utilities will be winners and losers. Granting two-carrier access to Morgantown and Chalk Point will preserve a level playing field, allowing PEPCO to decide its own fate.



### **C. Organization**

The remainder of my testimony is organized as follows:

- Section II describes how minimization of fuel expense is of immediate importance to PEPCO and will be of even greater consequence with the advent of power market deregulation.
- Section III discusses how the railroads are likely to price their services assuming consummation of the Conrail break-up. It is possible, even likely, that the railroads will turn to captive customers, including captive coal shippers such as PEPCO, for a disproportionate share of the revenues needed to pay for Conrail.
- Section IV discusses current coal supply and transportation arrangements to PEPCO's coal plants, and how PEPCO will be disadvantaged by the control proposal. In brief, the control proposal eliminates PEPCO's competitive leverage at Morgantown and Chalk Point.
- Section V describes how CSX and NS have selectively offered enhanced competitive service to a few customers. The combination of eliminating PEPCO's current competitive options while granting new leverage to other utilities will put Morgantown and Chalk Point in a precarious position in the market for incremental power sales.
- Section VI presents my recommendations with respect to the relief the Board should grant to PEPCO.

### **II. Role of Fuel Costs in the Power Markets**

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Delivered fuel costs are a central, often decisive factor in determining the relative competitiveness of utilities in the power markets.

The Middle Atlantic region within which PEPCO competes contains a mix of coal, nuclear, oil and gas generating units. Nuclear units are normally run at full available capacity at all times to meet the owner's native load. During peak periods, particularly in the summer and

during winter cold spells, coal units are fully committed and incremental competition is between oil/gas-fired stations. However, during low-demand periods

excess coal capacity is available.

On a basis

the operation of a plant is subject to variety of factors These include operational constraints, including the plant's ramp-rate (the time it takes to increase or decrease electrical output from the plant) and "must-run" factors that dictate, for reasons of generating and transmission system reliability, that a plant operate at some minimum output. Longer-term firm sales will also be influenced by capacity charges and non-fuel operations and maintenance costs.

It is in the case of that delivered fuel costs can play a decisive role. This is particularly true for PEPCO, because it is part of the PJM Interconnection. The PJM power pool is a grouping of 10 utilities operating in Pennsylvania, New Jersey, Delaware, Maryland, Virginia and the District of Columbia. It is currently the largest "centrally dispatched" power pool in North America. The significance of central dispatch is that although the member utilities are independent entities, a central PJM control center dispatches all the power plants in the PJM as a single pool, irrespective of ownership. The economic element of these dispatch decisions is based on Therefore, the dispatch of PEPCO's coal (and other) units

with all the other generating units in PJM. Operational factors, such as those noted above, also play a major role in determining unit commitments.

as a member of PJM, PEPCO already operates in a highly competitive power market.

In summary, for PEPCO to compete fully it will need to minimize its delivered fuel prices. Over the past 15 years, utilities have frequently succeeded at controlling fuel costs using strategies based on innovation, flexibility and competition. This is illustrated by the experience of utility compliance with Phase I of the Clean Air Act Amendments of 1990 ("CAAA"). Under Phase I, many utilities, particularly in the eastern and midwestern U.S., had to sharply reduce their emissions of sulfur dioxide beginning January 1, 1995. Phase I was expected to result in larger price premiums for low-sulfur coal and high prices (in the hundreds of dollars) for sulfur dioxide emission allowances<sup>1</sup>, and favor the traditional low-sulfur coal producing region of central Appalachia.

None of these expectations came to pass. Motivated in large part by efforts by utilities to find least-cost solutions to CAAA requirements, low-sulfur coal was produced in unexpectedly large volumes from such areas as Indiana and the so-called "MGA" area of northern Appalachia, while central Appalachian production stagnated. Technological innovation, particularly the advancement of highly productive longwall mining, played an important role in the increased

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<sup>1</sup> An allowance is essentially a permit allowing a utility to emit one ton of sulfur dioxide from a power plant. Allowances can be bought and sold, and function as an alternative to fuel switching or capital investment in pollution control systems as a means of complying with the CAAA of 1990.

sales of MGA and Utah/Colorado low-sulfur coals. Transportation competition facilitated the penetration of low-sulfur western coal into midwestern compliance markets. In this diverse and competitive compliance market, emission allowance prices have plunged below \$100 per allowance.<sup>2</sup>

The point is that utilities that retained flexibility in terms of fuel sourcing and transportation access were able to encourage and exploit these market developments, and achieve much lower costs than widely expected in the early 1990s. For PEPCO and other utilities to achieve low fuel costs in the future, with the advent of CAAA Phase II (effective January 1, 2000), power market deregulation, and other, as yet unforeseen challenges, flexibility, and the ability to innovate will likely continue to be of critical importance.

### **III. Railroad Rate-Setting After the Conrail Break-up**

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As discussed immediately above, low delivered fuel prices are essential and flexibility and innovation are key elements of a fuel procurement strategy designed to achieve low fuel costs. The wave of mergers sweeping through the railroad industry therefore poses a dual threat to rail-captive power plants: higher rail rates, and reduced ability to seek the lowest cost fuel sources.

One of the most notable aspects of the proposed Conrail acquisition is its enormous cost: \$10 billion, including a widely-reported \$4 billion premium above Conrail's book value. CSX and NS claim they can pay for and profit from the acquisition through operating efficiencies that

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<sup>2</sup> See Electric Power Research Institute, *Coal Supply and Transportation Markets During Phase One: Risk, Change and Opportunity*, January 1996. The report was authored by Fieldston Company.

will reduce costs and allow the carriers to compete for new traffic, such as shipments now moving by truck. The extent to which they will achieve these savings gains and win new business is unknown and uncertain. The Union Pacific merger with Southern Pacific, and the earlier Union Pacific acquisition of the Chicago and North Western, both encountered severe problems.<sup>3</sup> The Burlington Northern merger with the Santa Fe has not gone entirely well or produced the expected earnings.<sup>4</sup> There is no assurance that the Conrail acquisition will go more smoothly.

If the acquisition does not achieve the hoped-for savings and increased business, the railroads may increase rates to their captive customers to gain the revenues needed to pay for the purchase of Conrail. These higher rates for coal transportation may price captive utilities, such as PEPCO,

From the standpoint of the utility and its ratepayers there is a double loss -- , and the increased cost to transport coal to the plant.

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<sup>3</sup> See for example, *Wall Street Journal*, "Union Pacific Tie-Ups Cause Problems Across the U.S. Economy," October 8, 1997; "UP Hits Rocky Road Assimilating C&NW," *Coal Transportation Report*, October 16, 1995.

<sup>4</sup> "Growing Pains Persist for Merged BNSF," *Rail Business*, February 24, 1997; BNSF 1996 Annual Report, page 2.

<sup>5</sup>





(CSX), and Potomac River (NS) (see Table 1, below). At issue in this proceeding is the disposition of the two Conrail served stations, Chalk Point and Morgantown.<sup>6</sup>

<b>Table 1</b> <b>PEPCO Coal Fired Generation</b>					
Name	Location	Coal-Fired Capacity	Transportation Options		Primary Coal Supply
			Current	Post-Acquisition (as proposed)	
Dickerson	Montgomery County, MD	546 MW in three units	Captive to CSX	Captive to CSX	Northern Appalachia: CSX (B&O).
Chalk Point	Prince Georges County, MD	683 MW in two units	Captive to CR	Captive to CSX	Northern Appalachia: CSX (B&O) and Conrail Pennsylvania origins.
Morgantown	Charles County, MD	1164 MW in two units	Captive to CR	Captive to CSX	Northern Appalachia: CSX (B&O) and Conrail Pennsylvania origins.
Potomac River	Alexandria, VA	482 MW in five units	Captive to NS	Captive to NS	Central Appalachia (WV and KY origins).
Sources: FERC 423 data; 1996 PEPCO 10-K statement; Energy Information Administration, <i>Inventory of Power Plants</i> , 1994; Fieldston Publications, Inc., <i>Coal Transportation Manual</i> , 1996-97.					

As Table 1 indicates, Morgantown and Chalk Point both rely on a combination of coal supplies from CSX origins in northern Appalachia (northern West Virginia and western Maryland, the former B&O origins) and Conrail-originated coal from Pennsylvania. The ability of PEPCO to receive CSX-originated coal, although the plants are captive to Conrail, is attributed in part to the historical coal quality specifications for the plants.

With the advent of Phase I of the CAAA, these plants required a medium sulfur coal of approximately 2.4 pounds SO<sub>2</sub> per MMBtu. At that time (early and mid-1990s) PEPCO also required for its plants a soft (easy-to-grind), low volatility coal. MGA coal could meet the sulfur

<sup>6</sup> PEPCO also owns a 9.72% interest (165 MW) interest in the Conemaugh coal-fired station in western Pennsylvania, which receives coal by rail (Conrail) and truck. The plant is operated by Pennsylvania Electric Company.

requirement but not the volatility and grind specifications. The other mines on Conrail could provide only a portion of PEPCO's demand for coal with this combination of sulfur, grind and volatility characteristics. CSX-sourced coal was therefore needed to supply the plants. As shown below in Table 2, in 1996 CSX actually supplied the majority of the coal at Chalk Point and Morgantown.

<b>Table 2</b>		
<b>Coal Sources for Morgantown and Chalk Point, 1996</b>		
		<b>Tons</b>
<b>Chalk point</b>	CSX - B&O	641,000
	Other CONRAIL	728,000
	MGA	0
	Total	1,369,000
<b>Morgantown</b>	CSX - B&O	1,942,000
	Other CONRAIL	678,000
	MGA	0
	Total	2,620,000
<b>Total, Both Plants</b>	CSX - B&O	2,583,000
	Other CONRAIL	1,406,000
	MGA	0
	Total	3,989,000
Source: FERC Form 423 data.		

PEPCO has subsequently determined that its plants can use coal with a harder grind and higher volatility than previously believed, and has revised its coal specifications accordingly. It has successfully test-burned MGA coal at Morgantown and Chalk Point and has launched initiatives aimed at broadening the coal supply mix for the plants.<sup>7</sup> These initiatives involve

<sup>7</sup> "PEPCO Looks to New Markets," *Coal Daily*, August 19, 1997; "PEPCO Buys More Test Coal; Prepares Term RFP," *Coal Daily*, September 9, 1997.

PEPCO's plans for complying with Phase II of the CAAA, which are described in the accompanying Verified Statement of Susann D. Felton on behalf of PEPCO.

Under the current Conrail control plan, this leverage to take coals other than those originated by the terminating carrier will be altogether eliminated. The acquisition envisions CSX taking sole possession of the Conrail lines that serve Chalk Point and Morgantown, and acquiring joint access with NS to the MGA mines. This will allow CSX to offer single-line service from its traditional northern Appalachian origins, and from the MGA mines. CSX will also be able to ship coal single-line from its traditional central Appalachian origins, if PEPCO ultimately chooses to use this type of very low sulfur coal to meet CAAA Phase II requirements. With this control over origins and destinations, CSX will be able to impose uneconomic rate divisions that will preclude interline (NS/CSX) movements of MGA and other NS-origin coals, thereby reducing Chalk Point and Morgantown to truly captive status.

In its proposed operating plan, CSX suggests that PEPCO will still have competitive access at Chalk Point and Morgantown. The plan states that:

Conrail also moved Conrail-origin central Pennsylvania coal to Perryville, MD and then over the NEC to Bowie for delivery on Conrail lines to these plants. CSX will not have direct access to the central Pennsylvania coal fields, but will offer a joint-line service with NS to move that coal.

However, CSX's "Conrail Traffic Study" included in the highly confidential documents paints a different picture. As shown below in Table 3, CSX projects that in 2000, all of the coal to Morgantown and Chalk Point will be shipped from CSX origins.<sup>8</sup>

Table 3 CSX Projection of Year 2000 Coal Sources for Morgantown and Chalk Point		
		CSX Year 2000 Estimate (Tons)
<b>Chalk Point</b>	CSX - B&O	
	Other CONRAIL	
	MGA	
	Total	
<b>Morgantown</b>	CSX - B&O	
	Other CONRAIL	
	MGA	
	Total	
<b>Total, Both Plants</b>	CSX - B&O	
	Other CONRAIL	
	MGA	
	Total	
Source: CSX's "Conrail Traffic Study" at highly confidential document numbers CSX 21 4C000831 and 832		

PEPCO's experience at the Dickerson station, which has long been captive to CSX, demonstrates how CSX has used its market power to increase PEPCO's costs and reduce its coal supply options. As discussed in the Verified Statement of Ms. Felton, CSX recently at Dickerson, and has used its control of transportation to that plant to

<sup>8</sup> As noted in the source note to Table 3, the year 2000 projection in the table is a creation of CSX, and does not reflect the expectations of PEPCO concerning how it will divide future coal purchases among the MGA, other northern Appalachian mines, and other coal sources. Also note that the total shipments to Morgantown and Chalk Point in 1996 of almost 4 million tons (Table 2)

PEPCO's own forecast, as indicated by Ms. Felton, is that these plants will continue to burn about 4 million tons of coal annually through 2000.





coal originated by NS, only 62 million tons (54%) was shipped to electric utilities. Most of the balance was exported or was metallurgical coal shipped to the U.S. and Canadian steel industry.<sup>10</sup>

- As indicated above, the NS coal network is heavily oriented toward exports, predominately through the Lamberts Point facility at Norfolk, VA.

Since Dickerson is already captive to CSX, the upshot of the planned acquisition is that PEPCO will become beholden to CSX for the vast majority of its coal shipments. As the CSX traffic study shows, CSX expects to use this monopoly position to transport its own coals to PEPCO plants.

#### **V. Fuel Price and Power Market Risks for PEPCO**

The railroads argue that single line CSX service to Morgantown and Chalk Point will produce operating efficiencies compared to the current two-line shipments.<sup>11</sup> Regardless of the extent to which this is true, what is certain is that CSX has no obligation to base rail rates to Morgantown and Chalk Point on the cost of service. In the case of a captive shipper like PEPCO, CSX is likely to maintain or increase rates to the highest levels that will maximize revenues without triggering regulatory intervention.

High rail rates will put at risk PEPCO's

PEPCO's risks are increased by the decision by CSX and NS to selectively enhance the competitive access of certain PEPCO competitors. The railroads have chosen to grant four PJM

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<sup>10</sup> NS 1996 Form 10-K; CSX Corporation, 1996 Financial Supplement.

<sup>11</sup> Verified Statement of Robert Sansom in Volume 2A of the Railroad Control Application in this proceeding (page 20).

coal plants that are currently captive to Conrail joint CSX/NS access after the acquisition. These are PECO's Eddystone station, Atlantic City Electric's Deepwater and England plants, and Vineland's Down plant.<sup>12</sup> In addition, NS has reportedly reached agreements with Pennsylvania Power & Light ("PP&L") and Delmarva Power & Light ("DP&L") relating to competitive CSX access. PP&L and DP&L are currently captive to Conrail and would be captive to NS post-acquisition. The reported agreement will allow CSX to interchange coal trains with NS for delivery to PP&L and DP&L at competitive rates. The details of this agreement, including information on exactly which plants will benefit, have not been revealed.<sup>13</sup>

As shown in Exhibits SK-2 through SK-5, with the exception of the Down station, the plants known to be receiving joint access or possibly involved in the PP&L and DP&L arrangement all have delivered coal prices comparable or superior to those of Morgantown and Chalk Point. (Exhibits SK-2 and SK-3 ranks the plants by 1996 and 1997 average coal costs; Exhibits SK-4 and SK-5 present a similar ranking based on an approximation of each plant's incremental coal costs.)<sup>14</sup> With competitive rail access, they will likely be in a position to achieve lower delivered fuel prices through a combination of leveraging the railroads and the ability to receive coal from a wider selection of suppliers.

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<sup>12</sup> Sansom V.S., page 9.

<sup>13</sup> The PP&L and DP&L arrangements are discussed briefly in the Verified Statement of Raymond Sharp in Volume 2A of the Railroad Control Application in this proceeding (page 16). Also see "PP&L Negotiates Deal with CSX and NS," *Coal Transportation Report*, July 7, 1997.

<sup>14</sup> Data source for the exhibits is FERC Form 423 data. Marginal cost is approximated as the average delivered cost of all spot coal delivered to each plant. If the Form 423 data records no spot deliveries, the overall average cost is shown as the marginal cost.

PEPCO has been taking steps to reduce its fuel costs through its program of seeking a more diverse coal supply. In addition to the test burns of MGA coal, it recently initiated a survey of roughly 300 coal suppliers, aimed at determining the availability, quality and pricing for new coal supplies. According to a cover letter sent with the survey, the object is to gain the information needed for PEPCO to "broaden its supplier base and maximize flexibility in its fuel options." The ultimate aim is to reduce PEPCO's delivered coal costs while complying with Phase II of the CAAA.<sup>15</sup>

These steps follow the classic pattern of utilities using flexibility, diversity and innovation to achieve fuel cost savings. However, the planned Conrail acquisition will put these plans at risk by allowing CSX to dictate, through its control of rates, the coal sources that PEPCO can economically access. For example, the test shipments of MGA coal that PEPCO has taken have come in large part from the Rochester and Pittsburgh Mine 84. However, under the proposed control plan, Mine 84 will not receive joint CSX/NS access; it will be able to ship only via NS. This is significant to PEPCO because only three of the highly efficient MGA mines produce the low sulfur coal that PEPCO requires (the others are Bailey/Enlow Fork and Emerald). The control plan therefore immediately cuts by a third the MGA coal supply options effectively available to PEPCO.

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<sup>15</sup> "PEPCO Looking at New Fuel Strategy," *Coal Daily*, August 18, 1997; "PEPCO Looks to New Markets," *Coal Daily*, August 19, 1997.

## **VI. Conclusion and Recommendations**

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The Conrail acquisition plan poses a triple threat to PEPCO:

- It eliminates any semblance of competition at Morgantown and Chalk Point, creating an opportunity for CSX to increase rates in the future and limit the coal supply options available to PEPCO;
- The acquisition is so expensive as to potentially create incentives for CSX to seek whatever rate increases the market will bear;
- Simultaneously, the acquisition will improve competitive rail access for several of PEPCO's current or potential competitors. This raises the possibility that PEPCO will face increasing rail rates at Morgantown and Chalk Point at the same time these competitors will be able to use their newly enhanced rail access to leverage delivered coal prices.

This is a patently unfair situation. The Board should take three steps to restore a level playing field for PEPCO:

**1. Provide for competitive access to Morgantown and Chalk Point.** This would involve allowing NS access at Bowie, Maryland, to the Conrail lines that are scheduled to be transferred to CSX. By permitting both of the dominant eastern carriers to access Morgantown and Chalk Point, the Board will keep PEPCO on par with its competitors in its ability to leverage rail rates and access a diversity of coal suppliers. The current control plan would put PEPCO in an inferior competitive position compared to its current situation, and at risk of losing incremental power sales to its competitors -- particularly those whose rail access is being enhanced by the control plan.

**2. Provide for joint CSX and NS access to Mine 84.** The highly efficient, low-sulfur MGA mines may play a key role in the future fuel supply to PEPCO. The control plan would reduce the current competition for PEPCO's business by excluding Mine 84 from the MGA joint service area. The Board should maintain the current competitive balance by ordering joint access to Mine 84.

**3. Exclude the Conrail acquisition premium from rate reasonableness determinations:** CSX and NS have chosen to pay a multi-billion dollar premium to purchase Conrail. The premium constitutes a two-pronged threat to captive shippers:



- It increases the incentives for CSX (and NS) to increase rates on non-competitive traffic, and;
- Due to the impact the premium will have on the railroads' cost structures, it will make it more difficult for shippers to demonstrate that a rate exceeds the jurisdictional threshold for reasonableness reviews, or to win a competitive prescribed rate even if the jurisdictional threshold test is met.

This is a double-bind that captive shippers should not be subject to. The Board should exclude the Conrail premium from future rate-reasonableness determinations.

# Exhibit SK-1

## RESUME OF STAN M. KAPLAN

### Education

University of Texas at Austin - Masters Degree of Arts, Public Policy - 1977

Rutgers University - Bachelor Degree of Arts, History - 1974

### Work Experience

1993 - present      **Fieldston Company, Inc.**

Re-joined Fieldston Company in June 1993 as Director of Energy Market Analysis. Major projects have included:

- Studies of Midwestern and Appalachian coal supply and transportation for utility, equipment manufacturer, and Independent Power Producer clients;
- Studies of the Colorado and Utah coal and transportation markets;
- Studies of the current and future Powder River Basin coal supply and transportation situation;
- Reports for the Electric Power Research Institute on the impact of the Clean Air Act amendments on the major coal supply and transportation markets in the U.S.; and an analysis of the business strategies of the five major coal-hauling railroads;
- Assisting utilities with arbitration, litigation and negotiation of coal supply and transportation contracts;
- Analysis of power markets and purchased power transactions.
- Developing forecasts of coal prices and rail rates; managing the twice-yearly publication of Fieldston's *RCAForecast* report.
- Assisting clients with natural gas price forecasts, and gas and fuel oil procurement planning.

1987 - 1993      **Electric Utility, City of Austin - Manager, Fuels Planning & Supply**

Managed the procurement of coal, gas, oil and nuclear fuel for a municipal electric utility. Responsibilities included fuel purchases and contract administration; fuel strategy and planning; forecasting; determination of fuel inventory targets; fuel accounting; and preparation of testimony for rate cases. Major tasks included the following:

- Lead role for the utility in negotiating a long-term rail transportation contract, and in renegotiating a long-term coal supply contract. Played lead for the utility in subsequent negotiations with the coal and rail companies concerning price re-openers.

force majeure issues, performance-related disputes, and the purchase of spot coal supplies.

- Developed and implemented the utility's programs for buying spot and term gas. Responsible for determining the utility's mix of short-term, long-term, firm and interruptible gas supplies. Responsible for planning and building a spur pipeline which ended a 40-year monopoly on gas transportation to the utility's gas-fired plants; negotiated an associated gas transportation contract. Managed the City's interest in a gas-producing property; provided support for associated litigation.
- Developed from scratch the utility's fuel accounting function. Responsible for a variety of fuels planning projects, including a study of gas storage options; fuel price forecasts; and development of a model used to determine the optimum monthly mix of purchases from the utility's various gas-supply contracts.
- Lead role for the City in negotiating the fuel supply aspects of a proposed swap of the City's share of the South Texas Nuclear Project for a share of the lignite-fired Limestone station. The project involved a cost and operational analysis of the Jewett mine operated by an affiliate of Western Energy.

**1985 - 1987    Public Utility Commission of Texas - Manager, Fuels Analysis.**

Managed review of the prudence of electricity utility fuel contracts and of utility strategies for buying gas, coal, oil, and nuclear fuel. Testified on numerous occasions before the Commission on utility fuel costs and prudence. Responsible for the determination of the fuel factor portion of rates, fuel aspects of plant certification reviews and avoided cost dockets, determination of prudent fuel inventory levels, and price forecasting. Conducted study of the rates charged by railroads for shipping coal into Texas. Publication of the report resulted in litigation with the Burlington Northern railroad in which Mr. Kaplan served as the State's expert witness. Analyzed a proposed lignite mining project, including a review of the proposed mine plan and the costs of the project versus western coal alternatives. Responsible for the fuel aspects of Commission special studies, including a study of central economic dispatch for ERCOT and an evaluation of the electricity supply and demand balance in Texas.

**1984 - 1985    Fieldston Company - Consultant.**

Principal consultant with a coal consulting and publishing firm. Assisted a utility in litigating a coal supply contract, including preparation of testimony and development of a financial model of the source coal mine. Performed cost studies of rail movements of coal for a northeastern utility to find opportunities for rate reductions. Evaluated the financial and operational performance of the major coal-hauling railroads for the U.S. Department of Energy, with the aim of determining whether changes were needed in the Staggers (rail deregulation) Act. Editor for the first *Fieldston Coal Transportation Manual*, a comprehensive guide to rail, barge, truck, and international coal transportation logistics and economics. Also wrote articles for the *Coal Transportation Report*, a biweekly newsletter.

1978 - 1984:

Consulting work in the natural gas, petroleum, and coal areas with **Energy Ventures Analysis, Inc.** and **Jensen Associates**; studies of solar energy economics for the **California Energy Commission** and **EMAY Corp.**

### Publications and Presentations

"The Next Wave of Renegotiating Coal and Transportation Contracts," **Natural Resources & Environment**, Winter 1997.

"Determining the Impact of Regulatory Change on Fuel Risks," presentation to **Managing Fuel Risk Conference**, Dallas, Texas, December 13, 1996.

"Railroads and Utility Deregulation: New Challenge, New Opportunity," presentation for Schroder Wertheim, New York, November 11, 1996.

Several presentations to the EPRI Workshop, **Rail Consolidation and Market Power**, Denver, October 22, 1996.

"Keeping Track of Competitor Costs and Strategies," presentation at the **Managing Fuel & Power Production in a Competitive Environment Conference**, Chicago, May 9, 1996.

"Implications of Utility Deregulation for Industrial Coal Users," presentation to **Council of Industrial Boiler Owners Fuels Conference**, May 9, 1995.

With Jeff Watkins (Hill & Associates), **Powder River Basin Coal and Transportation: A Turning Point?**, multi-client study, 1995.

"Pricing Natural Gas Under Long-Term Contracts" and "Buying Gas: How to be an Informed Consumer," presentations to **Managing Price Volatility Conference**, Houston, Texas, October 4 & 5, 1994.

"Storage and Pricing: How Storage is a Key Indicator of Price," presentation to **Natural Gas Storage Update** conference, Houston, Texas, April 7 & 8, 1994.

"Long-Term Contracts and Electric Utilities: Balance of Benefits and Traps," **Natural Gas**, December 1993.

"Walking a Narrow Line: The Benefits and Risks of Long-Term Gas Contracts to Electric Utilities," presentation at the **Long-Term Natural Gas Contracts** seminar, Executive Enterprises, Inc., Houston, Texas, October 15, 1993.

"Transporting Coal under Crisis Conditions," presentation at the **1993 EPRI Fuel Supply Seminar**, Tampa, Florida, October 14, 1993.

"Fuels, Natural Resources, and Technology: a Broader Context for Fuel Price Forecasting," paper at the **International Association for Energy Economics 15th North American Conference** (forthcoming: October 13, 1993).

"The New Keys to Gas Deliverability: Storage, Imports, and Resource Development," paper for the **SPE Gas Technology Symposium**, June 30, 1993.

"The Long View: Technology, Society and the Price of Fuel," presentation to the **American Power Conference**, April 14, 1993.



"Storage and Imports Rearranging the Price Picture," **Natural Gas**, February 1993

"Utility Planning for Natural Gas Storage," paper and presentation to the **New Gas Storage Strategies** conference, Houston, Texas, September 2&3, 1992

"Fear and Loathing in the Gas Market," **Compliance Strategies Review**, September 28, 1992

"Breaking with the Past: Utility Planning for Natural Gas," presentation to the **Texas Public Power Association Annual Meeting**, Austin, Texas, August 3-4, 1992

"The Short-Term Approach to Fuel Supply Strategy and Contracts," conference paper and presentation, **Power-Gen'91**, Tampa, Florida, December 4-5, 1991

"Coal vs. Lignite: Costs and Other Issues," presented to the **Greater Austin - San Antonio Corridor Council Energy Task Force**, November 25, 1986

"Rail Transportation of Coal to Texas," PUC Working Paper 85-5, **Public Utility Commission of Texas**, October 1985

"The Effect of Utility Regulation on Coal Markets," co-authored with Doug Divine, **Third Coal Marketing Strategies Conference**, October, 1985

"Industrial Coal Demand: Past and Prospects," presentation at the **First Pittsburgh Coal Conference**, September 18, 1984

Editor, **Fieldston Coal Transportation Manual**, 1984-85 edition, Fieldston Company, Washington D.C. 1984.

"Potential For Use of Petroleum Coke in Industrial Applications," presentation at the **Council of Industrial Boiler Owners Annual Meeting**, October 26-28, 1983

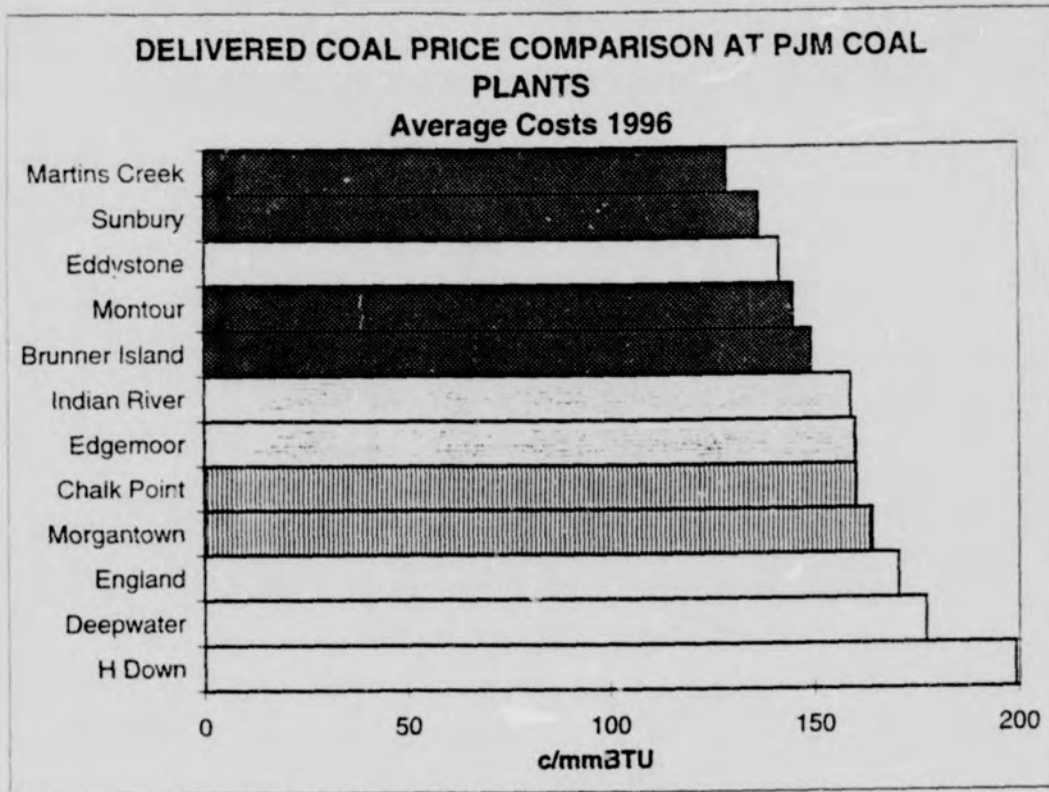
"Fuel Grade Coke Could Gain Status as Product," **Oil and Gas Journal**, October 10, 1983

"Petroleum Coke as a Supplemental Industrial Fuel," paper and presentation, **Fifth Symposium on Industrial Coal Utilization**, June 6-7, 1983

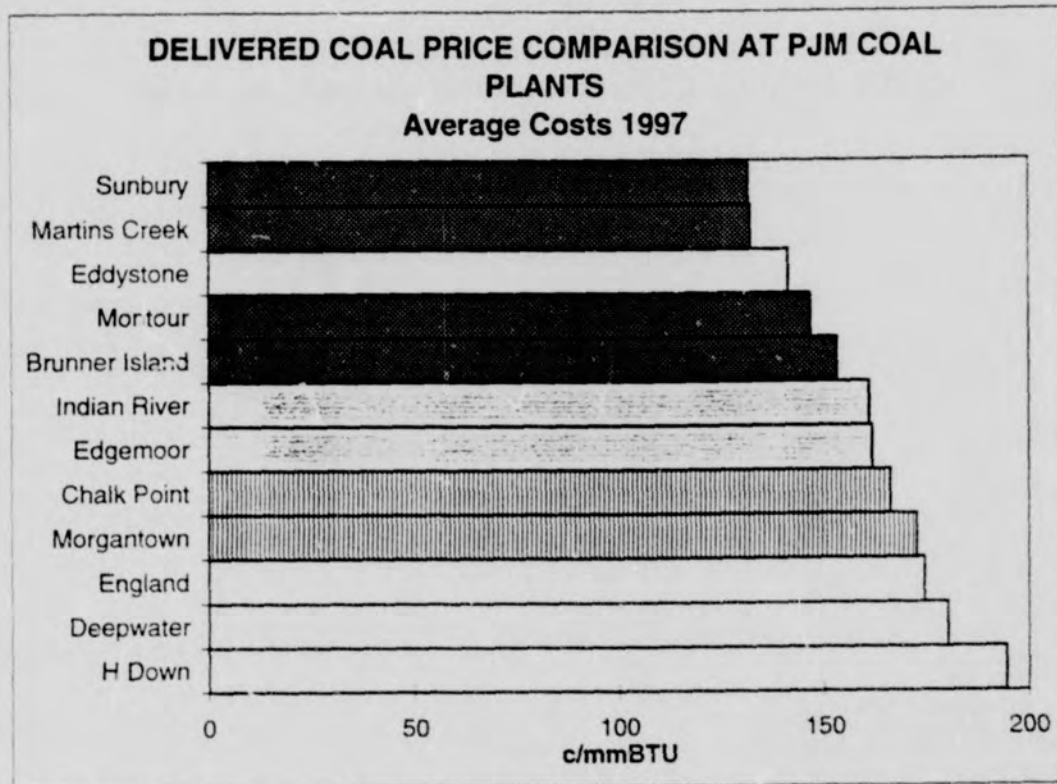
"Labor and Mine Productivity," presentation at the **Coal Economy Conference**, November 21, 1980



### EXHIBIT SK-2



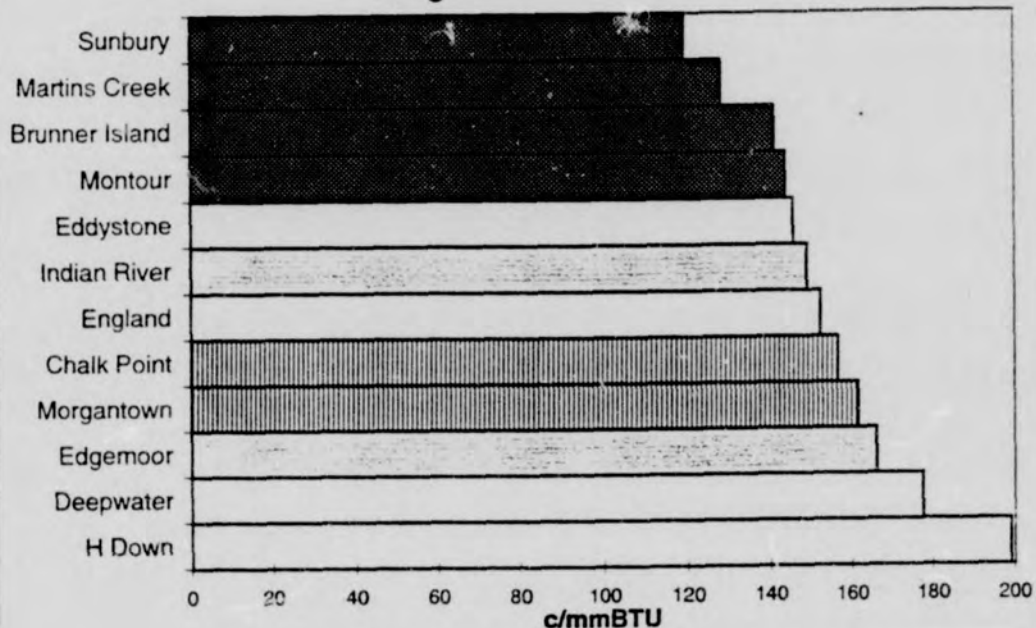
### EXHIBIT SK-3



# EXHIBIT SK-4

## DELIVERED COAL PRICE COMPARISON AT PJM COAL PLANTS

Marginal Costs 1996



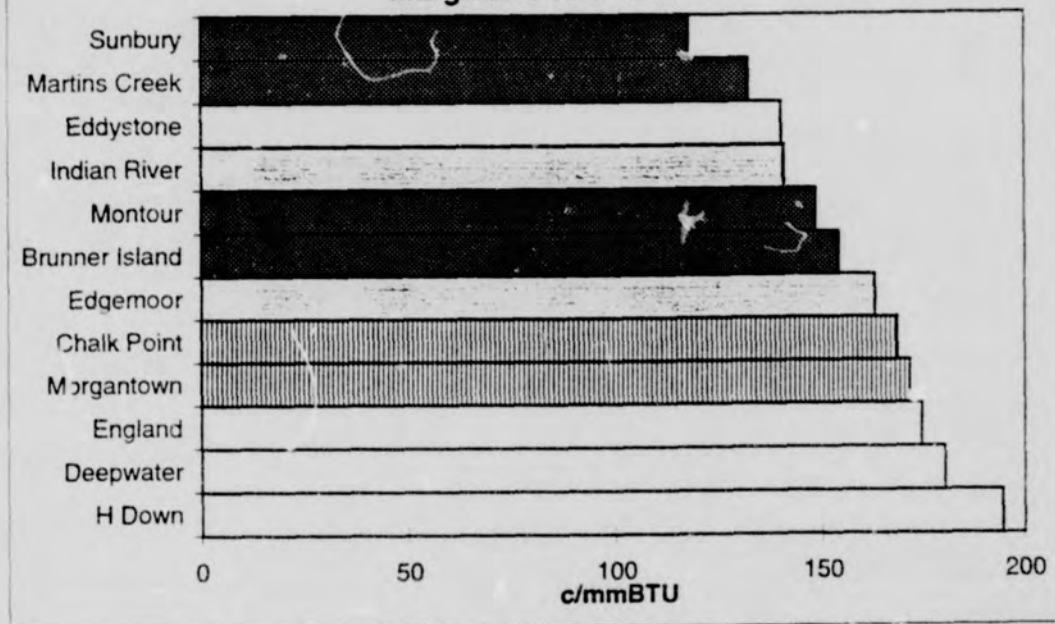
PEPCO Plants

Plants Receiving Joint Access

# EXHIBIT SK-5

## DELIVERED COAL PRICE COMPARISON AT PJM COAL PLANTS

Marginal Costs 1997



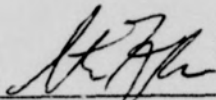
PP&L Plants

Delmarva Power & Light

VERIFICATION

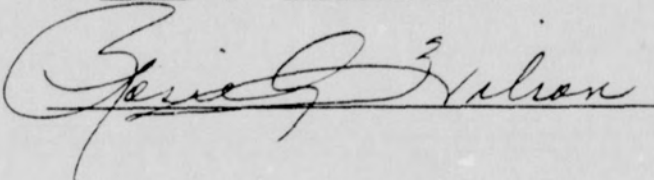
DISTRICT OF COLUMBIA ) ss:

Stan M. Kaplan, being duly sworn, deposes and say that he has read the foregoing Reply Verified Statement knows that contents thereof, and that the same are true as stated.

