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CONEG

COALITION OF NORTHEASTERN GOVERNORS

Governor Angus S. King, Jr., Chairman
Anne D. Stubbs, Executive Director

VIA HAND DELIVERY

Office of the Secretary
Case Control Branch
Attn: STB Finance Docket 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

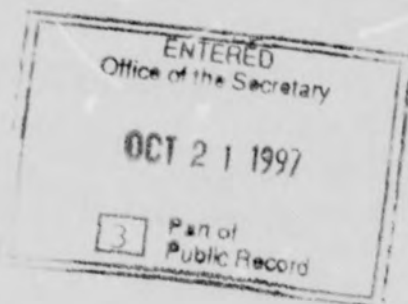


October 21, 1997

Dear Sir/Madam:

Enclosed for filing in the above captioned matter are the original and twenty-five copies of the "Comments and Request for Conditions by Coalition of Northeastern Governors" (CNEG-5) and the original and twenty-five copies of the "Verified Statement of Alan G. Dustin in Support of 'Comments and Request for Conditions by Coalition of Northeastern Governors'" (CNEG-6). Also enclosed is a 3.5" diskette formatted for Word Perfect 5 containing both of these documents.

Could you please date stamp the extra copies of the Comments and Verified Statement and return them to James E. Howard, counsel for CONEG, in the enclosed, self-addressed, stamped envelope? Thank you very much for your attention to this request.



Enclosures

Very truly yours,

Anne D. Stubbs



CNEG-5

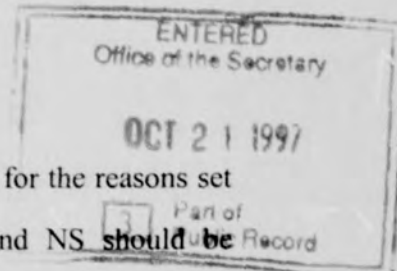
BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

COMMENTS AND REQUEST FOR CONDITIONS BY
COALITION OF NORTHEASTERN GOVERNORS

SUMMARY OF POSITION



The Coalition of Northeastern Governors ("CNEG") believes, for the reasons set forth below, that approval of the partition of Conrail by CSX and NS should be conditioned so as to ensure effective rail competition in all areas of the states represented by CNEG. The Board should retain jurisdiction over the proposed transaction for the specific purpose of determining whether there will be effective rail competition in all regions of the Northeast and, in particular, in the area east of the Hudson River, if the transaction is approved.¹

As demonstrated below, such a condition is fully consistent with – and, indeed, is required by – the public interest. Conrail was created in the public interest as a response to the rail crisis in the Northeast in the 1970s. It is wholly appropriate that the public interest should be furthered in connection with the dismantlement of Conrail by

¹ As noted in the "Description by Coalition of Northeastern Governors of Responsive Application" (CNEG-3), the co-development of passenger rail and freight service throughout the CNEG region is essential for a balanced transportation system. While CNEG has determined that it will not file a responsive application and that these comments and request for conditions will be limited to freight issues, many of the CNEG Governors are pursuing passenger issues separately by joining with other Governors to seek assurances from CSX and NS that they are committed to the development of a workable and constructive relationship between freight and passenger rail throughout the restructured systems.

preserving and restoring to the extent necessary effective rail competition in the Northeast region, particularly because there is no compelling basis for selectively restoring rail competition in certain areas while permitting the continuation of the Conrail monopoly in other areas.

The purest and most effective form of rail competition is the type of head-to-head competition envisaged by CSX and NS in the so-called "shared asset areas" of the Northeast. As discussed below, this type of competition could be extended to other areas. Alternatively, other forms of relief, such as trackage rights which will foster rate competition, would be better than the continuation of the Conrail monopoly. The Board must retain jurisdiction to review the competitive landscape and to ensure to the extent feasible the highest level of rail competition throughout the Northeast.²

BACKGROUND

Concerns of Coalition of Northeastern Governors

CNEG is an association of the governors of the states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont. CNEG has a rail task force which has carefully followed the progress of the efforts of CSX and NS to acquire Conrail. In addition, CNEG is deeply concerned with the continuation and improvement of a sound, competitive freight rail system in the Northeast.

CNEG recognizes that the northeast region's economic well-being is served by an efficient and financially viable rail system consisting of multiple railroads. CNEG believes that any transaction approved by the Board must support state, regional and national transportation, environmental and development goals. Competition, choice and capacity in the rail system is essential if the Northeast is to have affordable, effective

² As the Commonwealth of Pennsylvania and Governor Thomas J. Ridge have entered their own appearance in this case and will be developing their own position, the views presented here do not necessarily represent those of the Commonwealth and Governor Ridge.

service which advances the long-term competitiveness of the region within the national and global economy. Specifically, the transaction should adhere to the following principles:

1. Ensure Competitive Access. Direct competitive rail access for two or more Class I carriers should be assured between major service nodes which support global and domestic commerce, including seaports and major intermodal terminals.
2. Accommodate Passenger Rail. Co-development of inter-city, commuter and freight services should be ensured where shared trackage is necessary.
3. Provide Access to Markets. Effective, competitive connections to national markets should be available to short-line and regional railroads serving the Northeast.
4. Enhance Capacity. The rail system must have the capacity to grow and to meet the needs of its users.
5. Intermodal Effectiveness. The rail system must offer its users efficient intermodal rail service.

CNEG is particularly concerned that the proposed transaction, as structured by CSX and NS, does not adequately address general concerns relating to rail competition and competitive access to all markets in the Northeast. More specifically, the transaction will not result in competitive Class I rail service in all areas of the Northeastern states represented by CNEG, including portions of New York, New Jersey and Pennsylvania, and, in particular, in the area of the Northeast which is east of the Hudson River. Therefore, the Board should, for the reasons stated below, impose measures which will

ensure effective competition in areas which are not scheduled to be served by at least two competitive Class I rail carriers under the proposal by NS and CSX.

The NS/CSX Plan Selectively Provides for Competition

Pursuant to the application submitted by CSX and NS, the Conrail lines between Buffalo and Albany, between Albany and Boston, and between Albany and New York City, on both sides of the Hudson River, would be assigned to CSX. CSX would replace Conrail as the exclusive operator of those lines. Under the plan, NS would operate no lines which extend east of the Hudson River.

The application also describes what are termed "shared asset areas" in which both CSX and NS would have the ability to serve customers. In areas such as northern New Jersey, or the New York City area west of the Hudson River, southern New Jersey and portions of the Philadelphia area, both CSX and NS will have the right directly to serve shippers which are now served only by Conrail. As a result, these areas will benefit from head-to-head rate and service competition between NS and CSX.

Apparently recognizing that it has been excluded from many of the markets and customers in the Northeast, NS has announced that it has reached an agreement with Canadian Pacific pursuant to which CP would haul traffic for NS between Albany and Sunbury, Pennsylvania. In addition, NS has indicated that it is "discussing" with Guilford Transportation Industries the possibility of arrangements to interchange traffic with Guilford at Albany. In the application, both NS and CSX refer to the contemplated "competitive presence" of NS in the area east of the Hudson River and claim that it will enable NS to provide competition to CSX. As of this time, no details of either the arrangement between CP and NS or of the discussions between NS and Guilford have been made public. Perhaps more importantly, as amplified below, the NS-CP-Guilford arrangements are not the subject of the primary transaction or any related applications.

The Public Interest Aspects of the History of Conrail

The application and the accompanying verified statements submitted by NS and CSX chronicle the unique history of Conrail. See, e.g., VS John W. Snow, VS Charles W. Hoppe, VS James W. McClellan. Conrail is described as a "creature of public policy," having been created by Congress in the Regional Rail Reorganization Act as a response to the bankruptcies of several northeastern railroads in the 1970s. Congress established the United States Railway Association as a planning agency to resurrect a viable and efficient rail system from the chaos of the bankruptcies.

All parties agree that the first choice of USRA was to have the predecessors of NS and CSX add parts of the bankrupt railroads to their systems in order to create two financially strong and competitive carriers in the East. For reasons which are not important today, NS and CSX did not take advantage of the opportunity at that time, and USRA was left with the option of a Conrail which would have monopolies in rail service in large areas of the East. While this structure afforded Conrail a better chance to become financially viable, the Federal planners thereby sacrificed rail competition in favor of monopoly driven profitability.

CSX and NS describe the proposed partition of Conrail at this time as the last step in the restructuring of the eastern railroads. Alternatively, the transaction is referred to as the "logical culmination" of the reorganization of the Northeast rail system, thereby fulfilling the goal which USRA, Congress and others could not achieve earlier. VS Snow at 6. According to the applicants, this "long overdue rationalization" will integrate the rail system of the Northeast into the rest of the system and will enable the national economy to perform up to its potential. VS Joseph P. Kalt at 6.

PUBLIC INTEREST CONSIDERATIONS

The Transaction Proposes the Restoration and Maintenance of Rail Competition in Certain Areas But Not Others

As noted above, CSX and NS are proposing the restoration of head-to-head rail competition in certain areas, including portions of the Northeast, where Conrail now enjoys a monopoly. This factor makes this transaction different than any other Class I rail merger in the recent past or perhaps ever. In prior transactions, the principal competitive issue has been the reduction of rail options for shippers from three railroads to two or from two railroads to one. NS and CSX have also attempted to provide access for one another if the transaction would reduce an area's options from two carriers to one.

To the extent that NS and CSX propose to restore or preserve effective rail competition in the Northeast, their initiative is welcome and should be encouraged. As described below, however, NS and CSX do not go far enough, and the result is harm to the public interest.

NS and CSX contend that the public interest is being served by the restoration of rail competition in the shared asset areas where Conrail now has a monopoly. To be sure, there will be benefits to shippers and the general public in those areas; direct rail competition will, as described below, bring price and service competition and encourage investment in facilities.

While the result will be salutary, the motivations for the creation of direct competition are more basic. The only reason given by the applicants to determine where rail competition would selectively be restored was that the markets involved are "important."³ Application at 17. More candidly, an NS witness asserts that shared asset areas were created where it was "not feasible" or "not acceptable" to allocate the lines or customers in question solely to NS or solely to CSX. VS McClellan at 12.

³ Importance was not, apparently, the only criterion. For example, although Boston is the seventh largest IEA served by Conrail and the second largest BEA (behind New York but ahead of Philadelphia) which today is served only by Conrail, Boston is scheduled to remain a monopoly market. VS Kalt at 14.

An obvious, although unarticulated, reason for selectively restoring competition to a particular area would be the determination by NS and CSX that both could profitably operate in the market at the same time. In any event, there can be gleaned from the application no compelling basis for the selective restoration of two rail carrier competition to certain markets and the continuation of the Conrail monopoly in other markets. As described below, this disparity is the root of the harm which requires the conditions to be attached to the transaction.

Benefits of Rail Competition

The application and verified statements are replete with explanations and arguments concerning the benefits of having two Class I rail carriers in a market. The restoration of competition is one of the foremost public interest benefits touted by NS and CSX as a justification for approval of the transaction. VS Snow at 9; VS Goode at 11; Application at 2.

The specific benefits of two rail carriers competing head-to-head are clear and unchallengable. First and perhaps foremost, such competition will create a downward pressure on rates chargeable to rail customers. VS Goode at 11; VS Snow at 12. Such rate pressure is, in the hands of shippers, a "powerful bargaining chip." VS Christopher P. Jenkins at 40. The absence of two rail competitors, by comparison, suggests that any cost savings realized by the single carrier will not necessarily be passed on to the customer in the form of reduced rates; rather, the lone rail carrier in the absence of competition may choose to extract "economic rent" by maintaining the rate levels and earning higher profits. VS Barry Harris at 6.

There are additional public benefits of having two rail carriers serving a market. Several witnesses point out the phenomenon that shippers looking to relocate their facilities or to build new plants will invariably go to a location which is served by two rail carriers. VS L.I. Prillaman at 8; VS David Alan Cox at 9. Thus areas with two rail

carriers will attract industrial development and economic growth. Areas which do not have comparable competitive rail service or access cannot expect such development or growth.

In the application and the verified statements, CSX and NS extol the virtues of increased rail competition and, in particular, the restoration of direct competition in the shared asset areas as a benefit to the "Northeast" or to the "East." In fact, however, these statements of benefits can be applied only to those areas of the Northeast or East which will be left with two alternatives, and such statements should be footnoted or modified as such.⁴ Vast areas of the Northeast, such as upstate New York, New York City, Long Island, the New Haven line area in Connecticut, and the remainder of the areas of states east of the Hudson River, are not afforded effective rail competition by the transaction as currently structured.

The application is noteworthy for the relatively few statements of shipper support, among the hundreds of statements which were included, from rail customers located in the areas which will not have competitive rail service after the transaction is implemented. Moreover, the few statements ostensibly in support of the transaction were not based on an accurate understanding of the proposed status of rail competition in the areas east of the Hudson River. Several shippers assumed that direct, competitive single line service would be established by both CSX and NS. For example, a shipper located in Madison, Maine, wrote to the Board as follows:

There is a distinct need for two competing railroads in the Northeast which own their own tracks and facilities. For too long, customers which ship or receive product into and out of the Northeast have had the service of only one rail carrier.

...

⁴ For example, the assertion that "[t]his transaction will give customers who ship to and from the Northeast the benefits of competition between two strong rail systems" does not apply to the areas east of the Hudson River where CSX will continue to be the only Class I carrier. VS Snow at 12.

In addition, we are looking forward to experiencing not only the change from being serviced by one rail carrier increasing to two, but also the greatly expanded market reach which single line service by NS and CSX will offer.

Application, Volume 4D at 274 (emphasis supplied). In addition, a shipper located in New London, Connecticut based its support on the mistaken belief that NS would be providing single line service to Connecticut:

... the single line service which Norfolk Southern proposes would be of benefit to us. With single line service, I believe our facility would be able to compete in these markets with other companies enjoying single line service into the Northeast.

Application, Volume 4B at 690. Clearly, however, the transaction proposed by NS and CSX will not provide for ownership of assets, single line service or competition by both NS and CSX which will benefit shippers in Maine, Connecticut or any other area east of the Hudson River.

Proposed Competition by NS Will Not Be Meaningful in the Monopoly Areas

NS and CSX seem tacitly to recognize the different circumstances in which their proposal leaves the portion of the Northeast region east of the Hudson River and the other areas where the Conrail monopoly is perpetuated in comparison to the portions of the Northeast region, such as the shared asset areas, where rail competition will exist. Although technically not part of the application, NS, as described above, has taken certain steps in an effort to compete with CSX east of the Hudson River. As described below, however, the effort is unlikely to result in any meaningful or effective rail competition.

One of the most important public benefits of the transaction, according to NS and CSX, is the creation of single line service by means of the addition of Conrail lines to the existing systems of NS and CSX. Witness after witness describes the advantages of single line service. There can be no doubt that single line service is superior in every way to interline service involving two or three carriers.

NS will attempt to "compete" with CSX single line service to Boston, however, by means of an interchange with CP at Sunbury, Pennsylvania, haulage service by CP between Sunbury and Albany and interchange with Guilford at Albany. This service is described as "coordinated" service which NS contends will be workable because of an "alignment of interests" among the three parties. VS McClellan at 14, 32. If, however, the applicants are to be believed -- and they should be -- when they describe the advantages of single line service, the proposed three carrier competition, if it actually emerges, will not be the equal of CSX's single line service and will have little chance of providing effective competition for CSX.

Moreover, there are obstacles to the creation of such service. So far as is publicly known, NS has reached no agreement with Guilford. The Guilford route between Albany and Ayer, Massachusetts, which would be used if there is an interchange established with NS, has not been Guilford's primary route for several years. Rather than routing traffic over the line between Ayer and Albany, Guilford has chosen to move most of the traffic to and from an interchange with Conrail at Ayer, Massachusetts. Consequently, the physical condition of the Ayer-Albany line at this time is a question. Furthermore, a five mile long tunnel in western Massachusetts is not presently capable of accommodating certain high clearance cars. Although Guilford has reportedly started to work on increasing the height of the tunnel, details of the work, the estimated completion date and the anticipated new clearances are not known.

PUBLIC INTEREST ANALYSIS MANDATING IMPOSITION OF CONDITIONS

CNEG believes that the proposed transaction will, unless conditioned in the manner described, have adverse impacts on all parts of the Northeast in which effective rail-to-rail competition by NS and CSX is not provided. The most readily identifiable area in which this result will be seen is the area east of the Hudson River, where CSX will continue as the beneficiary of the current Conrail monopoly. Without rail competition,

the affected states, local governments, shippers, short-lines, regional rail carriers, and ports will be harmed, as described below.

Non-Competitive Areas Will Be Disadvantaged in Comparison to Competitive Areas

NS and CSX have convincingly demonstrated the benefits of rail competition in any region. Moreover, they have shown that regions and shippers which have effective rail competition will have advantages over those which do not. The result of the proposed transaction, if conditions are not imposed, will be to place the areas of the Northeast lacking rail competition at a distinct disadvantage compared to the competitive areas.

As demonstrated by NS and CSX, rail rates will undoubtedly decrease in the shared asset areas. For example, NS has quantified – at approximately \$80 million annually – the loss of revenues as a result of anticipated rate reductions in those areas where it intends to compete directly with CSX for business. VS Goode at 11; VS John H. Williams at 5. Rail rates will presumably also decrease or at least remain stable where both NS and CSX are able to compete effectively.

In areas of the Northeast where CSX will continue to have no effective competition, however, the economics of the marketplace suggest that CSX will be able to preserve or increase its margins in order to offset the lower profitability of traffic in the competitive areas. Most railroads attempt to offset the effects of lower margin traffic by maintaining higher margin traffic wherever possible so that fixed costs are covered and an appropriate profit is earned.

With the anticipated discrepancy in rail transportation rates between the non-competitive areas and the competitive areas, shippers in the non-competitive areas will be handicapped in their attempts to compete with shippers in the competitive areas. To the extent that transportation costs are a factor in a shipper's ability to deliver goods to its

customers, shippers located east of the Hudson River or in the other areas without competition will be at a severe disadvantage.

The NS/CSX application demonstrates that economic development and growth are fostered by having competitive service by two rail carriers. Conversely, economic development and growth are more likely to be stagnant in an area which is served by only one rail carrier. NS and CSX have asserted that shippers invariably look for two rail carriers before they decide whether to locate a new facility in any particular area. The result of the creation of non-competitive and competitive areas is that economic development will be fostered in the competitive areas and will be stifled in the areas which lack rail competition. In an economy which is unquestionably national in scope and increasingly global, the non-competitive areas will be harmed unless competitive rates and access are provided.

Shippers in the non-competitive areas recognize that they will be at a disadvantage. For example, Northeast Warehousing & Distribution of Monson, Massachusetts noted in a letter to the Massachusetts Executive Office of Transportation and Construction in August, 1997, a copy of which is attached, that the absence of Class I rail competition would place New England at an "economic disadvantage" and "subject to a reduction in employment opportunities that competitively will go to [the competitive areas]."⁵

The areas east of the Hudson River and other monopoly areas will be harmed by the transaction in yet another, more subtle fashion. NS and CSX will undoubtedly contend that the effect of the transaction is simply to replace Conrail with CSX and that such a replacement in and of itself is not harmful. By its own description, however, CSX is a much stronger entity than Conrail in every respect. To the extent that relative economic strength and leverage between a rail carrier and its customers is a factor in

⁵ Northeastern Warehousing submitted a letter in support of the transaction in May, 1997 based on the incorrect assumption, which, as described above, was shared by others, that NS would be obtaining a single line route to serve New England. Application, Volume 4D at 579.

dictating the quality of service and level of rates, CSX will be a much more formidable participant than Conrail.