  
\_\_\_\_\_  
Stan M. Kaplan

Subscribed and sworn to before me

this 20<sup>th</sup> day of October 1997.

  
\_\_\_\_\_

Notary Public for the District of Columbia

My commission expires 10/31/00



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CSX CORPORATION AND CSX	)	
TRANSPORTATION, INC., NORFOLK	)	
SOUTHERN CORPORATION AND NORFOLK	)	
SOUTHERN RAILWAY COMPANY --	)	Finance Docket No. 33388
CONTROL AND OPERATING LEASES/	)	
AGREEMENTS -- CONRAIL INC. AND	)	
CONSOLIDATED RAIL CORPORATION	)	
	)	

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ARGUMENT

PEPCO respectfully submits that the proposed acquisition and division of Conrail's assets between CSX and NS is inconsistent with the public interest, and should be denied. In particular, the transaction will disadvantage PEPCO in the bulk power market relative to certain specially favored utilities that will receive new dual-carrier rail access at destination, which they can combine with new dual-carrier access to certain important mine origins as a result of the Applicants' agreement. Moreover, the transaction will generate an acquisition premium which is likely to expose exclusively served bulk coal shippers, such PEPCO, to future rate increases.

Accordingly, the transaction should not be approved unless conditioned to ameliorate the anti-competitive impacts that would otherwise be encountered by PEPCO. As is more fully described below, the Board: (1) should require CSX to grant trackage rights to NS over the Conrail Pope's Creek Secondary



line (which CSX will acquire) for the limited purpose of transporting loaded and empty coal trains to and from PEPCO's Chalk Point and Morgantown generating stations; (2) should take steps to assure that the acquisition premium will not adversely affect regulatory rail rate-making; and (3) should require joint access to Rochester & Pittsburgh's Mine 84 in the MGA region of southwestern Pennsylvania.

#### **I. BACKGROUND**

As indicated in the attached Verified Statement of Susann D. Felton ("Felton V.S."), who is PEPCO's Vice President - Materials, PEPCO is an investor-owned electric utility that provides retail electric service to the Nation's Capital and surrounding Maryland suburbs. See Felton V.S. at 4-8. PEPCO also sells electricity at wholesale to Southern Maryland Electric Cooperative, Inc. ("SMECO") under a long-term contractual arrangement.

PEPCO owns and operates four coal-fired generating facilities. These include the 2,423 megawatt ("MW") Chalk Point Generating Station, the 1,412 MW Morgantown Generating Station, the 837 MW Dickerson Generating Station, and the 482 MW Potomac River Generating Station. At the present time, Conrail provides exclusive destination service to both the Chalk Point and Morgantown Stations which are located in southern Maryland. CSX provides exclusive service to the Dickerson Station, located in northwestern Montgomery County, Maryland, and NS provides exclusive service to the Potomac River Station located at Alexandria,

Virginia. The Dickerson, Chalk Point and Morgantown Stations are baseload power plants; that is, they normally operate at a high percentage of their available generation capacity. The Dickerson Station operates at the highest average capacity factor of all three plants, due in large measure to the fact that it is located closest to the West Virginia coal fields that are its present source of fuel supply.<sup>1</sup>

These plants' baseload status means that for the most part their level of generation is not affected by changes in rail rates or delivered fuel costs. However, during certain "shoulder" periods, i.e., the late-night hours in the Spring and Fall, when both the PEPCO system and the PJM system (of which PEPCO is a part) have excess capacity, they have to compete with other generation facilities for load (particularly for off-system sales). Even during these periods, however, all three plants still operate at a significant percentage of capacity due to various operational factors, including their design as baseload plants whose generation load cannot be ramped up and down quickly. Felton V.S. at 7-8.

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<sup>1</sup> CSX currently provides transportation service to the Dickerson Station pursuant to common carrier rates. These rates became effective on January 1, 1997, following the expiration of a rail transportation contract between PEPCO and CSX. The common carrier rates imposed by CSX are approximately higher than the expiring contract rates. These common carrier rates are the subject of a rate reasonableness proceeding that is currently pending before the Board in Docket No. 41989, Potomac Electric Power Company v. CSX Transportation, Inc., Complaint filed January 3, 1997. See Felton V.S. at 6-7.

The proposed Conrail transaction, as structured by agreement between CSX and NS, involves the transfer of Conrail's Pope's Creek Secondary line to CSX. This line serves PEPCO's two largest coal-fired plants, the Chalk Point and Morgantown Stations, and Conrail is presently the only rail carrier able to serve these plants. Thus, the transaction as presently structured would secure CSX' status as the sole rail carrier serving these plants (in addition to maintaining its existing control over rail deliveries to the Dickerson Station).

## II. THE APPLICABLE LEGAL STANDARD

The proposed division of Conrail is subject to review and approval by the Board under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) ("ICCTA").<sup>2</sup> The "single and essential standard of approval" for merger transactions under that Act is the public interest standard set forth at 49 U.S.C. § 11324(b)(1) and (2). See Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company,

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<sup>2</sup> The ICCTA abolished the ICC effective January 1, 1996, and transferred its essential functions (including its authority over railroad merger applications) to the Board, which is an independent agency within the Department of Transportation.

Decision No. 44 (served August 12, 1996) at 98 ("UP/SP").<sup>3</sup> To determine whether a merger is in the public interest, the Board balances the claimed economic and operational benefits of the merger against any potential competitive harm. Moreover, the Board is required to consider the following factors:

- (1) the effect of the proposed transaction on the adequacy of transportation to the public;
- (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
- (3) the total fixed charges that result from the proposed transaction;
- (4) the interest of rail carrier employees affected by the proposed transaction; and
- (5) 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) (emphasis added).

Similarly, the National Rail Transportation Policy ("NRTP") directs the Board, inter alia, to: (1) "allow to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;" (2) "maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to

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<sup>3</sup> Citing Missouri-Kansas-Texas R. Co. v. United States, 632 F.2d 392, 385 (5th Cir. 1980), cert. denied, 451 U.S. 1017 (1981); Penn-Central Merger and N&W Inclusion Cases, 389 U.S. 486, 496-99 (1968).

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attract capital;" and (3) "prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination." 49 U.S.C. § 10101(1), (6), and (12).

Finally, the Board's general policy statement governing mergers also emphasizes the importance of competition to the public interest:

... [T]he [Board] does not favor consolidations that substantially reduce the transport alternatives available to shippers unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a less anticompetitive fashion. Our analysis of the competitive impacts of a consolidation is especially critical in light of the Congressionally mandated commitment to give railroads greater freedom to price without unreasonable regulatory interference.

49 C.F.R. § 1180.1(a) (emphasis added).

The Board has broad authority to facilitate the public interest by imposing conditions on rail consolidations. See Union Pacific -- Control -- Missouri Pacific; Western Pacific, 366 I.C.C. 459, 562-64 (1982), aff'd sub nom. Southern Pacific Transp. Co. v. I.C.C., 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("UP/MP/WP"); Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transp. Co., 2 I.C.C.2d 709, 807-08 (1986) ("SF/SP"). Such conditions may include divestiture of parallel tracks, or a requirement that one

carrier grant to a rival trackage rights and access to necessary facilities. 49 U.S.C. § 11324(c).<sup>4</sup>

The criteria for imposing conditions to remedy anticompetitive effects of a proposed rail merger were described as follows in the BN/Santa Fe decision:

[W]e will not impose conditions unless we find that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), and the conditions will ameliorate or eliminate the harmful effects, will be operationally feasible, and will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits of produced by the merger.

BN/Santa Fe at 55-56. The proponent of a condition is also required to show that the requested condition addresses the adverse effects of the transaction and is narrowly tailored to remedy those effects. UP/SP at 145 (citing UP/CNW, slip op. at 97); Milwaukee -- Reorganization -- Acquisition by GTC, 2 I.C.C. 2d 427, 455 (1985).

The Board, of course, may deny approval of a merger in its entirety if it believes that the anticompetitive effects of the merger are significant enough, and are not susceptible to remediation through the imposition of conditions. SF/SP, 2 I.C.C.2d 709.

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<sup>4</sup> For example, the Board might require that the merged entity grant trackage rights to one or more other railroads over portions of the new combined railroad, in order to maintain competition. This remedy was employed extensively in both the UP/SP proceeding and in Finance Docket No. 32549, Burlington Northern Inc. -- Control and Merger -- Santa Fe Pacific Corp., (Decision served August 23, 1995) ("BN/Santa Fe").

In evaluating the impacts of the Conrail control transaction on PEPCO, the Board should bear in mind that this merger is very different from those that have preceded it. For the first time, two major Class I rail carriers are proposing to acquire and divide up a third major Class I carrier. In recognition of the likely anticompetitive impacts of such a transaction, the two remaining carriers propose to establish new intramodal rail competition where none has existed for several decades (if at all). Having chosen to extend dual service to shippers and receivers that have not heretofore enjoyed it, CSX and NS have upset the competitive balance for other shippers that will not be able to enjoy the fruits of the proposed new competition. PEPCO is such a shipper with respect to coal movements to its Chalk Point and Morgantown plants.

The Board must not countenance a situation in which the two surviving mega-railroads in the eastern United States are attempting to decide who gets dual rail service and who does not. CSX and NS are not the guardians of the public interest; rather, it is for this Board to determine where the public interest lies. Given that the proposed division of Conrail will complete the restructuring of the nation's rail system in the West and in the East that began with the BN/Santa Fe merger, and given the disastrous consequences presently unfolding with respect to the most recent merger (Union Pacific/Southern Pacific), it behooves the Board to take a very close look at this transaction to ensure

that all anticompetitive effects that can reasonably be identified are ameliorated.

**III. THE TRANSACTION WILL HINDER PEPCO'S ABILITY TO COMPETE IN THE ELECTRIC POWER MARKET**

PEPCO is a member of the "tight" Pennsylvania-New Jersey-Maryland Interconnection pool ("PJM").<sup>5</sup> This pool operates as a single system with a common economic dispatch of generation on a pool-wide, lowest-cost basis. If a given plant's marginal generation cost decreases (as the result of a reduced rail rate, for example), then that plant likely will be called upon by the PJM central dispatch authority to meet a greater share of system load. Such increased utilization may, of course, lead to a decreased utilization of those plants which enjoyed similar generating costs to the "benefitted" plant before the control transaction. Felton V.S. at 13.

The Applicants have emphasized that one of the chief public benefits of the proposed transaction is the unprecedented creation of broad new competition. See, e.g., Verified Statement of Mr. John W. Snow, Chairman, President, and Chief Executive Officer of CSX:

This transaction thus increases the level of competition between railroads, giving many shippers a true choice between two competing Class I railroads, each of which is willing

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<sup>5</sup> Other utility PJM members include Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, Pennsylvania Power & Light Company, and Public Service Electric and Gas Company.

to exert every effort to win business away from its rival.

Snow V.S. at 6 (App. Vol. 1 [CSX/NS-18] at 308). Mr. Snow went on to state:

I feel confident that this transaction is the beginning of a new era of competitive rail service.

Id. at 14 (App. Vol. 1 [CSX/NS 18] at 316).

Mr. David R. Goode, Chairman of the Board, President, and Chief Executive Officer of NS, makes similar representations in his Verified Statement:

This transaction is by far the most pro-competitive railroad restructuring in history. It will create two new Northeast/Southeast rail systems that will do their utmost to best each other in the marketplace every day. This will bring about a blossoming of rail competition, the likes of which the Northeast has not experienced in decades.

Goode V.S. at 1 (App. Vol. 1 [CSX/NS-18] at 323); see also id. at 10 (App. Vol. 1 [CSX/NS 18] at 332):

What sets this transaction apart from all previous railroad consolidations is, of course, the extraordinary amount of new railroad competition that it will bring to the areas served by the carriers involved.

These pronouncements sound good on paper. PEPCO, however, certainly will not enjoy any of this "blossoming" and "extraordinary" new rail competition.

A. The Transaction Will Cause Competitive Harm to PEPCO if Unconditioned -----

Although the Conrail transaction will afford dual CSX and NS access to the coal origins served by the former Monon-



gahela Railway ("MGA") (replacing the present exclusive Conrail access), this dual access will not benefit exclusively served plants like those owned by PEPCO.

One of the fundamental principles of railroad pricing is that a destination monopolist will not voluntarily (and under the Board's interpretation of the law, need not) "short-haul" itself. See, e.g., Docket Nos. 41242 et al., Central Power & Light Co. v. Southern Pacific Transp. Co., at 7 (Decision served December 31, 1996), petitions for review pending, Docket Nos. 91-1081 et al., MidAmerican Energy Company v. STB, (8th Cir.). Moreover, as the ICC held in BN/Santa Fe, a destination carrier with the exclusive ability to deliver coal to an electric utility can preclude effective competition from an unaffiliated origin carrier because the destination carrier can normally capture all of the monopoly ("one lump") profits for itself. Id. at 70-79.

CSX's own Vice President, Coal Sales and Marketing, Mr. Raymond L. Sharp, confirmed these principles in his deposition in the instant proceeding. Mr. Sharp's deposition included the following exchange:

- Q. What is it about joint-line pricing that could put CSX service mines currently out of reach for Conrail customers?
- A. The fact that Conrail serves the destination and also serves coal producing origins and has the ability and the practice of pricing single-line movements more -- pricing single-line movements lower than Conrail's participation in joint-line movements resulting in a lower single-line rate for the most part than is applicable on a joint-line move for similar distances.
- Q. So in essence Conrail will prefer in terms of its rate policies routes where it can provide single-line ser-

vice over providing joint-line service; is that a fair summary of what you said?

A. That's a fair summary of my impression. . . .

Q. . . .

A.

Q.

A.

Deposition of Mr. Raymond L. Sharp (August 21, 1997) at 170-72.<sup>6</sup>  
See also Deposition of Mr. John L. Williams, Applicants' traffic diversion expert (August 12, 1997) at 381.<sup>7</sup>

In other words, a carrier with exclusive access to a utility power plant will price its services from different origins/interchanges in such a manner as to dictate the utility's use of whichever transportation option will provide the greatest profit to the destination carrier. In ordinary circumstances, this "greatest profit" option will dictate the use of the destination carrier's long-haul. In light of these considerations, NS-originated MGA coal (and NS-originated coal from Rochester & Pittsburgh's Mine 84, which is located in the MGA region but is not being favored with dual access by CSX and NS) simply will be

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<sup>6</sup> The relevant pages of deposition transcripts cited herein are attached as an Appendix to this filing.

<sup>7</sup> Q. Would you agree with me that there's a railroad preference not to short-haul itself?

A. Yes.

unavailable to PEPCO, and the competition supposedly introduced between these carriers at MGA mines will have no beneficial value whatsoever to PEPCO.

In fact, the transaction actually will harm PEPCO through the enhancement of the competitive position of certain of PEPCO's rival utilities. Specifically, the transaction will afford certain utilities who at present are exclusively served by Conrail access to dual-carrier service at destination. With respect to MGA origins -- which are a key source of coal for purposes of compliance with Phase 2 of the Clean Air Act Amendments of 1990 ("CAAA") -- these favored utilities will now enjoy competitive rail service from origin to destination. See the accompanying Verified Statement of Mr. Stan M. Kaplan ("Kaplan V.S.") at 16-17; Felton V.S. at 12-13.

For example, the transaction will specially benefit PECO's Eddystone Station, Atlantic City Electric Company's Deepwater and England plants, and Vineland's Down plant. Kaplan V.S. at 17. Each of these plants is served exclusively by Conrail at the present time. Following the transaction, however, each will enjoy both CSX and NS destination service.<sup>8</sup>

Since PEPCO and these utilities compete for sales of incremental power (either amongst fellow PJM members or against

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<sup>8</sup> Furthermore, as witnesses Felton and Kaplan recount, the Applicants reportedly have reached agreements with Pennsylvania Power & Light and Delmarva Power & Light relating to competitive access at destination. Felton V.S. at 12; Kaplan V.S. at 17. See also Mr. Sharp's Verified Statement on behalf of CSX at 16 (App. Vol. 2A [CSX/NS 19] at 363).

external sources of power), and since these utilities doubtless will be able to take advantage of their new intramodal competition to obtain lower rail rates than PEPCO (which will remain captive to a single carrier at all of its coal-fired plants), they should be able to generate electricity more cheaply than before -- thus putting them in an improved competitive position compared with PEPCO.<sup>9</sup>

The Applicants have recognized that the Conrail transaction will lead to this kind of harmful impact. N3's Chairman, Mr. Goode, explicitly confirmed this in his verified statement:

Some companies that will not be gaining direct service from an additional railroad may not be happy that some other companies will be. . . . It is simply not possible to structure a transaction that would satisfy everyone and still provide the competition, efficiency and other benefits of this transaction.

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<sup>9</sup> Given the baseload status of PEPCO's Dickerson, Chalk Point and Morgantown Stations, the new intramodal competition available to some of PEPCO's competitors will affect primarily incremental power sales.

Felton V.S. at 13 n.7.

PEPCO's diminished ability to compete effectively for incremental sales in the bulk power market relative to the specially benefitted utilities, which would result from an unconditioned Conrail control transaction, will not prevent the railroads from charging higher rates to PEPCO. To the contrary, a railroad such as CSX will only limit the level of its rates to PEPCO's baseload plants if further rate increases would lead to reduced rail revenues, not merely to reduced coal transportation volumes. In other words, the appropriate analysis to gauge railroad pricing incentives is whether the shipper's demand for the service is elastic or inelastic. Baseload coal-fired plants,

Id.; Kaplan V.S. at 6.

See Goode V.S. at 12 (App. Vol. 1 [CSX/NS-18] at 334).

PEPCO respectfully submits that while Mr. Goode has correctly identified the harm that will be caused by the transaction, he is mistaken as to the unavailability of a remedy. It is entirely possible to structure the transaction in such a way that protects PEPCO's current competitive position. Specifically, approval of the transaction could (and should) be conditioned to require a grant of trackage rights to NS over the Pope's Creek Secondary line, thus extending dual rail service to PEPCO's Chalk Point and Morgantown plants and preserving their present competitive position vis-a-vis other plants that will receive new dual service.

While PEPCO's Chalk Point and Morgantown Stations do not currently enjoy access to two rail carriers at destination, this does not mean that PEPCO is seeking an improved position relative to its pre-transaction situation. Again, a grant of the requested trackage rights merely would allow PEPCO to maintain its current ranking in the PJM hierarchy relative to the "specially benefitted" plants that the Applicants have singled-out for new dual access in their proposal. As such, the subject condition would not improve PEPCO's pre-transaction competitive position, but to the contrary, would merely maintain that position. This is particularly important for PEPCO because one of its primary (and new) coal sources for CAAA Phase 2 compliance is



the MGA region which will also be receiving new dual service from CSX and NS. See Felton V.S. at 9-10, 12; Kaplan V.S. at 11-13.<sup>10</sup>

In this regard, the Applicants themselves have insisted that the Conrail transaction is unlike prior rail consolidations. Specifically, as indicated supra, Mr. Goode has commented that "[w]hat most sets this transaction apart from all previous railroad consolidations is, of course, the extraordinary amount of new railroad competition that it will bring to the areas served by the carriers involved." Goode V.S. at 10 (App. Vol. 1 [CSX/NS-18] at 332). Given the Applicants' view that the principal benefit of the transaction is its introduction of new competition to an entire region of the country, it is therefore very appropriate to consider the adverse competitive impacts of the transaction on a regional basis as well.<sup>11</sup> In other words, if the present single-line status is maintained at all of PEPCO's coal-burning plants after the Conrail transaction is consummated,

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<sup>10</sup> Prior to the announcement of the CSX/NS agreement to acquire and divide Conrail,

The only way to preserve the competitive balance between PEPCO and the other PJM utilities that will receive new dual rail access at destination is to provide Chalk Point and Morgantown with similar access.

<sup>11</sup> Indeed, consideration of the possible adverse effects of the transaction on "competition among rail carriers in the affected region" is mandated by the ICC Termination Act. See 49 U.S.C. § 11324(b)(5).

PEPCO will undeniably suffer in its ability to compete with other utilities in the PJM pool.

B. The Trackage Rights Condition Sought by PEPCO Satisfies the Other Relevant Criteria as Well

The trackage rights condition that PEPCO seeks also satisfies the other criteria employed by the Board in analyzing such requests. Specifically, the trackage rights in question are operationally feasible, would ameliorate the harmful effects of the transaction, and will produce public benefits (through reduction or elimination of the possible harm) outweighing any reduction to the public benefits otherwise produced by the merger.

It is beyond cavil that the NS trackage rights sought by PEPCO are operationally feasible. The Pope's Creek Secondary line (which serves both Chalk Point and Morgantown) is used almost exclusively to deliver coal to these plants. It connects with Amtrak's Northeast Corridor ("NEC"), over which both CSX and NS will have post-acquisition freight operating rights, at Bowie, Maryland. Both CSX and NS can transport coal trains from either direction via the NEC to Bowie, as described by Ms. Felton.<sup>12</sup>

The proposed trackage rights will not result in any increase in rail traffic on the Pope's Creek Secondary; nor will they result in any operational interference between CSX and NS trains. The volume of coal used at the plants will remain relatively constant; if PEPCO decides to split the business

---

<sup>12</sup> See Felton V.S. at 18-19 and the schematic of the rail lines used to deliver coal to Chalk Point and Morgantown attached to Ms. Felton's testimony as Exhibit SDF-1.

between the two carriers, this merely means that some trains will be operated by CSX and others by NS rather than having all the trains operated by one carrier.

For the reasons described in the preceding section, there can be no question that the proposed trackage rights condition is tailored to ameliorate the competitive harm to PEPCO that would otherwise result from the Conrail control transaction. It is narrowly tailored to remedy the competitive harm -- and, indeed, is very similar to the extension of dual-carrier access to other Conrail solely-served power plants that the Applicants themselves have espoused.

Finally, the proposed trackage rights condition is perfectly consistent with the public-interest benefits the transaction will create -- in particular, the creation of competitive balance in the East and the extension of intramodal competition to new areas, which the Applicants' own Chief Executives cite as an important public benefit of the transaction.

In this regard, PEPCO wishes the Board to understand that it does not oppose the increased competition that the Applicants have chosen to afford to other utilities, to the MGA mines, and to certain regions such as the New York, Philadelphia and Detroit metropolitan areas. To the contrary, PEPCO fully supports the introduction of competition into the eastern rail market. However, PEPCO does not believe that the Applicants should be permitted to disrupt the competitive balance that currently exists by depriving PEPCO of a similar benefit.

Consequently, it is very much the case that PEPCO's best interests are not directly correlated to its rail carriers' financial best interests. Their decision to carve up Conrail's assets in a manner that best suits their own objectives is not an appropriate substitute for an independent agency's consideration of how the public interest is best served.

C. Dual Access Should be Extended  
to Mine 84 in the MGA Region

If the Board grants PEPCO's proposed trackage rights condition, PEPCO will have the benefit of the intended competition between CSX and NS for the origination of coal at MGA mines. As detailed by Ms. Felton, the MGA region's Pittsburgh No. 8 Seam mines produce a mid-sulfur coal that is a good CAAA Phase 2 compliance product when bundled with sulfur dioxide emission allowances. Felton V.S. at 10.

One of the mines in the MGA region

is Rochester & Pittsburgh Mining Company's Mine 84. Id. at 23. This mine is located just to the north of the MGA mines that will receive dual access from CSX and NS; however, NS and CSX have decreed that it will not have the same dual access as the other MGA mines but rather will be served exclusively by NS. There is no logical reason why Mine 84 should be excluded from dual access; it is located in close geographic proximity to the other MGA mines and has very similar coal. PEPCO therefore

supports the extension of CSX service to this mine as well as the other MGA mines.<sup>13</sup>

IV. THE TRANSACTION IS NOT IN THE PUBLIC  
INTEREST BECAUSE THE ACQUISITION PREMIUM  
EXPOSES PEPCO AND OTHER EXCLUSIVELY SERVED  
SHIPPERS TO HIGHER FUTURE RAIL RATES

Finally, the proposed transaction is anti-competitive due to the multi-billion dollar premium that CSX and NS have agreed to pay for the acquisition of Conrail. Although the Application suggests a seemingly "pain-free" recovery of this premium, PEPCO suspects that CSX will attempt to recoup its investment through increasing rates paid by exclusively served shippers. As noted by Mr. Kaplan in his accompanying Verified Statement:

CSX and NS claim they can pay for and profit from the acquisition through operating efficiencies that will reduce costs and allow the carriers to compete for new traffic, such as shipments now moving by truck. The extent to which they will achieve these savings gains and win new business is unknown and uncertain.

Kaplan V.S. at 8-9. PEPCO is particularly concerned about this possibility because of the single-carrier status of its four coal-fired facilities, and because of CSX's behavior which led to PEPCO's institution of the pending coal rate case against CSX (Docket No. 41989, PEPCO v. CSXT). See Felton V.S. at 13-14, 25.

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<sup>13</sup> As explained by Ms. Felton, dual access to Mine 84 would be of little utility to PEPCO if its proposed trackage rights condition is denied, because of the resulting CSX destination monopoly at Chalk Point and Morgantown.



As acknowledged by the Applicants' witness Sansom, the premium could dramatically hinder PEPCO's ability to obtain reasonable rates:

Q. What's your understanding of the regulatory constraints on pricing movements to market dominant shippers?

A. Well, I understand there's a procedure whereby a shipper that is subject to exclusive deliveries can attempt to establish that the railroad serving it has market dominance. And, if they do establish that, then it's subject to certain limits which are basically a multiple of variable costs.

Q. Okay. And do you have an understanding of whether an acquisition premium would be included in the net investment base used to calculate those variable costs?

A. No, I haven't looked at that.

Q. Hypothetically, if you assume that the acquisition costs are included in the net investment base used to calculate variable costs, would you agree with me that the premium could result in higher rates to market dominant shippers?

A. If the market premium or the premium is included in the variable cost, then I think in your set of hypotheticals, that market dominance carrier premium included in the variable cost, subject to the regulatory constraint, the answer would be yes.

Q. And that would be because it would affect the jurisdictional threshold?

A. Yes.

Q. . . . So it would affect the jurisdictional threshold which would mean that market dominant shippers could potentially face a higher hurdle in order to have their rates reviewed, correct?

A. Under your set of assumptions.

Q. . . . Would it also affect the board's calculation of the maximum reasonable rate under the STB standards?

A. Under your set of assumptions, my understanding is it would.<sup>14</sup>

The Application fails to satisfactorily address the concern that a large share of the burden of recovering the Eastern carriers' multi-billion dollar premium investment in Conrail ultimately will be borne by exclusively served coal and other demand-inelastic traffic. Even if the carriers' actual earnings from intermodal diversions, etc. do not fall so far short of their projections as to prompt direct rate increases, upward pressure on coal and other bulk commodity rates is threatened by (1) a dampening of any competitive ardor on the part of NS and CSX as each concentrates on maximizing revenues from its traffic base as it exists after the transaction; and (2) higher reported unit costs due to acquisition premium amortization, which in turn would raise the variable cost threshold for STB jurisdiction over rates.

The acquisition premium has a negative impact upon the public interest because exclusively served shippers, such as PEPCO, will be forced to shoulder a disproportionate burden of the premium recovery via higher rail rates. Consequently, PEPCO requests that, if the proposed acquisition and division of Conrail assets is approved by the Board, the Board impose the following additional condition upon Applicants, pursuant to 49 U.S.C. § 11324(c):

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<sup>14</sup> Deposition of Dr. Robert L. Sansom (August 27, 1997) at 133-35.

Each of the Applicants shall quantify the amount of the premium over Conrail's pre-acquisition book value that it is paying, and shall exclude that amount from its net investment base for regulatory costing purposes.

The exclusion of the premium from Applicants' net investment bases for regulatory costing purposes will eliminate the harmful effects of the consolidation by protecting exclusively served shippers from future railroad pricing abuses. The requested condition is narrowly tailored and will only benefit exclusively served coal shippers who are able to demonstrate, in a regulatory context, that the rates charged by a given railroad are unreasonable. In this regard, the shipper would have to prove that the railroad's rates exceed the Board's 180% revenue to variable cost ratio.

Finally, exclusion of the premium will produce public benefits which outweigh any reduction in the public benefits otherwise produced by the consolidation. A shipper such as PEPCO will only benefit from the requested condition if it is able to establish that the carrier has market dominance over the traffic in issue. In other words, if the shipper does not prove market dominance, the requested premium condition is irrelevant. Exclusion of the premium from Applicants' investment bases thus has absolutely no effect on the public benefits that Applicants believe will be achieved by the proposed transaction.

V. CONCLUSION

The contemplated Conrail control transaction will hinder PEPCO's competitive standing in the bulk power market. In particular, the transaction improperly disrupts the existing competitive balance among the utility members of PJM. Moreover, the transaction threatens to burden shippers such as PEPCO with the tremendous burden of the acquisition premium that CSX and NS have paid to acquire Conrail. As such, the transaction is inconsistent with the public interest and should be denied.

The conditions requested by PEPCO will ameliorate or eliminate these harmful effects of the transaction, are operationally feasible, and will produce public benefits outweighing any reduction of the public benefits produced by the transaction. As such, these requested conditions comport with the Board's governing standard. BN/Santa Fe at 55-56.

Accordingly, PEPCO requests that, if the Board decides to approve the Conrail control transaction, such approval be made subject to a grant of the trackage rights and premium-exclusion conditions described herein.

Respectfully submitted,

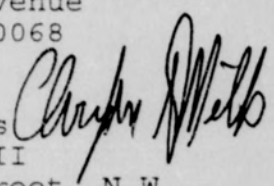
POTOMAC ELECTRIC POWER COMPANY

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Washington, D.C. 20036  
(202) 347-7170



Dated: October 21, 1997

Its Attorneys



APPENDIX

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

11                                   Washington, D.C.  
12                                   Thursday, August 21, 1997

13                   Deposition of RAYMOND L. SHARP, a  
14           witness herein, called for examination by counsel  
15           for the Parties in the above-entitled matter,  
16           pursuant to agreement, the witness being duly  
17           sworn by JAN A. WILLIAMS, a Notary Public in and  
18           for the District of Columbia, taken at the  
19           offices of Arnold & Porter, 555 Twelfth Street,  
20           N.W., Washington, D.C., 20004-1202, at  
21           10:00 a.m., Thursday, August 21, 1997, and the  
22           proceedings being taken down by Stenotype by  
23           JAN A. WILLIAMS, RPR, and transcribed under her  
24           direction.  
25

1 customers?

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

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

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

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

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

**ALDERSON REPORTING COMPANY, INC.**

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

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

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

9 Q. Do you have any experience with  
10 Conrail?

11 A. Lots.  
12  
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25

**CERTIFIED COPY**

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

11                              Washington, D.C.  
12                              Tuesday, August 12, 1997

13                              Continued deposition of JOHN H.  
14               WILLIAMS, a witness herein, called for  
15               examination by counsel for the Parties in the  
16               above-entitled matter, pursuant to agreement, the  
17               witness being previously duly sworn, taken at the  
18               offices of Zuckert, Scoutt & Rasenberger, L.L.P.,  
19               Suite 700, 888 Seventeenth Street, N.W.,  
20               Washington, D.C., 20006-3939, at 10:15 a.m.,  
21               Tuesday, August 12, 1997, and the proceedings  
22               being taken down by Stenotype by JAN A. WILLIAMS,  
23               RPR, and transcribed under her direction.

24  
25



1 A. Yes.

2 Q. Length of haul, could that affect it as  
3 well?

4 A. Well, I think the contract and the  
5 terms of the contract would be the governing  
6 factors.

7 Q. Okay. I just have some questions now  
8 on your diversion analysis. And again, to put  
9 that analysis in context, I want to see if we  
10 could come to some agreement on some other  
11 preferences that exist in the industry. Would  
12 you agree with me that there's a shipper  
13 preference to get as low a rate as possible for  
14 reliable railroad service?