Proposed Remedy

In general terms, CNEG believes that the monopoly areas must be afforded effective, two carrier rail competition. Competitive access by both NS and CSX could be accomplished in several different ways, as described below. In any event, however, CNEG believes that the Board must retain jurisdiction over this matter to review the status of rail competition and to implement changes now or in the future to the extent warranted.

The best form of rail competition would be the type of direct access by both NS and CSX which is being proposed for the shared asset areas. Introduction of such rate and service competition in the monopoly areas would ameliorate the harmful impacts outlined above. There are, however, other means to promote competition, such as trackage or haulage rights.

Several parties have expressed the intention to file responsive applications to address the same competitive concerns which CNEG has identified. For example, the New York Department of Transportation and the New York City Economic Development Corporation, identifying the lack of competitive rail access to New York City, are proposing trackage rights for a neutral carrier over the Conrail lines between Albany and New York City. Such trackage rights would enable NS, working with the holder of the trackage rights, to compete much more effectively with CSX for traffic to and from New York City.

Short-line carriers such as New England Central, which operates in Vermont, Massachusetts and Connecticut, and Housatonic Railroad, which serves areas of Connecticut and Massachusetts, have indicated intentions to file responsive applications for trackage rights or haulage rights enabling them to operate or move traffic over

portions of the Conrail line between Albany and Boston. Such rights would, in effect, enable NS to penetrate the New England region and to provide effective competition to CSX, at least with respect to rates.

By such means of such trackage or haulage rights, therefore, NS and carriers other than CSX will have the ability to extend their reach beyond Albany to reach points to the East and South which would otherwise be captive to CSX. Such a development would enable NS to compete more vigorously with CSX in the areas which would be without effective competition under the transaction as proposed.

To some extent, the proposed trackage rights or haulage rights may be duplicative or inconsistent. CNEG believes that if one carrier were granted trackage rights between Albany and New York City and between Albany and Worcester, Massachusetts, as a neutral extension, in effect, of NS operations beyond Albany, the competitive imbalance would be restored to a large extent. Multiple trackage rights over these lines are not necessary; common access through a neutral operator should be adequate.⁶

As described above, NS itself has taken certain steps in order to attempt to provide competition to the monopoly areas east of the Hudson River. It is possible that the NS efforts with CP and Guilford will come to fruition and that a competitive rail service will be created. At this time, however, the result is impossible to predict. Moreover, the proposal is not part of the application which is pending before the Board. Consequently, the parties to the service, if it is created, would be free to implement it or not; the service would not be mandatorily imposed as a condition of the primary transaction.

In these circumstances, the Board should favorably consider the responsive applications for trackage rights or haulage rights, as described above. In addition, however, the Board should expressly condition approval of the transaction by providing

⁶ It should be noted that any such arrangement which is not single line service will, for the reasons developed above, not afford the same advantages as the CSX single line service. On the other hand, even such an arrangement would be better than perpetuation of the Conrail monopoly.

for periodic review of the competitive access issues in order to determine whether there is effective rail competition in all areas of the Northeast. The condition should also explicitly provide that the Board is retaining jurisdiction with the ability to impose additional or other relief to the extent warranted. Such additional relief might be the creation of additional shared asset areas or the imposition of trackage rights in favor of NS over the CSX lines east of the Hudson River, combined with a common carrier obligation for NS and a directive to NS to use such rights.

Condition is Operationally Feasible

Such a condition would be operationally feasible. If any of the trackage or haulage rights applications were granted, it is unlikely that the addition of no more than several trains a day would overburden the capacity of the lines in question or lead to congestion. For example, the portion of the Conrail Boston-Albany line between Worcester and Albany currently handles approximately 25 trains per day. With such volumes, several additional trains exercising trackage rights would not create an operational problem. Haulage rights would presumably add no additional trains.

The retention of jurisdiction by the Board is certainly no burden to NS or CSX, either operationally or otherwise. The Board has retained jurisdiction over certain aspects of the implementation of the Union Pacific-Southern Pacific merger to monitor and ensure the effectiveness of the competitive remedies imposed in that case, and it could readily do so in this case.

Balancing of Public Interest Factors Mandates the Imposition of Conditions

The public benefits which will flow from imposing the condition requested by CNEG will far outweigh any reduction in the public benefits which will result from the transaction itself. More competition, by definition, is better than less. Indeed, it is

unlikely that there will be any diminution to the public benefits which NS and CSX contend will be produced by their partition of Conrail.⁷

Ultimately, the balancing of the public interest factors must take into account the admittedly unique history of Conrail. For the first time, the Board, including its predecessor, the ICC, is being asked to permit the restructuring of a rail carrier which is itself the product of public policy considerations and substantial public investment.⁸ In the words of the applicants, the proposed transaction is the "final restructuring" of a process which began more than twenty years ago in Congress.

The public interest for which CNEG speaks is based on the best interests of the economy and shippers in all areas of all of the states comprising CNEG. CNEG is motivated by the recognition that the transaction, as currently structured, will create an imbalance between certain areas and markets depending upon whether they are served by one Class I rail carrier or two Class I rail carriers. Certain areas, all of which are part of a national economy, will have competitive advantages and others will suffer from disadvantages.

Just as there were public policy issues and economic issues underlying the creation of Conrail and its structure and markets, there are important public policy issues at stake now. These issues require the review and intervention of the Board as the ultimate protector of the public interest. The issues should not be resolved solely by private interests, particularly when the proposed transaction will have such a substantial impact on the regional and the national economies.

NS and CSX are to be applauded for proposing to restore rail competition to the extent which they have. They should not, however, be the sole or final arbiters of the public interest. It should be recognized that each company fought vigorously for the right

⁷ To the extent that rates may decrease due to broadening the areas of competition, any revenue foregone would be a diminution of private, not public, benefits.

⁸ The net federal investment by the federal government in the acquisition and rehabilitation of Conrail, after taking into account the proceeds realized on the sale of the Conrail stock, was approximately \$5.1 billion.

to annex the Conrail monopoly for its own. They had to settle for a division of lines and a sharing of certain markets which are now captive to Conrail. The creation of shared asset areas and the preservation of competition in certain areas are, therefore, a product of the "deal" for which NS and CSX had to settle, not simply a magnanimous gesture.

The proposed transaction must be recognized as an example of private economic activity which has broad, far reaching and long lasting public impacts. The process of selectively restoring effective rail competition to certain regions and withholding it from others would create, to use a trite sports metaphor, a playing field that is not level. Thus, the question for the Board is the selection of the best means to correct or protect against any adverse impacts – how best to level the economic playing field. Stated otherwise, should the final restructuring of Conrail be ceded to NS and CSX, each of which fought vigorously to control Conrail for its own, sole benefit, or should there be an overriding role for the Board to ensure that the public interest is implemented?⁹

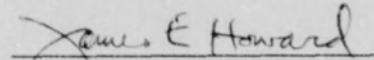
CNEG believes that the answer is clear: the final chapter of the Conrail story should not be left solely to private sector decisions as to where and to what extent rail competition should be restored or where and to what extent rail monopolies should be continued. The economic impact of the private sector decisions must be assessed on a regional and national basis in order properly to evaluate the public interest aspects of the transaction. While the manifest destiny of NS and CSX may be to partition Conrail, there

⁹ The Board has recognized the broad nature of its role and the need to consider economic issues. In the UP-SP decision, for example, the Board noted its responsibility, founded on the commerce clause of the Constitution, to foster the goal of economic integration embodied in NAFTA.

must be oversight of the type outlined above in order to ensure that rail competition is restored where it is feasible to do so, rather than denied by a decision of the applicants which lacks any compelling rationale.

Respectfully submitted,

COALITION OF
NORTHEASTERN GOVERNORS



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Dated: October 21, 1997

August 18, 1997

Mr. Dennis Coffey, Director
Executive Office of Transportation and Construction
Commonwealth of Massachusetts
10 Park Plaza, Suite 3170
Boston, MA 02116

Boston, MA

Dear Dennis:

This letter will follow-up our discussion regarding the upcoming impact of Conrail's take-over by CSXT in New England, in general, and Massachusetts in particular.

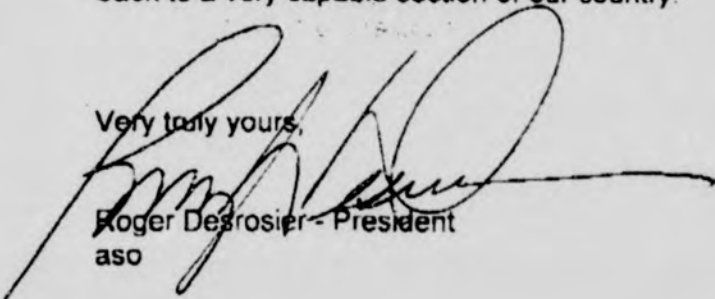
On a positive note, breaking Conrail's exclusive lock on US origin and destination rail business will be an economic plus for the many off-line shippers, receivers, transloaders and distribution businesses in New England.

On the negative side, we seem to be going from the "frying pan into the fire" by allowing a single class 1 rail carrier (CSXT) to replace another class 1 carrier (Conrail). Many industry leaders would prefer to see a situation similar to New York and New Jersey where both Norfolk Southern and CSXT are being allowed joint service access.

What appears to be happening again in New England, and Massachusetts in particular, is regionally we are being placed in another economic disadvantage. We will be subject to a reduction in employment opportunities that competitively will go to New York and New Jersey. This disadvantage will place additional pressure on increasing the already heavy truck imbalance in New England. We feel we should be reducing the number of long haul trucks on our congested highways, not increasing them.

Having two (2) class 1 United States rail carriers competing head to head in New England would go a long way to alleviate our region being so dependent on the service sector and tourism and it would certainly improve our regional ability to attract industry back to a very capable section of our country.

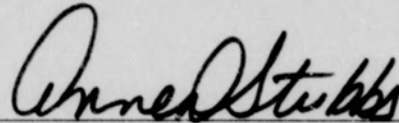
Very truly yours,



Roger Desrosier - President
aso

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the "Comments and Request for Conditions by Coalition of Northeastern Governors" is being served by mailing copies on October 21, 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 amended by Decision No. 43 dated October 7, 1997, and on Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.

A handwritten signature in cursive script, reading "Anne D. Stubbs", written over a horizontal line.

Anne D. Stubbs

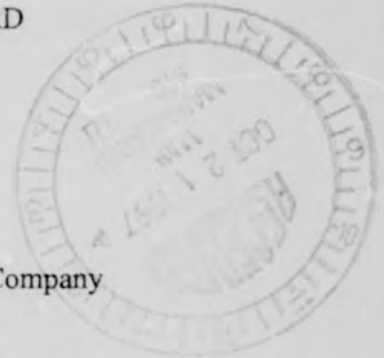
Dated: October 21, 1997

CNEG-6

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



VERIFIED STATEMENT OF ALAN G. DUSTIN
IN SUPPORT OF "COMMENTS AND REQUEST FOR CONDITIONS
BY COALITION OF NORTHEASTERN GOVERNORS"

My name is Alan G. Dustin, and I am currently employed as a rail transportation consultant with KKO & Associates, Inc. of Andover, Massachusetts. I am submitting this statement in support of the "Comments and Request for Conditions by Coalition of Northeastern Governors."

I have 50 years experience in the rail transportation industry. Since 1990, I have been a consultant, operating my own independent consulting business between 1990 and 1997 and affiliating with KKO earlier this year. As a consultant, I have been engaged in a variety of rail projects, including studies on the ability of Amtrak to become self-sufficient, the preparation of a number of bids for the acquisition of freight railroads, annual operational and financial audits of the Alaska Railroad Corporation and a variety of passenger and commuter projects, including commuter and long-distance passenger privatization in Argentina, analysis of the extension of the Metro subway system in Washington, DC, and study of the commuter systems in South Africa.

From 1984 to 1989, I was Vice President and General Manager of New Jersey Transit Rail Operations. In that capacity, I was responsible for the operation of a growing commuter service with an annual operating budget of approximately \$255 million and a

capital budget of approximately \$175 million. During my years with New Jersey Transit Rail Operations, ridership increased and costs per passenger decreased. In addition, we successfully completed a massive program for rehabilitating the track and facilities.

In 1983 and 1984, I was the President and Chief Operating Officer of Boston and Maine Corporation and Maine Central Railroad. I participated in the planning for and implementation of the consolidation of these two carriers following their acquisition by Guilford Transportation Industries. In addition, I was responsible for the operations of freight and commuter service.

I joined B&M as President and Chief Executive Officer in 1973 at a time when it was in reorganization proceedings. From 1973 through 1983, I was responsible for the overall operations and performance of B&M which, during that time, emerged from bankruptcy and was acquired by Guilford. The turnaround was accomplished through innovative wage, work rule and crew size agreements, increased and innovative marketing developments to generate new sources of revenue, and other efficiencies.

Prior to joining B&M, I held various other positions with freight railroads in the Northeast, including Executive Vice President of Bangor & Aroostook, Chairman of the Board of Pittsburgh and Shawmut and Division Superintendent with Erie Lackawanna. I began my rail transportation career in 1947.

As a result of my experience over the last 50 years, I am familiar with the rail industry in the Northeast. In particular, I am generally familiar with the freight and passenger rail networks, the rail carriers providing service and the significant rail customers in the Northeast.

I was retained by the Commonwealth of Massachusetts in June, 1997 in order to consult with and provide advice to the Executive Office of Transportation and Construction relating to the transaction pursuant to which CSX and NS propose to acquire Conrail. In connection with that assignment, I have generally reviewed the application and relevant verified statements submitted by NS and CSX to the Surface

Transportation Board. In particular, I have studied the plans of CSX and NS as they relate to the division of lines and facilities and the provision of service in the Northeast.

I fully agree with the witnesses for NS and CSX who claim that there are substantial benefits to having two Class I carriers competing in any market. The presence of two Class I carriers such as NS and CSX in the so-called "shared asset areas" and other areas where both NS and CSX will provide service after the transaction is implemented will mean that shippers will have the benefit of both price competition and service competition.

Price competition is a relatively straight-forward concept. Having two Class I carriers with the ability to quote rates, and in most cases single line rates, gives any rail customer a clear basis for comparison. In addition, the carriers are generally motivated to reduce rates in order to obtain new business or maintain existing business levels.

The passage of the Staggers Act and other legislation which has freed rail pricing from regulation to a great degree has enabled shippers to make the most of any leverage which they may have with rail carriers. Sophisticated shippers today understand that they can, in effect, play one rail carrier off against the other in order to negotiate lower rates. The ability to use confidential transportation contracts has made it easier for shippers to extract rate concessions from rail carriers.

The presence of two rail carriers in any market will also lead to service competition. By service competition, I am referring to factors such as transit times, the availability of equipment, and general responsiveness of the carrier. These factors are very important, especially to shippers dealing with time sensitive commodities. In many instances, shippers will negotiate with rail carriers concerning service requirements. If there are two rail carriers serving any particular market, the ability of a shipper to achieve service goals is enhanced.

The marketing department of any rail carrier devotes significant effort to attempting to persuade shippers to locate new facilities on the carrier's lines. I agree with

the witnesses for NS and CSX who stated that in today's economic climate shippers will invariably consider the investment in a new plant or facility only if they will have access to competitive service from two rail carriers. As in the case of the rate and service benefits to shippers with existing facilities, as described above, shippers place even more emphasis on being sure that any new capital investment for a plant will be at a location where two rail carriers provide competitive service.

Investment in plants and facilities means economic growth and jobs for the area in which the plant or facility is built. Areas or markets which have two competing rail carriers will undoubtedly have a better chance of experiencing economic growth than areas or markets which are served by only one rail carrier.

I also agree with the witnesses for NS and CSX to the extent that they assert that single line service is generally much better in all respects than joint line service. If the CSX/NS plan for Conrail is implemented, CSX will have single line service between points east of the Hudson River and other points in its system. Such service, for the reasons stated by the witnesses for NS and CSX, will be faster and less costly than interline service.

NS, on the other hand, is not scheduled to obtain any Conrail lines or rights which extend east of the Hudson River. In order to attempt to serve customers east of the Hudson River, NS has announced that it has reached an agreement with Canadian Pacific pursuant to which CP would haul NS traffic between Sunbury, Pennsylvania and Albany, New York. In addition, NS has also stated that it is discussing an arrangement with Guilford, the owner of B&M, to interchange traffic with B&M at Mechanicville, New York, near Albany, for the movement of traffic beyond the Albany area and to and from areas in New England. NS has asserted that this route will provide a "competitive presence" for NS which will enable it to compete with the single line CSX route.

In my view, NS will not be competitive with CSX east of the Hudson River for several reasons. First, NS will not have a single line route. Instead, there will be a

haulage arrangement with CP and an arrangement which apparently has yet to be defined or finalized with Guilford. If NS is able to reach definitive arrangements with Guilford, NS's service will in no event be equivalent to the single line service which will be offered by CSX. The NS service will depend on three different carriers and two interchanges, which will undoubtedly make it slower and less reliable than CSX. In addition, since three carriers, rather than one, will have revenue requirements for traffic movements, it is unlikely that NS will be able to offer lower rates than CSX or even rates that are equal to CSX.

It is my understanding, based on discussions with persons who are familiar with Guilford's operations, that in recent years Guilford has reduced the volume of traffic on its line between Mechanicville, near Albany, and Ayer, Massachusetts. I am told that the majority of Guilford's traffic is now interchanged with Conrail at Ayer and routed via Conrail between Ayer, through Worcester, and Albany. If there has been a decline in the use of the Guilford line, maintenance expenditures on the line may also have declined. If so, there may be a question whether the condition of the line is at a level which would be desirable if NS wants to incorporate the line as part of its attempt to create a competitive route.

The discrepancy between competitive rail service by two Class I carriers and rail service by only one Class I carrier will result in a form of economic discrimination against areas which are served by only one carrier. The discrimination will take several different forms. For example, shippers, whether present or prospective, in a single carrier area, or a "monopoly" area, which compete with shippers located in an area served by two carriers will be at a disadvantage, because the rail service will be less efficient and more costly. This same discriminatory impact will be seen with respect to ports which are served by two carriers as compared to ports which are in monopoly areas. In addition, as described above, the monopoly areas will suffer in terms of economic growth and development in comparison to the regions served by two carriers.

The ideal remedy for the harm caused by the fact that only CSX is scheduled to serve the area east of the Hudson River and the other monopoly areas would be to make those lines "shared asset areas" or to give NS trackage rights and a mandate to provide service in competition with CSX over those lines. In those circumstances, there would be full rate and service competition -- or direct "head-to-head" competition as NS and CSX describe it -- as there will be in the shared asset areas.