15 A. Yes.

16 Q. Okay. Would you agree with me that  
17 there's a railroad preference not to short haul  
18 itself?

19 A. Yes.

20 Q. Would you agree with me that shippers  
21 prefer to avoid routes that -- and perhaps this  
22 is a preference that's common to shippers and  
23 railroads, prefer to avoid routes that suffer  
24 from traffic congestion?

25 A. Yes.

1 BEFORE THE  
2 SURFACE TRANSPORTATION BOARD  
3 Finance Docket No. 33388  
4 CSX CORPORATION AND CSX TRANSPORTATION, INC.  
5 NORFOLK SOUTHERN CORPORATION AND  
6 NORFOLK SOUTHERN RAILWAY COMPANY  
7 -- CONTROL AND OPERATING LEASES/AGREEMENTS --  
8 CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
9 RAILROAD CONTROL APPLICATION  
10 HIGHLY CONFIDENTIAL  
11 Washington, D.C.  
12 Wednesday, August 27, 1997  
13 Deposition of ROBERT L. SANSOM, a  
14 witness herein, called for examination by counsel  
15 for the Parties in the above-entitled matter,  
16 pursuant to agreement, the witness being duly  
17 sworn by JAN A. WILLIAMS, a Notary Public in and  
18 for the District of Columbia, taken at the  
19 offices of Arnold & Porter, 555 Twelfth Street,  
20 N.W., Washington, D.C., 20004-1202, at  
21 10:05 a.m., Wednesday, August 27, 1997, and the  
22 proceedings being taken down by Stenotype by  
23 JAN A. WILLIAMS, RPR, and transcribed under her  
24 direction.  
25

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1111 14th ST., N.W., 4th FLOOR WASHINGTON, D.C., 20005

1           A.     I haven't examined the question of  
2 market dominance with regard to the exclusive  
3 deliveries.

4           Q.     What about with regard to the premium?

5           A.     Well, I think that's the same answer.

6           Q.     Now, let me see if we can get at it  
7 this way, you mentioned the subject to regulatory  
8 constraints, you used that phrase. What's your  
9 understanding of the regulatory constraints on  
10 pricing movements to market dominant shippers?

11          A.     Well, I understand there's a procedure  
12 whereby a shipper that is subject to exclusive  
13 deliveries can attempt to establish that the  
14 railroad serving it has market dominance. And,  
15 if they do establish that, then it's subject to  
16 certain limits which are basically a multiple of  
17 variable costs.

18          Q.     Okay. And do you have an understanding  
19 of whether an acquisition premium would be  
20 included in the net investment base used to  
21 calculate those variable costs?

22          A.     No, I haven't looked at that.

23          Q.     Hypothetically, if you assume that the  
24 acquisition costs are included in the net  
25 investment base used to calculate variable costs,

1 would you agree with me that the premium could  
2 result in higher rates to market dominant  
3 shippers?

4 A. If the market premium or the premium is  
5 included in the variable cost, then I think in  
6 your set of hypotheticals, that market dominant  
7 carrier premium included in the variable cost,  
8 subject to the regulatory constraint, the answer  
9 would be yes.

10 Q. And that would be because it would  
11 affect the jurisdictional threshold?

12 A. Yes.

13 Q. That's one reason?

14 A. If your hypothetical is right. I'm not  
15 prepared to admit that the premium would be  
16 included.

17 Q. I'm asking you to assume it.

18 A. Okay

19 Q. So it would affect the jurisdictional  
20 threshold which would mean that market dominant  
21 shippers could potentially face a higher hurdle  
22 in order to have their rates reviewed, correct?

23 A. Under your set of assumptions.

24 Q. And then would it also under the same  
25 assumptions affect the stand-alone rate that

1 would be prescribed -- strike that.

2 Would it also affect the board's.  
3 calculation of the maximum reasonable rate under  
4 the STB standards?

5 A. Under your set of assumptions, my  
6 understanding is it would.

7 Q. Let's switch back to Centerior.  
8 Earlier I put on the record a comment about your  
9 representation of Centerior in the past. Could  
10 you detail what that representation has been?

11 A. I served as an expert in a dispute  
12 between -- on behalf of Centerior in a dispute  
13 between Centerior and Ohio Valley Coal Company.

14 Q. In what context was that dispute?

15 A. That was a contractual dispute over the  
16 terms of the coal supply agreement between Ohio  
17 Valley and Centerior.

18 Q. What time frame was that?

19 A. Three years ago roughly.

20 Q. Okay. Was Mr. Schwartz also involved  
21 in matters relating to Ohio Valley?

22 A. Yes.

23 Q. Has he represented them or has your  
24 firm represented Centerior in other matters?

25 A. I think we've done studies for



STB

FD

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ANGUS S. KING, JR.  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0016

182787

JOHN G. MELTOSE  
COMMISSIONER

October 20, 1997



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

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

Dear Secretary Williams:

Enclosed please find an original and twenty five (25) copies of the State of Maine Department of Transportation's "Comments, Protest, and Requests for Conditions." The filing contains a Certificate of Service indicating that Administrative Law Judge Jacob Leventhal and all Parties of Record on the service list have been served with a copy of the filing.

Very truly yours,

*Robert D. Elder, Esq. for*

Robert D. Elder  
Director  
Office of Freight Transportation

RDE/cm  
Encs.



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BEFORE THE  
SURFACE TRANSPORTATION



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, PROTESTS AND REQUEST FOR CONDITIONS BY  
STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION

The State of Maine Department of Transportation is concerned about the position of New England in general, and Maine in particular, in regard to the proposed acquisition of Conrail, Inc. and Consolidated Rail Corporation ("CONRAIL") by Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") and CSX Corporation and CSX Transportation, Inc. ("CSX"). Competition, choice, and capacity in the resulting rail system are essential if Maine is to have affordable, effective rail service which advances the long term competitiveness of our State.

The State of Maine Department of Transportation has four major areas of concern about the proposed acquisition. The first is competitive access for Maine shippers and its corollary, potential market price distortion. The other areas of concern are better

access to markets, enhanced capacity and intermodal operations, and passenger rail service.

Competitive Access For Maine Shippers

The State seeks assurance that future competitive access to New England and to Maine by both NS and CSX will be provided. The applicants propose to divide up the CONRAIL lines in New England by replacing CONRAIL with CSX. Such an arrangement would confer upon CSX the singular ability to control rates and service. CSX would not be constrained from penalizing shortlines and shippers which might try to reach NS as an alternative to CSX. We, therefore, recommend some guarantees that NS be allowed to compete on equal terms with CSX throughout New England and into Maine.

Maine companies produce a vast quantity of forest products that are shipped both to national and international markets. Large industrial end-users purchase Maine paper for a variety of reasons, including favorable quality and delivered cost. Direct rail system connections to both CSX and NS will provide opportunities for Maine shippers to select the most beneficial rail movements by creating effective and competitive rail routing and rates.

Conversely, should the competitive transportation market be curtailed after CONRAIL is acquired by CSX and NS, the delivered cost of Maine paper could be influenced negatively, putting access

to Middle Atlantic and southern markets at a competitive disadvantage. No one railroad or other transportation company should have the power to harm an entire market sector. The proposed break-up of CONRAIL threatens to increase transportation rates for Maine shippers who are the freight generators.

One recommendation to improve this situation would be to consider granting NS trackage rights between Albany, New York and Worcester, Massachusetts. This would be a natural extension of NS operations beyond Albany and has the potential to cure the competitive imbalance to a large extent. Common access through a neutral carrier would be adequate. NS already has made efforts to provide this competition east of the Hudson River through negotiations with Canadian Pacific ("CP") and Guilford Transportation Industries ("Guilford"). It is possible that NS efforts with CP/Guilford will be successful; however at the time, the results are unknown.

Given this situation, if the Surface Transportation Board approves the proposed acquisition, the Board should consider imposing a condition that competitive access issues in New England be reviewed periodically. Retaining jurisdiction would allow the Board to impose additional relief if warranted. Such relief might require the creation of additional shared asset areas or the imposition of new trackage rights.



Acquisition of CONRAIL by NS and CSX cannot ultimately prove beneficial to the State of Maine unless competitive access by the two Class I carriers is provided.

Access to Markets, Enhanced Capacity, Passenger Rail

The competitive system proposed herein will provide the State of Maine's shipper community with better access to southern markets which historically have been difficult to access, given the time-consuming and indirect rail connections now existing between Maine and those markets. We also believe that our proposed system will enhance rail capacity and result in an improved intermodal situation in the State of Maine.

In the area of compatibility of passenger and freight operations, we believe that real cooperative efforts can lead to enhanced services of both freight and passenger operations.

Like the other New England States, the State of Maine asks the Board to assure that if the acquisition by CSX and NS is approved, conditions are imposed which do the following: allow a means for attaining on-time performance for passenger trains; create a process to address the initiation of new or special services; establish standard and reasonable formulas for variable and fully allocated costs; create liability standards; and establish a means of allowing higher passenger train speeds.

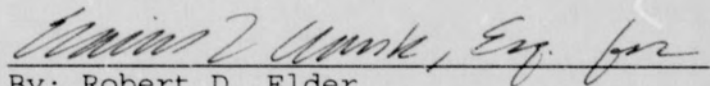
costs; create liability standards; and establish a means of allowing higher passenger train speeds.

The proposed acquisition of CONRAIL by CSX and NS is an example of private economic activity which has broad, far reaching, and historic public impacts. Resolution of all four of the issues raised in this filing is essential to the operation of an integrated transportation system in the State of Maine.

If the proposed acquisition is approved, we ask the Board to impose the conditions set forth in this filing to assure that its effects will be beneficial, rather than harmful, to the State of Maine.

Respectfully Submitted,

STATE OF MAINE  
MAINE DEPARTMENT OF TRANSPORTATION



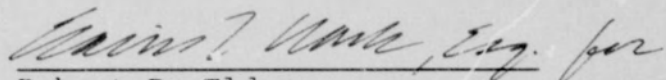
By: Robert D. Elder

Its: Director of Freight Transportation

Dated: October 20, 1997

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the "Comments, Protest, and Request for Conditions" is being served by mailing copies on October 20, 1997 by first class mail, postage prepaid, to the Parties of Record listed on the service list compiled by the Board and included in Decision 21 dated August 19, 1997 as subsequently modified, and on Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.

  
Robert D. Elder

Dated: October 20, 1997

RDE/el.cm

CONRAIL

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## Metro-North Railroad

### AIRBORNE EXPRESS

October 20, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W. (Room 700)  
Washington, DC 20423-0001

Re: Finance Docket No. 33388--CSX Corp./Norfolk Southern Corp. -- Control and Operating Leases/Agreements -- Conrail.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and 25 copies of the Metro-North Commuter Railroad Company's Comments and Request for Conditions (MNCR-2), dated October 20, 1997. A computer diskette containing the text of these filings in Word Perfect 5.1 format which is convertible into Word Perfect 7.0 also is enclosed.

Please note that we have not enclosed a filing fee. The reason is that your regulations at 49 C.F.R. § 1002.2 do not appear to require a fee for the filing of comments and a request for conditions. In any event, Metro-North is an instrumentality of New York State Government, having been created pursuant to § 1266 of the New York Public Authorities Law and performing an essential governmental function in accordance with § 1264(2) of said law.

Copies of MNCR-2 have been served upon all parties of record in this proceeding either by Airborne Express, postage-prepaid, or by First Class Mail, postage-prepaid, as indicated on the attached Certificate of Service.

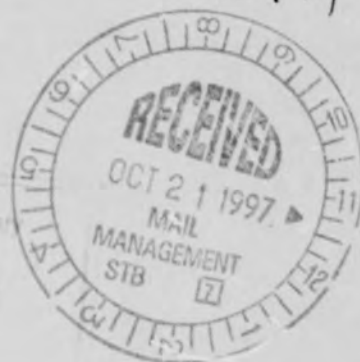
If you have any questions concerning this filing, please feel free to contact me at (212) 340-2027. Thank you for your courtesy in this matter.

Sincerely yours,

Walter E. Zullig, Jr.  
Special Counsel

Attorney for Metro-North Commuter Railroad Company

cc: Parties on Certificate of Service





ORIGINAL

18277

BEFORE THE  
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

METRO-NORTH COMMUTER RAILROAD COMPANY'S  
COMMENTS AND REQUEST FOR CONDITIONS



Richard K. Bernard,  
General Counsel

Walter E. Zullig, Jr.  
Special Counsel  
Metro-North Commuter Railroad  
Company  
347 Madison Avenue  
New York, New York 10017  
(212) 340-2027

Attorneys for:

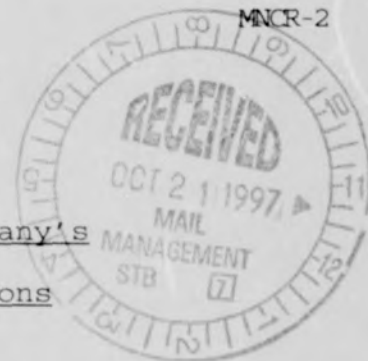
METRO-NORTH COMMUTER RAILROAD COMPANY

Dated: October 20, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

Metro-North Commuter Railroad Company's  
Comments and Request for Conditions



Preliminary Statement

Pursuant to the Board's Decision No. 12, Metro-North Commuter Railroad Company ("MNCR") hereby submits its comments and requests that the Board impose certain conditions in any decision authorizing approval of the proposed transaction covered by the subject proceeding.<sup>1</sup>

MNCR is a public benefit corporation of the State of New York created pursuant to Section 1266(5) of the New York State Public Authorities Law. MNCR is a subsidiary public benefit corporation of the Metropolitan Transportation Authority ("MTA"), an entity charged with broad responsibility for transportation services in the City of New York and seven suburban counties in the New York

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<sup>1</sup>MNCR did not file a description of a responsive application by August 22, 1997 for several reasons. First, under MNCR's interpretation of the Board's rules, a description of comments or a request for conditions did not have to be filed by that date. Second, the relief requested is neither inclusion nor new trackage rights; thus a responsive application would not be required. Third, Metro-North had been discussing acquisition of the subject railroad line with NS officials and did not learn until well after that date that NS does not intend to sell the line to us. In the event the Board takes a different view regarding the applicability of the August 22, 1997 filing requirement, MNCR respectfully requests that the requirement be waived.

Metropolitan Area. See New York Public Authorities Law Sections 1260-1278.

MNCR operates approximately 670 passenger trains each weekday on its Harlem, Hudson, and New Haven Lines which radiate out of Grand Central Terminal in New York City. MNCR also is responsible for commuter passenger service on the Hoboken-Port Jervis Line which is on the west side of the Hudson River and serves Orange and Rockland Counties, two of the counties included within the MTA's district of responsibility. Service on the Port Jervis Line is operated by NJ Transit Rail Operations, Inc. ("NJTRO"), under contract with Metro-North. The first 31.3 miles of the operation (between Hoboken and a Division Post west of Suffern) is conducted over trackage owned by NJTRO. The remaining 66.2 miles, which are the subject of this request for condition, is conducted over a line presently owned by Consolidated Rail Corporation.

The application seeks authorization for the acquisition by CSX Corporation and CSX Transportation, Inc. ("CSX") on the one hand, and Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS") on the other, of control of Conrail, Inc. and division of the assets of Consolidated Rail Corporation<sup>2</sup> into certain assets to be leased or sold to them as well as certain assets which will continue to be owned and operated by Conrail.

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<sup>2</sup>Conrail, Inc. and Consolidated Rail Corporation are hereinafter collectively referred to as "Conrail".

The Board's Decision No. 12 states, at page 5 [Item (7)(b)] that the existing Conrail line between Suffern and Port Jervis, NY, is proposed to be allocated to PRR, whose assets are to be operated by NS.

POINT I

THE BOARD SHOULD REQUIRE CONVEYANCE OF THE  
SUFFERN-PORT JERVIS LINE TO MNCR

MNCR respectfully requests that as a condition of its approval of the subject transaction, the Board impose the following requirement:

- Conrail, NS or PRR, as appropriate, shall convey title to the line of railroad between the Division Post at Suffern, NY (M.P. 31.3) and CP Sparrow (M.P. 89.9) at Port Jervis, NY to MNCR, subject to a reservation of trackage rights in favor of NS or PRR (as appropriate). The consideration for this conveyance shall be the price MNCR and Conrail tentatively agreed upon, subject to Board arbitration or some similar process to fix any other reasonable terms in the event of a failure to agree.

Background

Since January 1, 1983 NJTRO has operated commuter railroad

passenger service between Hoboken, NJ, and Port Jervis, NY, under contract with MNCR. This service is operated as an extension of NJTRO's commuter service operated on the trackage it owns between Hoboken and Suffern, NY. Publicly funded commuter service has been operated over this line since 1973, when Metropolitan Transportation Authority, MNCR's parent body, first entered into a service agreement with the Erie Lackawanna Railway Company covering this line. As indicated in the accompanying Verified Statement of Donald N. Nelson, during the ensuing years passenger service gradually has been expanded while the freight operations on the line gradually have declined. Moreover, as indicated in the accompanying Verified Statement of Howard Permut, MNCR and NJTRO recently entered into a long term contract which will provide for substantial capital investment on the part of MNCR to improve the line and the operation of additional passenger train service. NJTRO presently is constructing an interchange station known as Secaucus Transfer which will enable passengers from Port Jervis Line trains to transfer to NJTRO's Northeast Corridor trains to reach Pennsylvania Station in New York City. (Presently, the line terminates in Hoboken, NJ, and commuters to New York City must use the rail lines of the Port Authority Trans Hudson Corporation [PATH] in order to reach their destinations.) In his Verified Statement, Mr. Permut points out that partly because of the opening of this facility in 2002, by the year 2020 Port Jervis Line ridership is expected to increase by 173% compared to 1996 levels. During this same period, MNCR plans to increase the number of



passenger trains operated from 99 to 193 per week, an increase of 95%.

Metro-North's trains have been operated over Conrail's line since January 1, 1983, the date both NJTRO and Metro-North commenced operations. Since that time the commuter passenger trains and Conrail freight trains have co-existed on this line with relatively few problems. However, as indicated in the verified statements of Messrs. Nelson and Permut, additional train service will be added to this line effective October 27, 1997 and there are plans for still further expansions of passenger service. The information presented by NS strongly indicates that many more freight trains will be routed over this line if the instant application is granted. The high level of both passenger and freight trains will require very careful scheduling and dispatching so as to prevent the impairment of either service. Although owned by Conrail, the Suffern-Port Jervis Line is dispatched by NJTRO from its Operations Center in Hoboken, NJ. In the event NS were to assume control as contemplated, that dispatching function could be removed to a far-distant location staffed by personnel who are unfamiliar with the operating characteristics and the needs of commuter passenger trains. Even with the best of intentions, there would be a necessary "hand off" of each and every train at Suffern, the end of NJTRO's track ownership.<sup>3</sup> It would be far better, we

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<sup>3</sup>Regardless of the outcome of this request for conditions, NJTRO will continue to operate and dispatch the territory in its ownership between Suffern and the NJ/NY terminal area. Thus, NS

submit, to have the division between dispatching centers retained at its present location at CP Sparrow, M.P. 89.9, since that is just beyond the end of the commuter passenger service territory.

### Capital Improvements

The Operating Plan filed by NS indicates an intention to spend \$35 million to upgrade the Southern Tier Line between Buffalo and Port Jervis. It is silent as to the remaining 66 mile Conrail owned territory, used by MNCR's trains, between Port Jervis and Suffern.

As part of its responsibility for providing passenger service in this area, MNCR has reviewed the need for capital improvements between Suffern and Port Jervis. Particular concerns are the signal system which relies on an old trackside pole line and the fact that there are but two passing sidings in the 60 mile single track territory between CP Sterling and CP BC which can accommodate a present-day length freight train.<sup>4</sup> Although we assume NS also recognizes this problem, the Application<sup>5</sup> recites that the line has adequate capacity to accommodate the existing passenger and projected freight operations. MNCR is prepared to contribute its

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itself would have to interface with NJTRO's dispatchers at this point to traverse the section owned by that carrier.

<sup>4</sup>There is an additional 6060 foot siding at Campbell Hall.

<sup>5</sup>Volume 3B, page 304.

appropriate share of funding to put this line into proper condition for operation of a modern, reliable rail passenger service in conjunction with reasonable levels of freight service. As indicated in the verified statements of Messrs. Nelson and Permut, we estimate an expenditure of up to \$88.5 million is needed for right-of-way improvements. Upon completion of these improvements, the line would be in proper condition to handle some increase above the present level of freight operations. However, in the event that the level of freight traffic should substantially exceed that projected in the Operating Plan, a far greater investment in physical plant (primarily for passing sidings and double track) would be needed as would very close schedule coordination. Moreover, as Mr. Permut's statement indicates, an additional \$104 million will be needed to support future planned improvements relating to passenger service, such as rolling stock, stations and parking lots. As a public agency, Metro-North cannot justify the expenditure of this magnitude of public funds on a privately owned railroad line over which we may have little or no control and our rights to operate over that line may be terminated on one-year's notice.

#### Purchase Negotiations

As indicated in Mr. Nelson's verified statement, MNCR had for several months been negotiating with Conrail for the purchase of the subject line of railroad. These negotiations arose out of our need to control the property in order to justify the investment in

capital improvements as well as our concern regarding future access to the line since our trackage rights agreement with Conrail could be terminated on one-year's notice after 1997. A tentative understanding was reached with Conrail including a purchase price of \$9.8 million. Metro-North was ready, willing and able to formalize this transaction only to be told by Conrail, during the early part of March 1997, that the proposal had to be removed from the table because of the agreement recently reached by NS and CSX to control Conrail.

The Application correctly states that MNCR had been in negotiations with Conrail for acquisition of this line and recites the willingness of NS to continue these negotiations. Unfortunately, as indicated in Mr. Nelson's verified statement, during September 1997 we were told that NS intends to retain the line.

Metro-North stands ready to accept conveyance of this property "as is" based on the price which had been agreed upon with Conrail subject to a reservation of trackage rights in favor of NS for its freight operations. We assured NS that in the event of such conveyance dispatching will be retained at its present location in Hoboken, NJ, and both MNCR and NJ Transit will work with NS to accord proper priority to their expanded freight operations.

## POINT II

### IN THE ALTERNATIVE, THE BOARD SHOULD REQUIRE

#### A LONG TERM TRACKAGE RIGHTS AGREEMENT

MNCR believes that public interest considerations strongly support the conveyance of the subject line to MNCR since we are responsible for and obligated by New York State law to provide railroad passenger service in this territory. We are willing to accept the conveyance, make appropriate capital improvements and maintain the facilities to high standards. In the event, however, that the Board should not agree with our position in this regard, we respectfully request that it mandate a long term extension of the existing trackage rights agreement between MNCR and Conrail.

As pointed out above, MNCR presently uses Conrail's Suffern-Port Jervis line pursuant to terms and conditions of a 15 year trackage rights agreement. That agreement can be terminated upon one-year's notice after December 31, 1997. Thus, we have serious concern over the terms and conditions which might be imposed by NS for our future operations over this line. Moreover, we cannot justify the investment of substantial public funds in a line over which we have no long-term rights.

Clearly, our preferred remedy is a condition requiring that the line segment be conveyed to MNCR based upon the price

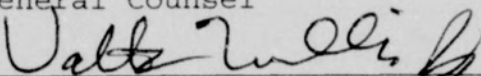


negotiated with Conrail. If, however, the Board does not deem it appropriate to impose such a condition, we respectfully request that NS be required to enter into a long term extension of the existing Conrail trackage rights agreement with MNCR. Depending upon the duration of such an extension or agreement, MNCR would be able to justify at least some investment of public funds in the rehabilitation of the line segment.

Dated: October 20, 1997

Respectfully submitted,

Richard K. Bernard,  
General Counsel

  
\_\_\_\_\_  
Walter E. Zullig Jr.,  
Special Counsel

METRO-NORTH COMMUTER RAILROAD CO.  
347 Madison Avenue  
New York, NY 10017  
212-340-2027

Attorneys for Metro-North  
Commuter Railroad Company

[62684/WEZ]

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 1997, a copy of the foregoing Comments and Request for Conditions of Metro-North Commuter Railroad Company (MNCR-2) Airborne Express overnight delivery, postage prepaid, upon:

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

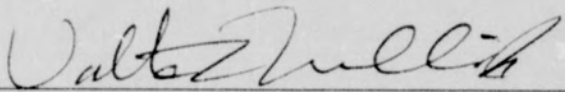
Dennis G. Lyons, Esq. -- (3 copies)  
Arnold & Porter  
555 12th Street, N.W.  
Washington, DC 20004-1202

Richard A. Allen, Esq. -- (3 copies)  
Zuckert, Scoutt & Rasenberger  
888 Seventh Street, N.W., Suite 600  
Washington, DC 20006-3939

Paul A. Cunningham, Esq. -- (3 copies)  
Harkins Cunningham  
1300 19th Street, N.W.  
Washington, DC 20036

Samuel M. Sipe, Jr. -- (3 copies)  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036-1795

and upon all other parties of record appearing on the Surface Transportation Board's official service list in this proceeding, by first class mail, postage prepaid.

  
\_\_\_\_\_  
Walter E. Zullig, Jr.

VERIFIED STATEMENT  
OF  
DONALD N. NELSON

My name is Donald N. Nelson, and my business address is 347 Madison Avenue, New York, New York 10017. I am President of Metro-North Commuter Railroad Company ("Metro-North"), a public benefit corporation subsidiary of the Metropolitan Transportation Authority of the State of New York ("MTA"). I have held my current position since April, 1991.

I began my railroad career in 1954 as a brakeman with the Great Northern Railway. After earning a Bachelor of Arts degree in Economics from the University of Washington in 1957, I left the Great Northern and joined the U.S. Marine Corps. My railroad career resumed in 1964 when I served as a brakeman on the Central Railroad Company of New Jersey, eventually rising through the ranks to Manager-Transportation, Superintendent and ultimately, General Manager. In 1974 I joined the United States Railway Association as a Regional Manager, and participated in the process that led to the creation of Consolidated Rail Corporation. In 1976 I became Conrail's General Superintendent of Transportation Planning, moving later to Regional Superintendent-Operation Improvement and, in 1979, General Manager of the Indiana Harbor Belt Railroad.

In 1981, I was appointed General Manager of Conrail's Eastern Region, a 10,700 route mile territory extending from Alexandria, VA to Selkirk and Buffalo, NY. I held this position until 1983, when I became Vice President-Operations for Metro-North. I was named

Executive Vice President in 1989, and President of Metro-North two years later.

Metro-North was incorporated by MTA in September, 1982 to assume operation of commuter rail service which previously had been provided by Conrail on the Harlem, Hudson and New Haven Lines, which radiate out from Grand Central Terminal in New York City. Metro-North was created in response to the mandate of the Northeast Rail Service Act of 1981 which relieved Conrail of all obligations to operate commuter service on January 1, 1983. We operate 670 weekday trains on our lines in New York and Connecticut. Metro-North also is responsible for the commuter service operated on the New York State sections of the Hoboken-Port Jervis Line which is the subject of my Statement.

Metro-North has funded commuter railroad passenger service between Hoboken, New Jersey, and Port Jervis, New York since January 1, 1983. This service is operated by NJ Transit Rail Operations, Inc. ("NJ Transit") under an operating agreement with Metro-North and is an extension of NJ Transit's commuter service beyond the limits of its territory at Suffern, NY. The trackage West of Suffern (approximately 66 miles) is owned by Consolidated Rail Corporation ("Conrail") and NJ Transit's operation of Metro-North's trains in this territory is pursuant to a trackage rights agreement between Metro-North and Conrail, also effective January 1, 1983.

Prior to 1983 commuter service on this line was operated by Erie Lackawanna Railway Company, and, later, by Conrail pursuant to service contracts with Metropolitan Transportation Authority, Metro-North's parent agency. These arrangements date to 1973.

The above-referenced trackage rights agreement covers Metro-North's use of Conrail trackage between Suffern and Port Jervis as well as Conrail's use of Metro-North's Hudson Line and portions of its Harlem and New Haven Lines on the east side of the Hudson River. That agreement became effective January 1, 1983 for an initial term of 15 years; thereafter it continues in force from year to year subject to termination by any party on one year's notice.

#### Nature and Extent of Passenger Operations

Over 24 years ago, when Metropolitan Transportation Authority entered into its first service contract with Erie Lackawanna for the financial support of the Hoboken-Port Jervis service, there were but two roundtrip daily passenger trains plus one eastbound train over a small portion of the line. There was little service on Saturdays and no service on Sundays. Passenger service on this line has gradually been increased with the result that presently there are seven eastbound and eight westbound revenue passenger trains on weekdays and three roundtrips on weekends. There also is an additional late Friday night westbound train and a Saturday morning eastbound train.



During 1996 Metro-North and NJ Transit renegotiated their operating agreement pursuant to which NJ Transit operates the trains and maintains the locomotive and coach equipment used in the territory between Suffern and Port Jervis. Although a new agreement was reached during October 1996, implementation was delayed for nearly a year pending legislative approval of Metro-North's new capital improvement program which was needed to fund some of the commitments under the new agreement.

The new agreement with NJ Transit was signed on October 6, 1997. One of its principal features is the provision of additional commuter passenger trains during both peak and off-peak hours. The first of these improvements, one additional roundtrip train during weekday peak periods, will be implemented on October 27, 1997.

The Suffern-Port Jervis Line serves Orange and Rockland Counties of New York State. As further elaborated in the Verified Statement of Howard Permut, Orange County is one of the fastest growing counties in the MTA District and there has been an ever increasing demand for expanded railroad passenger service partly as a result of that growth.

During the nearly 15 years that NJ Transit has operated the Metro-North service over the Suffern-Port Jervis Line pursuant to Metro-North's Trackage Rights Agreement with Conrail, both passenger and freight trains have coexisted with relatively few

problems. Over the years the number of passenger trains has gradually increased while the level of freight operations has decreased.

#### Impact of the Application

The Application filed by CSX Transportation and Norfolk Southern contemplates that the Suffern-Port Jervis Line will be turned over to the Norfolk Southern for operation as part of its Southern Tier route from Buffalo, NY, to Northern New Jersey. The operating plan submitted by Norfolk Southern provides for the addition of four daily freight trains in each direction and we have been told that even more trains are contemplated. Unfortunately, it appears that at least some of the freight schedules have been developed without consideration of the existence of the passenger trains. For example, I understand that the preliminary schedules indicate an eastbound freight train leaving Port Jervis at 6:45 p.m. A westbound passenger train leaves Otisville (13.7 miles to the east) at that exact time enroute to Port Jervis and there is no location in this hilly, single track territory where they could pass. Moreover, any eastbound train scheduled at this time of day would encounter at least three and possibly four westbound passenger trains over the nearly 60 miles of single track line between Port Jervis (CP BC) and CP Sterling.

As I have stated, Metro-North's commuter passenger service between Suffern and Port Jervis is operated by NJ Transit and is

basically an extension of the commuter passenger service operated over NJ Transit's own rail line from Hoboken to Suffern. Suffern is located 30.5 miles from Hoboken; Port Jervis is 95.1 miles from Hoboken. Copies of the operating and public timetable pages showing the milages between stations are attached to my Statement as Exhibits A and B, respectively. The operating timetable references mileposts via the shorter, now-abandoned, Main Line; thus the actual distance between Hoboken and CP Sparrow is 97.5 miles, not the 89.9 miles shown in the operating timetable. NJ Transit dispatches the entire line between Hoboken-Suffern-Port Jervis. In addition to our other concerns, Metro-North fears that with the transfer of the Suffern-Port Jervis Line from Conrail to Norfolk Southern, NS may remove the dispatching of this territory to some remote location. In that situation NJ Transit would continue to dispatch its part of the line between Hoboken and Suffern and the trains would then have to be "handed over" to an NS dispatcher located many miles away. This simply is not conducive to the efficient and timely operation of a commuter passenger service. Thus, one of our priorities is that the dispatching continue to be performed by NJ Transit at its Hoboken office. In any event, NJ Transit's dispatchers will be handling the NS freight trains in the territory between Suffern and the Northern Jersey Terminal area, just as they presently control Conrail's trains over this segment.

### Capital Improvement Needs

At this point in time, the signal system and communication lines are in dire need of replacement. The wayside pole line is prone to failure during periods of rain and wind. The railroad is single track for a distance of almost 60 miles from CP Sterling to CP BC, just outside Port Jervis. Throughout the single track territory there are only two controlled sidings of sufficient length to accommodate a freight train of modern length. A third siding, at Campbell Hall, is only 6060 feet long.

Metro-North staff estimates that an investment of \$88.5 million is needed to bring the Suffern-Port Jervis Line into proper condition to provide a reasonable frequency of passenger service and accommodate the type of modern freight train operations being planned by Norfolk Southern. These improvements include:

- new signal system, including burial of the communication lines;
- track improvements, primarily installation of Continuous Welded Rail;
- undergrade bridge rehabilitation.

### Metro-North Purchase Proposal

For several months prior to the announcement of the joint NS/CSX proposal to control Conrail, Metro-North had been negotiating with Conrail for the purchase of the line between Suffern and Port Jervis. A tentative agreement had been reached on the principal terms including the purchase price of \$9.8 million. Metro-North personnel had conducted numerous inspections of the property and were making plans for maintenance programs and necessary capital improvements. During the early part of March 1997, before that transaction could be consummated, NS and CSX announced their agreement to control Conrail. At that point, Conrail immediately notified us that it could not proceed with the transaction.

Metro-North also has discussed purchase of the line with officials of Norfolk Southern. Based on discussions at several meetings, I was led to conclude that NS management was favorably considering our purchase proposal. However, during the early part of September 1997, I was told that NS Operating Department does not want to relinquish control of the line. Although there have been discussions since then, to my knowledge NS has not changed its position.

There are numerous reasons why it is essential that Metro-North own and control the railroad line between Suffern and Port



Jervis. First, Passenger service is, and is likely, to remain the paramount user of the line. Second, we should have title to the property in order to justify an investment of a substantial amount of public (state and possibly federal) funds in this railroad line. Third, if NS assumes ownership and control, dispatching could be performed at a remote location without proper coordination and consideration of the needs of the commuter passenger service. Most of the line is located in Orange County, New York, which is projected to be the fastest growing county in the MTA District over the next ten years. Both Orange and Rockland Counties are in need of improved public transportation service. The elected officials of those counties are demanding service improvements to reduce automobile traffic congestion in the New York metropolitan area. As a result of our lengthy negotiations of a new long term contract with NJ Transit we finally are in a position to be able to make significant improvements in the service to this part of the MTA District only to face the possible frustration of those efforts by the Norfolk Southern takeover.

Finally, the existing trackage rights agreement between Metro-North and Conrail can be terminated upon one year's notice. Conrail had offered to extend that agreement for at least five additional years and we understand that CSX has orally agreed to consent to such an extension. However, we have not yet heard from Norfolk Southern on this subject.