Another remedy which would not be as effective but which would tend to ameliorate the harmful impacts would be to grant trackage rights between Albany and New York City and between Albany and Worcester, Massachusetts to a short-line or a regional carrier. The short-line or regional would enable NS, working with the short-line or regional, to provide rate competition over the CSX lines for shippers which would otherwise be captive to CSX. It should be recognized that a joint line service of this type would not be as efficient as the single line service of CSX. Such joint line service would, however, be more competitive than the complete lack of competition provided in the application. I believe that the service which could be provided by NS working with a short-line or regional over the CSX lines east of the Hudson River would provide more effective rate competition and would afford better service than the proposal by NS to work with Guilford on its route.

Trackage rights for either NS or another carrier over these Conrail lines from Albany would not impose any operational problem for CSX. It is likely that the trackage rights would be exercised for no more than several trains per day, and such volume would not test the capacity of the lines in question. For example, it is my understanding, based on the CSX operating plan (Application Volume 3A, p.447) that the Conrail line between Boston and Albany currently handles approximately 25 trains per day between Worcester and Albany, and the number of trains will decrease slightly after the transaction is implemented. Several additional trains per day would not be a source of congestion.

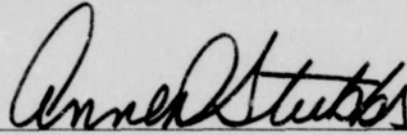
VERIFICATION

I, Alan G. Dustin, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on this 17th day of October, 1997.

Alan G. Dustin
Alan G. Dustin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the "Verified Statement of Alan G. Dustin In Support of 'Comments and Request For Conditions By Coalition of Northeastern Governors'" is being served by mailing copies on October 21, 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 amended by Decision No. 43 dated October 7, 1997, and on Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426.

A handwritten signature in cursive script, reading "Anne D. Stubbs", written over a horizontal line.

Anne D. Stubbs

Dated: October 21, 1997

STB

FD

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10-21-97

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SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N.W.

WASHINGTON, D. C. 20036

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 FRANK J. PERGOLIZZI
 ANDREW B. KOLESAR III

OCT 21 1997
 MAIL
 202-347-7170

October 21, 1997

BY HAND DELIVERY

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

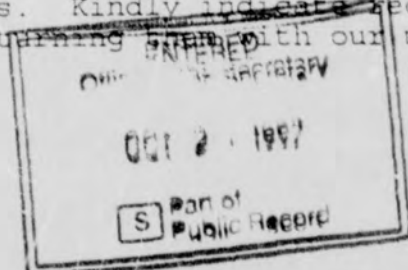
CONFIDENTIAL MATERIAL
 to be for Public Collection
 included with the sent
 in the
 Office of the Secretary
UNDER SEAL.

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

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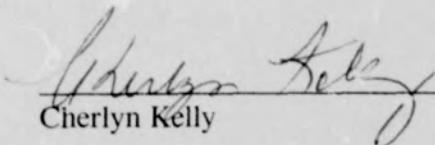
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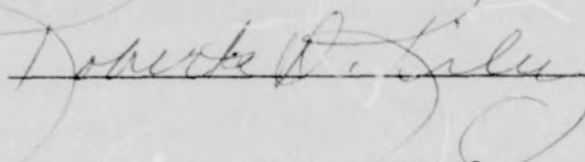
CERTIFICATE OF SERVICE

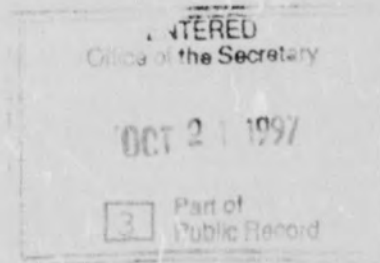
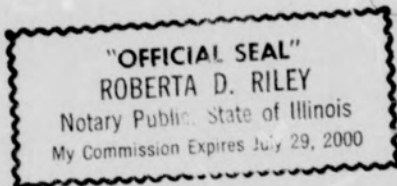
CHERLYN KELLY, being sworn, states that she served the attached Motion of the Illinois International Port District to be Joined as a Party of Record (Port/Chi-1) and the Request for Conditions of the Illinois International Port District (Port/Chi-2) as follows:

1. Upon the persons set forth on the attached Service List by Federal Express overnight delivery by placing same for delivery with the Federal Express Office at 111 West Washington Street, Chicago Illinois on October 20, 1997, before 5:00 p.m., with delivery charges to be paid by the sender.
2. Upon all other parties of record by causing the same to be mailed by Ikon Document Services to the parties of record, postage prepaid, by United States Mail, prior to midnight on October 20, 1997.


Cherlyn Kelly

**SUBSCRIBED AND SWORN TO BEFORE
ME THIS 20TH DAY OF OCTOBER, 1997.**





**MAILING INSTRUCTIONS FOR ILLINOIS INTERNATIONAL
PORT DISTRICT SERVICE LIST**



A. FEDERAL EXPRESS:

1. Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket No. 33388
1925 K Street, N.W.
Washington, DC 20423-0601

Number of Copies: An original and 25 copies. Each must have certification that the documents filed have been properly served on Judge Leventhal, the applicants' representatives as listed below #s 3,4,5 and all PORs per 10/7/97 service list update, but you don't need to attach the service list for all 25 copies (according to Ann Quinlan, Asst. Secretary); **and**

1 electronic copy of each document (a diskette 3.5 inch IBM compatible floppies formatted for WordPerfect 7.0 or formatted so that they can be converted into Word perfect 7.0) or a compact disc.

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

Number of Copies: 1 (One).

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

Number of Copies: 1 (One).

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

Number of Copies: 1 (One).

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

Number of Copies: 1 (One).

6. U.S. Secretary of Transportation
Office of the Transportation Department
400 7th Street, S.W.
Washington, D.C. 20590

Number of Copies: 1 (One).

7. U.S. Attorney General
U.S. Attorney General's Office
10th & Constitution Avenue, NW
Washington, D.C. 20530

Number of Copies: 1 (One).

B. REGULAR MAIL:

All remaining parties on the service list. Please note, however, that per STB Decision 62 FR 39577, 39588, service is not required on "Members of Congress" and "Governors" unless they are designated as "Parties of Record."

Number of Copies for each: 1 (One).

182772

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 33388

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



ILLINOIS INTERNATIONAL PORT DISTRICT'S
MOTION FOR LEAVE TO PARTICIPATE AS A PARTY OF RECORD

ILLINOIS INTERNATIONAL PORT DISTRICT
THE PORT OF CHICAGO
3600 East 95th Street
Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

REPRESENTATIVE FOR SERVICE:

EARL L. NEAL & ASSOCIATES

Earl L. Neal
Richard F. Friedman
Terrance L. Diamond
Kristen Barnes
111 West Washington Street-Suite 1700
Chicago, Illinois 60602
Telephone:(312) 641-7144



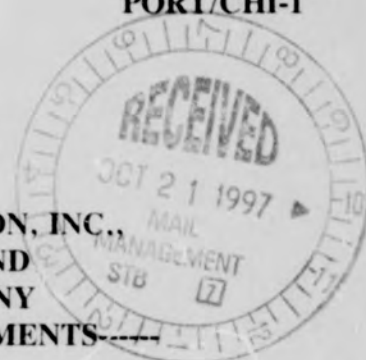
Attorneys for Illinois International Port District

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 33388

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

-----CONTROL AND OPERATING LEASES/AGREEMENTS-----



**ILLINOIS INTERNATIONAL PORT DISTRICT'S
MOTION FOR LEAVE TO PARTICIPATE AS A PARTY OF RECORD**

NOW COMES the ILLINOIS INTERNATIONAL PORT DISTRICT (the "Port of Chicago") by and through its attorneys, EARL L. NEAL & ASSOCIATES, and respectfully requests leave to participate as a party of record in the proceedings regarding CSX Corporation's, CSX Transportation, Inc.'s, Norfolk Southern Corporation's and Norfolk Southern Railway Company's application ("Conrail Application"), STB finance Docket No. 33388, for approval of their acquisition of Conrail Inc. and Consolidated Rail Corporation.

In support of its motion, the Port of Chicago states:

1. **Applicable Ruling.** The Surface Transportation Board's ("STB") Decision No. 12 provides for "[a]ny interested persons," in addition to parties of record, filing "written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications" with the STB by October 21, 1997 (62 FR 39577, 39588). In reliance on Decision No. 12's permitting filings by non-parties of record, the Port of Chicago has prepared its Request for Conditions, objecting to the application unless certain conditions are imposed. The Request for Conditions is filed simultaneously herewith.

In addition to the filing procedures contained in Decision No. 12, the Port of Chicago is permitted to become a party automatically. Persons providing comments automatically become a party of record. 49 C.F.R. §1180.4(d)(iv) provides as follows with respect to becoming a party of record:

“(iv) *Party*. All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.”

Accordingly, party of record status should be conferred upon the Port of Chicago.

2. Purpose to Serve all parties. The Illinois Port Authority's request to become a party of record is intended to assure that all parties receive filings of its written comments on the NS Application and that its comments will be given the STB's full consideration. It also desires to receive future filings by joining the service list.

3. The Interests of the Port of Chicago. The Port of Chicago is the largest inland port in the United States and the 16th largest port in the United States. It operates facilities at Lake Calumet, among others. At Lake Calumet, the Port of Chicago's tenants receive 12,000 rail cars annually. The changes proposed in the current disaggregation application would perpetuate the non-competitive rail situation on the east side of Lake Calumet and would further degrade the frequently poor rail service experienced there. The proposed conditions set forth in the concurrently filed Request for Conditions would remedy the non-competitive situation, improve rail service and would not harm the applicants.

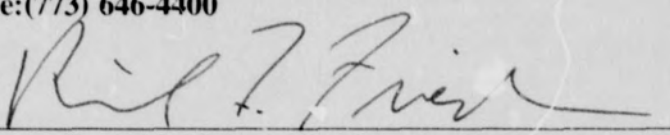
4. No Prejudice. No prejudice to the parties would result from allowing the Port of Chicago to become a party of record. Since the Port of Chicago is concurrently filing its Request for Conditions, and is doing so within the deadline for filing comments as provided in Decision

No. 12, the applicants and parties will receive the Request for Conditions in a timely manner. The applicants will be in a position to respond to the Statement of Conditions and take discovery, if they so desire. The Port of Chicago will respond to any discovery addressed to it. Accordingly, the applicants would not suffer any harm in permitting the Port of Chicago to become a party of record.

WHEREFORE, Illinois Port District respectfully requests permission to intervene in the STB Finance Docket No. 33388.

ILLINOIS INTERNATIONAL PORT DISTRICT
3600 East 95th Street, Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

By: _____


One of its Attorneys

REPRESENTATIVE FOR SERVICE:

EARL L. NEAL & ASSOCIATES

Earl L. Neal
Richard F. Friedman
Terrance L. Diamond
Kristen Barnes
111 West Washington Street
Suite 1700
Chicago, Illinois 60602
Telephone:(312) 641-7144

Attorneys for Illinois International Port District

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket 33388

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

ILLINOIS INTERNATIONAL PORT DISTRICT'S
REQUEST FOR CONDITIONS
TO THE APPROVAL OF APPLICATION

ILLINOIS INTERNATIONAL PORT DISTRICT
THE PORT OF CHICAGO

3600 East 95th Street
Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

REPRESENTATIVE FOR SERVICE:

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Earl L. Neal

Richard F. Friedman

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111 West Washington Street-Suite 1700

Chicago, Illinois 60602

Telephone:(312) 641-7144

Attorneys for Illinois International Port District

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket 33388

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

**ILLINOIS INTERNATIONAL PORT DISTRICT'S
REQUEST FOR CONDITIONS
TO THE APPROVAL OF APPLICATION**

The **ILLINOIS INTERNATIONAL PORT DISTRICT** (the "Port of Chicago"), a unit of local government of the State of Illinois, by **EARL L. NEAL & ASSOCIATES**, its attorneys, requests that the Surface Transportation Board ("STB") impose conditions upon the Norfolk Southern Railway Company ("NS"), as stated herein, if the STB approves the subject application. In support hereof, the Port of Chicago states as follows:

SUMMARY OF REQUEST

The pending proposed operating plan of NS would aggravate an already poor competitive and service situation with respect to rail service into the east side of Calumet Harbor at the Port of Chicago. In contrast to open trackage rights over the NS maintained with respect to customers on the west side of Calumet Harbor, NS maintains, and refuses to relinquish, exclusive trackage rights to customers on the east side of Calumet Harbor. Service to the east side is through the overcapacity Calumet Yard. Shipments are delayed. Capacity is limited and service responsiveness is poor. This has resulted in a loss of business to users of Calumet Harbor, has

prevented the Harbor from competing effectively with other ports and reduced competition from maritime and truck shippers who serve customers at the port.

The proposed operating plan further reduces service by eliminating crews at the Calumet Yard and projects its eventual closing.

To remedy this situation, the Port of Chicago proposes that the STB condition its approval of the current application upon the opening of service to the east side of Calumet Harbor. The NS should provide trackage rights and access to Harbor customers by local switching carriers: The Chicago South Shore and South Bend Railroad and Chicago Rail Link, or CSX.

STATUS OF THE PORT OF CHICAGO AS A PARTY

Concurrently herewith, the Port of Chicago has filed its motion for leave to participate as a party of record. It would appear that such a motion is not necessary, or should be allowed as a matter of course, because the regulations provide for automatic participation of persons filing written comments. 49 C.F.R. §1180.4(d)(iv) provides as follows:

“(iv) *Party.* All persons who file timely written comments shall be a party of record if they so indicate in their comments. In this event, no petition for leave to intervene need be filed.”

Accordingly, the Port of Chicago states its request to become a party of record. In all events, this Request for Conditions is submitted to the STB pursuant to Decision No. 12 in this proceeding, which provides (62 FR 39577, 39588):

“Any interested persons . . . may file written comments, protests, requests for conditions, and any other opposition evidence and argument, and/or responsive (including inconsistent) applications, no later than October 21, 1997.”

CONDITIONS REQUESTED

The Port of Chicago requests that the following operating changes be imposed upon the NS as a condition to the STB's approval of the instant application: The NS should be required to allow operating rights, with associated service to customers, over its trackage at the east side of Calumet Harbor, Lake Calumet, at the Port of Chicago. Operating rights should be accorded to the Chicago South Shore and South Bend Railroad Company and Chicago Rail Link. Alternatively, or in addition to the foregoing, operating rights should be granted to CSX, which has overhead trackage right between Hedgwich and Calumet Yard under the proposed Operating Plan.

THE PORT OF CHICAGO

The Port of Chicago is the largest port on the Great Lakes and the 16th largest port in the United States.* The Port of Chicago is a unit of Illinois government, created by the Illinois General Assembly pursuant to the Illinois International Port District Act, 70 ILCS 1810/1, *et seq.* The Port of Chicago is governed by a nine-member Board of Directors, appointed by the Mayor of Chicago and the Governor of Illinois. The boundaries of the Port District are those of the City of Chicago. It operates deep water port facilities at Iroquois Landing and Calumet Harbor at Lake Calumet. The legislative mandate of the Port of Chicago is operate, expand and enhance the port facilities within the City of Chicago. Lake Calumet comprises 1,500 acres of harbor facilities. Its facilities include Foreign Trade Zone No. 22 and tenant-owned or -operated warehouses, grain

* The facts stated in this Request for Conditions are taken from the attached Verified Statements of Anthony G. Ianello, Executive Director of the Port of Chicago and Thomas A. Collard, Vice-President of the Southern Railroad Company of New Jersey, an independent consultant.

elevators, wharfs, factories, and dry and liquid bulk terminals. It is an intermodal facility in its broadest sense. Goods and materials are interchanged between three modes of transportation: maritime, truck and rail.

RAIL SERVICE TO CALUMET HARBOR

Calumet Harbor is the term for the port facilities that the Port of Chicago operates at Lake Calumet. Because of the layout of the facility and geographical restraints, the east half of the port has distinct and independent rail service from the west half. On the west, trackage into the port is owned by the NS. Pursuant to an Interstate Commerce Commission decision in 1959, *Illinois Central Railroad Company, et al. Construction and Trackage Rights, Lake Calumet Harbor, Cook County, Ill.*, 307 ICC 493 (October 5, 1959), the Chicago South Shore and South Bend Railroad Company, Chicago Rail Link and Indiana Harbor Belt Railroad (as successors to the parties in said proceeding) have operating rights over the NS (as purchaser from the bankruptcy of the Chicago Rock Island Pacific Railroad Company) into the port. In contrast, on the east side of the port, which is the subject for this Request for Conditions, the NS has exclusive rights and does not offer trackage rights to any other carrier. This Request for Conditions seeks to equalize access to rail service between the two sections of the port in order to promote competition and improve rail service.

EXISTING SERVICE OVER THE NS TO THE EAST SIDE OF CALUMET HARBOR

The attached Verified Statement of the Executive Director of the Port of Chicago describes the state of service provided by the NS to the east side of Calumet Harbor. NS provides classification service through the Calumet Yard, a short distance from the Port. Because of congestion, unavailability of crews and lack of competition from other carriers, rail customers

have received consistently poor service from the NS. This includes delayed receipt of rail cars, lack of information concerning when rail cars will be delivered and excess demurrage.

THE IMPACT OF POOR SERVICE AND LACK OF COMPETITION

One of the major effects of the lack of competition on the east side of the Calumet Harbor is the loss of business to rail customers and the loss of competition from bulk maritime carriers. Shippers at Lake Calumet have suffered stagnant business growth and even loss of business. Customers, including those itemized in the accompanying Verified Statement, have suffered reduced rail car deliveries and consequently reduced levels of business. Persons who otherwise would take advantage of services offered by the shippers at the Lake Calumet and the bulk maritime shipping offered there are unable to use the port because of poor rail service. As a consequence of insufficient access to the port and its maritime facilities, shippers are limited to shipment by the NS and other rail carriers. The current situation prevents the Port of Chicago from offering services on the east side of the harbor competitive with those on the west side of the harbor and competitive with those of other ports throughout the country. The Port of Chicago is faced with the strange situation in which customers on the west side of the Port have a choice of carriers, while customers on the east side of the port having identical requirements have access to only one rail carrier. At the same time, as pointed out in the Verified Statement of Thomas A. Collard, attached hereto, competitive ports throughout the country enjoy competitive rail service. The Port of Chicago faces unequal competition from such facilities because of the noncompetitive access over the NS.

THE PROPOSED OPERATING PLAN MEANS FURTHER REDUCTION IN SERVICE

The Operating Plan, Volume 3B, pp. 184-5, indicates that the causes of the current poor service will be further increased. Service from the neighboring Calumet Yard will be reduced by the proposed elimination of ten operating positions, seven locomotives and 65 mechanical department positions. The Operating Plan foresees eventually eliminating the Calumet Yard and converting it into an intermodal facility. The functions of the Calumet Yard will be transferred to the Elkhart Yard, some 70 miles distant. With the personnel reduction and eventual elimination of the Calumet Yard, and the operating distances to the proposed yard, it is difficult reach any conclusion except that service to the east side of Lake Calumet will deteriorate further.