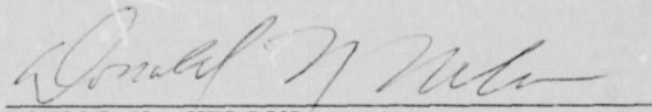
Verification

STATE OF NEW YORK )

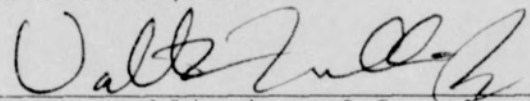
) ss:

COUNTY OF NEW YORK)

Donald N. Nelson, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

  
DONALD N. NELSON

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

  
Notary Public in and for the  
State of New York.

[62680/WEZ]

**WALTER E. ZULLIG, JR.**  
Notary Public, State of New York  
No. 60-9820426  
Qualified in Westchester County  
Commission Expires Sept. 30, 1998

Exhibit A

### **SOUTHERN TIER LINE**

The Southern Tier is owned by Consolidated Rail Corporation (Conrail). Passenger service is provided by Metro North. NJ TRANSIT Timetable and Bulletin Order is in effect for movements on the Southern Tier Line. Conrail will qualify its own employees on the physical characteristics of the Southern Tier Line. NJ TRANSIT will qualify its own employees on the physical characteristics.

<b>Mile Post</b>	<b>Stations</b>
31.3	DIVISION POST (CR)
31.9	HILLBURN (Hand-Crossover)
34.5*	CP STERLING (INT. Sloatsburg)
37.2*	TUXEDO
44.9*	CP HARRIMAN (INT, Siding, 15594 ft, Note 3)
47.8*	CP CENTRAL VALLEY (INT)
50.2*	WOODBURY VIADUCT
55.0*	MOODNA VIADUCT
55.5*	CORNWALL/SALISBURY MILLS
63.4*	CP HUDSON JCT (INT, Hudson Secondary, Siding, 6060 ft)
64.7*	CP HALL (INT)
65.6*	CAMPBELL HALL
66.5*	WEST HALL (Walden Sec.)
71.3D*	RED ONION (Note 2)
71.9D*	MIDDLETOWN (Note 2)
74.0D*	FOUR STORY JCT (Crawford Ind Trk, Note 2)
69.1*	CP HOWELLS (INT, Siding 24182 ft, Middletown Ind Trk Notes 1 and 2)
73.8*	OTISVILLE
75.0*	CP-OV (INT)
79.7*	EAST GRAHAM
86.7*	CP BC (INT)
87.5	PORT JERVIS
87.9	PA (Hand-Crossover)
89.9	CP SPARROW (R-Selkirk, CP)

#### **\*Single Track**

Note 1: Mile posts from CP Howells to CP Sparrow indicates former Main Line.

Note 2: "D" denotes duplicate mileposts between MP 69.0 through MP 76.6 inclusive.

Note 3: Special Instruction 1000.3 in effect

## SAMPLE FARES

Effective November 12, 1995

miles

	Between Hoboken and	One Way	Round-Trip Excursion	Ten Trip	Senior Citizen & Handicapped One-Way	Weekly	Monthly
30.5	Suffern	5.50	8.25	52.00	2.50	44.00	142.00
34.5 37.1	Sloatsburg Tuxedo	6.00	9.00	57.00	2.75	48.00	155.00
44.9	Harriman	6.75	10.25	64.00	3.25	49.00	157.00
55.4	Salisbury Mills- Cornwall	7.75	11.75	74.00	3.75	53.00	170.00
65.7	Campbell Hall	8.75	13.25	83.00	4.25	54.00	174.00
71.9	Middletown- Town of Wallkill	9.50	14.25	90.00	4.75	56.00	181.00
81.7	Otisville	10.25	15.50	97.00	5.00	60.00	195.00
95.1	Port Jervis	11.50	17.25	109.00	5.75	66.00	214.00

## CLASS OF TICKETS

**Weekly** - Valid from Saturday through Friday of the week for which issued. Weekly tickets may be purchased commencing Thursday of the preceding week for which ticket is sold.

**Monthly** - Valid for passage during calendar month for which issued. Monthly tickets available for sale 10 days in advance.

**Round-trip Excursion (RTX)** - Valid for three months from date of purchase. Greater off peak fares only, however, tickets from Metro-North Station will be honored on Train 54 arriving Hoboken 8:15 AM weekdays.

**Children** - Under 5 travel free when accompanied by parent or guardian. Children 5-17 travel at 1/2 fare.

VERIFIED STATEMENT

OF

HOWARD PERMUT

My name is Howard Permut, and my business address is 347 Madison Avenue, New York, New York 10017. I am Vice President of Planning and Development for Metro-North Commuter Railroad ("Metro-North"), a position I have held since 1991. From 1983 through 1991, I was Director of Planning and Marketing for Metro-North.

Metro-North has funded commuter railroad passenger service between Hoboken, New Jersey and Port Jervis, New York since January 1, 1983. This service is operated by NJ Transit Rail Operations, Inc. ("NJ Transit") under an operating agreement with Metro-North and is an extension of NJ Transit's commuter service beyond the limits of its territory at Suffern, NY.

Metro-North recently successfully renegotiated a new contract with NJ Transit that grants Metro-North explicit rights to significantly expand service in the future as well as commits Metro-North to fund certain capital improvements to meet projected growth in ridership (described in more detail below).

**Growth In Port Jervis Line Service and Ridership Since 1983**

The amount of service provided on the Port Jervis line and the number of customers making use of the line have both grown dramatically in the fourteen years since Metro-North started funding and improving the service (See Table 1 attached).



The overall number of trains operated weekly on the Port Jervis line has increased from 22 to 99 (corresponding to an increase of 350%, 1982 to present) while the number of customers using the line grew 69% between 1984 and 1996 (the last year for which complete data is available). Reflecting the fact that the Port Jervis line serves both commuters and discretionary ridership markets, Metro-North has increased service on the line during both peak and off-peak periods on weekdays as well as on weekends and holidays.

#### **Projected Growth in Port Jervis Line Service and Ridership: 1996 - 2020**

Orange County population is projected to be the fastest growing county in the MTA District over the next ten years. Furthermore, the County is experiencing significant demographic change by becoming more of a residential service area to the Manhattan and New York City job market. This trend will be accelerated by the completion of the Secaucus Transfer station in 2002. The opening of this new link in the transportation network will for the first time provide Port Jervis line customers commuter rail access to midtown Manhattan (at Penn Station). Port Jervis line customers (as well as customers using other NJ Transit Hoboken Division rail lines) destined for midtown Manhattan will be able to transfer to Northeast Corridor rail service at Secaucus thereby receiving a significantly faster and more reliable trip than they could previously get by transferring to PATH service at Hoboken. The reduced travel time and improved reliability for travel to Midtown is expected to produce significant gains in rail ridership, both by improving Metro-North's market share among Orange County residents currently making such trips to Midtown as well as by spurring overall higher growth in total travel to Midtown from the County in the years following the opening of the transfer station.

In total, this will result in significant increases in Port Jervis line ridership over the next 23 years. By the year 2020, total annual ridership on the Port Jervis line is projected to grow to 2.1 million (corresponding to a 173% increase from 1996 levels) and Metro-North plans to increase the number of trains operated from 99 to 203 per week (increase of 105%) during that same 23 year period.

### **Port Jervis Line Capital Expenditures**

In support of the major service improvements that have already been made or are planned in the near future, Metro-North has made major capital improvements on the Port Jervis line. Overall, Metro-North has expended \$101.1 million (1997 \$) in capital funds on the line since 1983 (See Table 3 for details). This includes Metro-North's contribution of \$53 million toward the construction of the Secaucus Transfer station now underway in the Meadowlands.

This money is in addition to the significant capital investment made by New York State DOT in the early 1980's to upgrade the portion of the Port Jervis line between Harriman and Middletown. This work included major track rehabilitation, signal improvements, and the construction of three new rail stations and rehabilitation of one major station with associated parking.

In addition, Metro-North estimates that an investment of \$93.5 million, of which \$88.5 million is for right-of-way improvements, would be needed to bring the Port Jervis Line to a proper condition to accommodate a reasonable level of passenger service and freight operation.

Finally, Metro-North has developed plans for \$104 million (1997 \$) worth of additional capital improvements on the Port Jervis line to support the railroad's long-term service expansion plans for the line through 2020.

TABLE 1  
PORT JERVIS LINE: HISTORICAL GROWTH IN SERVICE AND RIDERSHIP

HISTORICAL RIDERSHIP TRENDS: 1984 -1996			
	1984	1996	% CHANGE FROM 1984
ANNUAL RIDES	516,296	871,848	+ 69%

HISTORICAL TRENDS IN SERVICE PROVIDED: 1982 - 1997			
# TRAINS OPERATED	1982	Oct. 1997	% Change
WEEKDAY PEAK	4	10	+150%
WEEKDAY OFF-PEAK	0	7	NA
TOTAL WEEKDAY	4	17	+325%
WEEKEND	2	13	+550%
TOTAL WEEKLY	22	99*	+350%

\* Includes Friday only train

TABLE 2  
PORT JERVIS LINE: PROJECTED GROWTH IN SERVICE AND RIDERSHIP

PROJECTED RIDERSHIP TRENDS: 1996 - 2020		
	1996	2020
ANNUAL RIDES	871,848	2,121,700
% CHANGE FROM 1996	-	+173%
ANNUAL AVG. GROWTH RATE 1996 - 2020	-	+4.3%/YR.

LONG-TERM SERVICE PLAN: 1996 - 2020		
# TRAINS OPERATED	Oct. 1997	2020
WEEKDAY PEAK	10	16
WEEKDAY OFF-PEAK	7	17
TOTAL WEEKDAY	17	33
WEEKEND	13	37
TOTAL WEEKLY	99*	203*
% CHANGE FROM 1997	-	+105%

\* Includes Friday only trains

**TABLE 3****PORT JERVIS LINE****Capital Expenditures**

PROJECT	\$\$ 1997
<b>EXPENDED</b>	
Purchase 17 Coaches	\$23.0
6 Locomotives	9.6
Rebuild 1 Locomotive	1.3
Station Improvements	2.7
Parking Improvements	1.1
Secaucus Transfer (Des/Contr.)	56.3
Port Jervis Capacity Imp. Study	0.6
Port Jervis Yard Improvements	4.4
Misc. Improvements	2.0
Total Expended	\$101.1
<b>FUTURE - Immediate</b>	
Purchase 2 Locomotives	5.0
Signal Cable (58 Miles)	14.0
Electronic Signal System	33.4
Continuous Welded Rail (48.5 Miles)	29.1
Tie Replacement/Surfacing	12.0
Total Immediate	\$93.5
<b>FUTURE - 2020 Service Plan</b>	
40 Coaches	\$52.0
6 Locomotives	27.0
Station/Parking Improvements	15.0
Passing Sidings Improvements	10.0
Total Future - Service Plan	\$104.0
<b>TOTAL</b>	<b>\$298.6</b>

Note: This excludes the cost to maintain existing rolling stock and infrastructure in a state of good repair.

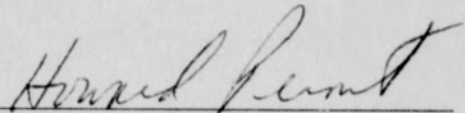
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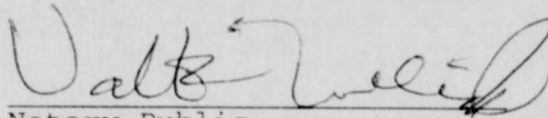
Verification

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

Howard Permut, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

  
HOWARD PERMUT

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

  
Notary Public

WALTER E. ZULLIG, JR.  
Notary Public, State of New York  
No. 60-9820426  
Qualified in Westchester County  
Commission Expires Sept. 30, 1998

STB

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STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0016

ANGUS S. KING, JR.  
GOVERNOR

JOHN G. MELROSE  
COMMISSIONER

October 20, 1997

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



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

Dear Secretary Williams:

Although the undersigned complied with Decision No. 21, dated August 19, 1997, by serving copies of all filings predating Decision No. 21 to each Party of Record named in Decision No. 21, a Certificate of Service was not filed with the Surface Transportation Board.

Accordingly, pursuant to Decision No. 21, we enclose an original and ten (10) copies of Certificate of Service evidencing that each Party of Record was timely served in accordance with the terms of that Decision.

Very truly yours,

*Robert D. Elder, Esq., for*

Robert D. Elder  
Director  
Office of Freight Transportation

RDE/cm  
Encs.



PRINTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 1997, a copy of all State of Maine Department of Transportation filings in STB Finance Docket No. 33388 made prior to receipt of Decision No. 21 was served on each Party of Record designated on the service list attached to Decision No. 21 by first-class, U.S. mail, postage prepaid.

*Robert D. Elker, Esq. for*

Robert D. Elker, Director  
Office of Freight Transportation  
State of Maine  
Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016  
Tel: (207) 287-2681

RDE/el:cm



STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION  
16 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0016

ANGUS S. KING, JR.  
GOVERNOR

JOHN G. MELROSE  
COMMISSIONER

October 20, 1997

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



**RE: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern Railway Company --  
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*Robert D. Elder, Esq. for*

Robert D. Elder, Director  
Office of Freight Transportation  
State of Maine  
Department of Transportation  
16 State House Station  
Augusta, Maine 04333-0016  
Tel: (207) 287-2681

RDE/el:cm

STB

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10-21-97

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TTD-3

**BEFORE THE SURFACE TRANSPORTATION BOARD**

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

**FINANCE DOCKET NO. 33388**



**COMMENTS OF THE  
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**



The Transportation Trades Department, AFL-CIO, (TTD) submits these comments on the control and operating leases/agreements application of the CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC) (referred to throughout as the Applicants).<sup>1</sup>

TTD consists of 29 unions representing millions of workers in the transportation industry, including the 13 unions that make up our Rail Labor Division.<sup>2</sup> As the umbrella organization for

<sup>1</sup>CSXC and CSXT will be referred to as CSX. NSC and NSR are referred to as NS. CRR and CRC are referred to as Conrail.

<sup>2</sup>A complete list of TTD's affiliates is attached at A-I. Specifically, the Rail Labor Division consists of the following unions: American Train Dispatchers Department; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers, SEIU; Sheet Metal Workers International Association; Transportation • Communications International Union; Transport Workers Union of America; and United Transportation Union.

transportation labor, TTD has a direct interest in the break-up of Conrail and the effects this transaction will have on workers, communities and businesses that depend on a safe, efficient and competitive rail industry.

At the outset, we note that various rail unions (either individually or as a group) have submitted comments with the Board on the particular problems that this transaction will have on their members.<sup>3</sup> We urge the Board to consider these comments as these unions offer a unique perspective and a level of expertise that will no doubt help the Board meet its statutory obligation to protect not only employees, but the overall public interest.

The plan submitted by the Applicants is itself unique and unprecedented in the U.S. rail history. Never before has a large, economically prosperous rail carrier been "partitioned" by its regional rivals. The fact is that neither CSX, NS, or Conrail have stated any compelling reason why this transaction needs to occur. Unlike the story presented to the Board in the Union Pacific/Southern Pacific (UP/SP) merger, none of these carriers can claim to be on the brink of bankruptcy and there is no competitive imperative that makes the dismemberment of Conrail necessary or inevitable.

While this transaction may make stockholders more wealthy or provide top executives with generous personal gains, the Board's role in reviewing this mammoth transaction is defined in statute. Specifically, the Board can only approve a merger or control of a Class I railroad (which obviously encompasses the break-up of Conrail) if the Board finds that "the transaction is consistent with the public interest." 49 U.S.C. § 11324(c). In making this determination the Board must

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<sup>3</sup>The United Transportation Union, while sharing the overall concerns about this transaction expressed herein, further detail their conditional opposition in its separate comments.

examine a number of factors including "the effects of the proposed transaction on the adequacy of transportation to the public" (49 U.S.C. § 11324(b)(1)), "the interest of rail carrier employees affected by the proposed transaction" (49 U.S.C. § 11324(b)(4)) and "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 clear that the transaction, as proposed by the Applicants, simply does not meet this standard. If the Board allows the Conrail dismemberment to proceed, close to 3,000 workers will lose their jobs, thousands more will be asked to move, collective bargaining agreements (CBAs) will be unilaterally broken, safety will be jeopardized and efficient, competitive rail service will be threatened.

The job loss projections and the CBA issues are clearly laid out in the operating plan. And we need only look at the recently completed UP/SP transaction to understand the impact on rail safety and service dependability when carriers engage in mega-mergers with little regard for anything other than the bottom line.<sup>4</sup> As the Board evaluates the facts of this transaction, it should become clear that the proposal submitted by the Applicants is not in the public interest and therefore cannot be accepted.<sup>5</sup>

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<sup>4</sup>It is significant that two months ago, the Department of Transportation announced that in preparation for the consideration of the Conrail break-up, the Federal Railroad Administration would conduct a comprehensive investigation of the safety issues involved in the proposed transaction. Secretary Rodney E. Slater stated that "we recognize the difficulty in successfully integrating railroads. In the pending merger, we want to assure that these railroads maintain the highest levels of safety." FRA 17-97 (August 21, 1997).

<sup>5</sup>Attached at A-II is a policy resolution unanimously adopted by TTD's Executive Committee that details the concerns that transportation labor has regarding the Conrail break-up.



**I. The proposed transaction harms employees by cutting jobs and forcing workers and their families to relocate.**

Even the Applicants admit that this transaction will harm many of the thousands of workers that have dedicated themselves to making these railroads highly profitable enterprises. The operating plan clearly states that net job loss will be 2,650<sup>6</sup> and thousands more will be required to move in order to keep their jobs. Even this projection is in all likelihood low. As we have seen in past mergers, the operating plan submitted by the applicants is not binding and nothing ensures that additional jobs may not be cut once the transaction is approved.

The labor impact picture is further clouded by the Applicants' assumption that a number of jobs will be created in part by traffic diversion from trucks and other railroads. There is of course no guarantee that these projections are anything but hyperbole and therefore should be dismissed by the Board as attempts by the Applicants to gloss over the true job impact of their transaction. Moreover, inherent in the Applicants' job gain projections is that working men and women employed by other railroads or in the motor carrier sector will be harmed by the Conrail break-up. Simply because the Applicants claim that they will be able to use their market powers to steal business from competitors, the Board should not be compelled to buy into the Applicants' grossly understated job impact analysis.

We would maintain that as the Board takes steps to protect the public interest, it must take into account the overall effect this will have on workers including the economic insecurity that will surely be inspired by the approval of this application. To examine this transaction only using Applicant-projected job cuts and jobs created diminishes the real impact of the Conrail break-up on working families and their communities.

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<sup>6</sup>Subsequent submissions by the Applicants indicate that this number will increase to 3,000. See supplemental labor impact statement filed July 7, 1997 (CSX-NS 26).

In this transaction, as in other rail mergers that this Board has recently considered, the Applicants attempt to further mask the negative impact that will befall workers by claiming that New York Dock and other worker protections will apply. This assurance is from an industry that regularly expends massive resources to utilize every loophole at their disposal to evade actually making these protective payments to affected or harmed employees. While these types of benefits were designed to make employees whole for a period of up to six years after the approval of a merger or similar transaction, recent decisions by this Board and its predecessor, the Interstate Commerce Commission (ICC), have made it extremely difficult for rank-and-file members to actually obtain these benefits if a railroad contests their eligibility as they regularly do. Based on the vast experience of rail unions in past mergers we know that simply because an employee loses his or her job as a result of the Conrail split-up does not automatically entitle that employee to a single dime under New York Dock.

First, an employee must prove to an arbitrator that his or her job was eliminated "as a result" of the sale and subsequent break-up of Conrail. Once the Board approves a merger, it is not uncommon for the carrier to subsequently announce wholesale operational changes resulting in additional job cuts which the carrier will maintain are not related to the merger and therefore not eligible for New York Dock. Even if an employee gets a favorable award from an arbitrator, this decision can be appealed to the Board for reversal and, if affirmed, appealed further to the Federal Courts. Needless to say, an unemployed worker needs compensation when he or she first loses a job — not three or four years later.

The carriers can also get around New York Dock by offering the employee "comparable employment" virtually anywhere in the railroad system and denying benefits if the employee refuses the offer. This course of action forces an employee, who is unable to move, into an extremely difficult position. In fact, in this transaction the carriers are asking the Board to approve expansive

seniority districts making this predicament even more troubling. This problem with New York Dock and the other labor protections touted by the Applicants underscores the point that the Board cannot, as the Applicants would prefer, ignore the impact this deal will have on workers by simply promising that appropriate protective conditions will apply.

The long and drawn out process of New York Dock stands in stark contrast to the swift and generous payments that the Applicants have carved out for top executives. More than \$1 billion, or approximately 10 percent of the value of this transaction, is reserved to pay-off outgoing senior Conrail management including David LeVan who stands to receive a \$22 million golden parachute.<sup>7</sup> We would maintain that rank-and-file workers deserve a similar level of certainty and security as they confront the prospect of losing their jobs and the daunting task of supporting their families.

**II. The proposed transaction improperly seeks to abrogate existing collective bargaining agreements which should not be sanctioned by this Board.**

Even the rosiest New York Dock promises will not mitigate one of the most troubling aspects of the Conrail break-up: the intent of the Applicants to use approval of the transaction as a tool to cancel out and unilaterally change collective bargaining agreements made between the individual carriers and their unions. The Applicants claim that the changes they are seeking are "necessary to provide improved service to shippers and achieve greater efficiency and utilization of capital in rail operations." Vol. 3B of 8 at 498-499. The plan further emphasizes that the "changes in collective bargaining agreements and personnel assignments ... will be essential to allow CSX and NS to achieve the efficiencies envisioned in their respective Operating Plans." *Id.* at 499.

The terms and conditions of employment that the Applicants are seeking to change are currently established in contracts that the carriers have voluntarily agreed to follow. Despite the

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<sup>7</sup>Attached at A-III is an article published in the New York Times that further describes this sweetheart deal for Conrail senior executives.

claims offered by the carriers, they have not offered any compelling or credible reason why the far reaching alterations to privately negotiated union contracts they are seeking are necessary for the completion of this transaction. For example, to defend their request that their labor contracts must be consolidated, the carriers have argued that a single pay system established in one contract will be less expensive to administer. Not only have the Applicants failed to offer any studies or other evidence to back-up this claim, we simply do not believe that this is justification for discarding one collective bargaining agreement in favor of another.

We also object to the intent of the carriers to "cherry-pick" the agreements that they find most favorable. If the Applicants find it necessary to change collective bargaining agreements to obtain a more advantageous labor situation, then they should sit down with their workers and negotiate these changes. What they should not be permitted to do is use a governmental body to make these changes based upon a tortured interpretation of the law. It must be emphasized that the abrogation of collective bargaining agreements directly harms employees. The Board cannot approve the operating plan, with its total disregard for the existing labor contracts, and maintain that it is protecting the interest of employees or otherwise preserving the public interest.

**III. Based on both the lessons learned from past mergers and the specific provisions contained in the operating plan, the proposed transaction raises a number of questions related to the safety of workers and the public which have not been adequately addressed by the Applicants.**

In evaluating the effect this transaction will have on safety, the Board must not only examine the operating plan, but it also must consider the impact that past mergers have had on the ability of the carriers involved to maintain a safe transportation system. A little over a year ago, the Board approved the UP/SP merger despite vocal concerns expressed by labor, shippers and affected communities. Unfortunately, many of these concerns have become a reality as we have witnessed



unprecedented safety and service problems that are confronting these railroads as they attempt to merge their operations.<sup>8</sup>

Earlier this year, Union Pacific suffered a string of major accidents that resulted in the death of several employees and called into question the ability of the carrier to conduct a consistently safe operation. In response to these concerns, the Federal Railroad Administration (FRA) instituted an intensive review of UP's operations that required the work of 80 inspectors examining almost every facet of the railroad. The FRA determined that many of the safety problems confronting the railroad could be directly traced to conditions forced on employees. FRA Administrator Jolene Molitoris stated that there was "widespread safety deficiencies in the area of training, dispatching, and employee fatigue..." FRA 19-97 (September 10, 1997). Specifically, the report submitted to UP cited the following safety areas where the railroad has been deficient:

- **Dispatching fatigue.** FRA inspectors found evidence of heavy dispatcher workload and stress.

- **Operation compliance.** The FRA found evidence that there is no mandatory process in place for advising or educating employees on operating rules, system-wide instructions and local operating restrictions.

- **Operating with defective equipment.** The FRA found examples of UP train crews being ordered to move trains that had defective equipment, despite protests to supervisors.

- **Crew management.** The FRA found that UP crews are working longer hours and getting less off-duty time than in the past. There was some evidence of crews being left on trains after their hours of service had expired.

- **Harassment and intimidation.** The FRA found widespread evidence of employees being harassed and intimidated to cover unfamiliar territory, to not report defects and to not report injuries. Id. (emphasis added).

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<sup>8</sup>Attached at A-IVa-m is a sample of articles chronicling the safety and service problems that have befallen UP.



It must be noted that as a condition of the merger, the Board mandated that "UP/SP shall comply with all applicable FRA rules and regulations in conducting operations ..." Union Pacific Corp., et al. — Control and Merger — Southern Pacific Transp. Co., et al., Finance Docket No. 32760, (Aug. 6, 1996), Appendix G, item 13. This has obviously not occurred. The Department of Transportation recognized this fact when it recently commented to this Board that "the safety of operations on the combined UPSP and on the newly extended BNSF is of paramount concern. Troubling incidents have occurred that warrant an investigation in order to determine the full extent of problems associated with the merger or its conditions." Comments of Dept. of Transportation (DOT-1), Union Pacific Corp. et al. — Southern Pacific Transp. Co. et al. (Oversight), Finance Docket No. 32760 (Sub-No. 21). It is clear, that in the interest of proceeding with their transaction, UP disregarded certain safety precautions and pushed a depleted workforce to operate a railroad in an unsafe and unacceptable manner.

CSX, NS and Conrail have already attempted to separate their transaction from the problems UP is experiencing and have maintained that they will adopt a "go slow" approach that will ensure that their merger will be different. Rip Watson, Buyers Vow Patience in Absorbing Conrail, J. Commerce, Sept. 16, 1997. While these assurances sound promising, it must be noted that before the problems of UP became public, NS and CSX had planned to move aggressively to complete the transaction once it was approved by the Board. Id. In addition, many of the same promises of efficient transportation with less employees made by UP and SP are also being put forth by the Applicants in this proposed transaction. In fact, CSX is already experiencing safety problems which will further hamper their ability to safely complete the large-scale break-up of Conrail that they are asking this Board to bless.

In evaluating the operations of CSX, the FRA released a report just last week that detailed a number of safety shortfalls that confront CSX. FRA 25-97 (Oct. 16, 1997). The report found that there needed to be more comprehensive employee training, a policy to eliminate a culture of harassment and intimidation, and a need to improve dispatcher communications. *Id.* These problems, combined with inherent safety challenges a mammoth merger presents, are especially troubling given the fact that together the three Applicants transport a large volume of hazardous materials in some of the most heavily populated communities in the nation.

The Board must ensure that the problems that are facing UP do not occur in this transaction. We would note that the operating plan submitted by the Applicants raises a number of operational concerns that may affect safety. Seniority districts will be greatly increased forcing employees to work in unfamiliar territories, maintenance workers will be cut, change in inspection points may make effective train inspections more difficult, and overall employment levels are to be reduced leaving the remaining workforce to do more with less.<sup>9</sup> Maintaining a safe work environment is one of the most important priorities for rail workers and their unions. The interests of employees cannot be protected if they are forced to work in an environment where their employers, in an effort to quickly realize the financial benefits of a merger, jeopardize their safety.

**IV. The Board must ensure that the proposed transaction will not jeopardize efficient, reliable and competitive rail transportation.**

UP is also experiencing tremendous service problems that must be examined to ensure that a similar situation does not arise as a result of this transaction. One shipper, responding to the chronic service problems that are plaguing UP, recently stated, "It's a total disaster. No one could ever imagine it would be this bad." Daniel Machalaba and Anna Wilde Mathews, Union Pacific Tie-

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<sup>9</sup>TTD supports the comments submitted by individual rail unions detailing the safety problems created by the operating plan as they relate to their individual crafts.

ups Reach Across Economy, Wall St. J., Oct. 8, 1997. The service problems are affecting virtually every sector of the economy. Grain is beginning to pile up across the farm belt, new automobiles have to wait for delivery, and utility companies along the Gulf Coast are running low on coal and are being forced to turn to more expensive fuels.<sup>10</sup> As shippers who are dependent on efficient rail service confront delays, lost shipments and irregular deliveries, it is often their workers who see their economic security threatened. For example, the Chemical Manufacturers Association has reported that its member companies are having to shut down plants and temporarily lay-off workers since many facilities cannot receive raw materials or send out finished product.

Again, the Applicants are making assurances that these problems will not be re-created. It is interesting to note that UP made the same assurances in its campaign to acquire SP when criticism arose of its handling of a past transaction. UP stated in its operating plan "this is not the most comfortable time for UP to talk about service quality. UP has a strong reputation for high-quality service, but the reliability of its service declined in recent months. We may have been too aggressive in the way we absorbed CNW — a lesson we will remember in connection with a UP/SP merger." Vol. 3, page 61. As this statement and the recent events clearly indicate, rail carriers, in a desire to make the latest, biggest deal, will downplay the negative possibilities. It is therefore up to this Board to see beyond the promises and the projections and to ensure that efficient and reliable rail service is preserved in the Eastern half of the United States.

The Board must also ensure that real competitive rail service is maintained. While the carriers involved in the transaction have continually claimed that this deal actually increases competition, it has been our experience that railroads do not engage in a long and expensive bidding

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<sup>10</sup>Attached at A-IVa-m are a number of articles on the safety and service problems confronting UP.

war and spend \$10 billion to create a competitive environment. In any event, it is clearly up to the Board, and not left to the carriers, to determine whether competition will be preserved.

### **Conclusion**

The Board has a statutory duty to review this transaction and to grant its approval only if it serves the public interest. In making this determination, the Board has the advantage of observing the problems that have befallen UP and the general state of rail transportation in this country as carriers have embarked on an aggressive drive to consolidate their operations. The result of this policy is clearly evident: thousands of rail employees have lost their jobs, families have been forced to move, safety is being jeopardized, and efficient and competitive rail service is being threatened. The operating plan submitted by the carriers in this transaction offers us little hope that this trend will be broken. It is therefore up to the Board, as it considers the break-up of Conrail, to ensure that rail transportation in the Eastern part of the nation will operate in a manner that will serve the overall public interest. Clearly, the Applicants' plan to break-up Conrail, as submitted, is contrary to the public interest and therefore cannot be approved by this Board.

Respectfully Submitted,



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Transportation Trades Department, AFL-CIO  
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202-628-9262

October 21, 1997

CERTIFICATE OF SERVICE

I, Edward Wytkind, hereby certify that, on this the 21<sup>st</sup> day of October 1997, I have served, by first-class mail, postage prepaid, or by more expedient means, a copy of the foregoing document to all parties of record in STB Finance Docket No. 33388.

A handwritten signature in black ink, appearing to be 'E. Wytkind', written in a cursive style.

Edward Wytkind



# TTD AFFILIATES

*The following labor organizations are members of and represented by the TTD:*

*Air Line Pilots Association  
Amalgamated Transit Union  
American Federation of State, County and Municipal Employees  
American Federation of Teachers  
Association of Flight Attendants  
American Train Dispatchers Department  
Brotherhood of Locomotive Engineers  
Brotherhood of Maintenance of Way Employees  
Brotherhood of Railroad Signalmen  
Communications Workers of America  
Hotel Employees and Restaurant Employees Union  
International Association of Fire Fighters  
International Association of Machinists and Aerospace Workers  
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers  
International Brotherhood of Electrical Workers  
International Brotherhood of Teamsters  
International Longshoremen's and Warehousemen's Union  
International Union of Operating Engineers  
Marine Engineers Beneficial Association  
Professional Airways Systems Specialists  
Retail, Wholesale and Department Store Union  
Service Employees International Union  
Sheet Metal Workers International Association  
Transportation • Communications International Union  
Transport Workers Union of America  
United Brotherhood of Carpenters and Joiners of America  
United Mine Workers of America  
United Steelworkers of America  
United Transportation Union*



## DERAIL THE CARVE-UP OF CONRAIL

Almost immediately after the Union Pacific/Southern Pacific rail merger was completed, attention turned to the prospects of rail consolidation in the Eastern-half of the United States as CSX and Norfolk Southern (NS) first sought to separately acquire and then agreed to split-up Conrail. The Surface Transportation Board (STB) has a statutory obligation to protect the public interest in evaluating this application and it is clear that the operating plans, as submitted by the carriers, will have a dramatic and negative impact on workers, shippers and communities throughout the carriers' vast rail networks.

One of the most disturbing aspects of the application filed by CSX and NS is their intentions to abrogate and unilaterally change the collective bargaining agreements they have made with their employees. The carriers' attempt to defend this insidious practice by arguing that the benefits of the Conrail break-up will not be realized if the expanded CSX and NS systems are required to operate pursuant to existing labor agreements. Despite this claim, we call on the STB to resist approving a transaction that will make it, as a governmental agency, a party to breaking existing private contracts governing workplace issues like job protections, seniority districts, work rules and personnel assignments. The fact is that the CSX and NS have failed to demonstrate any compelling need why the drastic changes they are seeking to their labor-management agreements should be imposed by the STB. If the carriers truly believe that these wide-ranging alterations are a prerequisite to a successful transaction, then they should negotiate these changes with their workers on a level playing field through longstanding collective bargaining procedures under the Railway Labor Act.

Not only does CSX/NS want to walk away from the responsibilities under their labor contracts, but the carriers also plan to cut over 3,400 jobs and transfer another 2,300 workers and their families. While the carriers maintain that the net job loss will be only 2,650 since approximately 1,100 jobs will be created, these projections are based on expectations of traffic diversion from trucks and other railroads that would presumably result in comparable job loss. It must also be remembered that the number of jobs cut is only a three-year estimate and nothing binds CSX and NS to these projections. In an effort to win STB approval and to minimize the negative impacts of the Conrail break-up, there is obviously great incentive to down-play the long-term affects of this transaction on workers and their families.

The carriers also maintain that workers who lose their jobs will be entitled to generous New York Dock payments, but experience shows that CSX and NS will fight the payment of these benefits every step of the way. For example, if a carrier offers a worker a transfer assignment thousands of miles away, but the worker, because of a family situation, cannot accept the assignment, the employee will lose all rights to these so-called "generous" benefits. The fact is that the railroad industry has developed and utilized every loop-hole in these supposedly mandatory worker protections, greatly diminishing their value to displaced rail workers. We need only look at past mergers to see that the railroads will use every means at their disposal to evade labor protection obligations to their affected workers. Moreover, while the carriers will use every means to avoid actually paying protective benefits to employees, their own calculations show that the savings achieved through job cuts -- just within the first several years of the transaction -- will far exceed their entire employee protection obligations within several years.

Besides direct attacks on workers, the break-up of Conrail also raises questions related to competition, safety and environmental concerns that have not been adequately addressed by the carriers. Because railroads fall under different anti-trust rules, for example, they typically evade the type of scrutiny most other corporations deal with when they seek to merge. The same rules railroads have inappropriately used to break private collective bargaining agreements are also manipulated to get around other important federal requirements such as environmental enforcement. Moreover, while their actions have dramatic effects on cities and states the railroads are able to cast aside local/state government regulations and laws.