THE LEGAL STANDARDS

Congress and the STB have determined that the criteria for judging an application of this kind is its impact on competition and its ability to enhance transportation alternatives to shippers, including the preservation of effective intermodal competition. Congress has determined that one of the criteria for judging an application that involves the control of Class 1 railroads is whether it will "have an adverse affect on competition among rail carriers. . . ." 49 U.S.C. §11324(a)(5). To implement this policy, the federal regulations provide that consolidations are not favored "that substantially reduce the transport alternatives to shippers." 49 C.F.R. §1180.1(a).

An important factor in this consideration is how the application will affect intermodal competition: "In some markets the commission's focus will be on the preservation of effective intermodal competition. . . ." 49 C.F.R. §1180.1(c)(2)(i).

The STB has authority to impose conditions upon approvals of consolidations, "including those that might be useful in ameliorating potential anti competitive effects of a consolidation."

Such conditions must show, as the Port of Chicago intends to show here, that the conditions are "designed to enable shippers to receive adequate service . . . [and] would not impose unreasonable operating or other problems" for the carrier. 49 C.F.R. §1180.1(d).

DISCUSSION

The facts set forth in this motion, and verified by the accompanying witness statements, demonstrate that the criteria for imposing conditions are met. The lack of competition on the east side of Calumet Harbor has resulted in poor service to customers, which in turn has prevented growth and resulted in loss of business through the port. The proposed Operating Plan demonstrates that service will be further reduced. The proposed method for accommodating the east side of Calumet Harbor is through a distant yard without any assurance that the port's needs can be met. Allowing the application without conditions would doom the east side of the port to further deterioration of service, limiting service to the public, and reducing the ability of maritime carriers to compete.

The conditions that the Port of Chicago proposes meet the criteria established pursuant to federal regulations. Allowing local switching carriers to provide service, in addition to that now provided by the NS, will encourage competition. Competitive carriers will compete for customers by improving service. Shippers will have a choice of carriers. The options available to customers will be maritime movements, as well as by rail carriage, since access to the port's facilities would be increased.

The Port of Chicago will be able to provide a more rational service, with both sides of the port offering customers access to rail carriers of their choice. More importantly, the Port of

Chicago will be able to compete on an equitable basis with other ports which are not limited by the anti-competitive access rights.

Finally, there is no financial or operating detriment to the NS in requiring it to provide equal access. This was the conclusion of witness Thomas A. Collard, whose Verified Statement is attached hereto.

CONCLUSION

For the foregoing reasons, the Port of Chicago requests that the STB impose conditions upon the approval of the current application to promote competition. The Port of Chicago requests that the approval of the application be conditioned upon NS's offering trackage rights and access to customers over its lines into the east side of Calumet Harbor to the Chicago South Shore and South Bend Railroad Company and Chicago Rail Link or, alternatively, CSX.

Respectively submitted,

ILLINOIS INTERNATIONAL PORT DISTRICT
3600 East 95th Street, Chicago, Illinois 60617-5193
Telephone:(773) 646-4400

By: _____

One of its Attorneys

REPRESENTATIVE FOR SERVICE:

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111 West Washington Street-Suite 1700
Chicago, Illinois 60602
Telephone:(312) 641-7144

Attorneys for Illinois International Port District

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

**VERIFIED STATEMENT OF
ANTHONY G. IANELLO TO SUPPORT
THE REQUEST FOR CONDITIONS OF THE
ILLINOIS INTERNATIONAL PORT DISTRICT**

ANTHONY G. IANELLO, being first duly sworn upon oath, states as follows:

I am the Executive Director of the Illinois International Port District (the "Port of Chicago"), a position I have occupied since 1990. I have been employed with the Port of Chicago administratively since 1984. As such, I have knowledge of the matters stated herein. This Verified Statement is given in support of the Port of Chicago's Request for Conditions to the Approval of the Application.

1. The Port of Chicago. The Port of Chicago is a governmental unit, created by the Illinois General Assembly in 1955. The Port of Chicago's boundaries are coterminous with those of the City of Chicago. The Port of Chicago is governed by a nine-member Board of Directors, whose members are appointed by the Mayor of Chicago and the Governor of Illinois.

The Port of Chicago operates deep water port facilities at Iroquois Landing on Lake Michigan and at Lake Calumet. The Port of Chicago is the largest port on the Great Lakes and is the 16th largest port in the United States, based upon annual tonnage. The Port of Chicago maintains piers and a 1,500-acre harbor facility (Calumet Harbor) at Lake Calumet. Foreign Trade Zone No. 22 is situated at Lake Calumet. The Port of Chicago leases areas at Lake Calumet to manufacturers, warehouse operators, grain elevators, and dry and liquid bulk terminals. Calumet Harbor is a major transshipment point with immediate access to the interstate highway system and with current rail service provided by the tracks owned and operated by the

at the Calumet Yard and the eventual conversion of the yard into an intermodal terminal. Classification service would then be provided through the yard at Elkhart, Indiana, some 70 miles away from Lake Calumet. Tenants of the Port of Chicago on the east side of Lake Calumet report to me major problems they are having receiving cars through the Calumet Yard. It is reported that the yard is severely overcrowded. This results in delays of one to five days in receiving cars through the yard. I have been advised by our tenants that frequently NS's Calumet Yard personnel report that they have received cars, but that the cars have not been delivered to the tenants for two to five days thereafter. The tenants also report to me that they frequently incurred unnecessary demurrage charges because of NS's slow pick-ups.

5. Differential Rates and Service to the West and East Side of Lake Calumet. On the west side of Lake Calumet, where competition exists, tenants report to me few instances of poor service. I receive no reports of rail service unavailability. The tenants are able to deal with carriers of their choosing. For my terminal tenants, their customers are able to make deliveries through carriers of their choice. Rail service on the west side has been increasing over the years from 3,800 cars annually in 1989 to 8,000 cars annually in 1996.

The open competition on the west side is in contrast to the closed system on the east. Shippers may deal only with the NS with respect to movement in and out of the east side of Lake Calumet. NS's rates for movement into the Port area \$400.00+ per car. Annual rail movements have been decreasing, from 7,000 in 1992 to 4,000 in 1996. Businesses dependent on rail carriage have been stagnant or have suffered losses of customers because of the monopolistic service on the east side and their being required to receive shipment through the Calumet Yard. The poor service is a frequent subject of meetings of the Transportation Committee of the Calumet

Area Industrial Commission, an organization including Calumet Harbor tenants. All tenants of the Port of Chicago have reported difficulties to me, which difficulties are typical of the east side tenants.

One tenant on the east side of Lake Calumet is a bulk liquid storage terminal and distribution point. It receives fifty percent of its products by rail, all via the NS. The company has reported to me that its current level of rail service is 3-3,500 rail cars annually, down from almost 5,000 in past years. It has suffered a revenue loss of between five and twenty percent. The company's loss is attributable to the company's customers' reluctance to use its facilities because of the non-competitive situation. The poor service experienced in classifying cars in the Calumet Yard has contributed to the loss.

I have received similar reports from another of the east side tenants, Emesco Dockside Development Corporation. This is an operator of a dry bulk storage and steel handling facility. Its business operates most effectively by transferring materials from water to rail. It reports to me that in the period 1995-96, it lost a customer intending to ship one million tons of steel slab because of the prohibitive rail costs. In the current year, it reports that it lost another customer wishing to ship 750,000 tons annually. This loss is also attributed to the expensive and ineffective rail service.

6. Impact of Non-Competitive Rates and Poor Service. The limitation on rail service has a direct impact on the Port of Chicago. I estimate that competitive rail service with improved yard conditions would generate approximately 4,000 additional rail movements on the east side of Lake Calumet. This would result in direct revenue to the Port of Chicago. If

Norfolk Southern (the "NS"). In close proximity are the tracks of other railroads: Conrail, Union Pacific, Indiana Harbor Belt, Grand Trunk Western, and Illinois Central Gulf. Goods move among maritime carriers, rail and truck. Shippers who wish to ship overseas may transfer goods directly to ships at Calumet Harbor or may ship by rail to a coastal port. Similarly, Great Lakes and Mississippi Valley destinations are served from Lake Calumet by rail, ship and truck.

Calumet Harbor is in the Chicago Terminal District and is provided switching services by the Chicago South Shore and South Bend Railroad (the "CSSSB"), Chicago Rail Link ("CRL") and Indiana Harbor Belt (the "IHB").

Principal tenants at Lake Calumet include Reserve Iron and Steel; Medusa Cement, Continental Elevators Corporation, Stolthaven Chicago Terminals, Ceres Terminal, Emesco Corporation, Pinkert Steel, Clean Harbors, Waste Management, Spraylat, Welded Tube and Tootsie Roll.

3. Calumet Harbor's East and West Facilities. With respect to rail service, Calumet Harbor is divided into east and west portions. Each portion has separate rail services, although the tracks on both the east and west portions are owned and operated by the NS. On the west, other rail carriers, including the Chicago Terminal switching lines, have access to customers. On the east, the Port of Chicago has attempted to negotiate a similar agreement with the NS. However, the NS maintains exclusive service and does not permit access over its trackage to other carriers.

4. The Calumet Yard. NS's movement of rail cars into the east side of Lake Calumet is through the Calumet Yard. It is my understanding that the disaggregation proposal now pending before the Surface Transportation Board proposes the gradual reduction in service

customers do not receive adequate rail service to get their goods dockside, they will avoid maritime shipping.

Competitive service on the east side of Lake Calumet would eliminate artificial barriers to expansion of the Port of Chicago's tenants there. Increased rail service would also have a beneficial environmental effect, reducing the need for truck movements on city streets and over-the-road.

In addition, many customers of our tenants have a variety of choices to transshipment points. Reducing the limitations on rail access would allow the Port of Chicago to compete more effectively with east coast and other Great Lakes ports that do not have the same artificial rail constraints. Removal of barriers to competition would put the east side of Lake Calumet on an equal competitive basis. It would also encourage intermodal competition from maritime carriers.

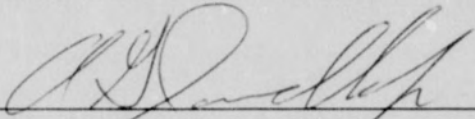
7. Adverse Impact on Intermodal Competition. The east side of Lake Calumet is a major intermodal site. Tenants and users of the Port of Chicago facilities interchange materials among marine bulk carriers, highway carriers and rail carriers. The impact of the proposed operating plan of NS will stifle intermodal interchanges. The reduction of the already limited yard services appears likely to reduce the availability of rail cars into the east side of Lake Calumet. If rail cars are not available and if rail service is not provided in a timely and convenient way, marine-interchanges will be reduced. The remedy for this situation is to open rail service to additional carriers. The fostering of competition by making rail services available from other carriers, will promote the interchange of materials between rail carriers and other transportation modes, particularly marine carriers on the east side of Lake Calumet.

8. **Proposed Service Changes.** The Port of Chicago seeks nothing more from NS for the east side of Lake Calumet than it has on the west side. It also seeks to have its rail access on an equitable basis with other ports. The Port of Chicago proposes that NS be directed to provide it with competitive rail services by allowing rights to local switching carriers to enter the east side of Lake Calumet to serve customers there. This would remedy non-competitive rates and encourage competition that would lead to more consistent and better rail services to the tenant and would foster intermodal competition.

Verification Appears on the Following Page

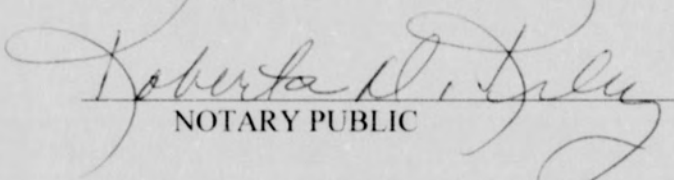
VERIFICATION

I, ANTHONY G. IANELLO, under penalties as provided by state law, state that the facts set out in the foregoing Verified Statement are true, except as to those facts that are stated upon information and belief, which statements I am informed and believe to be true.

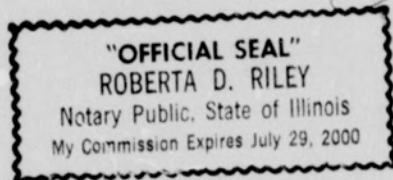


ANTHONY G. IANELLO

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 26th DAY OF OCTOBER, 1997.



NOTARY PUBLIC



VERIFIED STATEMENT OF THOMAS A. COLLARD

My name is Thomas A. Collard. I am Vice President of the Southern Railroad Company of New Jersey (SRNJ) and have over 30 years of railroad transportation experience with the Pennsylvania Railroad, Penn Central, Central Railroad of New Jersey, Conrail and the SRNJ. While at Conrail, I held the position of Director, Service Planning and Performance and worked on various service planning projects involving Conrail service in the Chicago Terminal.

I am associated with GRA, Inc. I am familiar with the Illinois International Port District (the "Port of Chicago"). I am familiar with the Chicago Terminal District and have observed the area on many occasions. I have inspected the site, although not in connection with this particular assignment.

I have become familiar with the configuration of the railroad lines serving the Port of Chicago, based on upon my experience, site inspections, study of railroad terminal maps, and interviews with personnel of GRA, Inc. who have recently inspected the site in connection with this assignment. Furthermore, I am familiar with the proposed future operation of the Chicago Terminal Area, particularly as it relates to the Port of Chicago, through the study of Railroad Control Applications, Volumes 1, 3A, and 3B, as well as a review of the application as a whole. I have also considered the facts stated in the accompanying Verified Statement of the Executive Director of the Port of Chicago, Anthony G. Ianello.

Based upon my experience, analysis and review for this assignment, I am of the following opinions:

The Port of Chicago is the largest port on the Great Lakes and among the largest 20 ports in the United States. The Lake Calumet Port Facility is the largest facility at the Port of Chicago.

The facility is owned and operated by the Illinois International Port District, an Illinois governmental entity. The Lake Calumet facility has deep water ports, piers, wharfs, warehouses, grain elevators and dry and liquid bulk terminal facilities.

Although some areas in the Port of Chicago Calumet River and Lake Calumet facilities have competitive rail access via Chicago Rail Link and the Chicago, South Shore & South Bend, those facilities on the east side of Lake Calumet are served exclusively by Norfolk Southern. Service to these facilities is provided by crews assigned to Calumet Yard, the principal Norfolk Southern classification and industrial switching yard in the Chicago Terminal. The proposed operation after Conrail disaggregation contemplates eliminating most classification and train functions performed at Calumet Yard and transferring them to Elkhart, Indiana, over 80 miles to the east.¹ Further, the proposed operating plan contemplates conversion of Calumet Yard to an intermodal facility in the future with "residual" support functions transferred to 97th Street Yard or to Colehour Yard.² Service to those port facilities now served by NS exclusively appear to be among these "residual" functions. This combination of transferring the primary service function to Elkhart and "residual" service to various local yards in Chicago will result in service degradation at these captive facilities. These NS captive facilities will be at a competitive disadvantage vs. facilities in the jointly served area on the opposite side of Lake Calumet and will have reduced service levels. Customers of NS on the east side of Lake Calumet are currently suffering poor service levels through the Calumet Yard. The operating plan does nothing to improve service, based on the Verified Statement of Anthony G. Ianello.

¹Railroad Control Application, Vol. 3B, Page 252.

²*Op. cit.*, Page 253.

To the extent to which geographic competition exists between the Port of Chicago and other ports, these NS captive facilities will be disadvantaged. CSX and NS have recognized the need for competitive access at ports through the establishment of Shared Asset Areas (SAA) in New Jersey and Detroit.³ Arrangements for the consolidated Ports of Philadelphia and Camden make a good comparative illustration. In Philadelphia on the west side of the Delaware River, the port is currently served by Conrail, CSX and CP Rail. The New Jersey side, however, is served exclusively by Conrail. Through the establishment of the South Jersey SAA, port facilities in Camden and Gloucester, New Jersey will gain competitive access to CSX and NS, as will facilities located on the northern portion of the Philadelphia Belt Line in Pennsylvania. Even the tiny Port of Salem, NJ served by a short line, will have access to both CSX and NS through the SSA. A direct parallel can be drawn between the east and west side of the Delaware River and the situation on the east and west sides of East Calumet.

CONDITIONS SOUGHT

In order to address the competitive disadvantage to the Port caused by single line access and potential service degradation, east Lake Calumet port facilities need access by an additional carrier.

One solution would be to grant the Chicago South Shore and South Bend or Chicago Rail Link, or other terminal carrier the right of access to the eastern port facilities via trackage rights. The terminal carrier could then deliver to and from all diverging roads in the Chicago Terminal with the exception of NS which would retain direct access.

³ *Ibid.*, Vol. 1, Page 45.

An alternative solution would be to grant direct access to CSX which already will have interim trackage rights over NS in the vicinity of the ports. Either solution would remedy this disadvantage and place the captive facilities on an equal footing with facilities with access to two carriers like the other facilities on Lake Calumet and with other lake and ocean ports.

The solutions proposed above would be in the public interest. They would place service on the east side of Lake Calumet on an equal footing with the service now existing on the west. Allowing access to the east side of Lake Calumet by competing local carriers would also place the Port of Chicago on an equal footing with the eastern ports. The fostering of competition would permit the enhancement of service to the east side of Lake Calumet. It would give shippers and other customers a wider choice of port facilities and would allow shipments at lower cost.

NO DETRIMENTAL IMPACT ON NS

Allowing access to the east side of Lake Calumet by unrestricted trackage rights to switching carriers would have no detrimental impact upon the NS. East Lake Calumet service traffic amounts to a minuscule portion of the revenues of the NS. NS would be permitted to maintain service to its customers on the east side of Lake Calumet.

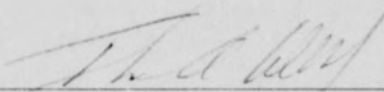
Service and traffic flow upon the NS would not be adversely impacted because the volume of traffic, the current residual traffic, does not constitute a substantial portion of the NS Chicago Terminal operating plan.

VERIFICATION ON NEXT PAGE

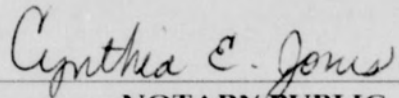
STATE OF PENNSYLVANIA)
)
COUNTY OF MONTGOMERY)

VERIFICATION

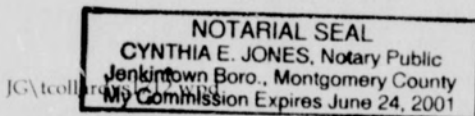
I, Thomas A. Collard, Vice President of the Southern Railroad Company of New Jersey, under penalties as provided by law state and certify that I have read the foregoing Affidavit and the contents thereof are true and correct to the best of my knowledge and belief.



**SUBSCRIBED AND SWORN TO BEFORE
ME THIS 15TH DAY OF OCTOBER, 1997.**



NOTARY PUBLIC



STB

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182768

SCHIFF HARDIN & WAITE

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Sheldon A. Zabel
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Chicago
Washington
New York
Peoria
Merrillville

October 20, 1997

VIA FEDERAL EXPRESS

Mr. 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**

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

**Finance Docket No. 33388 (Sub-No. 60)
Conrail Inc. and Consolidated Rail Corporation --
Divestiture of Control -- Indiana Harbor Belt
Railroad Company**

**Finance Docket No. 33388 (Sub-No. 68)
Conrail Inc. and Consolidated Rail Corporation --
Divestiture of Control -- Indiana Harbor Belt
Railroad Company**

Dear Secretary Williams:

On behalf of Northern Indiana Public Service Company, enclosed for filing in the above-captioned proceeding are an original and twenty-five copies of the comments of Northern Indiana Public Service Company (NIPS-1). As you will note, we have designated this as NIPS-1 and will use the "NIPS" acronym on future filings. A computer diskette containing the text of these filings in WordPerfect 6.1 format is also enclosed.