One needs to look no further than to the safety and service debacle the nation is witnessing in the aftermath of STB's approval last year of the Union Pacific/Southern Pacific (UP/SP) merger. Last month, responding to 12 deaths in eight months, the Federal Railroad Administration declared a "fundamental breakdown in [UP/SP's] ability to effectively implement basic railroad operating procedures and practices essential to safe railroad operations" after discovering findings of "widespread safety deficiencies in the areas of training, dispatching and employee fatigue..." Moreover, stories are spinning out across the West of lost and delayed freight shipments as the two railroads deal with equipment, capacity, crew shortage, safety and other problems. The STB, which has called an October 27 hearing to review these problems, has an opportunity to avoid these same merger-inspired disasters in the East as it reviews the Conrail transaction.

Finally, while the top executives and stockholders of the three carriers stand to gain millions, we see little evidence that transaction benefits claimed by the applicants will actually trickle down to shippers, employees and communities. In fact, quite the contrary: we see a proposed transaction that will abrogate labor contracts, cut jobs, severely erode service quality and safety conditions, force mass dislocation on workers and their families, and leave the nation with a multi-billion dollar railroad industry controlled by monopolists. This is not in the public interest — it is just simple greed.

#### **THEREFORE, BE IT RESOLVED:**

- That TTD will articulate rail labor's objections to the Conrail break-up, as proposed by CSX and NS to the STB, and will demand that the Board take the necessary steps to protect workers' jobs and rights, and preserve the overall public interest;
- That TTD will urge the STB to seriously consider the UP/SP debacle as a major factor in the evaluation of and eventual ruling on the merits of the Conrail break-up including its impact on safety and service;
- That transportation labor will call on the Administration, Members of Congress, the Department of Transportation, the Department of Labor and other government agencies to become fully involved in safeguarding workers, communities and businesses from the severe consequences of the Conrail break-up; and

■ That TTD will continue to coordinate a grassroots effort to educate and mobilize union members, shippers and communities about the negative implications of the plan to break-up Conrail so that these groups can voice their concerns and opposition to the STB, Members of Congress, and state and local public officials.

**Resolution No. 4-97(o)**

Submitted by: BRS

(Adopted October 7, 1997)

**FOR MORE INFORMATION CALL: 202•628•9262**



## Conrail Chairman Could Receive \$22 Million Severance Package

By CHARLES V. BAGLI

David M. LeVan, chairman of Conrail, will not get to lead one of the largest railroads in the country as he once planned. But he will get a \$22 million golden parachute if Federal regulators approve a proposed deal to split Conrail between the CSX Corporation and the Norfolk Southern Corporation, a person close to the negotiations said yesterday.

In what appears to be one of the more generous severance packages for outgoing management in the rapidly shrinking railroad industry, Mr. LeVan is to receive more than 40 times the \$539,278 in salary and bonuses he received at Conrail in 1995. Top managers who are dismissed are also to receive hefty benefits.

A spokesman for Conrail declined to answer questions about the severance packages.

"From a financial standpoint, the consolation prize for Mr. LeVan is certainly enough to keep the wolf out of the kitchen and perhaps out of the living room," said John Spychalski, chairman of the department of business logistics at Pennsylvania State University and a former consultant

*A railroad merger is expected to provide generous payouts for employees.*

to Conrail and other railroads.

In October, Conrail and CSX announced a "merger of equals" that would have dominated rail freight east of the Mississippi. Eventually, Mr. LeVan was to become chairman of the combined company. But the rival Norfolk Southern also wanted Conrail and blocked the deal in a bitter four-month battle. To break the impasse, Conrail agreed last Friday to sell the company for \$10.3 billion to CSX, which is negotiating to split the line with Norfolk Southern.

CSX declined to comment on severance issues. Robert Libkind, a spokesman for Conrail, said that some of the issues were "still under negotiation," although a news release from Conrail last Friday said that the company had taken action on bonuses for employees who stay

with the company during the transition, and on severance packages.

A person close to the negotiations who spoke on the condition of anonymity said that the severance numbers for Conrail's 2,926 nonunion employees might change slightly, but would total about \$1.5 billion. "Come payday, these numbers are not going to get significantly smaller or larger," the person said. "This is the level of severance and benefits that will be provided for some 2,900 employees of Conrail."

The deal for Conrail is the latest in a string of mergers that cut the number of railroad employees in the United States by 59 percent, to 188,000, between 1980 and 1995.

Under a merger agreement struck last year between the Union Pacific and the Southern Pacific railroads, the outgoing chairman of the Southern Pacific Lines, Jerry R. Davis, was to get a \$3 million golden parachute. But in a change of plans, Mr. Davis now serves as president of the combined company.

The termination benefits planned for Mr. LeVan and other nonunion employees at Conrail far exceed anything provided by Union Pacific, where managers received \$10,000

and up to 18 months' pay, depending on the length of employment at the railroad. About 900 of the Union Pacific's 6,700 employees are expected to be dismissed, with 18 months' pay and \$10,000 going to employees with more than 20 years' experience.

All 79 senior managers at Conrail are expected to be dismissed, according to projections provided by the person familiar with the negotiations. Depending on length of employment, they are expected to get about \$1.5 million each in severance and bonuses and disbursements from the employee stock plan.

The 1,187 nonunion secretaries, engineers and midlevel managers whose jobs are expected to be eliminated are to receive an average of \$420,000. The remaining 1,659 nonunion employees who are expected to stay with the railroad will get an average of \$300,000 in bonuses and stock disbursements.

An additional 17,850 Conrail employees are covered by union contracts and Federal regulations, providing up to six years of salary and benefits for workers who lose their jobs. The average union employee earns about \$47,000, a Conrail spokesman said.



Sunday October 12 8:21 AM EDT

## Rail Giant's Tie-Ups Hurt Many Industries

By Dan Burns

NEW YORK (Reuters) - And you thought the UPS strike was a headache.

The disruptions caused by the Teamsters walkout at United Parcel Service may soon look minor next to the problems developing as a result of a mammoth traffic jam on the nation's railroads.

Operational foul-ups at Union Pacific Corp., the nation's No. 1 railroad, have brought traffic along its 36,000-mile network of track to a crawl.

As a result:

- Grain is sitting in mountainous piles at railheads in Kansas and across the farm belt;
- New car buyers are having to wait up to an extra week for delivery;
- Utility companies along the Gulf Coast, running low on coal that is piling up at mines in Appalachia and the Rocky Mountains, have been sent scrambling for more expensive alternative fuels such as natural gas to fire their electricity generators;
- Chemical companies have written off more than \$100 million in lost sales and production since June and expect those losses to more than double before the problem is resolved.

"If we could see light at the end of the tunnel, that would be neat, but all we can see is it getting a lot worse before it gets better," said Jim Pasierb, spokesman for the Chemical Manufacturers Association.

At the heart of the problem is Union Pacific's \$3.9 billion acquisition last year of Southern Pacific Railroad Corp. It's a mouthful Union Pacific is having a hard time swallowing.

A mountain of problems ranging from computer systems that won't talk to each other to inconsistent labor agreements has led to the idling of as many as 10,000 railroad cars each day along the railroad's sinuous network between the Mississippi River and the Pacific Ocean.

The log jam has been building since mid-summer with no immediate end in sight. Union Pacific has said the problem is not likely to be corrected before January.

It has happened without the fanfare of the UPS strike but it has been perhaps more disruptive because of its affect on the movement of raw materials.

Pasierb said a number of chemical manufacturers have shut down plants and temporarily laid off workers because they can neither get raw materials into nor move finished products out of their facilities.

Aggregate industry losses were running at \$30 million per month in June, July and August but were expected to top \$55 million for September, he said.

## The Wall Street Journal

October 8, 1997

### "Union Pacific Tie-Ups Reach Across Economy"

By DANIEL MACHALABA  
And ANNA WILDE MATHEWS

Staff Reporters of THE WALL STREET JOURNAL

A Northwest lumber mill has so much unshipped wood that it stacked it on a barge for the slow trip down the coast. A small Houston packager is sending 20 or 30 workers home almost every day because it

#### TRANSPORTATION

can't get the plastic materials it needs. And all across Nebraska, farmers may have the most unusual concern of all: running out of molasses for their cattle.

Union Pacific Corp.'s continuing service problems are beginning to have sweeping and unexpected effects on industrial and consumer America. More than 10,000 railroad cars a day are stuck in limbo on the Union Pacific route system that stretches from the Midwest to the West Coast, lacking the crews, locomotives and even the tracks to keep the network moving. That's triggering everything from production slowdowns at factories to a scramble to switch to other more expensive forms of transportation.

The biggest railroading crisis in decades is fast reaching into American every-

day life. "Whatever the costs of the United Parcel Service strike, this may well have a greater effect on the economy," says Aaron Gellman, director of the Transportation Center of Northwestern University in Evanston, Ill. "This could take much longer to fix."

The foul-ups began a couple months ago when Union Pacific tried to digest its \$3.9 billion acquisition last year of Southern Pacific Rail Corp. Its officials say they simply underestimated the manpower and effort the merger would take, but critics say the company tried to cut costs too much.

Union Pacific, the nation's largest railroad, normally has about 300,000 cars on its system on any given day. But because of its operational woes, the number of cars has swollen to about 340,000 a day, worsening the congestion problems and making it ever harder for the railroad to unclog its lines.

The railroad has tried everything from hauling goods on a ship through the Panama Canal — under a plan that was soon scuttled — to shifting backed-up freight to rival railroads. Richard Davidson, chairman and chief executive officer of Union Pacific, said in a statement yesterday that

#### Railroad Bottlenecks

Union Pacific's worst gridlock spots:

CITY	MAIN CARGO
Houston	Chemicals, cars, grain
Fort Worth, Texas	Coal, lumber, mixed freight
Los Angeles	Electronic goods, clothing
Chicago	Paper, factory parts, mixed freight
North Platte, Neb.	Coal, food, metal goods

he has apologized to many of the railroad's customers in the past two months and that "most of the people are rooting for us." He added, "We have a plan in effect to fix it." Still, despite adding locomotives, hiring workers and curtailing service, the company said it doesn't expect to untangle the gridlock in its 36,000-mile system until at least January.

That's distressing news for a wide variety of companies now in the peak shipping season for Christmas. Eden LLC,

a children's product importer in New York, is now shipping Arthur the Aardvark, Paddington Bear and Peter Rabbit stuffed animals, among others, by rail and worries that last-minute orders won't make it to store shelves until it's too late. Already, the company is seeing delays of as much as a week on Asian goods that are loaded onto rail cars at West Coast ports for the trip East.

Chemical makers already have incurred some \$100 million in extra costs and lost sales, according to the Chemical Manufacturers Association. Other industries may have to shoulder even higher inventory and shipping expenses, particularly because many of them are switching rail shipments to trucks, which for regular cargo costs 25% more and for bulky cargo can cost three times as much.

What's more, the snarl-ups on rail are creating logistical nightmares because railroad cars often carry goods of enormous size, which can quickly fill up warehouses and storage yards. As many as 20,000 gallons of chemicals can fit into a single rail car — the capacity of four tanker trucks.

So big are the lumber shipments, Please Turn to Page B17, Column 1

#### Continued From Page B1

For example, at the Georgia-Pacific Corp. mill in Coos Bay, Ore., that the company has quickly had to barge its wood to southern California, after rail shipments fell three weeks behind. Its only other option: pile it in the parking lot, in enormous stacks.

"It's a total disaster," declares George Robinson, manager of logistics operations for Georgia-Pacific's building-products division. "No one could ever imagine it would be this bad."

Economists say the effects of the Union Pacific tie-ups aren't yet obvious to consumers. But they affect bedrock industries, including the \$105 billion chemical business based in the Gulf Coast, which supplies raw materials to makers of everything from tires to toys.

"These industries are the base of the economy," says John Taylor, professor of transportation at Wayne State University in Detroit. "Their problems spread through the rest of the production chain."

Chevron Corp.'s chemicals operation

already slowed production at its Baytown, Texas, plant, which produces polyethylene pellets, the white BB-size balls that are melted to make plastic products.

Disruptions have become a daily occurrence at United DC, a Houston packager of plastic pellets. Marc Levine, United DC's president, says he has to send 20 or 30 of his workers home most days because the railroad doesn't bring enough loaded cars or doesn't show up at all. "It's just a matter of time before consumer costs go up," says Mr. Levine.

Sam Shanklin, a purchasing agent for Animal Feed Ingredients Inc. in Kansas City, Mo., has a different worry: the health of Nebraskan cattle. Union Pacific delivers entire train cars of molasses that farmers use to make corn feed more appetizing to cows.

Mr. Shanklin has arranged trucks to handle the shipments for now but worries that trucking can't continue to handle loads of this magnitude. Without sweetener in their food, it "just doesn't taste as good," he says.

*National 'intrusion'*

## Shippers ask that Union Pacific deal be revisited

### Poor service quality is called intolerable

Shippers' alliance asks for more competition as STB readies public hearings and railroad advances new plan.

**BY RIP WATSON**  
**JOURNAL OF COMMERCE STAFF**

A shipper group that wants railroads to compete more aggressively with each other says **Union Pacific Railroad's** "drastic plan" to dump 40,000 shipments in the laps of other carriers is proof that the status quo must be changed.

Ward Uggerud, chairman of the Alliance for Rail Competition, leveled those charges late last week after UP proposed to unclog its congested rail network by handing off business to neighboring carriers, both large and small.

"One of the reasons ARC came into being was our concern over deteriorating rail service," said Mr. Uggerud, vice president of operations for **Otter Tail Power Co.** of Fergus Falls, Minn. "It's worth noting that to get out of the situation it's in, Union Pacific is turning to competitors for help. That move by itself is a ringing endorsement of ARC's position that competition is not only healthy for the shipping industry but absolutely essential."

While the shipper group blasted deteriorating service at UP, the Surface Transportation Board announced plans for a public hearing on Oct. 27 to consider what to do -- if anything -- about UP's troubles that began in Texas and have engulfed much of the Western rail system.

As it reviewed the state of Western rail service, the agency promised to look over proposals by UP's rival, **Burlington Northern and Santa Fe Railway Co.**, as well as others, to restore normal service levels and remove the apparent gridlock on some UP routes. The board said the focus on the public hearing "is on the immediate resolution of existing problems."

UP has pledged to correct delays and congestion that have closed down some shippers' manufacturing operations and forced customers to seek other carriers and modes of transportation. UP's solution includes a new operating plan, acquisition and application of new locomotive power and hiring of additional employees.

## **Wrong Track**

### **A Big Railroad Merger Goes Terribly Awry In a Very Short Time**

**Union Pacific Is Hammered  
Over Service and Safety;  
Have Patience, It Says  
Have You Seen Our Rice?**

By DANIEL MACHALABA

Staff Reporter of THE WALL STREET JOURNAL

Its railroad safety record, marred by three fatal crashes in three months, is being characterized as a "fundamental breakdown" by federal regulators. Its route system west of the Mississippi River has slipped into near gridlock in many places, with thousands of freight cars backed up in the Houston area alone. Its chairman was forced to publicly apologize in August to its big customers.

So bad has service become that customers say Union Pacific Corp., the nation's largest railroad, can't account for millions of dollars of shipments for weeks at a time. Riviana Foods Corp., a Texas rice producer, tried to ship a freight car full of rice from Missouri to Tennessee in early August. A month later, the car was spotted on a track in Devil's Slide, Utah. The latest word is that it was somewhere in Texas. "I still don't know where it's at," says Terry Nickens, Riviana's distribution manager.

Is this any way to run a railroad?

#### **A Major Debacle**

Union Pacific's attempts to put together the biggest railroad merger in history is fast becoming one of the industry's biggest debacles. With high hopes last year, the company bought Southern Pacific Rail Corp. for \$3.9 billion and promised to begin merging the systems this summer into a seamless link between the West Coast and the Midwest.

Instead, with amazing speed, the merger has unraveled in recent weeks into a series of service and safety snafus. Analysts estimate the carrier has already lost about \$125 million in revenue as customers diverted shipments. Hundreds of customers have threatened to take away business, and the Federal Railroad Administration could well impose stiff fines on the company for safety violations. The company concedes that its service problems will reduce its third-quarter earnings by 10% to 15%. And the stock price has fallen 14% in the past month.

Yesterday, things got worse. The Dallas-based company said it would abandon an embarrassing plan to move goods by ship through the Panama Canal—a plan that was rejected this week by its customers. Instead, in an even-more-remarkable step, it agreed to hand over some of its business to competing railroads and to "borrow" the services of dozens of former managers from Eastern railroads to help untangle the mess.

#### **Surprised Observers**

The setbacks have startled industry observers, who only a few months ago expected the merger to go smoothly, especially because Union Pacific had had a sterling reputation in railroading.

"They thought they could conquer the world," says William Withuhn, transportation curator at the Smithsonian Institution in Washington and a widely recognized expert on railroads. "They were counting on having a great success. But they just didn't plan it right. It fell apart."

Union Pacific acknowledges that it has been caught by surprise — and humbled by the experience. Richard Davidson, its chief executive, said in an interview after a recent meeting with more than 200 angry chemicals-company officials and other shippers in Houston: "I never imagined in my wildest dreams that I'd be down here apologizing for our service." Yesterday, a Union Pacific spokesman said. "There's no denying we have severe service problems, but we are making headway."

#### **Problems Acknowledged**

The carrier's executives concede that they overestimated their ability to combine giant rail systems operating hundreds of thousands of freight cars. Its own long record of success, unmatched through much of the late 1980s and early 1990s, may have bred overconfidence. "We are arrogant," Greg Garrison, Union Pacific's Houston superintendent, said last month. "We consider ourselves the best."

Union Pacific's woes raise troubling questions about how well railroads can transport goods in the nation's ever-growing economy. For more than a decade, the industry has been in an unprecedented merger binge that was supposed to give the remaining five powerful railroads a better chance at competing against trucks, which now earn nearly 80% of the nation's freight revenues. That improvement, in turn, was supposed to help reduce everything from highway congestion to air pollution to fuel consumption. Consumers would gain, too, because railroads can haul goods about 20% more cheaply than trucks can, with much of the saving to be passed on to the public.

But Union Pacific's problems suggest that the railroads are a long way from fulfilling this promise and that shippers may be discouraged from using them. Chemicals companies on the Gulf Coast have been switching to trucks whenever possible because Union Pacific's delays have cost them an estimated \$100 million in plant closings, lost revenues and extra expenses.

In Waverly, Ohio, Mill's Pride Inc., a maker of prefabricated kitchens that had turned to railroads to save money, says it



## UP's cup of woes spilleth over to chemical shippers, tank trucks

### US-Mexican trade disrupted by snags

BY KEVIN G. HALL, GREGORY S. JOHNSON & MARY SUTTER  
JOURNAL OF COMMERCE STAFF

Chemical shippers are angry, tank truckers are working overtime and an important link in U.S.-Mexico trade is being adversely affected as **Union Pacific Railroad's** congestion and bottleneck problems spread across sectors and borders.

"Any business is good business, but just due to the fact of what the UP is doing over there, it really has put a strain on everybody," said Tony Santos, Mexico operations manager for McKenzie Tank Lines at the Brownsville, Texas, terminal.

"You had customers calling you for two or three tanks, now they are calling for 10 tanks. They call you because of the shortage."

"We're hearing from people we've haven't heard from in years," said Nicholas L. Braden, vice president of sales at DSI Transports Inc., a Houston tank trucker.

In the case of McKenzie, the Tallahassee, Fla.-based company has had to relocate equipment from Florida and New Jersey to meet demand in the U.S.-Mexico and Gulf trade routes.

### *UP 'captives'*

Large chemical companies, such as Ashland Chemical and Occidental Chemical, which have depended on UP and the former Southern Pacific Lines it absorbed, have been hit especially hard by the railroad's woes.

"At any given moment, we have 1,000 to 1,500 cars stuck in the Houston or Gulf area. We are captive to UP," said Federico Martinez, traffic manager in Mexico City for Dow Quimica Mexicana.

Dow has responded by working on longer lead times where possible but the largest problem remains getting equipment back to where it is needed at U.S. sites, said Mr. Martinez, describing the situation as "grave."

Shipments to Akzo Nobel Chemicals Inc. from Georgia are moving OK, but "stuff coming out of Louisiana and Texas is a nightmare," a source said.



"For any available driver and tractor, we have about 2.3 loads available. Drivers in the U.S. are not that easy to find," said Chemical Leaman's Mr. Cantu.

Added Mission's Mr. Scheaffer, "It just heightened the situation, particularly trailer availability as well as shortage of drivers."

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## West's rail woes a lesson for East

The calamitous history of Union Pacific after its merger will focus greater scrutiny on CSX and NS plans to absorb Conrail.

**BY RIP WATSON  
JOURNAL OF COMMERCE STAFF**

Widespread service and safety problems on Union Pacific Railroad will force federal regulators to take a much closer look at the Eastern railroad mergers spawned by the breakup of Conrail Inc.

Industry observers and insiders see a direct link between near-gridlock conditions on parts of the UP system since its purchase of Southern Pacific Rail Corp. and the government's pending review of the Conrail carve-up proposed by CSX Corp. and Norfolk Southern Corp.

Union Pacific's problems "will force more focus on mergers that have not been approved," said NatWest Securities analyst Tony Hatch. "These guys (CSX and NS) will be under intense scrutiny. They will have to . . . work hard so they won't suffer from the UP problems. A lot of the fate of the industry is in UP's hands right now," he added.

One outgrowth of UP's problems is that tougher merger conditions might be imposed on the NS/CSX plan to break up its Eastern rail rival. These could be compounded by tighter control on rail safety practices if the \$10.2 billion purchase of Conrail is approved.

"Railroads must prove these mergers will do things FOR shippers and not TO them," Mr. Hatch said. "And they must do this soon, before the deliberations begin on Conrail," he stressed.

### *The record is not auspicious*

"Unfortunately, there is no empirical evidence to support the railroads' case for improved service outweighing the potential problems of consolidation," he added. "The two Western mergers . . . have provided significant declines in service levels. That, plus a series of well-publicized (and unlucky) accidents on the UP/SP have led to the railroads being in the cross-hairs of the government, the unions, the press and, most importantly,

mused.

Said Ed Rastatter, director of policy for the National Industrial Transportation League: "The board would serve both the shippers and railroads well to try to phase this merger in as plans and agreements are finalized." NITLeague represents many rail shippers.

Mr. Rastatter suggested that letting the railroads move ahead full speed 30 days after government approval, which is the soonest the merger could take effect, "would be a sure recipe for a Houston situation along the entire East Coast."

Houston has been the center of UP's service problems, which also have surfaced elsewhere in the Southwest and along the Pacific Coast.

### *No rubber stamp*

"The board is dying to show it is not a rubber stamp," said one analyst. "The STB will have to throw a sop to shippers and communities. They may have to throw a few sops to politicians. The question is whether it is optical or does it affect how the railroads do things. They (STB) may be willing to do some things the railroads don't like, but they won't spike things that are absolute necessities."

### *Questions about accountability*

"I assume we will see a very engaged DOT figure out ways that the ugliness we are seeing on UP/SP does not repeat itself in any Conrail deal that might be approved by STB," Mr. Wytkind said. "I believe this affirms many of the fears rail labor has put forward in recent years. One of the big ones is the lack of accountability."

"Railroads historically are not held to things they say before federal regulators," he continued. "They can't tell a bunch of myths and not comply with whatever commitments they make. Hopefully, this will provide impetus for the shipper to come forward before the fact and not after."

The Conrail case is more complex than the UP/SP merger, so assessing the similarities regulators may find between Western railroad realities and Eastern railroad promises isn't easy, analysts believe.

Timing also is a key issue. Effective actions by Union Pacific to solve its service and safety problems would have a positive

## Rail problems hit western U.S.

*Shippers, intermodal companies, ocean carriers complain about service problems, particularly at Union Pacific.*

### HOUSTON

Union Pacific Railroad doesn't top many shippers' lists of most-favorite transport providers these days.

For three months, shippers west of the Mississippi River have complained of delays and lost business as a result of problems UP has encountered following its acquisition of Southern Pacific.

"Many of our shipments from the South Atlantic and West Coast have been affected by the railroad's inefficient service," said Jim McGrath, less-than-containerload business manager for Direct Container Line, a Carson, Calif.-based freight consolidator. "Containers are getting lost and UP has no record of them on its computer."

Things got so bad that on Aug. 29, the National Industrial Transportation League called an emergency meeting in Houston with top management of UP to discuss service problems and possible remedies. Nearly 300 rail shippers showed up, representing industries such as grain, metals, chemicals, food products and plastics.

Bob Evans, chairman of the NIT League's railroad transportation committee, and corporate manager of rail transportation for Occidental Chemical Corp. in Dallas, presided over the meeting.

"We have spoken our minds," Evans said. "Now we've got to give UP time to correct the situation."

**Troubled Shippers.** UP's problems began shortly after its buyout of Southern Pacific last year.

The company blamed the service problems on several factors, including its sale of the line between Lake Charles and New Orleans to Burlington Northern Santa Fe, a shortage of skilled manpower in the Gulf Coast, unsettled labor agreements and service disruptions in Texas from derailments and poor track along the SP system.

Texas shippers, particularly in the Houston area, have been hurt the worst by rail service problems so far, but the effects have been felt throughout the UP system.

The NIT League said a survey of shippers showed that some shipments were taking two to three times longer for delivery by UP than they had with SP.

Some shippers said they were having to reduce shifts, pay penalties for late delivery

"Our biggest problem with the railroad has been getting railcars in and out of our mill on time," said Jim Sheble, shipping manager for Nucor Steel at Jewett, Texas. "We used to have our railcars rotated by the railroad once a day. Now it's very sporadic."

UP has also started hearing complaints from shippers about inefficient service in California, particularly along the north/south Interstate 5 corridor.

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***"It's a big deal when  
the chief executive officer  
of a major railroad  
has to face an audience  
of angry shippers."***

---

**Lee Glass**  
transportation manager,  
United Sugars Corp.

Even when containers arrive at the Los Angeles/Long Beach rail terminals on time, backups are so severe that it can take two days for truckers to retrieve the boxes.

Some shippers are demanding compensation from UP for rail service problems. UP said it "would entertain such claims on a case-by-case basis," implying that existing penalty clauses may prevail.

"We haven't calculated cost for idle railcars, but we know that we're losing money. We're waiting for the railroad to try to charge us with demurrage fees for the idle railcars, even though they created the problems in the first place," said Nucor's Sheble.

**UP's Remedy.** UP told shippers at the NIT League's Houston meeting that it had a plan to remedy the problems.

The company was trying to quickly settle labor agreements in the Gulf area, hire additional workers, and add 327 locomotives to its system by the end of the year. More than 150 of those locomotives are already in place.

UP said it also has started refurbishing some units that were originally scheduled for scrapping.

service by dividing its Gulf Coast region into five zones. The company said the zones of Houston and Longview, Texas, and Livonia, La., already have shown significant improvement, but that the San Antonio and Fort Worth zones still had severe congestion.

In addition to delays for shippers, UP has been hit by a recent spate of railroad crashes and derailments, prompting an investigation by the Federal Railroad Administration.

"It's a big deal when the chief executive officer of a major railroad has to face an audience of angry shippers," said Lee Glass, transportation manager for United Sugars Corp., based in Moorhead, Minn. "UP has always been a proud company. You hate to see these problems happening to them."

**Worst To Come?** Many shippers predict the worst is yet to come with, especially as the holiday peak-season traffic picks up. "We have experienced significant costs into our West Coast distribution strategy because of the rail problems," said Clark Handy, group manager of paper distribution for Georgia-Pacific in Atlanta. "We're concerned that the problems will probably last a while."

Union Pacific is not the only railroad that has had service problems lately.

"We have seen a shortage of flatcars with Norfolk Southern and CSX in the East during the past two months," said Doug Bordewyk, international logistics representative with Steelcase Inc. in Grand Rapids, Mich.

A lack of flatcars in the Chicago area has many shippers frustrated.

"It's been difficult to get flatcars in Chicago," McGrath said. "This is the worst that I have seen rail service in the Chicago area since the big floods several years ago."

DCL relies on rail for moving about 85 percent of its containers.

Some shippers have had to turn to truckers to meet shipping schedules.

"We have trucked containers to the railheads in Chicago well before the cutoff times and there are still delays. We ended up trucking some of these containers the rest of the way to the ports," Bordewyk said. "It cost us more money, but we have customers that were counting on our shipments to arrive on time."

Ocean carriers also have been affected. "It's an ugly situation, but we're trying to work our way through it," said Ted Prince, senior vice president and chief operating officer of K-Line America.

Prince commented about the attitude of the railroads toward the problem. "The railroads believe that it's cheaper to pay the penalties for unreliable service, instead of putting aside their pride and allocating rail-  
service between them."



## Federal report uncovers rampant 'safety deficiencies' within UP

The study, conducted in the wake of 3 accidents, said problem areas are training, dispatching and employee fatigue.

**BY RIP WATSON**  
**JOURNAL OF COMMERCE STAFF**

The Federal Railroad Administration Wednesday issued a blistering report that criticized safety conditions at **Union Pacific Railroad** and said the carrier will take immediate actions to rectify the problems.

FRA's inspection began two weeks after three separate fatal accidents within 60 days on UP lines, two in Texas and one in Kansas. Seven people died in those accidents.

Administrator Jolene Molitoris issued a statement saying "findings of widespread safety deficiencies in the areas of training, dispatching and employee fatigue are of great concern to FRA. (FRA has) been given the strongest assurances that our recommendations will be implemented."

UP has agreed to appoint a senior manager reporting to president Jerry Davis to oversee corrective actions, FRA said. The carrier also will be part of a joint-safety assurance and compliance program with the agency and rail labor.

No financial penalties were announced, but FRA said its investigation in that area is continuing.

Safety recommendations issued by FRA include mandatory classes and briefings for dispatchers and other operations department officials, and adequate training for employees.

The 80 inspectors who combed UP's system over the past two weeks found numerous problems, FRA said.

Dispatchers were overworked, the agency said, and some of their supervisors were unable to confirm that dispatchers were complying with railroad operating rules. Train crews also were overworked, with less time off between assignments, FRA said.



## Frustrated shippers get no satisfaction from UP in Texas

While UP says it is making some progress on service problems and is hiring workers and adding locomotives, the giant rail admits it will be months before freight backlogs are unraveled.

**BY RIP WATSON  
JOURNAL OF COMMERCE STAFF**

HOUSTON -- Union Pacific Railroad is telling frustrated shippers that it is beginning to make progress on widespread service problems in Texas, but it will be months before all steps are in place to eliminate freight backlogs.

Facing 280 angry shippers at an emergency meeting organized by the National Industrial Transportation League, UP executives said they were hiring hundreds of new workers and adding locomotives to address problems that have mushroomed in the past two weeks.

However, the railroad made no promises of blanket compensation to customers who said they were losing millions of dollars due to the delays.

Dick Davidson, UP's chairman, said compensation would be considered on a case-by-case basis.

He did not quantify how much business UP has lost or how much potential new traffic could not be carried because of the delays. UP's traffic was down slightly in August, while competitor Burlington Northern Santa Fe boosted business by 3%.

Brad King, UP's vice president of transportation, conceded that twice as many trains as usual are idle because locomotives are not available to pull them.

Among the shippers who sounded off about the problems was Terry Nickens, distribution manager for Riviana Foods in Houston. He said his company has shifted all of its business away from UP on some routes, adding 20% to his overall costs.

"The big focus is to work together to get out of this," Mr. Nickens said. "We're all in this together."

Mr. Nickens' comments about seeking solutions appeared to be

NIT League invited members of other groups to Friday's meeting, including the Houston Traffic Club, the Houston Port League and the Chemical Manufacturers Association. The representatives from UP's competition and other railroads were barred from the meeting.

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# UP Unravels Further

BY JACK BURKE

**FRA launches all-out inspection  
after 3rd fatal crash in 10 weeks**

Chicago

**I**n the wake of Union Pacific Railroad's third fatal collision in 10 weeks, the Federal Railroad Administration has launched a sweeping round-the-clock inspection of UP that FRA Administrator Iolene Molitoris said last week had found that "UP's problems are broad, deep and very fundamental."

"There are just not enough people to run the railroad," said Molitoris. "Supervisors are working 12 hours a day, seven days a week. You just can't do that and run an operation that is safe."

Molitoris said UP had exacerbated its problems by moving 130 managers to Houston, where UP continues to have severe congestion and service failures. Concentration on the Houston problem further thins the ranks of management elsewhere on the 36,000-mile system, she said, and raises the question, "Who's minding the store?"

FRA initially said a force of 60 inspectors, from the ranks of FRA as well as from

state agencies, would be riding UP trains, overseeing dispatching in Omaha and Denver, and conducting interviews with supervisors, train crews and labor representatives. Early reports from the task force were negative enough that FRA added another 20 inspectors to the inspection effort as of last Wednesday.

FRA launched its blitz on UP after a late night Aug. 20 collision of four run-around and unoccupied locomotives with a westbound train just departing the railroad's Centennial Yard in Fort Worth, Texas. While the cause of the accident was still under investigation, early indications pointed to the failure of a crew to set more than one set of hand brakes on the four locomotives parked on a siding awaiting refueling. The four units escaped from the siding onto the mainline and rolled undetected for about 10 miles, reaching an estimated speed of 60 miles per hour by the time of the collision. Two crew members on the westbound train were killed,

though two other employees on board survived the crash and subsequent fire.

UP issued a general directive two days after that accident ordering employees to secure brakes on all parked units. "But we're still finding instances where the new general order on securement is not being followed," said the FRA's Molitoris five days after the order was issued. She also pointed to breakdowns in dispatching that had put freight trains dangerously close together with other freights and, in one instance, a commuter train, as examples of personnel ignoring rules.

Molitoris spoke after a meeting with UP President Jerry Davis, who she said had promised full cooperation with FRA. "We got his specific, personal commitment to be the point person himself," said Molitoris of Davis.

Molitoris disagreed with UP officials on the source of UP's problems, specifically on the issue of whether UP's year-ago acquisition of Southern Pacific has contributed to the recent tragedies. UP has argued that the accidents are unrelated to the merger, since the two railroads are still generally being operated as separate properties and that the Ft. Worth incident, and fatal accidents in Devine, Texas, in June, and in Kenefick, Kan., in July, all occurred on UP lines.

"I disagree," said Molitoris. "The cuts they have made have focused on administrative, clerk-type folks. That's resulted in front line supervisors doing administrative work. That subtracts from running the railroad. With so many requirements on trainmasters, yardmasters, supervisors, they don't have time to do operational testing, to ride trains, to do safety tests."

Molitoris cited a May 1 shift to UP's operating rules for the former SP as another change to which UP management had given insufficient attention. "The operating rules are not dramatically different, but they are different," she said. The FRA head also pointed to lingering "hostility" between former competitors as a source of difficulty. "They don't feel like one railroad," said Molitoris.

In addition to Omaha and Denver, the all-out inspection of UP was concentrating on the Chicago, Fort Worth, Los Angeles, Kansas City, San Antonio, Pocatello, Idaho, Sacramento, Calif., Portland, Ore., and Houston areas.

REGULATORY WATCH

## GAO Questions FRA Safety Program

BY DAVID BARNES

**Cooperative approach to rail safety  
has resulted in fewer inspections**

**E**spite the continued decline in railroad accidents, the General Accounting Office says it is unclear whether the Federal Railroad Administration's efforts to improve safety by working closely with railroads and unions is working. In a new report, the GAO found that FRA's shift to a cooperative approach from a violation- and penalty-based approach to enforcement of federal safety regulations has resulted in fewer inspections of the nation's railroads.