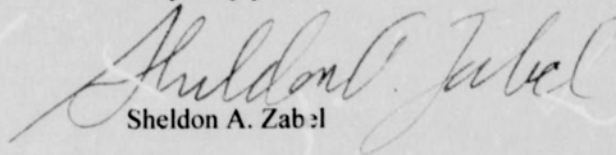
SCHIFF HARDIN & WAITE

Mr. Vernon A. Williams
October 20, 1997
Page 2

As required, copies of NIPS-1 have been served by first class mail, postage prepaid on all parties of record listed on the Board's service list.

If you have any questions on this matter, please contact the undersigned.

Very truly yours,



Sheldon A. Zabel

SAZ/mjt
Enclosures

cc: The Honorable Jacob Leventhal (w/encl.)
All Parties on Service List

182768

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 33388

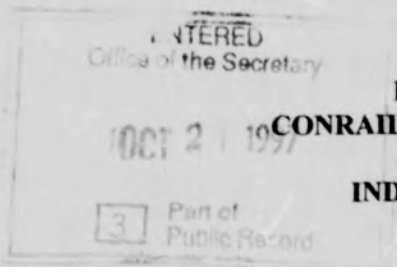
**CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND
OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL
CORPORATION**

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

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

FINANCE DOCKET NO. 33388 (SUB-NO. 60)

**CONRAIL AND CONSOLIDATED RAIL CORPORATION DIVESTITURE OF CONTROL -
INDIANA HARBOR BELT RAILROAD COMPANY**



**FINANCE DOCKET NO. 33388 (SUB-NO. 68)
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION
-- DIVESTITURE OF OWNERSHIP --
INDIANA HARBOR BELT RAILROAD COMPANY**

COMMENTS OF NORTHERN INDIANA PUBLIC SERVICE COMPANY

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540

Dated: October 20, 1997

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 33388

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

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

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

FINANCE DOCKET NO. 33388 (SUB-NO. 60)

**CONRAIL AND CONSOLIDATED RAIL CORPORATION DIVESTITURE OF CONTROL -
INDIANA HARBOR BELT RAILROAD COMPANY**

**FINANCE DOCKET NO. 33388 (SUB-NO. 68)
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION
-- DIVESTITURE OF OWNERSHIP --
INDIANA HARBOR BELT RAILROAD COMPANY**

COMMENTS OF NORTHERN INDIANA PUBLIC SERVICE COMPANY

INTRODUCTION:

Northern Indiana Public Service Company ("NIPS") submits the following comments on the transactions proposed in the above-referenced proceeding by CSX Corporation ("CSXC"),

CSX Transportation ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway ("NSR"), Conrail Inc. ("CRI") and Consolidated Rail Corporation ("CRC").¹

NIPS is a regulated electric and natural gas utility operating in the northern portion of the state of Indiana. NIPS owns and operates four coal-fired electric generating stations - the Bailly Generating Station in Chesterton, Indiana ("Bailly"); the Michigan City Generating Station in Michigan City, Indiana ("Michigan City"); the Dean H. Mitchell Generating Station in Gary, Indiana ("Mitchell"); and the R.M. Schahfer Generating Station in Wheatfield, Indiana ("Schahfer"). All four stations obtain their coal supplies virtually exclusively by rail.

The sole destination carriers for the Mitchell Station is the Elgin, Joliet and Eastern Railway Company ("EJE") and for the Bailly Station is the Chicago SouthShore and South Bend Railroad ("CSS"); Michigan City is served by CSS and Conrail. Schahfer Station is served exclusively by Conrail on what is referred to in the application as the Streater line and which will, if the transactions are approved, become an NS line.

NIPS moves approximately 8.5 million tons per year of coal into its four stations. All of NIPS long-term coal supplies, and the overwhelming majority of the coal it purchases, originates in the West or in Southern Illinois. The Schahfer Station, with four coal-fired generating units aggregating about 1,625 megawatts of net electric generating capacity, represents about 53% of NIPS coal-fired capacity. The Schahfer units utilize both high sulfur coal from Southern Illinois and low sulfur coal from the Powder River and Hanna Basins in Wyoming. Schahfer burns approximately 5 million tons, or 59% of NIPS total coal purchases each year, about 3.4 million tons

¹ CSCX and CSXT will be collectively referred to as CSX; NSC and NSR as NS; CRI and CRC as Conrail. All of them together will be referred to as Applicants.

of western coal and 1.6 million tons of Southern Illinois coal. The Southern Illinois coal currently can originate on either the Illinois Central ("IC") or the Union Pacific ("UP"), interchanging with the Streator line without entering the Chicago area. The Powder River Basin coals can originate on either the UP or the Burlington Northern ("BN"), but the Hanna Basin coal can originate only on the UP. The majority of all the Wyoming coal currently originates on the UP. Although it might be possible for this coal not to pass through the Chicago area, currently almost all of it does.

Bailly, Michigan City and Mitchell Stations (collectively referred to as the Lake Stations) also burn both western low sulfur coal and Illinois Basin high sulfur coal. Except for some spot purchases, the contract supplies for the Lake Stations, and the rail origins for them are the same as for the Schahfer Station. In the aggregate the Lake Stations annually burn about 2.2 million tons of western coal and 1.3 million tons of high sulfur coal. All of this coal currently moves through and must interchange through the Chicago area.

SERVICE QUALITY

NIPS is especially concerned that the approval of the transactions proposed in this proceeding, assuming that they are approved, not result in any further deterioration in the quality of service. The Surface Transportation Board ("STB") has already indicated its concern that service may have deteriorated on the UP since its merger with the Southern Pacific ("SP") by initiating its Docket Ex Parte No. 573. Similar concerns have arisen following the merger of the BN with the Santa Fe ("SF"). The transactions proposed here, basically the elimination of Conrail as a separate entity and the consolidation of its different pieces with the CSX and NS, is substantially the same kind of transaction in its effect as were the UP-SP and BN-SF mergers, and the adverse results may be similar.

NIPS' particular concern results from both past and current serious service difficulties in obtaining its necessary coal deliveries, especially into the Schahfer Station. NIPS needs to have about 40 unit trains delivered to Schahfer Station per month but has rarely, if ever, been able to obtain that level or quality of service under its contracts with the carriers. Historically much of the problem came from Conrail's service deficiencies in picking up trains at the junctions on the Streator line, or in the Chicago area or in picking up empties at the Schahfer Station. The overwhelming majority of the coal moves in NIPS owned cars. Conrail has informed NIPS that it should be able to deliver coal from Chicago to Schahfer in eight hours. It has also indicated that it should pick up empties at the station within eight hours of being notified that they are ready for pick up. Conrail has rarely, if ever, been able to achieve that level of service and NIPS is deeply concerned that the transactions proposed here not result in further degradation of its service, in the kind of deterioration of service occurring on the UP-SP and BN-SF.

NIPS concern with the potential for service deterioration is not based merely on second hand indicators of what has happened as result of those other transactions but unfortunately, is based on first hand experience. As indicated above, NIPS moves by contract a significant volume of coal over the UP and has, since the UP-SP merger, experienced first hand a drastic decline in the quality of service. Right now, as of October 10, 1997, NIPS has only a 5 day supply of low sulfur coal at the Schahfer Station while NIPS endeavors to maintain at least a 30-45 day supply. Certain of the units at Schahfer Station, under applicable environmental laws, can only burn low sulfur coal so the inability to obtain an adequate supply could force NIPS to shut down those units. The problem is directly attributable to the inability or failure of the UP, with whom NIPS contracted to move 95% of its western coal supply, to efficiently and effectively move that coal. Trains, both loaded and

empty, have just been left sitting in various places between Wyoming and Indiana because of the lack of crews or locomotives on the UP. For example, for the months of June through September NIPS scheduled deliveries of 98 unit trains of western coal into Schahfer; NIPS has the cars to accomplish this; NIPS coal suppliers have the capability to produce and load that quantity for NIPS; but the UP was able to move only 78 trains into the station.

NIPS can not definitively state that the transactions proposed here will result in the same deterioration of service that NIPS has experienced with the UP and that NIPS understands also has occurred with the BN-SF. Nonetheless, in light of that experience the STB has the duty to thoroughly and adequately investigate now, not after the fact as it apparently is doing in the UP-SP case, the impact of the proposed transactions on the quality of service that will result, and take all necessary steps to assure that the transactions, if approved, are approved in such a manner as to assure that there will be adequate quality of service and to impose or adopt appropriate mechanism to allow for the prompt identification and correction of any resulting inadequacy in the quality of service.

INDIANA HARBOR BELT RAILROAD COMPANY:

The Indiana Harbor Belt Railroad Company ("IHB") is one of the major terminal/belt carriers in the Chicago switching district. Currently Conrail owns 51% of the stock of IHB and after the transaction proposed here, if approved, the CSX and NS would control the IHB. As already indicated, NIPS ships a major portion of its coal purchases through the Chicago district. Not only does virtually all of the western coal destined for the Schahfer Station pass through Chicago but virtually all the coal, western and Illinois Basin, destined for the Lake Stations also passes through Chicago. Thus NIPS is vitally interested in maintaining and promoting adequate competition within

Chicago. Related to that, NIPS is also seriously concerned that a dominating position in the Chicago district could be used as leverage, outside the Chicago district, to the detriment of shippers (and, for that matter, other railroads) who must move freight through the Chicago area.

NIPS understands that if the proposed transactions are approved, CSX and NS will effectively control the three major terminal/belt carriers in the Chicago switching district. That monopolistic concentration of power, even if uncombined with anything else, is on its face anti-competitive and should not be approved by the STB. It would obviously give the CSX and NS the ability to charge rates for the switching, belt movements and terminal services in the Chicago district that would be almost unconstrained by competition and, because of the insurmountable evidentiary burden of challenging a rate in that setting, would be unassailable before the STB. Beyond the issue of rates, this control would also give CSX and NS a clear opportunity to favor their own lines against movements entering and/or leaving the Chicago area on competing lines, thereby pressuring shippers to utilize the CSX or NS to the fullest extent possible to get efficient movement through the highly congested Chicago area.

Of course, CSX and NS are unlikely to provide rates just for the services within the Chicago area, at least to the extent either is able to provide a greater portion of any particular movement. Considering the control of the Chicago area, in terms of both rates and efficiency of service, together with principles set in the STB's so-called "bottleneck" decisions and these two carriers, if we assume they will act rationally, will almost certainly offer to a shipper only the greatest through service with a through or joint rate that is possible for any movement. The Chicago portion would then be legally unchallengeable and the entire rate would be, for practical and evidentiary reasons, equally unassailable. CSX and NS would be able, through this mechanism, to utilize the control

they would acquire within the Chicago district for anti-competitive purposes outside that district, where there otherwise would be competition.

Obviously this concern is not unique to NIPS. At least three other participants in this proceeding have expressed their concerns with the anti-competitive effects of the proposal and indicated that they will be filing Responsive Applications proposing alternative handling for the 51% interest in IHB that Conrail currently holds. Transtar, Inc. ("Transtar") and the EJE in Sub-No. 36 (see EJE-3) indicated that they would file a Responsive Application proposing the divestiture of Conrail's 51% interest in IHB to Transtar, EJE or another of their corporate affiliates.

The Wisconsin Central Ltd. ("WCL") in Sub-No. 60 (see WC-2) stated that it would file a Responsive Application on this matter. Expressing similar concerns with the anti-competitive effect of the proposal for CSX and NS to acquire control of the IHB, WCL indicated that its Responsive Application would propose the divestiture of Conrail's 51% interest in IHB to a carrier or consortium of non-eastern carriers that could include the WCL.

Finally, the Illinois Central Railroad Company ("IC") in Sub-No. 68 (see IC-2) indicated that it would file a Responsive Application proposing an alternative handling of the 51% interest in IHB. IC stated that it believes all or a portion of the stock should be divested and that a neutral carrier or group of carriers should acquire the stock and be responsible for non-discriminatory dispatching of rail traffic over the IHB.

As none of these Responsive Applications has yet been filed (they are due the same date as these Comments), NIPS obviously has not yet had an opportunity to review the specific details of any of them to determine if any or all of them are acceptable or which might be preferable. Nonetheless, NIPS believes, on the limited information currently available, that any of these

proposals for the disposition of Conrail's 51% interest in IHB would be preferable to the Applicants' proposal. NIPS intends to review those proposals when they are received and comment on them in its next filing.

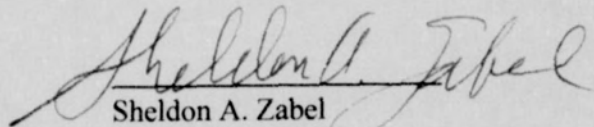
If the STB should reject all of the alternatives that are proposed and approve the acquisition of control of IHB by CSX and NS, that approval then must be subject to appropriate conditions to avoid or minimize the anti-competitive effects of that acquisition. Those conditions should include provisions to insure non-discriminatory dispatching of rail traffic over IHB. The conditions should also include a preclusion on the CSX and NS from quoting or utilizing joint or through rates that include service on the IHB or the other Chicago district carriers controlled by the CSX and/or the NS. At the least this would allow a shipper to know what he is paying for the Chicago area service and compare it to what limited competition might be left although NIPS recognizes that challenging such a rate before the STB is, for all practical purposes, impossible.

CONCLUSION

For the reasons set forth above, first NIPS urges the STB to thoroughly and carefully investigate the service implications of the proposed transactions and assure itself, the users of these rail services and the public generally, now, not after the transactions are completed, that approval of the proposals will not result in a deterioration of the quality of service and, if need be, impose appropriate restrictions and mechanism to insure that result. Second, NIPS believes that the STB should reject the portion of the proposal that would give the CSX and NS control of the IHB and should approve an alternate proposal. However, should the STB approve the Applicants' proposal with respect to the IHB, then it should at the least condition its approval so as to assure non-discriminatory dispatch of rail traffic over the IHB and to prevent the market dominance that CSX

and NS would have in the Chicago district from being used to undermine competition both in and outside the district.

Respectfully submitted,

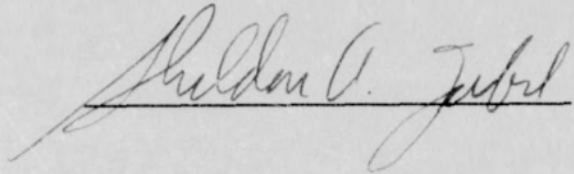
A handwritten signature in cursive script, reading "Sheldon A. Zabel". The signature is written in dark ink and is positioned above the printed name and address.

Sheldon A. Zabel
Schiff Hardin & Waite
7200 Sears Tower
Chicago, Illinois 60606
(312) 258-5540
Counsel for Northern Indiana
Public Service Company

CHI3:150085.1 10.20.97 09.17

CERTIFICATE OF SERVICE

I, Sheldon A. Zabel, certify that on October 20, 1997, I have caused to be served a true and correct copy of the foregoing NIPS-1, Comments of Northern Indiana Public Service Company, on all parties listed on the Surface Transportation Board's service list in Finance Docket No. 33388, by first-class mail, postage prepaid.

A handwritten signature in cursive script, reading "Sheldon A. Zabel", is written over a horizontal line.

STB

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10-21-97

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Conservation Law Foundation

182767

October 20, 1997



BY OVERNIGHT COURIER

Mr. Vernon Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423

Re: STB Finance Docket No. 33388 (Conrail Merger)

Dear Mr. Williams:

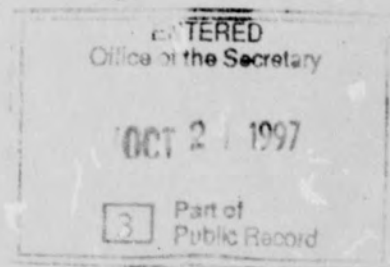
Enclosed please find an original and twenty-six copies of the comments of the Conservation Law Foundation in the above-referenced matter.

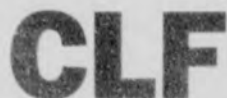
Kindly date-stamp and return one of the copies to us in the enclosed, postage prepaid envelope.

If you have any questions, please call me at 617/350-0990 ext. 132. Thank you.

Very truly yours,

Richard B. Kennelly, Jr.
Staff Attorney





Conservation Law Foundation

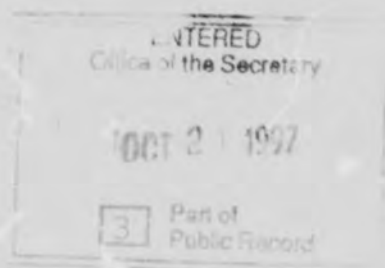
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October 20, 1997

BY OVERNIGHT COURIER

Mr. Vernon Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423



Re: STB Finance Docket No. 33388 (Conrail Merger)

Dear Mr. Williams:

The Conservation Law Foundation ("CLF") appreciates the opportunity to submit comments on the proposed merger involving the division of Conrail between Norfolk-Southern and CSX Corp. (the "Conrail merger").

CLF is New England's oldest environmental organization, with offices in Massachusetts, Vermont, New Hampshire and Maine. CLF's mission is to solve the environmental problems that threaten the people, natural resources, and communities of New England, using law, economics and science to design and implement strategies that conserve natural resources, protect public health, and promote vital communities in our region. CLF has long supported rail as an environmentally and economically sensible alternative to endless highway expansion and resulting urban sprawl and air pollution.

CLF has two general comments at this time, in anticipation of more detailed comments on the draft Environmental Impact Statement due to be released next month. If the Surface Transportation Board ("STB") ultimately approves the merger application, CLF respectfully requests that the STB imposes the following two conditions:

1. CSX must cooperate with the Massachusetts Bay Transportation Authority ("MBTA") and Amtrak in the provision of improved, faster passenger rail service and increased access between Boston, Massachusetts and Albany, New York; and
2. CSX must make every effort to improve freight rail service east of the Hudson River -- especially from New York City and the ports of New Jersey to New England.

Conservation Law Foundation

Mr. Vernon Williams, Secretary
Surface Transportation Board
October 20, 1997
page 2

Passenger service between Boston and Albany is hampered by the low speed limits imposed by Conrail. Although the track is Class Five and could accommodate speeds of 90 miles per hour, Conrail has mandated that no train exceeds 60 m.p.h. In order to attract passengers away from their cars -- where they can travel on a highway that has a speed limit of 65 m.p.h. -- passenger trains must be able to take advantage of the full speed capacity of the track infrastructure. CSX should make every effort to facilitate such improved service.

Similarly, CSX should expand its provision of freight service between New York and New England to reduce the dependence on highway trucking--currently, Interstate 95 in Connecticut is heavily stressed by truck traffic, a situation that is inefficient, unsafe and uneconomic.