"FRA has shifted some of its resources away from site-specific inspections, which have historically served as FRA's primary means of ensuring compliance with safety regulations. As a result, a greater number of railroads are not receiving inspections and inspectors are conducting fewer reviews of the railroads' own inspection efforts," the GAO said.

The government watchdog agency acknowledged that railroad safety has improved significantly in the past 20 years, with reported accident rates down 70 percent and injury rates down 74 percent. Accident rates have declined annually since 1994, according to reports filed by railroads with FRA.

The GAO report was scheduled to be released late last week by congressional Democrats. An advance copy was obtained by *Traffic World*.

According to the GAO, FRA inspections declined 23 percent to 53,113 in 1995, down from 68,713 in 1994. FRA inspectors are spending more time meeting with large railroads, rail unions and state officials to identify and solve the root cause of systemic problems facing railroads, according to the GAO. The 18-month-old Safety Assurance and Compliance Program has improved safety at larger railroads, the GAO said, even though fewer railroads are inspected. Ninety-five railroads were not inspected by FRA in 1995, up from 66 the previous year.

FRA officials told the GAO that the program is allowing the agency to leverage its limited resources to improve safety. The GAO was not convinced. "Since these efforts are still evolving, including the role of inspectors, it is too early to tell if they will improve railroad safety over the long term," the agency concluded.

The report comes eight months after the Department of Transportation's inspector general sharply criticized FRA's enforcement program. DOT auditors said FRA

inspectors did not ensure that railroads complied with safety standards or follow up to make sure repairs were made to locomotives, rail cars and tracks. The inspector general said it was too early to tell whether the changes FRA was making in its enforcement process were working.

The GAO also raised concerns about FRA's efforts to regulate bridge safety. It recommended FRA ensure that structural bridge problems are addressed by bridge owners. FRA inspectors currently bring bridge safety problems to the attention of railroads but take action only if an imminent threat to safety exists.

The report was requested last year by Reps. Jim Oberstar, D-Minn., the senior Democrat on the House Transportation Committee, Rep. Robert Wise, D-W.Va., the senior Democrat on the House Railroad Subcommittee, and Rep. Bruce Vento, D-Minn.

The report is expected to be cited by Oberstar when he reintroduces rail safety legislation. Little discussion of rail safety is likely in Congress this year. The House Transportation Committee is focused on reauthorizing the Intermodal Surface Transportation Efficiency Act, which expires Sept. 30, and a replacement has not yet been named for House Railroad Subcommittee Chairwoman Susan Molinari, R-N.Y.

Safety will be on the congressional agenda next year as authorization for the FRA's safety program expires.

# Shippers out of patience with UP

## Group heads to Texas today to seek answers

Tired of lackluster service via the railroad for weeks on end, a group plans to confront railroad executives.

**BY GREGORY S. JOHNSON**  
**JOURNAL OF COMMERCE STAFF**

About 300 shippers, fed up with poor service, will face off with Union Pacific Railroad executives in Houston today.

"It seems that UP, in this area, has essentially collapsed," said James F. Jundzilo, transportation manager at Tetra Technologies, a Houston oil-field products company. "They are so congested. They don't have the capacity," he said. "They are just so backed up and overcrowded it is impossible to position cars. This is a major crisis."

The National Industrial Transportation League is sponsoring the emergency meeting on UP's service problems for traffic managers from Arkansas to California.

While 300 shippers are scheduled to attend, judging from angry remarks, more are likely to storm the session.

The NIT League for weeks has fielded complaints ranging from late or nonexistent pickups and deliveries to inadequate car supply, misrouted freight and billing errors, said Ed Rastatter, the group's director of policy who is attending the meeting.

"Lost cars are a big problem for some people. Nobody seems to know where the cars are," he said. "In some cases, shippers have gone out and found the cars, but UP still can't get the cars to them."

Mr. Jundzilo, who called the meeting a waste of time and won't attend, recalls that UP experienced much the same problems shortly after its March 1995 merger with Chicago & North Western Transportation Co. But UP, which withstood withering shipper criticism when it merged with Southern Pacific last November, said a variety of factors are at fault.



## Numerous lapses by UP raise issue of promises still to be honored

**Union Pacific Railroad** will mark the first anniversary of its acquisition of Southern Pacific Transportation Co. in just two weeks. As that anniversary approaches, the railroad, which is struggling with widespread service, safety and labor problems, has some explaining to do.

It must say to its customers, employees and government regulators how last year's acquisition of SP has been good -- at least so far -- for anyone other than surviving executives, bankers and lawyers.

Consider today's reality.

There are 80 government inspectors picking over UP operations and finding glaring mistakes -- like sending out carloads of hazardous materials without identifying placards and distributing lists of trains with inaccurate information.

To make things worse, UP has to explain how these lapses are not part of a pattern of mistakes that created a climate for three separate fatal accidents in barely 60 days. Seven people died in those wrecks.

Meanwhile, customers are furious about service disasters, talking openly about a 'meltdown.'

Here's an example: a Southwestern shipper waited 12 days for locomotives to be put on a departing train. It took three more days to get a crew to move the train.

That is a far cry indeed from puffy claims about railroads meeting just-in-time delivery standards.

UP faces the music today at a meeting with major shippers represented by the National Industrial Transportation League.

## Shippers' group finds skepticism is justified

Today's conditions are not what the merger application promised, by a long shot.

merger, since no definitive causes have been established.

Today's troubles could be just an unfortunate coincidence. Accidents do happen in spite of the railroads' steady, statistical improvement in safety.

And service problems caused by lack of crews and locomotives and lax oversight can be fixed by hiring more people, buying more equipment and getting the supervisory system operating at top efficiency.

At some point, however, it doesn't matter what the railroad says if the perception is so different. With the heat on UP, its ability to handle adversity is important.

It's also important to note that UP's troubles aren't occurring in a vacuum. The Surface Transportation Board blessed the union of UP and SP with almost no changes. STB now is reviewing an even larger consolidation case involving **CSX, Norfolk Southern and Conrail**. If the UP-SP megamerger doesn't appear to be working out very well, how can STB rubber-stamp a deal where the applicants are making similar promises? At the very least, CSX and NS must be giving serious thought to explaining how their outcome will be different from UP's recent experience.

Perhaps by the time the Surface Transportation Board rules on the Conrail case next year, UP's recent problems will be a sad memory with a happy ending. All sensible people will welcome the resumption of solid service and safe operations.

But what if the problems persist? How can anyone guarantee these serious troubles won't happen again?

Rip Watson has worked in or written about the transportation industry since 1982. He can be reached at (202) 661-3363.

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# United States Senate

WASHINGTON, DC 20510-3802

October 21, 1997



The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

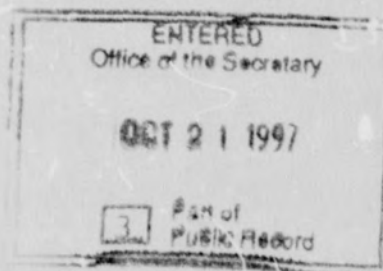
Dear Secretary Williams:

Enclosed are my comments on STB Finance Docket No. 33388 (CSX Corporation/Norfolk Southern Corporation Acquisition of Consolidated Rail Corporation).

Sincerely,

*Arlen Specter*  
Arlen Specter

AS/mtc



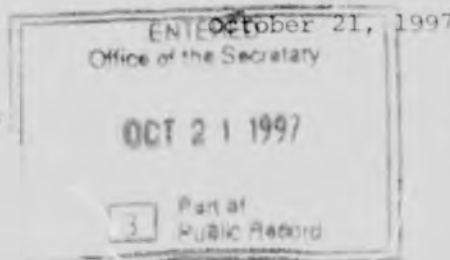
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# United States Senate

COMMITTEE ON APPROPRIATIONS  
 WASHINGTON, DC 20510-6025



The Honorable Vernon A. Williams  
 Secretary  
 Surface Transportation Board  
 1925 K Street, NW  
 Washington, DC 20423-0001

Re: STB Finance Docket No. 33388 (CSX Corporation/Norfolk Southern Corporation Acquisition of Consolidated Rail Corporation)

Dear Secretary Williams:

I am writing to convey my comments on the application filed by CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS") to acquire Conrail.

As a United States Senator from Pennsylvania, I have great concerns about the potential impact of the proposed breakup of Conrail on my State and the region as a whole. I have said at Congressional hearings and in private conversations with the Chief Executive Officers of Conrail, CSX, and NS that there may be no more significant issue for Pennsylvania's economy than the future of Conrail. On this state of the record, based in part on my discussions with the Chief Executive Officers and my review of the operating plan and other materials provided to me by CSX and NS, it remains unclear whether the consummation of this transaction is necessarily in the "public interest," which is the standard by which the Board must assess such mergers.

As I noted in my letters to the Board dated March 7, 1997 and May 1, 1997, this transaction raises substantial issues with respect to the effect on Conrail employees, Pennsylvania communities, shippers, the Port of Philadelphia, trucking companies, commuter and intercity passenger rail services, rail safety and the environment. I believe the Board's consideration of these issues should be governed by the premise that it is in the public interest that Pennsylvania, its communities, and Conrail employees should be no worse off under the CSX/NS purchase of Conrail than they would have been under the originally proposed CSX/Conrail friendly merger. I recognize that the operating plans filed by CSX and NS do contain information about capital investments in maintaining and expanding some Conrail facilities. However, the totality of the transaction must be reviewed, not just individual pockets of success.

As a member of the Senate Transportation Appropriations Subcommittee and the Antitrust Subcommittee of the Senate Judiciary Committee, I also have broader concerns about the consolidation of the railroad industry and the efficacy of the Surface Transportation Board in reviewing mega-mergers such as the transaction proposed by CSX and NS. Particularly in light of the operational safety and service concerns which have arisen in the implementation of the most recent mega-merger between the Union Pacific and Southern Pacific railroads, it is particularly important to focus on ensuring rail safety and on whether CSX and NS can reasonably deliver on their promises of operational efficiencies.



The Surface Transportation Board must act with great care in reviewing the proposed acquisition of Conrail because it will have far-reaching implications for years to come. For, if the Board approves the transaction based on the operating plan filed by CSX and NS, and the optimistic scenarios projected therein do not materialize, there is little or no recourse for affected Pennsylvania communities, Conrail employees, shippers, and other interested parties.

In commenting on whether the proposed transaction meets the statutory "public interest" standard, I have left many of the details (such as specific trackage rights proposals) to the interested parties, recognizing that they will make their own filings with the Board.

#### Background on Conrail's Significant Role in Pennsylvania

I am personally familiar with Conrail's history and role in Pennsylvania from my experiences in 1985-86, when Congress went to great lengths to save the railroad and the thousands of jobs which were at risk of being eliminated. I have visited a number of Conrail facilities through the years and have held legislative hearings throughout the State to hear testimony on the impact of the sale of Conrail. My discussions with elected officials and community leaders throughout Pennsylvania have also served to demonstrate the great apprehension that exists with Conrail's future in doubt, particularly because it pays more than \$30 million annually in State and local taxes and has purchased more than \$430 million a year in goods and services from Pennsylvania vendors. Pittsburgh Mayor Thomas Murphy, for example, noted in his letter to me dated March 20, 1997, that rail cargo service must be maintained in Pittsburgh and the surrounding region because it is essential to moving local goods and products to domestic and international markets. (He added that the future location of major rail lines along the City's riverbanks and the downtown area pose public safety risks and may limit the development potential of the City, an issue which I believe is suitable for your Board to consider.)

The magnitude of Conrail's role throughout Pennsylvania cannot be underestimated. The company employs more than 8,100 Pennsylvania residents in 64 of our 67 counties. 18 counties have more than 100 Conrail employees as residents, with the largest concentrations living in Blair County, Allegheny County, Beaver County, Delaware County, and Philadelphia. According to the Pennsylvania Department of Transportation, one-third of all rail traffic moving in the United States passes through our State, much of it on Conrail's 2,456-mile Pennsylvania rail network.

#### Concerns About the Price of the Transaction

In assessing whether this transaction is in the national public interest and Pennsylvania's public interest, the Board should review whether CSX and NS can pay \$115 per share for Conrail (1) without passing on that high costs to shippers in the form of higher rates, which will either cause shippers on close profit margins to go out of business or otherwise materially harm shippers; or (2) cause the expanded CSX and NS to reduce other costs (such as maintenance and safety) which would treat unfairly Conrail's employees and/or treat unfairly Pennsylvania communities.

### Impact on Conrail Employees

From the headquarters in Philadelphia to the locomotive repair shops in the Altoona area to the rail yard in Conway to the Customer Service Center in North Fayette Township, there are more than 8,000 Conrail employees in Pennsylvania. They had every reason to expect that the initial Conrail-CSX merger would have been a positive development for them. They should expect to benefit from the CSX/NS transaction at least as much. Their dedication throughout Conrail's turbulent past enabled the railroad to succeed to the point where it is worth \$10 billion.

In their filing, CSX and NS state that they "anticipate that the New York Dock conditions will be applied" to the approval of their requested transaction. The governing statute, 49 U.S.C. § 11326, clearly mandates that the Board shall require CSX and NS to provide a fair arrangement to Conrail employees, including the preservation of rights, privileges, and benefits they receive under existing collective bargaining agreements. However, I am troubled by the reports I have received from far too many Conrail employees that the New York Dock doctrine is grossly inadequate in its application. In particular, they note the difficulty in overcoming the hurdle of proving that the transaction itself affected their employment, not an intervening cause such as a drop in business or a technological innovation. I am also advised that railroads have in past transactions combined numerous smaller seniority districts into single seniority districts which cover hundreds of miles. As a result, affected employees must exercise seniority to obtain jobs hundreds of miles from their homes and thus receive no real compensatory protection pursuant to New York Dock.

In reviewing the CSX/NS proposal, the Board should take concrete steps to determine what the impact will be on Conrail's employees, and, if it decides to approve the transaction, the Board should avail itself of its wide statutory discretion to impose conditions on the transaction to benefit employees beyond the doctrine of New York Dock.

### Corporate Headquarters in Philadelphia

In 1986, Congress took great care in preserving the statutory requirement that Conrail's corporate headquarters be located in Philadelphia. The 1,500 employees who work at the Center City headquarters have contributed greatly to the railroad's successes in recent years and deserve to have their interests protected by the Board. Further, Philadelphia's economy depends greatly on such a substantial corporate presence. According to the plans filed with the Board, CSX and NS intend to operate jointly in the Philadelphia area and will retain the Conrail name for the corporate entity which conducts such operations. Accordingly, one of the issues confronting the Board is to ensure that in keeping with the intent of Congress to preserve jobs in Philadelphia, that there is a significant headquarters presence for Conrail or any successor entity.

### Competition/Impact on Shippers and Other Railroads

Under the governing statute, the Board must consider whether there will be sufficient real competition in a post-acquisition environment. I understand that CSX and NS have

structured the transaction to include several shared asset areas, such as Philadelphia. So much joint activity is presumed in the operating plans that were filed that one must wonder whether there will be true competition between the two Class I carriers. In the absence of competition, costs will escalate and the region's economy will suffer.

The Board must give ample weight to the comments which will be filed by the Canadian Pacific Railway/Delaware and Hudson Railroad and the Pennsylvania short lines, whose role is critical to ensuring that shippers in the region have access to reasonable freight rail pricing. I urge the Board to ensure that Canadian Pacific/Delaware and Hudson receives effective commercial access to shippers in the greater Philadelphia area and to the short line railroads near its routes of travel so that the railroad can take advantage of predictable, cost-effective opportunities to serve Pennsylvania, particularly Philadelphia.

I have been contacted by a number of short line railroads which believe that the Conrail takeover will have substantial impact on their operations and have asked that in the event the Board approves the transaction, that they will have sufficient trackage rights to remain competitive and grow their businesses. For example, during a legislative hearing I held in Philadelphia on April 14, Andrew Muller, Jr. testified for the Reading, Blue Mountain, and Northern Railroad Company of Port Clinton, PA that the Board should ensure competitive and equitable access for two or more large railroads to all areas of Pennsylvania because it will be critical to the continued growth of the anthracite coal producers he serves. I would note that the Board has received similar input from the Pennsylvania Anthracite Council in their filing of July 28, 1997.

Another issue that arose in the context of my legislative hearing of April 7 was the ability of bituminous coal companies in the Clearfield Cluster in Clearfield County, PA to access traditional markets at competitive rates through their short line operator. I urge the Board to address these concerns as it reviews the transaction.

Given the important role played by short line railroads in Pennsylvania, particularly in bringing smaller geographic areas into the global stream of commerce, I urge the Board to accord their concerns a high priority.

#### Impact on Ports

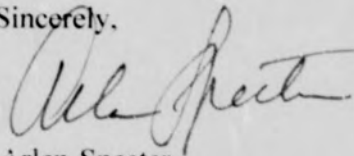
Throughout the Eastern Seaboard, rail service is essential to ports in communities such as Philadelphia, Camden, Hampton Roads, Baltimore, and New York. During the legislative hearing I held on April 14, 1997, Manny Stamatakis, Chairman of the Delaware River Port Authority, testified that the Conrail acquisition has the potential to alter the competitiveness of the Port of Philadelphia well into the next century. Among the issues he raised were the need for maintaining on-terminal access for three Class I railroads and competitive double-stack and conventional rail service between the Port of Philadelphia and the Midwest. He also noted the Authority's support for Canadian Pacific/Delaware and Hudson to retain its access to the Port.

Impact on Commuter Rail -- Southeastern Pennsylvania Transportation Authority (SEPTA)

Public transportation is critical to millions of Pennsylvania residents each year, particularly in Philadelphia and its neighboring suburbs, where commuter rail operated by SEPTA has much at stake in the Conrail transaction. SEPTA has informed me of its concerns on the potential impact of changes in volume and routing of freight traffic on SEPTA's 13 commuter rail lines, which ensure mobility to residents of Pennsylvania, New Jersey, and Delaware and contribute substantially to the region's economy and environment.

I am advised that SEPTA and Conrail share common tracks for passenger and freight operations on more than half of SEPTA's entire service territory based on a close relationship since Conrail's inception in 1976 and trackage rights agreements dating back to 1979. According to SEPTA, those agreements have fairly and effectively governed the rights and responsibilities of SEPTA and Conrail with respect to their operations, maintenance, allowable traffic levels and cost apportionment. I believe that in reviewing the CSX/NS proposal, the Board should ensure that a new trackage rights contract is obtained by SEPTA which allows not only existing service to continue but also provides for new services which SEPTA is studying (Cross County Corridor, Schuylkill Valley Metro).

Sincerely,



Arlen Specter

AS:dr

The key factor is whether Conrail's employees & Pennsylvania's communities will be as well off as they would have been under the CSX-Conrail Agreement.

STB

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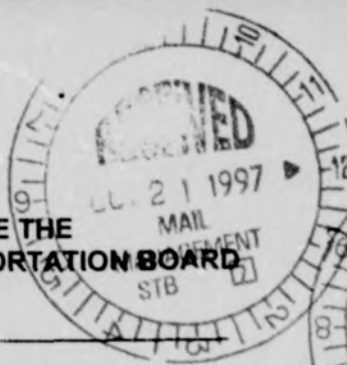
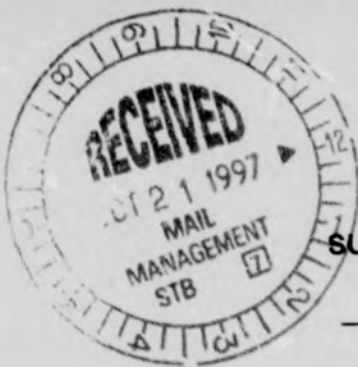
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

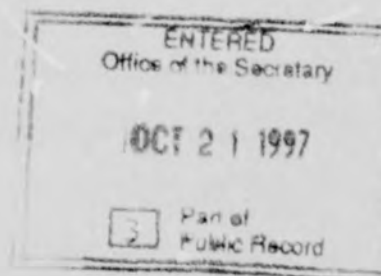
Finance Docket No. 33388



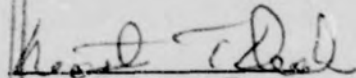
CSX Corporation and CSX Transportation, Inc., Norfolk  
Southern Corporation and Norfolk Southern Railway Company  
-- Control and Operating Leases/Agreements --  
Conrail Inc. and Consolidated Rail Corporation

**COMMENT OF THE VILLAGE OF RIDGEFIELD PARK, NEW JERSEY  
TO THE REFERENCED APPLICATION**

The undersigned, counsel for the Village of Ridgefield Park, New Jersey (the "Village"), respectfully submits the annexed Affidavit of George D. Fosdick, Village Mayor, by way of comment to the application of the CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"); the Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"); and Conrail Inc. and the Consolidated Rail Corporation (collectively, "Conrail") seeking authority for the acquisition by CSX and NS of control of Conrail, and the division of Conrail's assets by and between CSX and NS.



Respectfully,

  
Martin T. Durkin, Esq.  
Durkin & Boggia, Esqs.  
Centennial House  
71 Mt. Vernon Street  
P.O. Box 378  
Ridgefield Park, New Jersey 07660

Dated: October 16, 1997

**Finance Docket No. 33388**

**AFFIDAVIT OF GEORGE D. FOSDICK  
MAYOR OF THE VILLAGE OF RIDGEFIELD PARK, NEW JERSEY  
IN CONNECTION WITH THE REFERENCED APPLICATION**

COUNTY OF BERGEN )  
 ) SS:  
STATE OF NEW JERSEY )

I, George D. Fosdick, of full age, being duly sworn and upon my oath,  
depose and say:

1. I am a resident of the Village of Ridgefield Park, New Jersey (the "Village"), and have been a resident of the Village for most of my life.
2. I have been a member of the Ridgefield Park Volunteer Fire Department for 33 years, belonging to Truck No. 2. I was the Assistant Chief of the Volunteer Fire Department in 1981 and 1982, and I was the Chief of the Volunteer Fire Department in 1983.
3. In 1984, I became a member of the governing body of the Village to fill an unexpired term. I was elected to office in 1984, 1988, 1992 and 1996.

4. In May 1992, I was selected as Mayor by the Board of Commissioners. I served as Mayor from May 1992 to May 1996. In 1996, upon my re-election as Commissioner, I was selected for another four-year term as Mayor, and am presently serving in that capacity.

5. As Mayor, I am also a member of the Ridgefield Park Planning Board.

6. I make this Affidavit by way of comment to the application of the CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"); the Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"); and Conrail Inc and the Consolidated Rail Corporation (collectively, "Conrail") seeking authority for the acquisition by CSX and NS of control of Conrail, and the division of Conrail's assets by and between CSX and NS.

7. At this time, the Village has no objection *per se* to the granting of the referenced application. However, unrelated events have caused the application to take on a certain significance to the Village. Specifically, the Village has become aware that the Delaware Otsego Corporation, of which the New York Susquehanna & Western Railway Corporation ("NYS&W") is a wholly-owned subsidiary, is the subject of a proposed management buyout by Norfolk Southern Corporation, CSX Corporation and Walter G. Rich, Delaware Otsego's Chief Executive Officer.<sup>1</sup> (A recent article in the Railroad News column of the November 1997 issue of Trains Magazine stated that the buyout was expected to be done in September.) The realization of the management buyout would bring the CSX and Norfolk Southern railroads into the Village in a significant manner.

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<sup>1</sup> CSX has an ongoing business relationship with NYS&W, which transports freight cars to CSX's "Little Ferry Yard" located adjacent to the Village in the Borough of Ridgefield. Furthermore, NYS&W has been a presence in the Village for many years, and since 1992 has operated a so-called "refueling and light maintenance facility" on property it owns within the Village. Their operation is not being operated in accordance with applicable EPA regulations.

8. In addition to the foregoing, the Village has been advised that CSX has proposed, in connection with the matter currently pending before the Surface Transportation Board, to construct two cross-tracks within the Village for the purpose of connecting CSX with Norfolk Southern and facilitating the movement of freight between the two railroads.

9. The placement of the proposed cross-tracks within the Village is a matter of concern for a number of reasons. Specifically:

(a) Traffic on the proposed cross-track will exacerbate an existing problem already faced by the Village in that it will cause prolonged blocking of two major thoroughfares, Mt. Vernon Street and the Bergen Turnpike. This will negatively affect a number of large industries, including Crystal Clear Industries, Callahan Chemical, BP Electrical Co., Fire Guard Sprinkler Corp., Hagemann Roofing, Guy's Auto Repair, Apache Auto Wreckers, Inc., M.J. Pacquet Construction Co. and Paoella Pro-Filing, located on the west side of the railroad tracks.

(b) A newly-constructed Department of Public Works yard is located on the west side of the railroad tracks. Village fire trucks, ambulances and garbage trucks are repaired and fueled at this location, and the untimely blocking of Mt. Vernon Street and/or the Bergen Turnpike could, without exaggeration, make the difference between life and death should a serious fire or other emergency arise at a time when an emergency vehicle is trapped in the DPW yard and is prevented from reaching the emergency site.

(c) The location of the cross-tracks on Mt. Vernon Street and the Bergen Turnpike will in effect split the Village into two sectors, eastern and

western, which separation will be at times a true blockade between those sectors resulting from long intermodal trains utilizing the cross-tracks. Indeed, NYS&W's refueling and light maintenance facility has already led to the Mount Vernon Street and Bergen Turnpike crossings being blocked for as much as 20 minutes to 1 hour at a time, causing those individuals on the west side to be greatly inconvenienced and, in fact, causing some property owners on the west side of the railroad tracks to request reductions in their property assessments. Any additional use of the railroad track in the Village will only make the present situation worse. As it is, Conrail and NYS&W freight trains enter the present Little Ferry Yard at about 5-10 m.p.h. with freight trains that sometimes have as many as 150 cars of freight!

(d) The Village is concerned that the proposed cross-tracks may cause use of the NYS&W's "refueling and light maintenance facility" in the Village to increase.

(e) The Village has very recently learned that the New Jersey Department of Transportation, in conjunction with Bergen County, is presently considering a renewal of passenger transportation from Saddle Brook, New Jersey to Weehawken, New Jersey, among other possible locations. Passenger trains would pass through the Village and in fact a station is contemplated in Ridgefield Park. The presence and use of the proposed cross-tracks will prevent the ability of passenger trains to pass through the Village on a regular schedule and may affect the construction of a railroad track.



10. Annexed to this Affidavit as Exhibit A are several photographs which depict both the site of the proposed cross-tracks and the "Little Ferry Yard" presently owned by CSX in the Borough of Ridgefield. As these photographs indicate, there is more than sufficient room at the Little Ferry Yard for the construction of the proposed cross-tracks with none of the attendant inconvenience and potential danger to the Village. The Village thus believes that the Little Ferry Yard would be a far more appropriate site for the proposed cross-tracks.

11. In addition to the foregoing, the Village notes that Conrail presently maintains a drawbridge over the Hackensack River which, if operable, would permit water traffic to enter the eastern end of Overpeck Creek. The United States Coast Guard has indicated that this drawbridge should be operable to water traffic. However, Conrail has permanently closed the drawbridge by welding the track.

12. If the Surface Transportation Board is inclined to grant the subject application, granting to CSX and NS the right to divide the assets of Conrail and merge them into their respective companies, it is respectfully requested that Surface Transportation Board consider the following conditions:

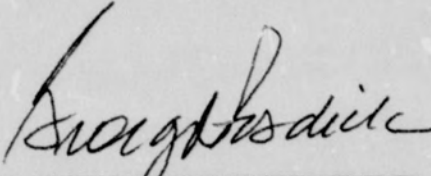
(a) That there not be a cross-track located in Ridgefield Park between CSX and NYS&W.

(b) That the NYS&W be required to remove its refueling facilities from the Village, which are in violation of applicable EPA regulations on containment of petroleum products.

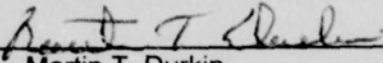
(c) That the bridge over the Overpeck Creek maintained presently by Conrail be returned to being a moveable bridge, so that vehicles can navigate the Overpeck Creek east of the bridge, as they once did.

I hereby certify that the above statements are true. If any of the above statements are wilfully false or misleading, I am subject to punishment.

Date: October 16, 1997

  
\_\_\_\_\_  
GEORGE D. FOSDICK

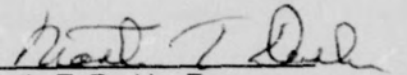
Sworn and subscribed to before me this  
16th day of October, 1997.

  
\_\_\_\_\_  
Martin T. Durkin  
Attorney at Law  
State of New Jersey



### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 16, 1997, he served the within Comment of the Village of Ridgefield Park, New Jersey to the application of the CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"); the Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"); and Conrail Inc. and the Consolidated Rail Corporation (collectively, "Conrail") seeking authority for the acquisition by CSX and NS of control of Conrail, and the division of Conrail's assets by and between CSX and NS, by causing copies of said document to be mailed by first class mail, postage prepaid, to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, D.C. 20426, and to all designated parties of record on the Service List in this matter.

  
Martin T. Durkin, Esq.

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JOHN F. COLLINS  
WILLIAM B. COLLINS  
STEVEN L. KANTOR  
JOHN E. MAXWELL  
BRIAN G. REDDY  
ALAN D. VOOS  
JOSEPH A. COLLINS  
LLOYD J. FISCHBECK

COLLINS, COLLINS & KANTOR

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

267 NORTH STREET  
BUFFALO, NEW YORK 14201  
(716) 885-9700 • FAX: (716) 885-9770

JOHN T. COLLINS  
(1923-1991)

182819

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October 14, 1997

SURFACE TRANSPORTATION BOARD  
OFFICE OF THE SECRETARY  
Case Control Unit  
1925 K Street, N.W.  
Washington, DC 20423-0001

ATTN.: STB Finance Docket No. 33388

Dear Secretary of the Board:

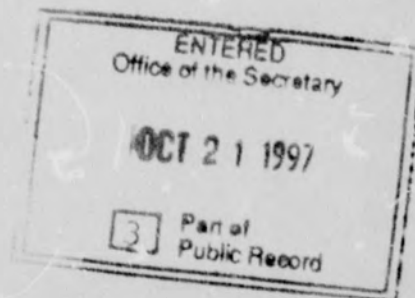
Enclosed are an original and ten copies of the Certificate of Service, pursuant to the provisions of Decision No. 43, filed on behalf of the Brotherhood of Locomotive Engineers, Conrail General Committee of Adjustment, R.W. Godwin, General Chairman, and Brotherhood of Locomotive Engineers, New York State Legislative Board.

Very truly yours,

COLLINS, COLLINS & KANTOR, P.C.

*John F. Collins*  
JOHN F. COLLINS, ESQ.

JFC:car  
Enclosures



182819

BEFORE THE  
SURFACE TRANSPORTATION BOARD

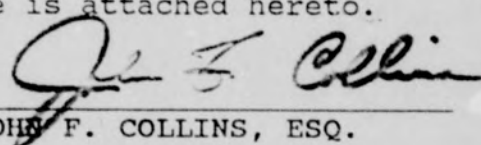
STB FINANCE DOCKET NO. 33388

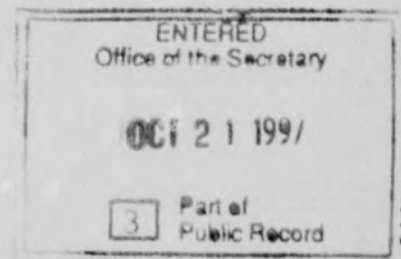


CSX CORPORATION AND CSX TRANSPORTATION INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
--CONTROL AND OPERATING LEASES/AGREEMENTS--  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the provisions of Decision No. 43, served October 9, 1997 in the above-captioned matter, a copy of the attached Notice of Intent to Participate was served on all parties of record added to the service list, as identified in Decision No. 43, via first class mail, postage prepaid on this 14th day of October, 1997. A list of those parties of record added to the service list and served this date is attached hereto.

  
JOHN F. COLLINS, ESQ.



COLLINS, COLLINS & KANTOR

ATTORNEYS AT LAW • 267 NORTH STREET • BUFFALO, NEW YORK 14201 • (716) 885-9700 • FAX: (716) 885-9770

CHRISTOPHER J. BURGER, PRES.  
CENTRAL RR CO. OF INDIANAPOLIS  
500 N. BUCKEYE  
KOKOMO, IN 46903

M.W. CURRIE, GC  
UTU GO-851  
3030 POWERS AVE., STE.2  
JACKSONVILLE, FL 32250

MARTIN T., DURKIN  
DURKIN & FOGGIA, ESQS.  
CENTENNIAL HOUSE  
71 MT. VERNON ST.  
P.O. BOX 378  
RIDGEFIELD PARK, NJ 07660

GARY EDWARDS  
SUPERINT. OF RR OPERATIONS  
SOMERSET RAILROAD CORPORATION  
7725 LAKE RD.  
BARKER, NY 14012

PETER A. GILBERTSON  
LOUISVILLE & INDIANA RR CO  
SUITE 350, 35 W. JACKSON BLVD  
CHICAGO, IL 60604

R. LAWRENCE McCaffrey, JR.  
NY & ATLANTIC RAILWAY  
405 LEXINGTON AVE., 50TH FLOOR  
NEW YORK, NY 10174

SAM J. NASCA, SLD  
UNITED TRANSPORTATION UNION  
35 FULLER RD, STE 205  
ALBANY, NY 12205

SCOTT A. RONEY, ESQ.  
ARCHER DANIELS MIDLAND CO  
P.O. BOX 1470  
4666 FARIES PARKWAY  
DECATUR, IL 62525

ALICE C. SAYLOR, VP, GC  
AMERICAN SHORT LINE RR ASSN  
1120 G ST. N.W., STE 520  
WASHINGTON, DC 20005-3889

THOMAS E. SCHICK  
CHEMICAL MANUFACTURERS ASSN  
1300 WILSON BLVD  
ARLINGTON, VA 22209

ROBERT P. vom EIGEN  
HOPKINS & SUTTER  
888 16TH ST., NW, STE 700  
WASHINGTON, DC 20006

LEO J. WASESCHA  
TRANSPORTATION MANAGER  
GOLD MEDAL DIVISION  
GENERAL MILLS OPERATIONS, INC.  
NUMBER ONE, GENERAL MILLS BLVD  
MINNEAPOLIS, MN 55426

STB

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BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

182826

LAW DEPARTMENT  
(978) 663-1029

October 20, 1997

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



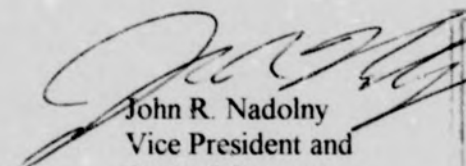
Re: Finance Docket No. 33388  
CSX Corporation and CSX Transportation, Inc.  
Norfolk Southern Corporation and Norfolk  
Southern Railway Company -- Control and  
Operating Leases/Agreements -- Conrail, Inc.  
and Consolidated Rail Corporation

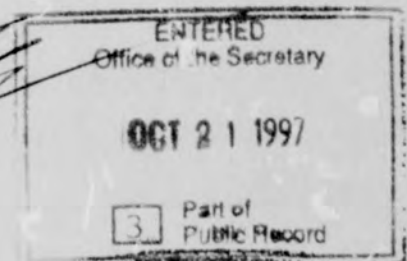
Dear Secretary Williams:

Enclosed herewith for filing in the above-captioned proceeding are the original and twenty-five (25) copies of the Boston and Maine Corporation's Comments in Support of the Application and in Opposition to Certain Conditions Proposed by the State of Rhode Island. Copies have this day been served upon the parties of record as noted in the Certificate of Service.