Trains have important economic and environmental benefits, such as:

- **Efficiency:** Passenger trains are three times as energy-efficient as commercial air and six times as efficient as a car with one occupant. Freight trains are up to nine times more efficient than trucks. Switching only five per cent of U.S. highway driving to electrified rail would save more than one-sixth the amount of oil imported from the Middle East.
- **Air pollution:** Compared to heavy trucks, freight trains emit one-third the carbon dioxide and nitrogen oxide and one-tenth the hydrocarbons and diesel particulates.
- **Land use:** Trains can encourage more compact land-use patterns and concentrate economic development around town centers, rather than contributing to urban sprawl, as highways invariably do. More rail also translates into less traffic congestion and paved-over land; one railroad track can carry as many people per hour as eight lanes of highway.
- **Revitalization:** Trains can help revitalize old downtown areas that were originally built around rail. By adding a new travel option, rail increases tourism and economic development. A recent study of Virginia Metrorail concluded that the state had realized a \$1.2 billion net gain in tax revenues alone from its investment in trains. Other studies have shown that residential property values go up with access to rail.

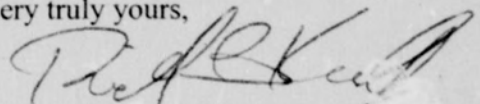
Conservation Law Foundation

Mr. Vernon Williams, Secretary
Surface Transportation Board
October 20, 1997
page 3

For these and other reasons, CLF urges the STB to impose the two conditions specified above should the STB approve the merger.

Thank you for giving CLF the opportunity to comment on the Conrail merger.

Very truly yours,


Richard B. Kennelly, Jr.
Staff Attorney

STB

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



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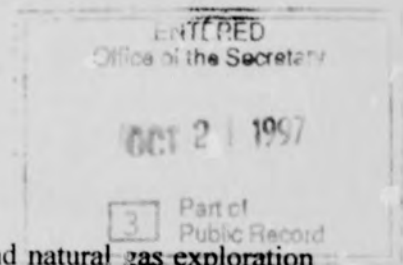
COMMENTS OF:

FINA OIL AND CHEMICAL COMPANY

Fina Oil and Chemical respectfully opposes the Control Application. Fina is concerned about the potential service disruptions created by this acquisition and the financial commitment made by the Applicants for this Control. Fina believes that the Applicant's proposed transaction is not in the public interest. Fina recommends the adoption of the conditions suggested by the CMA / SPI made in their filing as a minimum condition for STB approval of this Application.

I. Statement of Identity

Fina Oil and Chemical Company engages in crude oil and natural gas exploration and production; petroleum products refining, supply and transportation, and marketing; and chemicals manufacturing and marketing. Fina relies heavily on the rail



transportation industry to deliver its products such as polystyrene, polypropylene, polyethylene, asphalt and other chemical products, to a variety of customers located across the United States, Canada and Mexico. Fina's production facilities are located predominately along the Texas and Louisiana Gulf Coast.

II. Statement of Interest

Rail transportation accounts for over 80 percent of Fina's chemical deliveries and is responsible for over 20 percent of the cost of finished petrochemical products. Fina is involved in these merger proceedings to ensure that Fina's interest in transportation are stated. Fina expects benefits to be achieved in the merger process in terms of service levels and costs and ensure that these benefits are realized. Fina is concerned that the problems experienced by recent mergers may be repeated in this Conrail break-up.

III. Discussion of Concerns:

A. Payment of the Transaction Depends on Revenue Growth

Due to the bidding war developed by the Applicants, the price paid for the transaction has far exceeded the expectations of Conrail's market value. In order to achieve an acceptable return for this transaction, the Applicants are depending on traffic growth, while simultaneously cutting costs. Fina is concerned that if this growth is not realized to its magnitude, the existing shipping community may be asked to bear the costs of the acquisition in the form of increased rates.

- B. **The service resulting from the integration of large railroads could lead to decreased service levels in the short term, as well as the long term.**

1. **Day One Operations**

Fina believes that the operational aspects defined for the takeover date need to be flawless for a smooth operation. This Control Application differs from the previous railroad mergers in that one railroad is being divided among two carriers.

2. **Integration of former Conrail Lines**

Fina has experienced severe congestion and service disruptions in the Western railroad mergers, Union Pacific / Southern Pacific and Burlington Northern / Santa Fe. Fina is concerned that the same disruptions may also occur in this Application. The Application does address the situation in great detail, but prior experience indicates that detail plans may not be sufficient for success.

3. **Operation of Shared Asset Areas**

One key ingredient in the operating plan is the operations of the Shared Asset Areas. Our experience with switching railroads has not been favorable at best. Even after long periods of operation, the dual ownership of lines lead to the increased confusion among the owners and hampered service levels. There are instances where the owners can not agree on strategic or tactical solutions to problems. The Application does not adequately explain the operation of the Shared Asset Areas, and thus

shippers might realize poor service. Fina does acknowledge that the Shared Asset Areas should provide economical benefits to the shipper.

4. Additional Costs Incurred as a Result of Implementation

In periods of combination of operations and organizations, problems do occur where additional costs are incurred by the shipper. Fina expects the additional costs to be borne by the company who caused these costs. For example, if a railroad loses a railcar due to system integration problems, that railroad should be responsible for incurring charges which occurred as a result of the problem.

C. Potential of Gateway Reroutes

The Application does not adequately address the potential shifts to alternate gateways for existing business. The Applicants mention that more efficient gateways will be examined. They did not address any potential economic impact to the shippers as a result of the revenue requirements of the connecting carriers.

IV. Support of CMA / SPI Conditions

Fina recommends the adoption of the conditions indicated by the CMA/SPI filing. Fina is a member of both the Chemical Manufacturers Association (CMA) and the Society of Plastics Industry (SPI). The granting of these conditions would help in alleviating Fina's concerns.

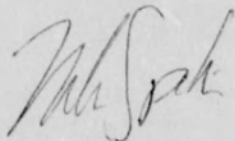
V. Oversight Proceedings:

Fina believes in the continued oversight of the merger and strongly encourages the Board to implement Oversight Proceedings for this Application. Fina believes that the oversight process is essential in this rail merger due to rail transportation's critical importance to the company. Fina believes that the oversight process established in the Union Pacific case has been critical in monitoring the implementation of the merger.

VI. Conclusion

For the foregoing reasons, Fina opposes the Control Application. If the Application continues for approval, Fina urges the Board to condition the approval on the CMA / SPI conditions set forth in their application.

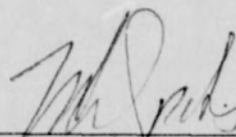
Respectfully submitted,



Mike Spahis
Fina Oil and Chemical Company
Manager of Logistics and Distribution
8350 North Central Expressway, Suite 1620
Dallas, TX 75206
(214) 750-2898

CERTIFICATE OF SERVICE

I hereby certify that copies of the comments of Fina Oil and Chemical Company, in accordance with the Board's Decisions in this proceeding, have been served this 20th day of October, 1997 by next day air to the Surface Transportation Board, Administrative Law Judge Jacob Leventhal, Dennis G. Lyons, Richard A. Allen, and Paul A. Cunningham, and by first-class mail, postage prepaid on all parties of record in Docket No. 33388.



Mike Spahis
Fina Oil and Chemical Company
Manager of Logistics and Distribution
8350 North Central Expressway,
Suite 1620
Dallas, TX 75206
(214) 750-2898

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STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

2800 BERLIN TURNPIKE, P.O. BOX 317546

NEWINGTON, CONNECTICUT 06131-7546



Office of the
Commissioner

At-Equal Opportunity Employer

October 17, 1997



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

Dear Mr. Williams:

Subject: Finance Docket No. 33388

In accordance with Decision No. 6 dated May 30, 1997 for Finance Docket No. 33388, enclosed is an original and 25 copies of Comments and Request for Conditions related to the Primary Application by CSX and Norfolk Southern Corporation.

Very truly yours,

James F. Sullivan
James F. Sullivan
Commissioner

Enclosures ^{ENTERED}
the Secretary

OCT 21 1997
Part of
Public Record

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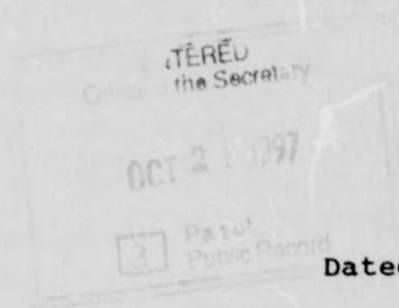


BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

**CONNECTICUT DEPARTMENT OF TRANSPORTATION
COMMENTS AND REQUEST FOR CONDITIONS**



Dated: October 17, 1997

**James F. Sullivan
Commissioner
Connecticut Department of Transportation**

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

**COMMENTS AND REQUEST FOR CONDITIONS
CONNECTICUT DEPARTMENT OF TRANSPORTATION**

In accordance with Section 13b-3 of the Connecticut General Statutes, the Connecticut Department of Transportation (CDOT) shall be responsible for all aspects of the planning, development, maintenance and improvement of all modes of transportation in the state of Connecticut. In particular, CDOT has demonstrated a longstanding interest in and financial commitment to the preservation and improvement of rail passenger and freight service in the state.

As a party of record in the subject proceeding, CDOT has reviewed the primary application filed jointly by CSX and Norfolk Southern (NS) and respectfully submits the following in accordance with the procedural schedule established in the Board's decision dated May 23, 1997 (Decision No. 6).

COMMENTS

It is the expectation of CDOT that the STB will only approve an application that is consistent with the economic and environmental objectives of the affected states and regions. However, respecting the overall benefits to be derived from the transaction, approval of the Primary Application in an unconditional form will place Connecticut, and other New England states, at a competitive disadvantage.

The contemplated division of Conrail's assets, in effect, negates the promise of direct competitive rail access to New England for two Class I carriers and the provision of competitive connections to national markets for short-line and regional railroads in southern New England. Without question, markets outside of New England (i.e. Detroit, Philadelphia, Newark) will enjoy the service and tariff benefits that result from direct competition between CSX and NS, while markets in New England will continue to be disadvantaged by the domination of a single Class I carrier.

The Hudson River appears to have become a natural border between competitive and non-competitive rail service regions, since the Primary Application calls for only CSX to operate east of the Hudson River. In Connecticut, CSX will operate from New York City to New Haven on the state-owned section of the Northeast Corridor referred to as the New Haven Line. The alternative route for service to Connecticut, and the rest of southern New England, is a circuitous, multi-line route through Albany, New York and Springfield, Massachusetts.

Unlike the northern tier of the Northeast Corridor where a single operator has been designated, a shared assets area has been created on the southern tier to equalize service opportunities for CSX and NS. Given the parallel environmental and economic issues that each geographic region faces, it is highly inequitable to introduce direct competition to one region and deny it to the other.

Failure to modify to the current operating plan or impose of conditions, may facilitate a significant regional imbalance in tariffs as well. It is not unlikely that CSX's monopoly in the New England markets could result in a disproportionate increase tariffs in the New England to offset competitive tariffs that CSX will be compelled to offer in regions where direct competition with NS exists.

Though it can be argued that this condition currently exists under Conrail's domination of the New England markets, Conrail has not been subject to the direct competition that CSX will face in markets to the south and west of New England. Therefore, while Conrail's monopoly in the northeast may have resulted in generally higher tariffs overall, it has not been determined that an individual region was disadvantaged in the establishment tariffs. In this regard, the unconditional approval of the Primary Application may create a worsened condition.

The benefits to be derived from a truly competitive environment are not simply economic in nature. Prior to the division of assets agreement reached by CSX and NS in April of 1997, NS expressed its intention to operate on the entire Northeast Corridor (through Penn Station in New York) using "Roadrailer" type equipment and single container trailer on flat car trains. Such operations are commonly held to be a successful means of effecting truck-to-rail diversions, which is an expressed objective of CDOT and the Primary Application.

One of the many benefits of the shared assets area on the southern tier of the Northeast Corridor, is that this type of equipment will now be operated by NS between Washington and Newark. It is CDOT's position that low profile operations would not only be feasible, but highly beneficial in a shared assets area on the northern tier. The fact that CSX has expressed limited interest in operating this type of equipment, further validates an extension of the shared assets area to New Haven, Connecticut.

Admittedly, an increase in rail freight operations on the Northeast Corridor will require careful consideration of available operating windows and preferences for commuter and intercity rail operations. However, since Connecticut is not in attainment with the U.S. EPA's National Ambient Air Quality Standards, even the limited use of low profile equipment through Penn Station to the New Haven Line will support CDOT's objective of increasing truck-to-rail diversion in the I-95 Corridor.

CDOT encourages the STB to view the impending reconfiguration of Conrail's properties and rights as potentially the last opportunity to create balanced rail freight competition in New England, establish equal rail service opportunities and tariffs between New England markets and other markets in the northeast, and reduce the volume of trucks in the I-95 Corridor.

REQUEST FOR CONDITIONS

CDOT acknowledges the many benefits that will accrue from the STB's approval of the Primary Application. However, out of an abundance of caution, it is recommended that the STB approve the Primary Application only with conditions to ensure competitive access to Connecticut for two or more Class I carriers; to ensure competitive connections to national markets for short-line and regional railroads in New England; to provide incentives for the truck-to-rail diversion of traffic in the I-95 Corridor, and to ensure the application of uniform, competitive rates for shippers in Connecticut and other areas east of the Hudson River.

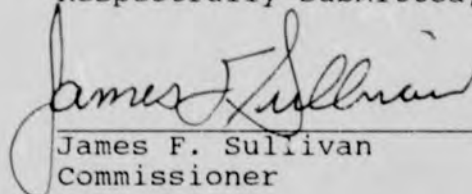
In addition, it is requested that the STB retain jurisdiction in this matter and implement changes as warranted in the future to ensure that the common goal of competitive rail freight access to all regions is realized.

ENVIRONMENTAL EXEMPTION

It is not possible to determine the number of trains that would be generated by a condition such as the creation of a shared assets area north of New York City. Train frequency is, of course, determined by shippers' demand for service. However, given the priority assigned to commuter rail service and the operating windows available for freight movements, it is anticipated that the conditions and other relief requested by CDOT do not represent operational changes that would exceed any applicable thresholds. With this understanding, I hereby certify that under the applicable STB rules referenced in Decision No. 29 in Finance Docket No. 33388, no environmental or historic documentation is required.

Dated at Newington, Connecticut this 20th day of October, 1997.

Respectfully submitted,


James F. Sullivan
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Connecticut Department of Transportation's Comments and Request for Conditions in STB Finance Docket 33388 was served by first class US mail, postage prepaid, upon all Parties of Record and the following individuals:

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

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

Mr. Richard A. Allen, Esq.
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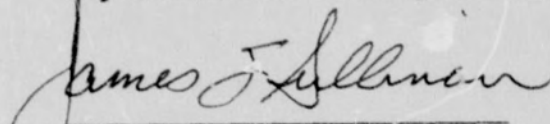
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Timothy O'Toole, Esq.
Constance L. Abrams, Esq.
Consolidated Rail Corporation
Two Commerce Square
2001 Market Street
Philadelphia, PA 19101

Dated at Newington, Connecticut, this 20th day of
October, 1997.

State of Connecticut
Department of Transportation



James F. Sullivan
Commissioner

STB

FD

33388

10-21-97

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182760



National Mining Association
Foundation For America's Future

Harold P. Quinn, Jr.

Senior Vice President, General Counsel & Secretary

Legal & Regulatory Affairs



October 21, 1997

BY HAND DELIVERY

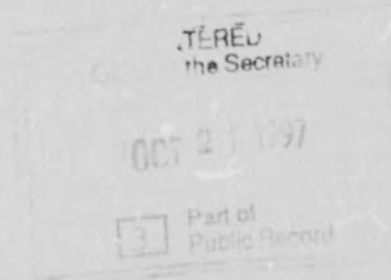
Office of the Secretary
Case Control Branch: Attn: STB No. 33388
Surface Transportation Board
1925 K Street, N.W.
Room 715
Washington, D.C. 20423-0001

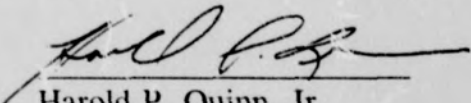
RE: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company-Control and Operating Leases/Agreements - Conrail Inc. and Consolidated Rail Corporation -Transfer of Railroad Line by Norfolk Southern Railway Company to CSX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

Dear Sir/Madam:

Please find enclosed for filing in the above-referenced proceeding, an original, 25 copies, and a 3.5-inch diskette containing the National Mining Association's Comments and Request for Conditions.

Respectfully submitted,




Harold P. Quinn, Jr.

Enclosures

182760

NMA-2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



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

Finance Docket No. 33388

**COMMENTS AND REQUEST FOR CONDITIONS
IN RESPONSE TO THE
CSX AND NS APPLICATION TO ACQUIRE,
CONTROL AND OPERATE ASSETS OF
CONRAIL**

RECEIVED
the Secretary

OCT 21 1997

3 Part of
Public Record

The National Mining Association ("NMA") submits the following comments and request for conditions in response to the application filed by CSX Corporation and CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Co. ("NS"), and Consolidated Rail Corporation ("Conrail") seeking the Surface Transportation Board's ("the Board") authorization for the acquisition by CSX and NS of control of Conrail and the division of assets of Conrail by and between CSX and NS.

IDENTITY AND INTERESTS OF THE NATIONAL MINING ASSOCIATION

NMA is an industry trade association whose members are engaged in the mining and processing of coal and minerals; the manufacturing and supplying of mining and minerals processing machinery, equipment, materials and services; and other minerals-related activities. The mining industry produces vital resources needed to fuel our economy and manufacture virtually all commodities sold in domestic and foreign markets. Coal is used to generate 56 percent of the electricity consumed on an annual basis in the United States. Mining companies produced \$39 billion worth of nonfuel minerals last year, which in turn were used to manufacture \$395 billion worth of products for use by Americans and for export to trading partners around the world. The principal purpose of NMA is to represent those with interests in the Nation's mineral resource industries in the important public policy issues affecting the development and use of mineral resources. Toward this end, NMA seeks to develop policies that will foster the efficient production, distribution and use of mineral products.

NMA's members produce approximately two-thirds of the coal produced in the United States and most of the Nation's non-metallic minerals and metallic ores. NMA's members rely on the timely availability of efficient railroad transportation services for the distribution of their products to domestic consumers, and to inland and coastal port terminals where their products are transloaded into vessels destined for domestic or export markets. The acquisition of Conrail by CSX and NS will result in a massive restructuring of the railroads in the eastern United States, and will impact long-haul shipments of mineral products, machinery and supplies within the eastern United States and by connections with western railroads throughout the Nation.

Coal relies on railroad transportation services continually throughout the year. In 1996, railroads were called upon to originate more than 705 million tons of coal freight, approximately 70 percent of total coal production in the United States. In terms of both originated and terminated coal traffic, the railroads handled almost 869 million tons of coal in 1996, or approximately 40 percent of total railroad freight tonnage carried by Class I railroads. Railroad coal transportation demand is a substantial component of the total demand for railroad transportation services, and requires a relatively constant level of transportation services month-to-month inasmuch as coal is the low cost fuel of choice for generating 56 percent of the Nation's electricity. More than 80 percent of all coal mined in the U.S. is consumed for domestic power generation. Accordingly, there must be certainty in the delivery system as now provided by CSX, NS, and Conrail. Another 90 million tons of coal are moved annually to port terminals for export to other countries with much of the coal export tonnage handled by CSX, NS, and Conrail in shipments from mines to ports on the Atlantic Coast.