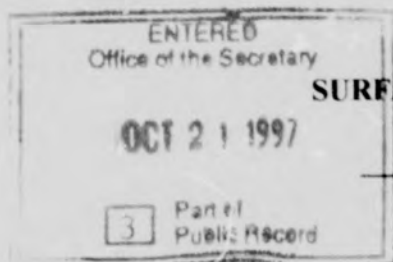
If there are any questions, please contact the undersigned directly.

Sincerely,

  
John R. Nadolny  
Vice President and  
General Counsel



enc.



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

**Finance Docket No. 33388**



182826

**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**

**Boston and Maine Corporation's Comments in Support  
of the Application and in Opposition to Certain Conditions  
Proposed by the State of Rhode Island**

Boston and Maine Corporation, Springfield Terminal Railway Company and Maine Central Railroad Company (collectively the Guilford Rail System and referred to herein for purposes of simplicity and consistency with the Application as "B&M") hereby present

- (i) their comments on the proposed transaction, as described in the Application and
- (ii) their comments in opposition to certain suggested conditions described in the earlier filing submitted by the State of Rhode Island.

B&M supports the proposed transaction and is of the belief that its expeditious approval and consumation will provide substantial improvement in the market for competitive rail service throughout New England in general and on the Guilford Rail System in particular. Unlike many of those who will submit comments or responsive

applications in this proceeding, B&M has a direct, identifiable and measurable interest in the successful outcome of same. For many years, B&M has tried a variety of different means to maintain competitive connecting routes into New England. For many years B&M has relied on its connection with the single dominant carrier in the region, Conrail, to develop new business and services, such as B&M's *PressRunner* paper express train and *Downeast Express* intermodal service. It is imperative that the proposed merger result in customers of the Guilford Rail System having the opportunity to route traffic to either the new CSX system or the new Norfolk Southern system. It is our understanding that these options will be available as a result of an agreement reached between Canadian Pacific and Norfolk Southern to extend the Norfolk Southern system to Mechanicville, New York, enabling a direct interchange between B&M and Norfolk Southern.

B&M has already improved its line between Mechanicville, New York and Rotterdam Junction, New York to allow for an efficient interchange at what will become a CSX gateway. B&M is currently completing a substantial rehabilitation program between the Hoosac Tunnel, in North Adams, Massachusetts and Mechanicville, New York, which will present an efficient interchange with Norfolk Southern. Tie replacement through the tunnel will continue during the winter, while our contractor completes the tunnel clearance improvement program initiated in September, 1997. Further clearance improvements are scheduled for the spring of 1998, primarily the removal of restrictions at some nineteen bridges. When completed in 1998, the B&M line will offer the same clearance benefits presently offered on the Conrail main line between Albany, New York and Worcester,

Massachusetts, albeit with substantially better grades.

B&M sees the opportunity to provide better and/or expanded service throughout New England by establishing new, efficient and competitive operations with both CSX and Norfolk Southern over existing locations and via the improved western end of our railroad. B&M has initiated the above-described investment and improvement programs in an effort to be ready for these new opportunities on or before the Board's scheduled decision date.

B&M opposes the suggestion, set forth by the State of Rhode Island at Section III of its Description of Anticipated Responsive Application Filing dated August 21, 1997, that the Board "grant Norfolk Southern trackage rights to the Boston & Maine [sic] line, currently owned and operated by the Guilford Transportation Co. [sic] to allow interchanges with the P&W at Gardner, MA." There is simply no need or authority for the granting of such extraordinary relief. The Board's mission in adjudicating this proceeding does not include the elimination of existing carriers from presently functioning routes. There is no evidence, nor even a suggestion, that the existing connections enjoyed by P&W do not or will not work post-merger. It is also telling to note that, to the best of our knowledge, neither P&W nor Norfolk Southern has requested this unprecedented type of action.

In conclusion, B&M respectfully requests that the Board approve the Application as expeditiously as possible and that the Board reject the conditions suggested by the State of Rhode Island.

BOSTON AND MAINE CORPORATION,  
SPRINGFIELD TERMINAL RAILWAY  
COMPANY and MAINE CENTRAL  
RAILROAD COMPANY

October 20, 1997

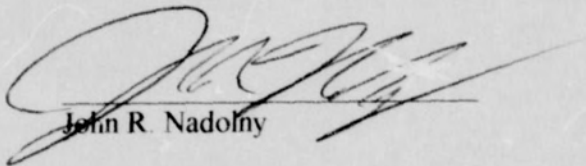
By 

John R. Nadolny  
Vice President and General Counsel  
Law Department  
Iron Horse Park  
N. Billerica, MA 01862  
(978) 663-1029



**CERTIFICATE OF SERVICE**

I, John R. Nadolny, certify that on October 20, 1997, I caused to be served by first class mail, postage prepaid, a true and correct copy of the foregoing B&M-2, Boston and Maine Corporation's Comments in Support of the Application and in Opposition to Conditions Proposed by the State of Rhode Island, on all interested parties of record in STB Docket No. 33388.

  
John R. Nadolny

STB

FD

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10-21-97

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ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388  
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CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
-- CONTROL AND OPERATING LEASES/AGREEMENTS --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

ESHR-4

Finance Docket No 33388 (Sub No. 57)

EASTERN SHORE RAILROAD, INC.  
-- TRACKAGE RIGHTS EXEMPTION --  
LINES OF PENNSYLVANIA LINES LLC

COMMENTS OF EASTERN SHORE RAILROAD, INC. Office of the Secretary

OCT 21 1997

3 Part of  
Public Record

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(202) 785-3700

Attorneys for the Eastern Shore  
Railroad, Inc.

Dated: October 21, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 33388  
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CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
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**ESHR-4**

Finance Docket No 33388 (Sub-No. 57)<sup>1</sup>

EASTERN SHORE RAILROAD, INC.  
-- TRACKAGE RIGHTS EXEMPTION --  
LINES OF PENNSYLVANIA LINES LLC

COMMENTS OF EASTERN SHORE RAILROAD, INC.

Introduction

In a Decision served July 23, 1997, the Surface Transportation Board accepted for consideration the primary application and related filings (hereinafter, these related filings will be referred to as the "Application") submitted by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"),<sup>2</sup>

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<sup>1</sup> ESHR had previously reserved a "Sub-No." docket designation in anticipation of filing a responsive application. Since it has since elected not to file a responsive application, ESHR understands that it is no longer necessary for it to refer to Sub-No. 57 or to the trackage rights caption that accompanies it.

CSXC and CSXT will be referred to collectively as "CSX."

Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"),<sup>3</sup> Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")<sup>4</sup> (collectively "Applicants") for Board approval and authorization under 49 U.S.C. §§ 11321-25 for, as is relevant here -- (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of assets of Conrail by and between CSX and NS.<sup>5</sup>

In its Decision served on July 23rd, the Board confirmed the procedural deadlines for this proceeding. As pertinent here, the Board has required that all parties wishing to offer comments, protests, and requests for protective conditions, and any other opposition evidence and argument must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, the Eastern Shore Railroad, Inc. ("ESHR"), a class III shortline railroad headquartered in Cape Charles, VA, hereby submits its comments in connection with the above-docketed Application.<sup>6</sup>

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NSC and NSR will be referred to collectively as "NS."

<sup>4</sup> CRR and CRC are referred to collectively as either "CR" or "Conrail."

<sup>5</sup> Hereinafter, the series of transactions proposed in Applicants' primary application and related supplements shall be referred to as the "Transaction."

<sup>6</sup> On August 22, 1997, ESHR filed, as "ESHR-2" a Description of Anticipated Responsive Application to -- (1) preserve competitive rail service to shippers located along the southern end of the Delmarva Peninsula, and (2) ensure for mid-Atlantic shippers a competitive corridor between the northeastern U.S. and the greater Norfolk, Virginia vicinity. ESHR also filed on August 22nd a Notice of Appearance for Robert A. Wimbish (ESHR's designated Washington counsel), and a "Rebuttal of



### Comments

Earlier in the course of this proceeding, ESHR had determined that it might be necessary to protect its interests and its shippers' interests by preparing and filing a responsive application. It has since elected not to go forward with such a filing.

Within the past few weeks, ESHR representatives have met with officials from NS to discuss the potential traffic diversions that the Application indicated ESHR would suffer post-Transaction. At those meetings, NS represented that -- contrary to the expert testimony contained in NS's portion of the Application -- it foresaw no instances where NS would attempt to divert away from ESHR any traffic ESHR currently handles. NS therefore could not foresee any ESHR revenue losses (post-Transaction) that would be attributable to NS activity. Indeed, ESHR representatives came away from the meeting with a sense of renewed commitment from NS to pursue and develop with ESHR new business opportunities after consummation of the Transaction.<sup>7</sup>

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Presumption of 'Significant' Transaction in Connection with Anticipated Responsive Application" (ESHR-3).

<sup>7</sup> In a letter from Bill Schafer, Director of Strategic Planning for Norfolk Southern, to George R. Conner of the Virginia Department of Rail and Public Transportation, Mr Schafer stated:

Norfolk Southern has established strong partnership with its shortlines. it is not our policy to establish transloading facilities for the purpose of attracting traffic that otherwise originates or terminates on shortline-railroads.

As we discussed in our meeting in Norfolk on October 7, the traffic diversions from the Eastern

CSX has been holding meetings with representatives of the Commonwealth of Virginia regarding aspects of the proposed Transaction, and CSX has arranged for a similar meeting with ESHR in an effort to address and resolve ESHR's traffic and revenue-related concerns. While ESHR is encouraged by such positive developments, it is disappointed by the tardiness of CSX's responses to frequent ESHR inquiries. ESHR hopes that CSX's recent commitment to meet and potentially resolve ESHR matters signifies an effort by CSX to act responsibly toward those carriers who, like ESHR, are or may be affected by the Transaction.

For the reasons presented above, ESHR has elected not to submit a responsive application in this proceeding. Although ESHR is still concerned about its future economic well-being in the event the Transaction is consummated, it is now hopeful that NS and CSX will work with ESHR -- as NS informally pledged to do and as CSX now appears it may finally be ready to do -- to ensure that ESHR's essential rail services will be preserved. ESHR has

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Shore Railroad (ESHR) shown in Volume 29 of the Application are probably overstated. Most of the traffic identified for diversion originated or terminated in the Norfolk area, and it would make sense for this traffic to continue to be routed via the ESHR. NS will continue to work with ESHR to identify business opportunities that will benefit us both.

Norfolk Southern's shortline marketing group in Roanoke has been working regularly with shortlines in Conrail territory on rate, interchange and service issues. This group will also assist Virginia shortlines with similar issues.

no further comments to submit at this time, but it wishes to remain a party of record in order that it may continue to review and assess developments in this proceeding.

Respectfully submitted,

*Robert A. Wimbish*

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Attorneys for the Eastern Shore  
Railroad, Inc.

Dated: October 21, 1997

#### CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.

*Robert A. Wimbish*

Robert A. Wimbish

STB

FD

33388

10-21-97

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182853

ROBERT MENENDEZ  
13TH DISTRICT, NEW JERSEY

COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE

SUBCOMMITTEES:  
SURFACE TRANSPORTATION  
WATER RESOURCES

COMMITTEE ON INTERNATIONAL  
RELATIONS

SUBCOMMITTEES:  
AFRICA  
WESTERN HEMISPHERE AFFAIRS

CHIEF DEPUTY WHIP



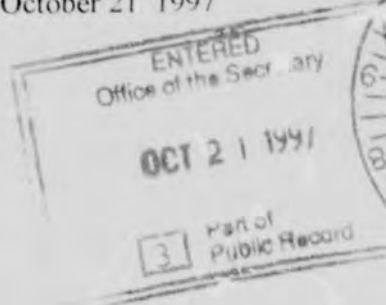
## Congress of the United States

House of Representatives

Washington, DC 20515-3013

October 21 1997

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



182853

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To the Members Of the Surface Transportation Board:

I am Congressman Robert Menendez and I represent the Thirteenth Congressional District of New Jersey. New Jersey's Thirteenth Congressional District has some of the most densely populated cities in the United States. This area has virtually every form of transportation - rail, highway, port, mass transit and air. Ports Newark and Elizabeth are the largest maritime ports in the New York Harbor making it the largest port on the East Coast. The Conrail Yards make up the economic spine of New Jersey and the Northeastern U.S. 180,000 jobs depend on the Port of New York and New Jersey and the Port and the New York/Northern New Jersey Metropolitan region's 15.7 million people depend upon rail service.

John Snow, the Chairman of CSX said of the Conrail/CSX/NS merger, "The devil is in the details." There are tens of thousands of pages of submissions to the Surface Transportation Board and from the point of view of the New York Harbor there appears to be a certain amount of devilry, some of it detailed, some of it devilishly vague. I submit the following comments as problem areas that should be addressed by the Board in the best interests of the nation, the economy and our fellow citizens.

### Noise

Volume 6A has the discussion by the merger parties of Noise Methodology:

Acoustic shielding provided by the first row or two of residences is usually sufficient to keep noise exposure below DNL 65dB at residences that are further away. (pp. B-1 199, B2-200)

As a frame of reference, FAA considers 65dB level where it is intolerable for individuals to live. Apparently the railroads believe that they are free to use the first two rows of residences as free acoustic shields for cutting sounds in the communities through which they pass. Furthermore, if the sound is reduced to 65dB because of sonic absorption by peoples' home, then the noise level inside those residences used as shielding is much, much louder.



### Recommendation

The Board should require the parties to the mergers to augment effective noise reduction. Failure to take effective noise relief measures amounts to a taking for the residences along the right of way. Studies show that prolonged exposure to elevated noise levels result in long term hearing loss and other health complications. The Board must condition merger approval on adequate noise protection for residences adjacent to rail right of ways. The intended benefits of this merger should not involve the loss of hearing by helpless citizens. There was never any intention by the Congress to grant the Board merger approval which would immunize merger parties in areas related to public health. Similarly I have enclosed correspondence from Conrail regarding noise problems rail operations have produced in my communities. Similarly it is hoped that the Board would not nullify preexisting agreements or court settlements with communities or local noise ordinances.

### **Safety**

The case before the Board presents three parties whose records raise serious safety questions. Conrail has a recent history of over 1,000 safety violations. Norfolk Southern has refused to participate in the Federal Railroad Administration Safety Assurance and Compliance Program and NS dispatchers have gone out on strike over training qualifications and skills. CSX is facing a \$2.5 billion jury award over a 1987 crash involving hazardous material and an October 16, Federal Railroad Administration report outlining 251 safety related projects involving too few employees to maintain track and communications facilities properly or to dispatch train and crews.

The Government Accounting Office study, Rail Transportation: Federal Railroad Administration's Approach to Railroad Safety, July, 1997, (GAO/RCED-97-142) in its principal findings stated:

Safety on the nation's railroads has improved since 1976, although the most rapid decrease in accidents occurred before 1987, FRA and industry officials attribute these improvements to advancements in technology, increased investment focused on a downsized infrastructure, and a more scientific approach toward reducing injuries. However class I freight railroads, which account for most of the industry's revenue and train-miles, are now using fewer miles of track. Labor officials believe that these changes in operations could lead to more rail collisions and accidents as a result of greater congestion and fewer qualified employees to perform essential maintenance. While current safety trends are positive, it is uncertain how further advancements in technology or reductions in employment will affect safety in the future.

Nonetheless, further improvements in safety are needed, since more than 1,000 people die each year as a result of fatal collisions between cars and trains or as a result of trespassers

on rail road property being struck by trains. Hazardous material releases resulting from train accidents showed no clear trends between 1978 and 1995. About 261,000 people were evacuated across the United States because of rail-related hazardous materials releases occurring over these years. Concerns remain about evacuations because the volume of chemical traffic increased by over one-third from 1976 to 1995.

The Union Pacific/Southern Pacific and Burlington Northern/Sante-Fe mergers and their aftermaths have not been models of improved efficiency, customer service or safety. There is a rapidly developing body of information that most of the conditions that were placed on the railroads by the Surface Transportation Board have not been honored. On August 1, the Assistant General Counsel of the U.S. Department of Transportation wrote the STB citing "Troubling incidents have occurred that warrant investigation in order to determine the full extent of problems associated with the merger. . . . It is clear by now that continuing disputes over the application of some conditions have delayed the onset of competitive service." USDOT raised the head-on collision of two UP freight trains near San Antonio, Texas, where four people were killed and one severely burned. Concerns about safety problems on Burlington Northern were raised as well. Shortly after this letter was sent, there was a crash of an Amtrak train in Arizona on Burlington Northern tracks.

Into this context, the proposed Conrail merger envisions a Shared Asset Area with no operating plans, no plans for investment in facilities already operating at full capacity, expectation of huge increases in traffic, and vastly reduced labor forces in the most densely populated area in the nation. Moreover unlike the other mergers this area has heavy mass transit usage on the same trackage as freight rail. 65,000 riders use NJTransit daily. There are only 20 pages which refer to transit at all in the submission. Conrail has trackage rights agreements with NJTransit, renewable annually, expiring October 31, 1997, which specifies the rights and responsibilities between Conrail and NJTransit in Northern New Jersey. The agreement provides that preference be given to passenger service over freight. Without specific plans and commitments to the preservation of transit rights, billions of dollars of state and federal investment in mass transit will be compromised.

### Recommendation

As a precondition to merger, safety promises must be guaranteed. In recent mergers, the STB has acted in good faith and required subsequent safety improvement but this has been met with lackadaisical compliance. Now, the STB should insist on safety as a initial condition prior to merger. Revenues of the parties to the merger should be required to be paid into escrow until there are sufficient funds to finance urgent safety improvements. Second, the parties to the mergers must be required to reach satisfactory resolutions to the trackage right issues with all public transit entities.

## Labor

In examining the pleadings to the STB, it appears that one of the major reasons for this merger is the abrogation of collective bargaining agreements. While the supporting documentation has lengthy narratives of finances and corridor routings, the emphasis of the prayers for relief are for changes in labor contracts. The Surface Transportation Board has the authority to abrogate freight rail collective bargaining agreements and destroy privately negotiated rail labor protections.

The railroads have made it their highest priority to maintain their advantage of abrogating contracts in the case of failing railroads and subsequent mergers. Rail labor contracts almost always have better labor conditions than any statutory protection.

The railroads are trying to take advantage of old measures that were taken when the Interstate Commerce Commission was faced with failing railroads and with stranded communities. The nature of rail mergers has drastically changed. They no longer involve failing railroads. The unilateral abrogation of contracts by the Surface Transportation Board has taken on some sinister new aspects. The STB has voided contracts not to save failing railroads but "to obtain the benefits of a transaction that we have approved in the public interest." The STB has used a 30-year old approval of a merger and conditions to break a current collective bargaining agreement simply because the railroad asks them to act. In the recent Burlington Northern-Sante Fe merger, the Surface Transportation Board allowed the termination of 3,000 clerks in Minnesota. Most of these individuals had lifetime contracts.

Most of the statutory protections for railroad workers preceded modern unemployment programs. They are criticized as overly generous but are very difficult, in fact to collect. The other labor "protection" provision that is usually cited is New York Dock. New York Dock is repeatedly referred to in the prayer for relief along with other vague statutory provisions.

There is reason to believe that the statutory provision is Section 702 of the Regional Reorganization Act of 1973 which created Conrail stating:

The Corporation may terminate the employment of certain employees, in accordance with this section, upon the payment of \$350 for each month of active service with the corporation or with a railroad in reorganization, but in no event may any such termination allowance exceed \$25,000.

This is far less cash payment than would be received under New York Dock. Moreover Sec. 705(b) of the same act states:

Any benefit received by an employee under an agreement entered into pursuant to Section 701 of this Act[repealed] and any termination allowance received under section 702 of this Act shall be considered compensation solely for the purpose of-

- (1) the Railroad Retirement Act of 1974 (45 USC 231 et seq.); and
- (2) determining the compensation received by such employee in any base under the Railroad Unemployment Insurance Act (45 USC 351 et seq.).

It is possible that the true agenda of this merger is to terminate all the Conrail employees and pay them off with a fraction of the amount the railroads would be required to pay under either the collective bargaining agreement or the far less generous terms of New York Dock. It is also possible that the railroads may be able to slide these terminated Conrail employees onto the Federal roles of Railroad Unemployment or Retirement. The Federal Government may end up subsidizing this merger.

### Recommendations

The STB should require the parties to the merger to renegotiate labor contract under the terms of the Railway Labor Act. The STB would never seriously entertain voiding contracts for coal or diesel fuel for profitable companies. To exercise this power over labor contracts is unnecessary. The STB should also make every effort to avoid sanctioning merger provisions which have the effect of providing federal subsidies to the parties.

### **Shared Asset Area**

The proposed merger offers a historic opportunity to end the virtual rail monopoly of Conrail in the Northern New Jersey/New York region. The central question is whether competition will be the result of the Shared Asset Area? The Shared Asset Area has over 20 million people. It has been termed the "jewel in the crown" of the proposed merger. The only certainty with the SAA is that it is completely undefined. There is no operating plan for the SAA in New Jersey. The parties have said that the operating plan may not be available until the last quarter of next year. That is conveniently past the time for scrutiny by the Surface Transportation Board.

What is wrong with an ill defined operating plan for the SAA? Commerce requires an amount of certainty. If the SAA is truly the "jewel in the crown" of this merger, is it in the public interest to allow improvisation in what is the largest market in the nation? At best, going forward with inadequate knowledge of the operating plan is bad public and economic policy. At worst, the SAA is a flimsy veneer to conceal monopoly practices behind the power of the STB to craft anti-trust exemptions for mergers which they approve.

What little we know of the SAA in the Northern New Jersey area is troubling. There are no definite commitments for any capital improvement in New Jersey. The Conrail yards that will be divided between the parties are already at full capacity, yet inconsistently the submissions insist that there will be a vast increase in traffic volume. The only clear reconciliation of these antitheses is that cargo will be diverted away from the Port of New York and New Jersey.



As I will further elaborate below, the combination of little or no capital investment in the Northern New Jersey and New York area, the great reduction in workforces, and the bizarre structure of the Shared Asset Area are a great source for alarm. The SAA is an elaborate tiering of shell corporations including the Green and Conrail. It appears the net result is that both CSX and NS will have 50% control of activities in the SAA. With STB approval, this legalizes a cartel. If all works well this cartel will operate with impunity and costs to consumers could rise. If all goes badly, a 50% control leads to deadlock. Each company is in a perfect position to sabotage the other and tie up traffic for the entire Northeast.

### Recommendations

The STB must demand more definite information on the Shared Asset Area. There must be an operating plan which is full and definitive. It should outline safety and capacity improvements. The operating plan should clearly lay out infrastructure improvements and timetables for construction. It is vital that the operating plan clearly detail procedures to avoid management deadlock which could slow traffic and result in cargo diversion. The operating plan must resolve rights of way issues for mass transit agencies and passenger rail. If projections of traffic increases are correct there could be serious safety problems without fully modernized traffic control systems in place and operational. The STB should consider requiring a deadlock breaker, consisting of an impartial party to represent the public interest in the SAA and act as an arbitrator. The STB should extend public review time to enable the public to review this new operating plan for the SAA. Should the parties fail to provide a more definite plan, the Board should entertain recommendations for a neutral terminal railroad to preserve the public interest or allow completely open access on the Northeast Corridor.

### **Railroad Mergers in Context**

The aftermath of the Union Pacific/Southern Pacific and Burlington Northern/Sante-Fe mergers have not been models of improved efficiency, customer service or safety. In fact, there is a rapidly developing body of information that most of the conditions that were placed on the railroads by the STB have not been honored.

On August 1, the Assistant General Counsel of the U.S. Department of Transportation wrote the STB citing "Troubling incidents have occurred that warrant investigation in order to determine the full extent of problems associated with the merger. . . . It is clear by now that continuing disputes over the application of some conditions have delayed the onset of competitive service." USDOT raised the head-on collision of two UP freight trains near San Antonio, Texas, where four people were killed and one severely burned. Concerns about safety problems on Burlington Northern were raised as well. Shortly after this letter was sent, there was a crash of an Amtrak train in Arizona. Newspaper articles of September 2, 1997, tell of shipper frustration with UP which admitted it will be months before freight backlogs are unraveled.



I am concerned about the extensive growth of monopoly and near monopoly power in every facet of the economy from communications, computing, financial services to even retailing. The recent spate of mergers and "alliances" in transportation creates an unsettling resemblance to the vast holding trusts of the last century.

At issue in this merger is the very disturbing transcript of a meeting involving representatives of the Norfolk Southern Railroad and the North Atlantic Ports Association on June 5, 1997, in Providence, Rhode Island. The transcript appears to be a blatant return to the tactics and exercise of old-fashioned monopoly powers. In a panel session of this association, the Vice President of Intermodal of Norfolk Southern, Tom Finkbinder stated:

Quite frankly I have to [tell] you that we are human beings on the railroad and we know who have supported us and we know who didn't and if you think that any of us are going to forget that you are crazy.

While the entire statement raises many legitimate points about problems in the nation's transportation system, there remains the implication in concluding remarks:

We have to make this work by expanding the market and not killing everybody. Where there are not two carriers who compete now, in most ports there will be but I need your support, I don't need to be nitpicked and we need some practical thinking, not politically correct thinking.

Is this the rationing of rail service? Is this a further veiled threat? Remember this statement is in response to a letter by the North Atlantic Ports for the Surface Transportation Board to conduct a longer review of this takeover. Are large rail transporters already so insulated that they are able to dictate terms? The highest ranking official in the intermodal business of Norfolk Southern made these threats. He obviously feels confident that he can carry out his reprisals. Is this the inevitable result of deregulation and the breakdown of the principles of common carriage? Most ports in this country are public entities. Can we allow our public entities to be held hostage by economic blackmail?

Contrast these two statements of Mr. Finkbinder made four days apart:

Everyone of the ports in this room that I have talked to have expressed a concern about the way we treat Norfolk, and the relative success of the Port of Norfolk. I would point out that we are not the only carrier that services Norfolk. Of the people in this room and the state representatives in this room, I have one support left, the State of Virginia and the Port of Norfolk. Who, of all the ports in the northeast, has more to lose than the Port of Norfolk? The next time you ask me if there is a special relationship, you might think about that. The answer is that I have one partner here at the moment and I'd ask you to rethink your position and take a look at it because we are an economic entity. (North Atlantic Ports

Association, Inc., Annual Meeting, June 5, 1997)

Norfolk Southern intends to replicate its close cooperation with the Virginia Port Authority at each of the eastern ports it will serve. (Verified Statement of Thomas L. Finkbiner, p.36. June 9, 1997)

I do not think that the threats in this transcript should be taken lightly. It certainly illustrates a bleak future if our government continues to allow vast, international concentrations of economic power. The most profound thinker on the subject on transportation and monopoly was Justice Louis Brandeis. He said:

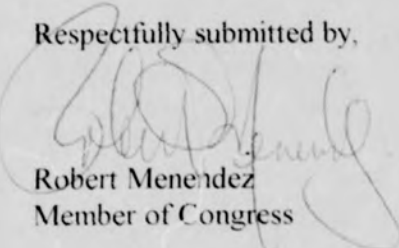
There is no way to safeguard the people from the evils of a private transportation monopoly except to prevent the monopoly. The objections to despotism and to monopoly are fundamental in human nature. They rest upon the innate and ineradicable selfishness of man. They rest upon the fact that absolute power inevitably leads to abuse.

The Union Pacific/Southern Pacific and Burlington Northern/Sante-Fe mergers and their aftermaths have not been models of improved efficiency, customer service or safety. In fact, there is a rapidly developing body of information that most of the conditions that were placed on the railroads by the Surface Transportation Board have not been honored. There is every reason to believe that the same problems will rapidly emerge if the STB approves this merger in the present form.

#### Recommendations

Given the serious concerns regarding noise, safety, labor, the deficiencies of the Shared Asset Area, the failure to finalize commitments to public mass transit agencies and the lack of compliance with STB imposed conditions in other current mergers, I would submit that the Surface Transportation Board should instruct the parties to this merger to address and correct these issues prior to any approval.

Respectfully submitted by,



Robert Menendez  
Member of Congress

GAO

United States General Accounting Office

Report to Congressional Requesters

July 1997

# RAIL TRANSPORTATION

## Federal Railroad Administration's New Approach to Railroad Safety







United States  
General Accounting Office  
Washington, D.C. 20548

Resources, Community, and  
Economic Development Division

B-275984

July 23, 1997

The Honorable James L. Oberstar  
Ranking Democratic Member  
Committee on Transportation and  
Infrastructure

The Honorable Robert E. Wise, Jr.  
Ranking Democratic Member  
Subcommittee on Railroads  
Committee on Transportation and  
Infrastructure

The Honorable Bruce F. Vento  
House of Representatives

In response to your request, this report provides information on operational and safety trends in the railroad industry, and describes how the Federal Railroad Administration (FRA) has responded to these trends by developing a new partnering approach for improving safety on the nation's rail lines.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to interested congressional committees, the Secretary of Transportation, and the Administrator of FRA. We will also make copies available to others upon request.

If you or your staffs have any questions, I can be reached at (202) 512-2834. Major contributors to this report are listed in appendix V.

A handwritten signature in cursive script that reads 'John H. Anderson, Jr.'.

John H. Anderson, Jr.  
Director, Transportation Issues

# Executive Summary

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## Purpose

In 1980, the Congress passed the Staggers Rail Act, which fostered substantial changes in the railroad industry. By 1995, fewer large freight railroads accounted for most of the industry's revenue and train miles. At the same time, these freight railroads substantially reduced their workforce and track networks. In response, the Congress and railroad labor have raised concerns that these changes in the industry could compromise safety.

The Ranking Democratic Member of the House Committee on Transportation and Infrastructure, the Ranking Democratic Member of that Committee's Subcommittee on Railroads, and Representative Bruce F. Vento asked GAO to describe (1) relationships that existed between operational and safety trends in the railroad industry from 1976 to 1995 and (2) the Federal Railroad Administration's (FRA) approach to improving safety on the nation's rail system. GAO was not able to identify any direct relationships between operational and safety trends because of limitations in the data that were available for the 1976 to 1995 period. Therefore, this report provides information on safety trends for the entire railroad industry and describes how FRA has responded to both operational and safety trends to develop a new partnering approach to improving safety on the nation's rail lines. In addition, chapter 1 provides information on operational trends in the freight industry.

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## Background

In 1995, the railroad industry consisted of Amtrak (the nation's largest passenger railroad), 14 large freight railroads—collectively known as class I railroads—as well as over 600 regional and smaller railroads. The industry had changed significantly since the Staggers Rail Act made it federal policy that railroads would rely, where possible, on competition and the demand for services, rather than on regulation to establish reasonable rates. Prior to the act, several of the largest freight railroads were earning a negative rate of return on investment and at least three were bankrupt. The deregulation contributed to changes in the composition and operation of the rail industry. From 1976 through 1995, the nation's largest freight railroads cut costs; increased the tonnage each train carried and the distance this tonnage was carried; downsized their workforce; and eliminated, sold, or abandoned thousands of miles of unprofitable or little-used track.

Since 1970, FRA has been responsible for regulating all aspects of passenger and freight railroad safety under the Federal Railroad Safety Act.



## Principal Findings

### Safety on the Nation's Railroads Has Generally Improved

Safety on the nation's railroads has improved since 1976, although the most rapid decrease in accidents occurred before 1987. FRA and industry officials attribute these improvements to advancements in technology, increased investment focused on a downsized infrastructure, and a more scientific approach toward reducing injuries. However, class I freight railroads, which account for most of the industry's revenue and train-miles, are now using fewer people, locomotives, and cars to haul more tonnage over fewer miles of track. Labor officials believe that these changes in operations could lead to more rail collisions and accidents as a result of greater congestion and fewer qualified employees to perform essential maintenance. While current safety trends are positive, it is uncertain how further advancements in technology or reductions in employment will affect safety in the future.

Nonetheless, further improvements in safety are needed, since more than 1,000 people die each year as a result of fatal collisions between cars and trains or as a result of trespassers on railroad property being struck by trains. Hazardous materials releases resulting from train accidents showed no clear trends between 1978 and 1995. About 261,000 people were evacuated across the United States because of rail-related hazardous materials releases occurring over these years. Concerns remain about evacuations because the volume of chemical traffic increased by over one-third from 1976 to 1995.

### FRA's New Safety Strategy Involves Partnerships

Beginning in 1993, FRA reassessed its safety program to leverage the agency's resources and established a cooperative approach that focused on results to improve railroad safety. With rail traffic expected to grow through the remainder of the 1990s and beyond, FRA anticipated the need for new approaches to enhance site-specific inspections. As a result, FRA formalized this shift with the establishment of three new initiatives. First, in 1994, FRA took the lead responsibility for coordinating the Department of Transportation's multiagency plans to reduce fatalities at rail-highway crossings. Second, in 1995, FRA formally established the Safety Assurance and Compliance Program through which the agency works cooperatively with railroad labor and management to identify and solve the root causes of systemic problems facing the railroads. Third, in 1996, FRA established the Railroad Safety Advisory Committee to develop recommendations for

rulemakings. Because these requirements only recently became effective, FRA has yet to accumulate sufficient data for analysis. Once sufficient data are collected, the agency will be able to determine the causes of the most frequent and serious injuries and focus efforts on corrective actions.

FRA does not have regulations governing the structural integrity of the 100,700 railroad bridges in the nation. Instead, a 1995 Statement of Agency Policy provides guidelines for railroads to use for the formulation of their own bridge management programs. FRA inspectors do not cite specific defects for bridge conditions, nor do they recommend violations, as they do for track, signal, or equipment problems. Instead, FRA inspectors call conditions to the attention of railroad bridge maintenance and engineering officials. According to FRA, inspectors normally use informal procedures to advise railroad personnel of bridge problems. If a bridge condition presents a hazard of death or personal injury, and the bridge owner does not correct the condition, FRA exercises its emergency authority to restrict or prohibit train operation over the bridge. The railroad industry agrees with FRA's policy that regulations are not needed to address issues related to structural conditions of bridges. Railroad labor officials disagree and note that bridge safety is equally as important as track safety, for which FRA has regulations.

## Recommendations

GAO recommends that the Secretary of Transportation direct the FRA Administrator to, in cooperation with the industry, where appropriate, (1) analyze injury data collected under the revised reporting requirements to determine the workplace safety issues that lead to the most numerous or the most serious injuries; (2) in areas where efforts to obtain voluntary corrective action do not address the causes of these injuries, consider developing regulations; and (3) use appropriate mechanisms, including the Safety Assurance and Compliance Program, to ensure that a finding of potential structural problems on a bridge is properly addressed by the bridge owner.