I. THE ACQUISITION, CONTROL AND OPERATION OF CONRAIL'S ASSETS BY CSX AND NS WOULD IMPOSE A NEW AND SIGNIFICANTLY HIGHER DEMAND ON THE CARRIERS' COAL TRAFFIC OPERATIONS.

In 1996, CSX originated 157 million tons of coal and handled more than 171 million tons of coal including coal tonnage originated and/or terminated by the rail carrier. In the same year, NS originated more than 115 million tons of coal and handled nearly 135 million tons of coal. Conrail originated more than 53 million tons of coal and handled nearly 70 million tons of coal. In 1996, CSX, NS, and Conrail together originated 325 million tons of

coal, or 46 percent of all coal freight tonnage which was originated by the Nation's railroads last year.

That level of coal traffic on the three railroads in 1996 was typical of the railroad coal transportation demand during the mid-1990's and remains so today. There have been times during the mid-1990's when coal transportation services in the eastern United States have been seriously inadequate due to:

1. Insufficient numbers of locomotives, crews and/or railcars in coal transportation service to accommodate the demand for timely coal shipments, especially to power plants in the eastern and southern United States
2. Failure to provide effective communications between rail carrier dispatching and operations personnel and coal producers, shippers and consumers on train arrival times resulting in losses in productivity and economic harm.
3. Scheduling of major and lengthy track maintenance and rehabilitation work without adequate advance notice to coal producers, shippers and consumers.

These experiences considered with the forecasted one to three percent annual growth in the demand for electricity, and the quest of CSX and NS to attract more intermodal trailer-on-flatcar and container-on-flatcar traffic to their system, raises serious questions about the ability of CSX and NS to absorb the current demand for coal and noncoal transportation services now provided by Conrail immediately upon their acquisition, control and operation of Conrail's assets in June, 1998 as set forth in the current schedule established by the Board.

II. NMA DOES NOT OPPOSE CSX AND NS ACQUISITION, CONTROL AND OPERATION OF CONRAIL'S ASSETS IF CONDITIONED ON A PLAN OF OPERATIONS DESIGNED TO AVERT SERVICE DISRUPTIONS.

NMA's concerns with the subject transaction have been heightened substantially by the debilitating losses of critical coal transportation services in the western United States. The

current deterioration of transportation services in the western United States occurred after the Union Pacific Railroad absorbed the Chicago & NorthWestern Transportation Company and the Southern Pacific Transportation Co., including the Denver & Rio Grande Western Railroad Company and the St. Louis Southwestern Railway Company, which followed the Burlington Northern Railroad Company merger with the Santa Fe Railway Co. Whether or not the current service problems in the western United States result from the UP/SP merger, or some other conditions that preceded the merger, the current difficulties there clearly disclose the need to ensure that the transaction under consideration here fully considers a plan of operations designed to avert service disruptions once CSX and NS begin to take over train movements now handled by Conrail.

Toward this end, NMA requests that the Board:

- (1) Require the applicants to prepare and file a detailed initial plan of operations focused on actions to avert service disruptions and to assure continuation, at not less than prevailing service levels, the railroad transportation services provided coal producers, consumers and/or shippers by Conrail as a condition to be met before approving the pending transaction;
- (2) Provide for a public comment period of not less than 120 days for the public to respond to the detailed initial plan of operations; and
- (3) Consider the comments, order appropriate revisions to the plan of operations, and require the applicants' adherence to the approved plan of operations as a condition for the approval of the subject transaction.

NMA's request is fully consistent with our Nation's rail transportation policy which, *inter alia*, provides that: "In regulating the railroad industry, it is the policy of the United States Government -- to ensure the *development and continuation of a sound rail*

transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." 49 U.S.C. § 10101(4) (emphasis supplied). Similarly, in a proposed transaction of this nature, the Board, at a minimum, must consider "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1).

The Board's responsibility and mandate in reviewing the pending transaction requires the consideration and imposition of necessary conditions which will ensure that services will continue at a level of performance at least equal to the prevailing level for railroad freight now handled by Conrail once CSX and NS take control of Conrail's assets. The operating plans for CSX and NS lodged in this proceeding describe steps to be implemented with regard to various commodity groups. See *Railroad Control Application, Vols. 3A and 3B*. These steps include actions which may be beneficial such as more single-line routes and less circuitry for selected shipments. However, because many coal movements are served by only one rail carrier, the benefits of those actions, while appreciable, may become more apparent than real if the market dominant rail carrier fails to share with the shipper the benefits that may accrue from services that are less costly to the carriers because joint-line movements are eliminated and/or distances traversed are less from origin to destination.

NMA's concerns about the pending transaction, however, are not based solely on the plight of a captive shipper, *per se*, since those concerns exist whether the condition is confronted at the immediate point at which a change in service from Conrail to CSX or NS occurs, or at a subsequent time. Rather, our concerns arise from two facets of the transition problem which must be considered carefully and addressed in this proceeding. First, the

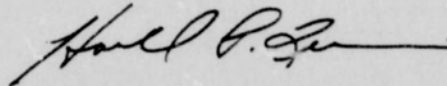
development and implementation of enhanced transportation operations command and control facilities which unify dispatching of CSX trains including those acquired from Conrail, and of NS trains including those acquired from Conrail. Second, the preservation of sufficient operating personnel to assure that when the transaction occurs the applicants will provide railroad services commensurate with the anticipated demand and current performance levels. The subject application projects a net loss of about 2,650 jobs of the total employment of CSX, NS, and Conrail over the first three years, with many of those reductions occurring in the first year. Although the reduction of rail costs through measures designed to attain higher efficiency and productivity are welcome positive effects, premature massive reductions of the work force engaged in train operations could cause severe disruptions in train service before the newly expanded CSX and NS railroad systems have been rationalized from a systems management perspective.

CONCLUSION

NMA strongly supports the development and continuation of reliable and efficient railroad freight transportation services. Toward this end, NMA requests that the Board, as a condition for approval of the application, require: the Applicants to submit a detailed initial plan of operations designed to ensure the continuation of rail service at performance levels at least equal to that currently provided by Conrail; public comments in response to the plan;

revisions to the plan as necessary in response to such comment; and adherence to the plan by the applicants.

Respectfully submitted,

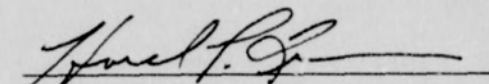
A handwritten signature in dark ink, appearing to read "Harold P. Quinn Jr.", with a horizontal line extending to the right.

Harold P. Quinn Jr.
Senior Vice President and
General Counsel
National Mining Association
1130 17th Street, N.W.
Washington, D.C. 20036
(202) 463-2652

October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, a copy of National Mining Association's "Comments and Request for Conditions" in STB Finance Docket No. 33388 has been served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhall, each of the Applicants' representatives and all Parties of Record.


Harold P. Quinn, Jr.

STB

FD

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10-21-97

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182764

Richard R. Wilson, P.C.

**Attorney at Law
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Of counsel to:
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Pittsburgh, PA 15219
(412) 471-1806
(412) 471-4777 FAX

October 16, 1996

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423-0001



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

Dear Secretary Williams:

On behalf of the North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company, I enclose for filing an original and twenty-five copies of the Comments of the aforementioned railroads. Also enclosed is a 3 1/2" computer disk containing the pleadings in Word 7.0 format. Should you have any questions regarding this submission, please contact the undersigned.

Very truly yours,

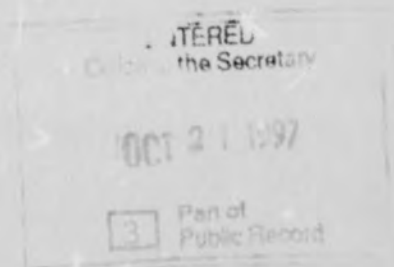
RICHARD R. WILSON, P.C.

Richard R. Wilson

Richard R. Wilson

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
Richard D. Robey
All Parties of Record

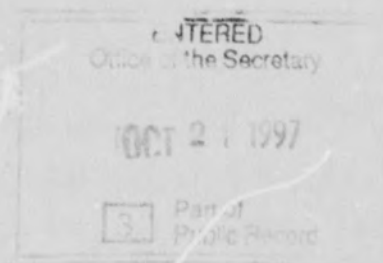


BEFORE THE
SURFACE TRANSPORTATION BOARD



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

**Comments of North Shore Railroad Company, Juniata Valley Railroad Company,
Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company,
Shamokin Valley Railroad Company and Union County Industrial
Railroad Company**



Richard R. Wilson, Esq.
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Counsel for:
North Shore Railroad Company
Juniata Valley Railroad Company
Nittany & Bald Eagle Railroad Co.
Lycoming Valley Railroad Company
Shamokin Valley Railroad Co.
Union County Industrial
Railroad Company

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**Comments of North Shore Railroad Company, Juniata Valley Railroad Company,
Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company,
Shamokin Valley Railroad Company and Union County Industrial
Railroad Company**

My name is Richard D. Robey. I am President of North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company. All of these railroads are Class III common carrier railroads located in central Pennsylvania with connections to Consolidated Rail Corporation on its Harrisburg-Buffalo line between Lock Haven and Sunbury, PA. (See Exhibit 1)

With the announcement that Norfolk Southern Corporation would be acquiring the right to operate over Conrail's Harrisburg-Buffalo main line, we approached Norfolk

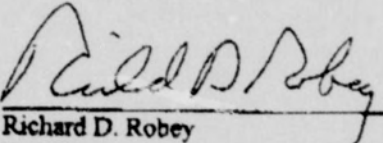
Southern concerning various operational issues that were of major concern to us. I am pleased to advise the Surface Transportation Board that Norfolk Southern and my railroads have agreed to implement the terms set forth in Norfolk Southern's letter of June 10, 1997 which will address most of the concerns which our companies had regarding the proposed transaction.

We have advised Norfolk Southern that we have accepted their proposal of June 10, 1997 and we ask that the Board note for the record this agreement between our companies.

In light of this agreement, I request that the Board approve the transactions proposed by Norfolk Southern and CSX.

VERIFICATION

I, Richard D. Robey, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file these Comments on behalf of the North Shore Railroad Company, Juniata Valley Railroad Company, Nittany & Bald Eagle Railroad Company, Lycoming Valley Railroad Company, Shamokin Valley Railroad Company and Union County Industrial Railroad Company, of which I am President. Executed on October 16, 1997

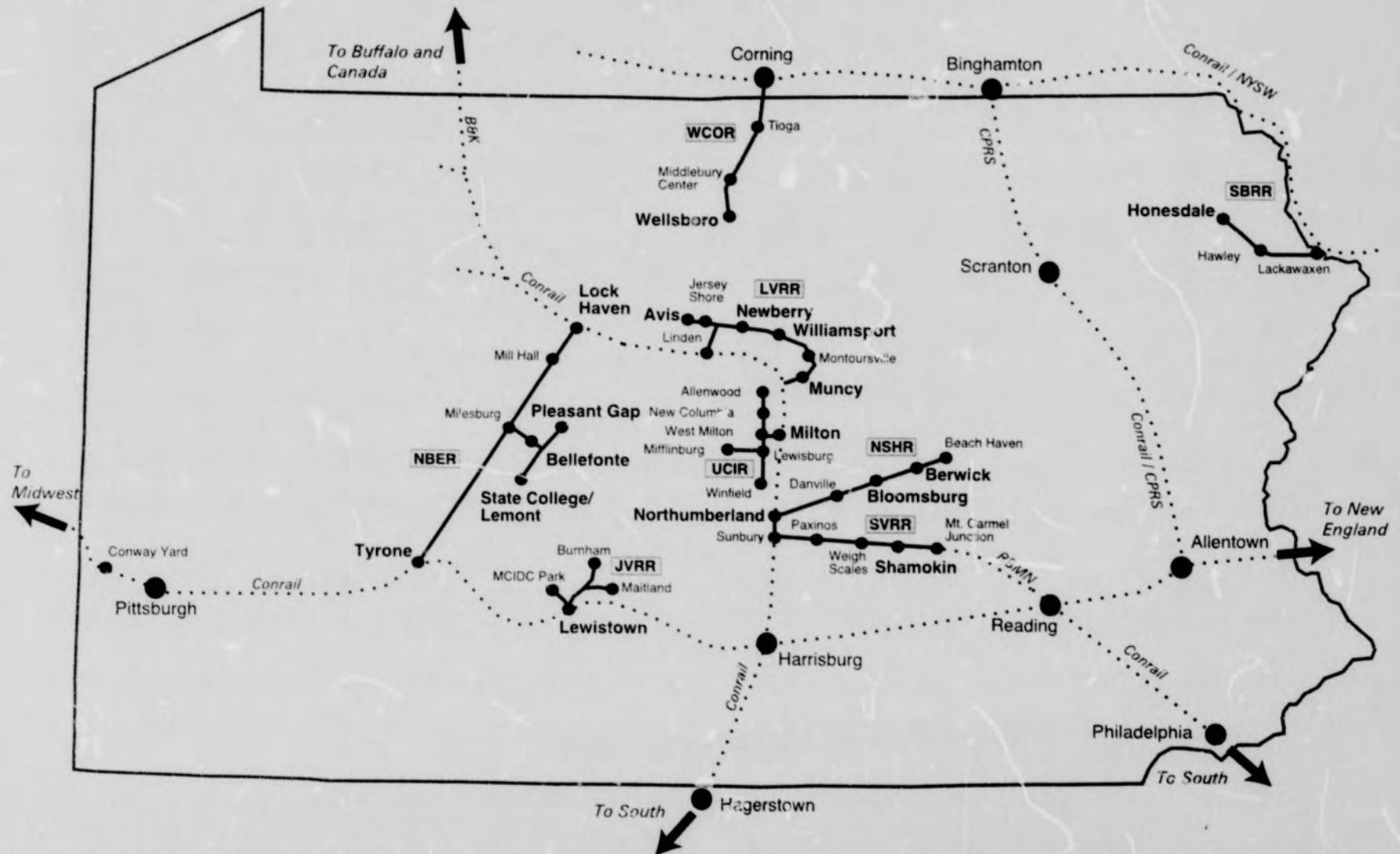

Richard D. Robey
President

JUNIATA VALLEY RAILROAD
 LYCOMING VALLEY RAILROAD
 NORTH SHORE RAILROAD
 NITTANY & BALD EAGLE RAILROAD

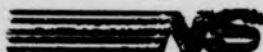
Main Business Office

356 Priestley Avenue
 Northumberland, PA 17857
 Phone (717) 473-7949
 Fax (717) 473-8432

SHAMOKIN VALLEY RAILROAD
 STOURBRIDGE RAILROAD
 WELLSBORO & CORNING RAILROAD
 UNION COUNTY INDUSTRIAL RAILROAD



The eight railroads of the NORTH SHORE SYSTEM are dedicated to providing the highest standards of efficient rail transportation to the industry and communities we serve. Contact us. We would like to provide innovative solutions to your shipping needs using modern railroad and intermodal transportation.


**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
Strategic Planning
Three Commercial Place
Norfolk, Virginia 23510-2191
757 629-2676

Bill Schafer
Director
(757) 629-2377
(757) 633-4824 FAX

June 10, 1997

Mr. Richard D. Robey
President
North Shore Railroad Company
856 Priestly Avenue
Northumberland, PA 17857

Dear Dick:

Mr. Goode has forwarded your May 23, 1997 letter to me for handling. This is also an appropriate time to document the understanding that was reached last week among you, Brian Wotring, Howard Starkloff and Roy Blanchard in Burlington, Vermont.

We offer the following, effective upon Norfolk Southern Railway Company (NS) gaining control of Conrail properties, assuming STB approval. NS will:

- Grant the North Shore Railroad, the Nittany & Bald Eagle Railroad, the Lycoming Valley Railroad, the Shamokin Valley Railroad, and the Union County Industrial Railroad (hereafter the Five Railroads) overhead trackage rights over the Harrisburg-Buffalo line between Lock Haven and Sunbury, Pennsylvania. The purpose of these trackage rights is to enable the Five Railroads to connect with each other, and is subject to execution of requisite agreements with NS. Also, the operating employees of the Five Railroads will be required to qualify for operation over NS lines.
- Grant the Five Railroads the option to interchange traffic, with the Canadian Pacific (CPRS) at Sunbury, Pennsylvania, originating or terminating at local points on the CPRS or at points located on carriers that connect only with CPRS.
- Work with the Five Railroads and the Wellsboro & Corning Railroad, the Juniata Valley Railroad, and the Stourbridge Railroad, to protect traffic currently moving to and from CSXT points so that these railroads are not inadvertently threatened with the loss of this business by a transfer facility or other means. These railroads will identify such moves, and NS will work to address each one from a marketing and commercial standpoint so that what is on rail today stays on rail tomorrow (the Heinz business to Kankakee is an example).

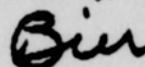
Our goal is to minimize potential harm to present traffic lanes in which the Five Railroads participate. We want to help you keep what you have today and to work with you to

** TOTAL PAGE 02 **

Mr. Richard D. Robey
June 10, 1997
Page Two

grow the business for *both* of us. Connecting the Five Railroads, protecting the Heinz traffic, and providing access to CP that does not harm Norfolk Southern are first steps. The rest is up to us both.

Sincerely,



Bill Schafer

cc: David Goode
Sam Mason
Steve Eisenach
Brian Wotring

Richard R. Wilson, P.C.

Attorney at Law
A Professional Corporation
1126 Eighth Avenue, Suite 403
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October 16, 1996



Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423-0001

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

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Very truly yours,

RICHARD R. WILSON, P.C.

A handwritten signature in cursive script that reads "Richard R. Wilson". The ink is dark and the signature is fluid.