## Agency Comments and GAO's Response

GAO provided a draft of this report to the Department of Transportation (DOT) for its review and comment. GAO met with departmental officials, including the FRA Administrator, Deputy Administrator and Associate Administrator for Safety. The officials indicated that they agreed with many portions of the draft report's historical perspective but said that the report did not adequately reflect the more recent accomplishments and potential of the Safety Assurance and Compliance Program. The officials

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are related to train operations. FRA would have matters related to non-train operations under the purview of OSHA. But should FRA's analysis of workplace safety data show a preponderance of non-train-related injuries, the agency should not foreclose the need to consider regulations covering such injuries. Additional agency comments are included in chapter 3. FRA officials had additional technical and clarifying comments that GAO incorporated throughout the report, where appropriate.

DOT-1

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

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Union Pacific Corp., Union Pacific Railroad Co. )  
 and Missouri Pacific Railroad Co. )  
 -- Control and Merger -- Southern Pacific )  
 Railroad Corp., Southern Pacific Transportation ) F.D. No. 32760 (Sub-No. 21)  
 Co., St. Louis Southwestern Railway Co., )  
 SPCBL Corp., and the Denver & Rio Grande )  
 Western Railroad Company (OVERSIGHT) )

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**COMMENTS OF THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**Introduction**

The Surface Transportation Board ("STB" or "Board") has instituted this proceeding to implement the oversight condition it imposed in Finance Docket No. 32760, the merger of the Union Pacific ("UP") and Southern Pacific ("SP") railroads (collectively, "UPSP"). Decision No. 1, served May 7, 1997 ("Decision"). The Board specifically sought comments on the effects of the merger and on the implementation of the conditions used to address the transaction's competitive harms. *Id.* at 2. The United States Department of Transportation ("DOT" or "Department") commends the Board for its timely initiation of the formal oversight condition. Like the STB and many other parties, DOT is very interested in ensuring that the conditions either serve their intended purposes or are modified accordingly.

To evaluate a rail consolidation, the Department in almost every case since the Staggers Act has assessed the information, evidence, and argument presented by other private and public parties before expressing its position on the merits. We will follow this approach as well for our general assessment of the



implementation of the UPS/SP merger, and particularly of the efficacy of the conditions imposed by the Board. To date, however, the only record evidence provided has been submitted by the UPSP and Burlington Northern Santa Fe ("BNSF") railroads in their quarterly reports. Accordingly, DOT intends to file its substantive views in its reply comments on August 20, once we have reviewed all the initial submissions. Nevertheless, there are two areas of concern that we wish to raise at this time.

#### Safety Must Be the Highest Consideration

The Department considers it appropriate that in this merger, as in others, approval has been conditioned on various safety-oriented conditions as well as on compliance with "all applicable FRA rules and regulations in conducting rail operations on the merged system." Decision No. 44, Appendix G, item 13. The Federal Railroad Administration ("FRA"), an operating administration of DOT, is responsible for overseeing the safety of railroad operations. FRA has performed interim safety assessments of UP and SP operations since the STB's approval of the merger. Preliminary findings, outlined below, raise concerns about the difficulties inherent in ensuring high levels of safety as operations the size of UP and SP are combined.

In any consolidation, once the requisite approval has been granted the applicants understandably wish to realize the efficiencies projected in their operating plan as soon as possible. However, this goal cannot be reached at the expense of maintaining a safe railroad. Particularly when the consolidation covers two rail systems as extensive as those of the Union Pacific and the Southern Pacific, it is imperative that there be a fundamental commitment to safety throughout the new entity, with unified safety plans and programs over the entire system. Integration of operations and services should proceed only when management is confident that safe and uniform operating practices have been implemented.

This merger in particular presents additional safety challenges because of the extensive trackage rights granted to the Burlington Northern Santa Fe. As with the integration of operations on the UP and SP, full integration of roughly 4,000 miles of trackage rights into the BNSF system must be accompanied by consistent and well-understood safety practices and programs in the interests of an accident-free environment.



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UPSP reports that safety on both UP and SP lines has improved since the merger was approved, and specifically with respect to employee injuries and derailments. See LP/SP-303 at 60. DOT agrees that this improvement is a significant achievement, particularly with respect to the former SP lines. However, the preliminary results of FRA investigations of the UP and SP during this same period, which are outlined below, provide additional perspective on the nature of implementing such a challenging consolidation. FRA is working with UPSP management to address the problems identified in this review, and UPSP has taken additional steps on its own to resolve these issues. UP management has cooperated forthrightly with FRA on its Safety Assurance and Compliance Program on addressing every safety issue brought to its attention.

Specifically, the FRA has identified problems in the following areas:

1. **Train Control Systems and Operating Practices.** The transition may be affecting safety procedures on higher density tracks that are not signaled (and thus are subject to train orders or Track Warrants), as evidenced by two recent collisions on such tracks, both entailing significant fatalities.<sup>1</sup> Additionally, FRA has identified instances in which emergency braking units (so-called "End-of-Train" devices) have not been operational in areas with significant grades.
2. **Training and Quality Control at Central Dispatch Center.** FRA conducted a dispatching audit the week of June 22, 1997, at UPSP's consolidated Harrison Dispatch Center in Omaha, Nebraska. Errors in the transmission and acknowledgment of messages were commonplace — almost 80% of the orders monitored contained one or more errors. The audit also found problems with the level of dispatcher experience and training levels, among other areas. Dispatching shortcomings may have also contributed to various incidents since the merger was approved, including one of the two fatal accidents cited above.<sup>2</sup>

1/ On June 22, 1997, in Devine, Texas, there was a collision of two opposing UP trains; four fatalities (two crew members, two nonemployees) resulted. On July 2, 1997, in Delta, Kansas, a fuel tank fire and spill was caused by a side collision between two UP trains; one fatality (crew member) resulted and evacuation was required.

2/ On December 4, 1996, a UP coal train was separated (uncoupled) by an act of vandalism. The rear powered section traveled over 43 miles, with no one on board, trailing the head power and trailing cars by up to 11 miles over numerous public and private road crossings. The Omaha Dispatch Center was unable to detect the separated train. Fortunately, no highway grade crossing collisions occurred. On June 30, 1997, a UP commuter passenger train standing at a

Heavy workloads and long working hours in this crucial facility may also pose safety risks. Through its Safety Assurance and Compliance Program, FRA is working with UPSP to address the concerns raised in the audit.

**3. Train Inspection and Hazardous Materials Defects.** Since approval of the merger FRA inspectors have documented increased power brake-related safety problems at UPSP, particularly on routes between Chicago and the West Coast. On other routes FRA has also found numerous instances of improper or missing documentation and/or labeling of hazardous materials shipments, situations that could pose problems for safe transport of such shipments and lead to improper procedures in the event of an accident. Poor or absent coordination of hazardous materials documentation between UPSP and BNSF has been found in at least one area in which BNSF operates on the UPSP lines via trackage rights.

**4. Hours-of-Service for Train Crews.** Excessive work hours and/or continuous loss of rest for crews in their off-duty periods can profoundly affect their performance and judgment, with attendant safety risks. Although the directional traffic flows promoted during the merger proceeding do indeed promote real efficiencies, the manner in which they are implemented may affect safety. For example, on crew districts without common initial or final release points, crews can be required to "commute" significant distances from one point to another, which can contribute significantly to employee fatigue and jeopardize safe operations. FRA is still studying the specifics of UPSP's operations in this regard. Moreover, since approval of the merger, UPSP has adopted a system of record-keeping in this area that could pose difficulties for compliance with hours-of-service laws. 49 C.F.R. Part 228. We are continuing efforts to resolve this matter with the carrier.

The results of these investigations have prompted the FRA to intensify its review of safety within the merging UPSP during the next six months. We will work with the railroad to determine whether these are relatively isolated instances or whether there are institutional or systemic obstacles to ensuring that

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(Footnote continued from previous page) station came "face-to-face" with a coal train. The dispatcher ran the coal train on the same track that the commuter train was using; both trains managed to stop before a collision occurred.

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safety receives the highest priority throughout such a large and complex organization, particularly during the consolidation process. Once this effort is completed, we will apprise the Board of relevant findings and of any remedial actions that appear appropriate.

At this time the Department believes that the concerns noted herein are sufficient grounds to consider means by which the Board could augment or assist FRA efforts to ensure the safest possible integration of merging railroads. The combined resources and authority of the STD and DOT could conceivably enhance safety during such a difficult period more than either single agency could do alone. We suggest that other interested parties may wish to address this point, and we may offer more specific recommendations for the Board in subsequent filings.

#### Competitive Conditions

In its brief in this consolidation, the Department expressed its view that trackage rights, even as enhanced by various agreements between the Applicants and other parties, were inadequate to provide sufficient competition to the merged UPSP. DOT-4 at 34-39. In Texas, where UP and SP competed along parallel corridors, DOT supported the sale of one of the lines as the best way to provide protection for shippers. In the Central Corridor, where unique circumstances militated against divestiture of a parallel line, DOT recommended that the proposed trackage rights be augmented with conditions that would further strengthen the BNSF's ability to compete. *Id.* at 39-41. The Board declined to order divestiture of the Texas corridors, choosing instead to order trackage rights with unprecedented conditions to preserve competition in the affected areas of Texas and the Central Corridor. Decision No. 44 slip op. at 156-164. The unique nature of some of those conditions, crafted by the Board to address the singular competitive circumstances of the merger, has led to disputes between UPSP and the Board and between UPSP and BNSF, not all of which have been resolved.

Too little time has elapsed since the merger was approved for a thorough evaluation of the effectiveness of the trackage rights conditions. Nevertheless, by this time there should be general agreement on the specifics of the traffic for which BNSF is entitled to compete. While we can understand the natural desire of UPSP not to cede traffic to the BNSF without vigorously trying to maintain its customer base, DOT believes it is imperative that UPSP recognize that the

conditions imposed by the Board deliberately go beyond traditional considerations, such as whether a particular customer is classified as a 2-to-1 shipper based on switching tariffs. The STB has emphasized that the pivotal conditions in this proceeding, such as its "new facilities" and "transloading" conditions, were imposed for two purposes: (1) to replicate pre-merger competitive options, and (2) to enable BNSF to attain sufficient traffic density to conduct effective operations. See Decision No. 44, slip op. at 106; Decision No. 61, slip op. at 9-10. Only when both these purposes are served can a potential loss of competition be mitigated in the circumstances of this case. *Id.*

For these reasons the Department supports the request of BNSF that UPSP provide it with a clear determination on the shippers at 2-to-1 points to which BNSF has access rights. BNSF-PR-4, V.S. of Rickerhauser at 11. Indeed, since the Board's merger analysis primarily addressed 2-to-1 "points" and traffic in 2-to-1 "corridors" rather than 2-to-1 "shippers" (see Decision No. 44, slip op. at 121-124, 133; Decision No. 61, slip op. at 10; Decision No. 57 at 3-5), DOT suggests that the Board revisit the terms of the traffic rights agreements to consider providing BNSF access to all shippers at 2-to-1 points, regardless of whether a shipper was closed or open to switching under a tariff in place at the time of the merger. BNSF direct service is already restricted to 2-to-1 points; to further restrict access to selected shippers at those points may undermine BNSF's ability to develop the traffic base necessary to be an effective competitor.

Reciprocal switching in New Orleans appears to be a related problem. BNSF-PR-4 at 12, V.S., Rickerhauser at 25. DOT understands that UPSP has denied BNSF access to shippers that were open to UP and SP reciprocal switching before the merger. Presumably, UPSP's rationale is that, because there are eastern and/or midwestern railroads on the switching tariff in addition to UPSP, these shippers are still served by more than one railroad. However, to the extent that routes to the West are restricted under a new switching tariff to a single carrier, UPSP, it appears that UPSP has effectively created a 2-to-1 situation. We urge the Board to inquire into this problem and to take remedial action as necessary.

Finally, there still appears to be debate about what constitutes a "new facility," both in the context of 2-to-1 points and the transloading condition. See BNSF-PR-4, V.S. of Rickerhauser at 11. DOT believes such matters should be resolved on a functional basis, i.e., if newly rail-served or newly established as a



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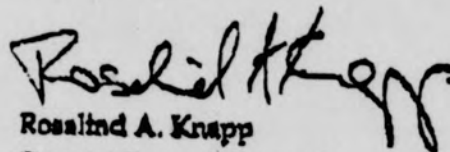
transloading operation, a facility should be considered "new" regardless of whether a building or structure was already in place on the property. We believe the STB should rule on this issue in such a way that allows BNSF access to the maximum number of shippers.

#### Conclusion

The safety of operations on the combined UPSP and on the newly extended BNSF is of paramount concern. Troubling incidents have occurred that warrant an investigation in order to determine the full extent of problems associated with the merger or its conditions. The Department will notify the Board of its findings and recommendations at the conclusion of this effort.

Although it is premature to evaluate definitively the competitive efficacy of the enhanced trackage rights imposed in this proceeding, it is clear by now that continuing disputes over the application of some conditions have delayed the onset of competitive service. We will closely monitor developments on this point, and we urge the Board to respond expeditiously to requests to clarify the implementation of the conditions that it has adopted.

Respectfully submitted,



Rosalind A. Knapp  
Deputy General Counsel

August 1, 1997





**Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001**

## NEWS

FOR RELEASE:  
Thursday, October 2, 1997  
No. 97-81

Contact: Dennis Watson  
(202) 565-1596  
TDD (202) 565-1695

**SURFACE TRANSPORTATION BOARD  
BEGINS PROCEEDING, TO HOLD OCTOBER 27 PUBLIC HEARING,  
ON RAIL SERVICE PROBLEMS IN WESTERN U.S.**

Surface Transportation Board Chairman Linda J. Morgan announced today that the Board is beginning a proceeding on its own motion and will hold a public hearing on **October 27, 1997**, in Washington, D.C. to provide the public the opportunity to report on the status of railroad service in the western United States and to review proposals for solving existing rail service problems. This proceeding will focus on the immediate resolution of those problems.

The hearing will begin at **10:00 a.m. Eastern Time on Monday, October 27, 1997**, in the Board's Hearing Room at its offices in the Mercury Building, 1925 K Street, N.W., in Washington.

Persons wishing to appear at the hearing and to make statements to the Board must submit their requests--and the amount of time needed to make their statements--in the form of an original and 10 copies by **October 9, 1997**. The Board will issue a schedule for the hearing, together with a list of speakers and the time allotted to each, by **October 16, 1997**. Copies of speakers' written statements must be filed with the Board by **October 23, 1997**.

--MORE--

The Board has been made aware of rail service problems in the western part of the nation through formal filings, public accounts, and more recently, informal communications made to the Board's Office of Compliance and Enforcement by affected persons and entities. These service problems most recently have involved the lines of the "Union Pacific" (UP) and "Southern Pacific" (SP) railroads. Based on the information received to date, the Board believes it appropriate to hold a public hearing on the issue of rail service in the West, problems in the delivery of that service, and solutions, both governmental and non-governmental, that have been offered or might be offered to remedy such problems.

In making its announcement, the Board emphasized that the proceeding it has instituted and the public hearing it has scheduled are being conducted separately and apart from the Board's ongoing oversight proceeding entitled *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760 (Sub-No. 21). In that case, the focus is on whether conditions imposed by the Board in its August 1996 approval of the merger of the UP and SP have been successful in resolving competitive problems that the Board found would exist as a result of its approval of the merger in the absence of such conditions. The Board noted, however, that parties to the oversight proceeding have commented on service problems on the UP-SP system, and both UP-SP and The Burlington Northern and Santa Fe Railway Company, in their most recent (October 1, 1997) quarterly reports filed in the oversight proceeding, have separately put forth proposals to resolve existing service problems. Given the immediacy of these problems, the Board is instituting this proceeding to focus specifically on rail service problems that have arisen in the western part of the country.

The Board encourages interested persons and parties to coordinate the presentations of their points of view through the selection of an individual to appear at the hearing on behalf of their interests so that the opportunity for input may be maximized. At this hearing, the Board intends to concentrate more on operational, resource, and customer service matters than on legal issues, and it would be helpful if speakers are individuals able to address such matters.

The Board instituted the proceeding concerning rail service in the West and announced that a public hearing would be held in the case entitled *Rail Service in the Western United States*, STB Ex Parte No. 573, in a decision issued to the public on October 2, 1997. [STOP]

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SERVICE DATE - LATE RELEASE OCTOBER 2, 1997

## SURFACE TRANSPORTATION BOARD

## DECISION

STB Ex Parte No. 573

## RAIL SERVICE IN THE WESTERN UNITED STATES

AGENCY: Surface Transportation Board

ACTION: Notice of Proceeding and Public Hearing.

SUMMARY: The Surface Transportation Board (Board) is instituting a proceeding and will hold a public hearing on October 27, 1997, at its offices in Washington, DC, to provide interested persons the opportunity to report on the status of rail service in the western United States and to review proposals for solving the service problems that exist.

DATES: Persons wishing to appear at the hearing and make a statement must submit their request to speak at the hearing, and their requested time allotment, by October 9, 1997. The Board will issue a schedule for the hearing, along with a list of speakers and their allotted times, by October 16, 1997. Speakers' written statements must be filed with the Board by October 23, 1997.

ADDRESSES: Send requests to speak and requested time allotments (an original and 10 copies) referring to STB Ex Parte No. 573 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is instituting a proceeding on its own motion and will hold a public hearing beginning at 10:00 a.m. on October 27, 1997, at its offices at 1925 K Street, N.W., Washington, DC, to provide an opportunity for interested persons, including carriers, shippers, and employees, to report on the status of rail service in the western United States and to review proposals for solving service problems. The Board has been made aware of railroad service problems in this area of the country [recently involving the Union Pacific Railroad Company/Southern Pacific Transportation Company (UP/SP)] through formal filings and public accounts, and, more recently, through informal communications between affected persons and the Board's Office of Compliance and Enforcement (OCE) about specific UP/SP service problems, which OCE has worked with UP/SP to resolve. Based on this information, we believe it is appropriate to hold a public hearing on the issue of rail service in the western part of the country, problems in the delivery of that service, and solutions, both governmental and non-governmental, that have been offered or might be offered to remedy these service problems. The focus of this proceeding is on the immediate resolution of existing problems.

This proceeding and this public hearing are being conducted separate and apart from the ongoing oversight proceeding in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSI, Corp., and The Denver and Rio Grande Western Railroad Company, STB Finance Docket No. 32760 (Sub-No. 21). There, the focus is on whether the conditions we imposed in approving the application in Finance Docket No. 32760 have been successful in resolving the competitive problems that we found would exist as a result of our approval of the UP/SP control transaction in the absence of these conditions. Parties to the oversight proceeding

STB Ex Pane No. 573

have, however, commented on service problems on the UP/SP system, and both UP/SP and The Burlington Northern and Santa Fe Railway Company, in their most recent quarterly reports, filed October 1, 1997, in the oversight proceeding, have separately put forth proposals that, in their view, would lead to a resolution of the existing service problems. Given the immediacy of these service problems and the national, as well as regional, interest in their resolution, we are instituting this proceeding to focus specifically on the rail service problems that have arisen in the western part of the country.<sup>1</sup>

We encourage interested persons to coordinate the presentation of their points of view by selecting of a single individual to appear at the hearing on behalf of their common interests so that the opportunity for input at the hearing can be maximized. Persons wishing to appear and make a statement at the hearing should submit a request for time to speak on or before October 9, 1997. The Board notes that, in the interest of a focused hearing, it must necessarily limit the number of persons allowed to speak. At this hearing, we intend to concentrate more on operational, resource, and customer service matters than on legal issues, and it would be helpful if speakers are individuals who are able to address such matters. The Board will issue a schedule for the October 27, 1997 hearing, along with a list of speakers and their allotted times, by October 16, 1997. Speakers' written statements of their presentations must be filed with the Board by October 23, 1997.

Notice of the October 27, 1997 hearing will be published in the Federal Register.

Decided: October 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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<sup>1</sup> To ensure that all parties to the oversight proceeding are aware of the proceeding we are instituting by this notice, we will serve a copy of this notice on all parties on the service list in the oversight proceeding.



**NORTH ATLANTIC PORTS ASSOCIATION, INC.  
ANNUAL MEETING  
JUNE 5, 1997**

**PROVIDENCE BILTMORE HOTEL**

**PROVIDENCE, RHODE ISLAND**

**CALL TO ORDER:** By President Raymond Heinzelmann who introduced the head table and thanked Michael Black for his part in coordinating the meeting, the Maguire Group, inc. for sponsoring the Early Bird Reception and the ports of Rhode Island and Southeastern Massachusetts for sponsoring the Wednesday evening dinner at which we recognized our recently retired members - Frank Caggiano and Rino Moriconi.

**MINUTES OF LAST MEETING:** Minutes of the last meeting held in Washington, D.C. on December 5, 1996 were approved for the file.

**TREASURER'S REPORT:** At yesterday's Board Meeting, it was reported that the balance in the treasury was \$12,631.97 as of last Monday. This does not include the expense of this meeting.

**COMMITTEE REPORTS:**

**MARITIME COMMITTEE**

Chairman Dennis Rochford reviewed some of the elements of his report which is attached hereto in its entirety.

**MEMBERSHIP COMMITTEE**

Chairman Thomas Butler reported that membership, as of this month, stands at 52 Corporate members and 83 Associate members. The new members are:

Corporate	Christina Service Company Wilmington, Delaware John Coulahan, Vice President
Associate	CIANBRO Corp. Pittsfield, Maine Ernest Kilbride, Director of Purchasing  Frederic R. Harris, Inc. Fairfax, Virginia Michael McCarthy, Vice president  Massachusetts Coastal Zone Management Boston, Massachusetts Peg Brady, Director  Seaport Advisory Council Fairhaven, Massachusetts Richard Armstrong, Executive Secretary

Five members resigned including the Halifax Port Corp.



**REPORT OF THE  
MARITIME COMMITTEE**

**ANNUAL MEETING - JUNE 5, 1997**

Following are updates to the Membership on subjects the NAPA Maritime Committee has been monitoring during the interim between meetings:

**I. U.S. Army Corps of Engineers Hopper Dredge Fleet**

The battle continues against the elimination of the four U.S. Army Corps of Engineers dredges that currently operate throughout the United States. The McFARLAND performs emergency dredging for gulf and east coast ports; the WHEELER on the Mississippi River; and the ESSAYONS and YAQUINA in the northwest. Efforts are now focusing on the opportunity to review the Army Audit Agency Study of the Hopper Dredge Fleet due out in July. Assistant Secretary of the Army H. Martin Lancaster assured the Maritime Exchange that a review will be made possible prior to the final decisions. This review is critical to the success of keeping the Corps' fleet operational permanently.

**II. U.S. Coast Guard**

The comment period for the Coast Guard's proposed implementation of an underkeel clearance was re-opened. There was no change in status and we will continue to monitor this issue.

**III. U.S. Customs**

**A. Enforced Compliance Program**

On June 1, Customs began an Enforced Compliance Program under the Mod Act passed in 1993. An Informed Compliance Program was conducted by Customs for the past three years in an effort to ensure importers have all the information needed to provide accurate and complete information. They are now targeting export documentation, specifically Shippers' Export Declarations (SED). The Enforced Compliance Program will require that carriers have SEDs from exporters prior to departure and file the export manifest within four days post departure as required by law, or assess fines and penalties to carriers for non-compliance.

**B. New Commissioner**

George Weise resigned as Commissioner of Customs. There is a great deal of media attention on ensuring the new commissioner has a law enforcement and/or criminal justice background. Our goal is to ensure that Customs leadership continues to place equal emphasis on trade facilitation. A candidate for the new commissioner is Mr. Fermin Cuza, Vice President Logistics, Consumer and Government Affairs of Mattel Co. Ten years ago he served with Customs in Enforcement and Control.

**IV. U.S. Department of Agriculture**

USDA filed a proposed rule to amend user fee regulations by adjusted fees charged for certain agricultural quarantine and inspection services provided in connection with certain commercial vessels, trucks, railroad cars and aircraft, and international airline passengers arriving at port in the Customs territory of the United States. This proposal will set user fees in advance for services for fiscal years 1997 through 2002. The fees must be adjusted to reflect the anticipated actual cost of providing these services through FY 2002.

- How does a plan like this have any chance of success? The only way is to keep it focused on the customer's needs. A number of our larger customers have had input into the operating plan. We've received over a thousand letters of support from customers and shippers saying that they think this is a good thing and it's going to benefit them. We have to integrate CSX's share of Conrail's traffic base with our current business, and we have to grow at the same time. We'll be serving over 22,000 rail route miles. CSX will serve more seaports than any other railroad in the U.S. Rail is a volume/density type of business. We'll be spending hundreds of millions of dollars in capital improvements including track connections. Competitive balance will be significantly improved in the eastern half of the U.S. Trucks in the eastern U.S. control 86% of the transportation dollars, so there's a lot of opportunity for new business. (Ms. Lee then showed a number of slides of the new rail network.) We see a huge saving in empty car miles with this system.

There is a tremendous amount of work ahead for us. We need support from ports. We at CSX plan to build a company that will provide excellent competitive service and transportation capabilities that are second to none. We want to do this by greater customer reach, improving our reliability and tapping into the unparalleled resources that CSX has. I'd like to thank you for your support and interest in this historic and important transportation opportunity. (Ms. Lee responded to questions from the audience.)

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Tom Finkbinder, Vice President, Intermodal of Norfolk Southern Railroad for the past ten years had prior experience with American Van Lines, Airborne Freight Corp. and Roadway Express. Tom is a graduate of Rutgers University.

I can't tell you how shortsighted and unsophisticated I think your letter was and your support so far, and I go back to the beginning. I have dealt with all of you at one time in the past, some of you as recently as last summer, and all I ever heard was complaints about Conrail from people in this group in the ports of the northeast. Then something happened in October and Norfolk Southern was not the catalyst in all this. Conrail and CSX agreed to merge and that could have happened and then you would have been stuck, not with two railroads but with one, and we would not be here having this conversation; you would be listening and you would have less of a choice. That's not to say that you would have less quality or less of anything, but you would not have competition. Then we came to town and brought our money, and the money did it more than anything else. We paid an awful lot of money to get access here. We got nit-picked by your organization because we don't have equal access to every port, because some of you were afraid that we would advantage one port over another. My comment to that is 'what are you thinking?' Where were you a year ago? Where were you in October with the outlook of one carrier and where are you now? The analogy of "the goose that laid the golden egg" comes to mind. You have a golden opportunity and you write to the STB and you say "we can't support this unless all these nit-picking little things which are politically correct and practically incoherent are going to happen."

Let me tell you what the cost of this is. CSX and NS jointly paid 10.2 billion dollars for Conrail. Our collective interest on this is about 7%. If you calculate that out, you'll find that it is about 700 million dollars a year. Now we ask for your support, and we ask for expedited handling of that support - 250 days instead of 350 days. You didn't give that support and we didn't get it, and that will cost us 100 days times 2 million dollars a day and everyone of you individual ports that I have had meetings with have come with hat in hand and a list of things you would like me to spend money with your port. We are 200 million dollars worse off than we were before, after spending 10.2 billion dollars. Where do you suppose this money is coming from? We are not a political entity, we are not a regulatory entity, we are actually an economic entity. We can only spend money we make, and that 200 million dollars is a lost opportunity, and it's a lost opportunity for

you. Quite frankly, I've got to tell you that we are human beings on the railroad, and we know who supported us and we know who didn't; and if you think any of us are going to forget that, you are crazy. Everyone of the ports in this room that I have talked to have expressed a concern about the way we treat Norfolk, and the relative success of the Port of Norfolk. I would point out that we are not the only carrier that services Norfolk. Of the people in this room and the state representatives in this room, I have one support left, the State of Virginia and the Port of Norfolk. Who, of all the ports in the northeast, has more to lose than the Port of Norfolk? The next time you ask me if there is a special relationship there and what do I have to do to get that relationship, you might think about that. The answer is that I only have one partner here at the moment, and I'd ask you to rethink your position and take a look at it because we are an economic entity. We are not public or government entities. We are not a public utility. We make money. We survive by paying shareholders dividends and returns on this money they invest in us and I don't give a damn whether the freight I haul comes from New York or Providence or Norfolk or Baltimore or Philadelphia or anyplace else. We have a little saying in terms of inland rail intermodal business.

"What's mine is mine and what's yours is mine". I want to have it all. That's what our aim is, and that's what we'd like to do; and I don't care which it comes from. We are absolutely indifferent but we will work to get it.

Now I'll change the tenor of this and talk a little bit about the deal and what's going on and where you fit in. Some of you that were at the breakfast meeting this morning heard the questions and the comments of persons here at Quonset, and I really have some concerns about that because where Norfolk Southern comes from, Atlantic Coast international business, that is business that originates and terminates in a port in the Atlantic. We haul more of it today than both of our parallel competitors combined, both Conrail and CSX. I have 36 steamship lines that give me a million dollars in line haul revenue or more. We have a business relationship with every one of these people. I heard what the guy from Quonset said about consultants, and there are some in this room, and consultants are great and we love them. If you paid a consultant he would tell you that the optimum Atlantic port was somewhere in the sub-Sahara Desert. You can get them to tell you whatever you want, and they will. If you go out and talk to the steamship lines and you are the Port of Davisville or Quonset or the port of anyplace USA, the steamship line will tell you that they would love to come to your port if you are better, if you are cheaper and if the total cost of your logistics from port to inland is cheaper and faster than every other place. And if they ever dredge the Port of New York, all of those lines will be in New York because that's where the freight is. And, if New York ever got out of their catatonia, or whatever it is, and if all the constituencies in New York - being the two different states, the cities, the port authorities and labor - if they ever got it all together, this North Atlantic Ports Association would become moot because it would all be in New York. But that will not happen; and that is a perfect example of what we would like you all to look at because the guy from Quonset was right. Each of the ports on the North Atlantic has some advantages. Instead of everyone shooting for a million TEU's, which is clearly crazy, you ought to concentrate on the business that you are good at or the places where you have the distinct advantage; and we are willing to talk to you about that and we and CSX are willing to talk to you about how we see the situation and the sharing of information with our customers is helpful to both of us. What we have to concentrate on is which of the ports have economic advantages, which port are niche ports, which ports are big ports and if you are a state government entity, I think you are doing yourself a disservice spending a lot of money on something that you are never going to be. As a practical matter, there may be some weird rail connection between here and Worcester that will get a train there, but I'll tell you that by the time that happens, the train from New York, Philadelphia, Baltimore or Norfolk will be half way to Chicago and they won't have to worry about whether you put an 8'6" or a 9'6" box together. So what are you really accomplishing here? The fact that you can do it? Everybody can do it. All it takes is money. The real question is "where is that money best spent?"

The problem that we have jointly is that we paid three times the revenue for Conrail, and we can't



If I sounded a little harsh to begin with, I don't apologize. This is an extremely serious thing for us. We have to make this work by expanding the market and not killing everybody. Where there are not two carriers who compete now, in most ports there will be but I need your support, I don't need to be nit-picked and we need some practical thinking, not politically correct thinking. Thank you. (Mr. Finkbinder then responded to questions from the audience.)

(Members please note that the only Canadian port that is a member of N.A.P.A. at this time is Saint John. JJM)

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President Heinzelmann introduced Kurt Nagle, President of the American Association of Port Authorities.

We represent about 150 public port agencies throughout the western hemisphere. We represent ports in Canada, the Caribbean and Latin America. We also represent about 250 firms or individuals that are involved in seaports. We provide education and training programs for our members and we work to expand public awareness of our ports. We offer about 8 to 10 seminar programs a year and we have a Washington meeting in the spring and our Annual Meeting in the fall at one of our ports. This year it will be September 22-26 in Jacksonville. We recently established a professional port managers certification program. The people going through that program tend to be full time port professionals.

Our government relations staff plays a key role in a number of issues ranging from landside access to ports, funding for dredging, environmental regulations and trade policy. The government relations staff interacts with individual members and our regional groups like yourself. The strength of our legislative activities lies in the participation of our members. We recently learned that Assistant Secretary of The Army for Public Works, Martin Lancaster, is leaving the Administration this summer. That's a position that took over three years to fill in the first Clinton term. This is a critical position for the public ports. At the Department of Transportation, Admiral Herberger, the Maritime Administrator, is leaving at the end of this month. Michael Huerta, who headed the Office of Intermodalism, has moved to become Chief of Staff for Transportation Secretary Rodney Slater. There are also a number of other vacancies in the Department of Transportation. The Customs Commissioner is also leaving soon.

Among the principal issues that we are looking at is the Shipping Reform Act. AAPA feels that the Shipping Act as currently structured works well for ports and is not in need of change. At the same time we recognize that there is a great deal of interest among a number of shippers and carriers to have added flexibility as far as arrangements that they have between them. S414, the Shipping Reform Act, continues to change in mark up. It is expected to go before the floor this month. I know that a number of you have concerns about the filing and publication of service contracts. The current draft would require all service contracts to be filed with the new Intermodal Transportation Board. As the bill stands now, only the following information would be available to the public: name of the U.S. port range, the commodity and the duration of the contract. No information would be provided regarding the rates, origin, destination or volume. Some shippers press for even less information to be made public. There is a range and variety of concerns regarding this legislation in the port industry. Now is the time to talk to your legislators.

Our number one priority this year is reauthorization of the Intermodal Surface Transportation Act (ISTEA). It's due for reauthorization by September 30th this year. The original concept was to provide some funding for better connections between rail, trucks and ports. In reality, over the past five or six years it has tended to be pretty much a highway bill. A GAO study showed that

## ATTENDANCE

John Anderson	Frederic R. Harris, Inc.
Richard Armstrong	Massachusetts Seaport Advisory Council
Joseph Birgeles	B & B Marine Consultants, Inc.
Michael Black	Moran Shipping Agencies, Inc.
Dayle Boyd	Maryland Port Administration
Douglas Brown	Connecticut Dept. Transportation
Daniel Burns	Fall River Port Authority
Thomas Butler	Port Authority of New York & New Jersey
Victor Calabretta	Maguire Group, Inc.
Alfred Castagnola	South Jersey Port Corp.
Leo Donovan	Booz-Allen & Hamilton
James Dooley	Sedgwick James of Washington
Capt. Bruce Fisher	Northeast Marine Pilots
Raymond Heinzelmann	Port of Philadelphia & Camden, Inc.
Allan Hodges	Parsons Brinckerhoff
John Jackson	Virginia International Terminals
Rev. Douglas Johnson	New England Seafarer's Mission
Linda Jordan	Maryland Port Administration
Victoria Cross Kelly	Port Authority of New York & New Jersey
Harry Kennedy	Delaware River Port Authority
Rev. Andrew Krey	Maritime Ministries
Edward Lenahan	Maguire Group, Inc.
Basil Maher	Maher Terminals, Inc.
Adam McBride	Diamond State Port Corp.
Millard Meiggs	Virginia International Terminals
Paul Merrill	Merrill Industries, Inc.
Capt. Jeffrey Monroe	Massachusetts Port Authority
Martin Moynihan	Port of Richmond
Philip Moran	Moran Shipping Agencies, Inc.
Kurt Nagle	American Association of Port Authorities
Robert Nelson	Goff & Page Company
Patrick O'Hara	Syrstone, Inc.
John J. Orr	John J. Orr & Son, Inc.
John Okolowicz	Parsons Brinckerhoff
Herbert Packer, III	Pennports
Capt. James Peterson	Sandy Hook Pilots
Timothy Ray	Maritime International
Michael Repko	Alimak Elevator Company
John Riendeau	Rhode Island Economic Development Corp.
Dennis Rochford	Maritime Exchange Delaware River & Bay
Carlo Salzano	World Wide Shipping
James Schine	Logistec Connecticut, Inc.