Richard R. Wilson

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
Richard D. Robey
All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 33388
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Richard R. Wilson, Esq.
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Counsel for:
North Shore Railroad Company
Juniata Valley Railroad Company
Nittany & Bald Eagle Railroad Co.
Lycoming Valley Railroad Company
Shamokin Valley Railroad Co.
Union County Industrial
Railroad Company

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388
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OCT-17-97 FRI 02:16 PM NSHR
10-16-1997 2:15PM FROM

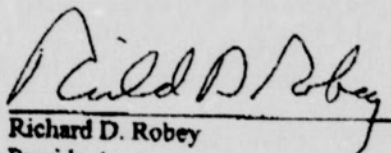
FAX NO. 717 473 8432

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P. 5

VERIFICATION

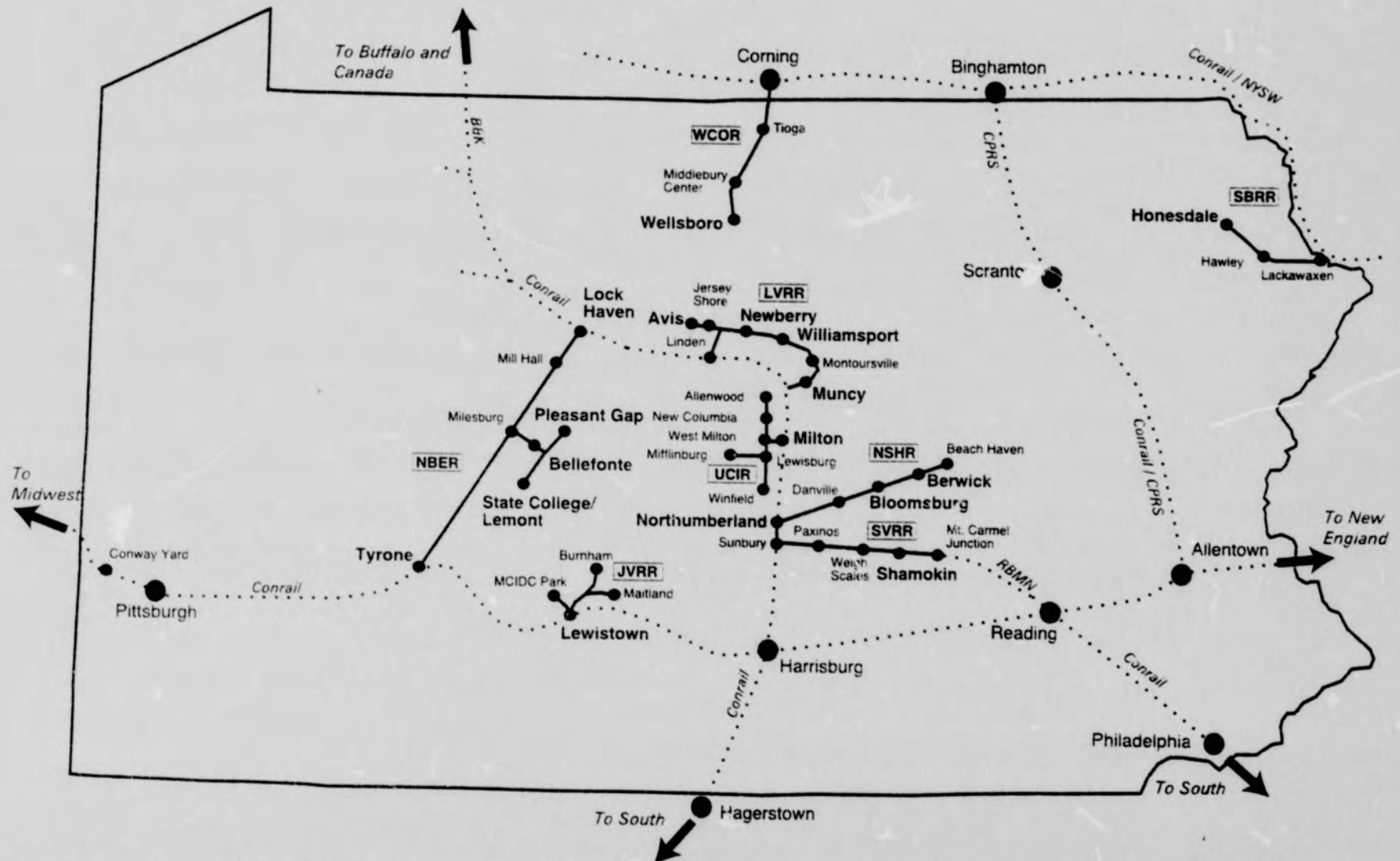
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Richard D. Robey
President

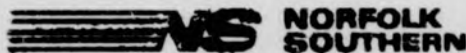
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The eight railroads of the NORTH SHORE SYSTEM are dedicated to providing the highest standards of efficient rail transportation to the industry and communities we serve. Contact us. We would like to provide innovative solutions to your shipping needs using modern railroad and intermodal transportation.



Norfolk Southern Corporation
Strategic Planning
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757 629-2676

Bill Schafer
Director
(757) 629-2677
(757) 633-4884 FAX

June 10, 1997

Mr. Richard D. Robey
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Mr. Goode has forwarded your May 23, 1997 letter to me for handling. This is also an appropriate time to document the understanding that was reached last week among you, Brian Wotring, Howard Starkloff and Roy Blanchard in Burlington, Vermont.

We offer the following, effective upon Norfolk Southern Railway Company (NS) gaining control of Conrail properties, assuming STB approval. NS will:

- Grant the North Shore Railroad, the Nittany & Bald Eagle Railroad, the Lycoming Valley Railroad, the Shamokin Valley Railroad, and the Union County Industrial Railroad (hereafter the Five Railroads) overhead trackage rights over the Harrisburg-Buffalo line between Lock Haven and Sunbury, Pennsylvania. The purpose of these trackage rights is to enable the Five Railroads to connect with each other, and is subject to execution of requisite agreements with NS. Also, the operating employees of the Five Railroads will be required to qualify for operation over NS lines.
- Grant the Five Railroads the option to interchange traffic, with the Canadian Pacific (CPRS) at Sunbury, Pennsylvania, originating or terminating at local points on the CPRS or at points located on carriers that connect only with CPRS.
- Work with the Five Railroads and the Wellsboro & Coming Railroad, the Juniata Valley Railroad, and the Stourbridge Railroad, to protect traffic currently moving to and from CSXT points so that these railroads are not inadvertently threatened with the loss of this business by a transload facility or other means. These railroads will identify such moves, and NS will work to address each one from a marketing and commercial standpoint so that what is on rail today stays on rail tomorrow (the Heinz business to Kankakee is an example).

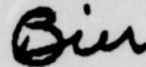
Our goal is to minimize potential harm to present traffic lanes in which the Five Railroads participate. We want to help you keep what you have today and to work with you to

** TOTAL PAGE 02 **

Mr. Richard D. Robey
June 10, 1997
Page Two

grow the business for *both* of us. Connecting the Five Railroads, protecting the Heinz traffic, and providing access to CP that does not harm Norfolk Southern are first steps. The rest is up to us both.

Sincerely,



Bill Schafer

cc: David Goode
Sam Mason
Steve Eisenach
Brian Wotring

STB

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10-21-97

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October 20, 1997

Transmittal Memorandum

via Express Mail

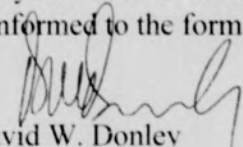
Office of the Secretary
Case Control Unit Attn: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street N.W.
Washington DC 20423-0001

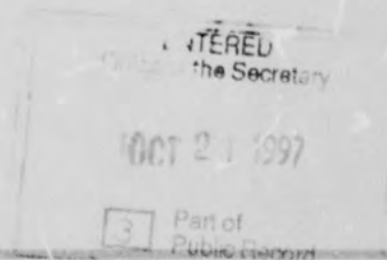


Dear Sir or Madame:

Re: STB Docket No. 33328

Enclosed is an Original and 25 copies of the Comments of Weirton Steel Corporation, a party of record in the above-captioned proceeding. Also enclosed is an electronic copy conformed to the format specified by the Board.


David W. Donley
Attorney for Weirton Steel Corporation



DAVID W. DONLEY ATTORNEY AT LAW

3361 STAFFORD STREET PITTSBURGH, PENNSYLVANIA 15204 (412) 331-8998 TELEPHONE (412) 331-5720 FACSIMILE

182756

October 20, 1997

Transmittal Memorandum

via Express Mail

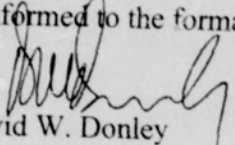
Office of the Secretary
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Surface Transportation Board
925 K Street N.W.
Washington DC 20423-0001



Dear Sir or Madame:

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David W. Donley
Attorney for Weirton Steel Corporation

RECEIVED
Office of the Secretary

OCT 21 1997

3 Part of
Public Record

DAVID W. DONLEY ATTORNEY AT LAW

3361 STAFFORD STREET PITTSBURGH, PENNSYLVANIA 15204 (412) 331-8998 TELEPHONE (412) 331-5720 FACSIMILE

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Before the
SURFACE TRANSPORTATION BOARD
Washington, DC

Finance Docket No. 33388

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

COMMENTS OF WEIRTON STEEL CORPORATION

Weirton Steel Corporation (Weirton Steel) is an integrated steel producer with a single point of production located in Weirton, WV. Weirton Steel is vitally affected by the matters pending before the Board and offers these Comments pursuant to the procedural schedule set forth in Board's order of May 30, 1997. Weirton Steel has had the opportunity to evaluate in detail the acquisition proposal, its impact upon rail shippers, and has engaged in a continuing dialogue with Norfolk Southern, the road intending to control Conrail properties now used to serve our mill. On the basis of these evaluations and discussions, Weirton Steel offers its support for the proposal of Norfolk Southern Corporation and CSX Corporation to acquire control of Conrail.

Weirton Steel relies upon rail transportation and is among Conrail's largest customers. We will receive or ship approximately 80,000 carloads on Conrail in 1997. Our projected annual budget for rail transportation is \$50 million, the substantial portion of which reflects our transportation expense for iron ore and pellets, briquettes, coke, fluxing stone and scrap iron or steel. A modest portion of that expenditure reflects the current outbound movement of finished products from our mill, but we are persuaded that Norfolk Southern would aggressively compete for more of our outbound shipments. Competition for shipments now moving by truck is among the notable benefits likely to result from Federal approval of the acquisition plan.

Our company believes also that Federal approval would permit greater flexibility in rail operations across the Conrail system and is likely to result in more efficient

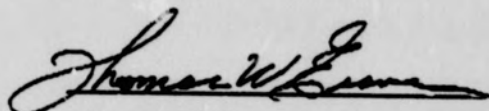
flexibility in rail operations across the Conrail system and is likely to result in more efficient rail transportation. These opportunities to improve operations and the resultant efficiencies offer the greatest benefit for our company and other manufacturers competing to sustain and grow market share on a global basis.

For these reasons, Weirton Steel supports the acquisition plan and urges its approval by the Surface Transportation Board.

Verification

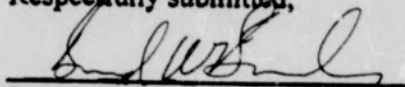
I, Thomas W. Evans, Vice President of Materials Management, declare under penalty of perjury that the foregoing Comments of Weirton Steel Corporation are true and correct. I further certify that I am qualified and authorized to file this verified statement.

Dated: October 20, 1997



Thomas W. Evans

Respectfully submitted,



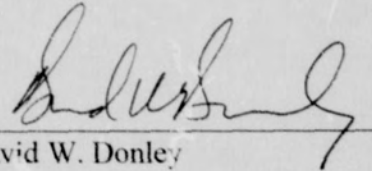
David W. Donley
Attorney for Weirton Steel Corporation
3361 Stafford Street
Pittsburgh PA 15204

Dated October 20, 1997

Certificate of Service

I certify that the foregoing Notice of Intent to Participate has been served upon all parties of record as specified on the Board's service list, including all revisions, in STB Finance Docket No. 33388 by first-class mail, postage prepaid.

Dated: October 20, 1997



David W. Donley
Attorney at Law
3361 Stafford Street
Pittsburgh PA 15204

PA I.D. No. 19727
(412) 331-8998 Telephone
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Richard R. Wilson, P.C.

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A Professional Corporation
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Altoona, PA 16602

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Of counsel to:
Vuono & Gray LLC
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Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX

October 16, 1996



Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 715
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

On behalf of the Ohi Rail Corporation, I enclose for filing an original and twenty-five copies of Ohi-Rail - 2, Comments and Request for Conditions by Ohi-Rail Corporation. Also enclosed is a 3 1/2" computer disk containing the pleadings in Word 7.0 format. Should you have any questions regarding this submission, please contact the undersigned.

Very truly yours,

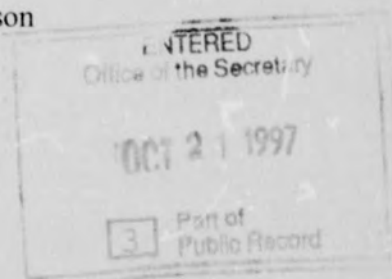
RICHARD R. WILSON, P.C.

Richard R. Wilson

Richard R. Wilson

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
Ohi-Rail Corporation
All Parties of Record



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OHI-RAIL -2



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

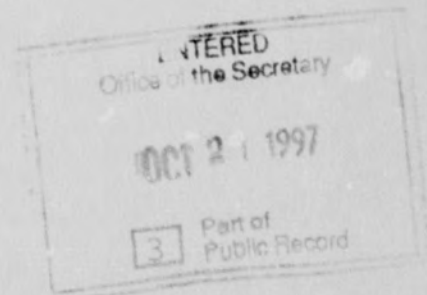
STB FINANCE DOCKET NO. 33388

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

**COMMENTS AND REQUEST FOR CONDITIONS
BY OHI-RAIL CORPORATION**

Richard R. Wilson, Esq.
Counsel for Ohi-Rail Corporation
1126 Eighth Avenue, Suite 403
Altoona, PA 16602
(814) 944-5302

Dated: October 21, 1997



**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB FINANCE DOCKET NO. 33388

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

**COMMENTS AND REQUEST FOR CONDITIONS
BY OHI-RAIL CORPORATION**

My name is Tom D. Barnett. I am Vice President and General Manager of Ohi-Rail Corporation. We operate a 45 mile short line railroad between Baird, OH where we connect with Conrail's Cleveland line and Hopedale, OH where we connect with the Wheeling & Lake Erie Railway Company.

Our railroad line serves an area of eastern Ohio which has substantial coal reserves. We have been approached by several coal producers concerning the movement of Ohio coal to CEI's Eastlake Plant on Conrail's former Chicago line. Unfortunately, NS and CSX have agreed to divide operating responsibilities on Conrail's Chicago line east of Cleveland at Collingwood yard. This means that coal movements which had formerly been handled single line by Conrail to CEI's Eastlake Plant will now require a

joint NS-CSX move for any coal traffic originated on NS operated Conrail lines or connecting short lines. We foresee that CSX may impose significant reciprocal switching charges for NS movements of coal traffic between Collingwood Yard and the Eastlake Plant or will favor CSX single line movements of coal from Monongahela coal fields or CSX served coal sources in eastern Kentucky. This loss of single line service to the Eastlake Plant and other similarly situated utilities will have an extremely detrimental impact on the development of Ohio coal reserves such as those served by Ohi-Rail.

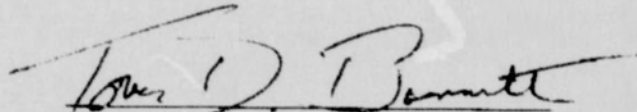
Accordingly, Ohi-Rail Corporation requests that the Surface Transportation Board condition its approval of this merger on CSX granting NS direct access into the CEI Eastlake Plant in order to provide competitive rail service at that plant and to afford Ohio coal producers an opportunity to compete for traffic to that location.

In all other respects we find the proposed transaction to be consistent with the public interest. If the access rights requested above are made a condition of this merger, we will support Board approval of the transaction proposed by NS and CSX.

VERIFICATION

I, Tom D. Barnctt, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file these comments on behalf of Ohi-Rail Corporation of which I am Vice President and General Manager.

Executed on this 16th day of October, 1997.


Tom D. Barnett

STB

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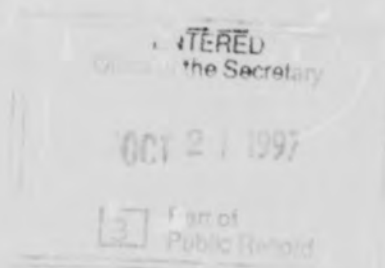
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REDACTED - PUBLIC



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



Finance Docket No. 27388

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

**COMMENTS AND SUPPORTING EVIDENCE OF
THE CITY OF INDIANAPOLIS IN OPPOSITION TO
THE APPLICATION OF CSX CORPORATION, et al.,
UNLESS COMPETITIVE CONDITIONS ARE IMPOSED**

CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT") (CSXC and CSXT collectively "CS"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR") (NSC and NSR collectively "NR"), Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") (CRR and CRC collectively "CR"), (CSX, NR and CR collectively "Applicants"), pursuant to 49 U.S.C. §§ 11321-25 and 49 CFR Part 1180, have requested the Surface Transportation Board ("Board") to authorize the acquisition of the control and operation of CRR by CSX and NSC ("Proposed Transaction"). The Applicants have also requested authorization for certain operating agreements, the construction of new connections, the granting of trackage rights and other related matters in connection with the Proposed Transaction. It is the Applicants' position that the Proposed Transaction will "hold enormous public benefits, the greatest of these being increased competition, single-line

efficiency, and fresh opportunities for improved transportation options and resulting economic growth." Application Vol. 1, p. 2. Whatever public benefits the Proposed Transaction might yield for the rest of the northeast and the midwest, these benefits will not be realized for the City of Indianapolis without, at a minimum, the adoption of the conditions outlined below. Rather than increased competition for Indianapolis, the Proposed Transaction will mean a decrease in competition. Rather than single-line efficiency for Indianapolis, the Proposed Transaction will mean inefficient and costly trackage and switching arrangements. Rather than fresh opportunities for improved transportation options and resulting economic growth for Indianapolis, the Proposed Transaction will mean lost opportunities for improved transportation options and resulting economic harm. It is because of the public harm posed to Indianapolis by the Proposed Transaction that the City is submitting to the Board these Comments and Supporting Evidence in opposition to the Application. The conditions outlined herein are operationally feasible and will serve to lessen the public harm that would otherwise be caused to the economic future of Indianapolis by the Proposed Transaction.

**Summary of Proposed Transaction As It
Pertains to Indianapolis**

The Applicants identify Indianapolis as one of the markets that will go from two rail carrier service to single rail carrier service under the Proposed Transaction unless specific remedies are provided. *See, e.g.,* Application, Vol. 1, pp. 545-46. In fact, the Applicants recognize that Indianapolis is "by far the largest "2 to 1" point created by this transaction."

Application, Vol. 1, p. 546.¹ The reason Indianapolis is a "2 to 1" point under the Proposed Transaction is because Indianapolis is presently served by both CSX and CR but under the Proposed Transaction CSX will acquire control of all of CR's trackage in the Indianapolis area, including CR's three yard facilities. Application, Vol. 3A, pp. 109-11, 210-11. Accordingly, without more, Indianapolis would under the Proposed Transaction become a "one railroad town" served only by CSX.

The Applicants seek to "remedy" the public harm caused to Indianapolis by the Proposed Transaction by allowing NS to provide indirect rail service to "2 to 1" customers in Indianapolis by way of certain overhead trackage rights and switching agreements. The Master Trackage Rights Agreement ("TRA") proposed by the Applicants grants to NS overhead trackage rights on CSX's lines to Indianapolis from Muncie, IN, and from Lafayette, IN. NS's ability to provide rail service under the proposed TRA is severely limited, however. Specifically, the TRA provides that:

NSR shall not use any part of the subject trackage for the purpose of switching, storage or servicing of cars or equipment, or the making or breaking up of trains or service to an industry . . .

Application, Vol. 8B, p. 223.²

¹For a description of the size and importance of Indianapolis as a major manufacturing and distribution center, see CI Ex. 2, V.S. of Mayor Goldsmith, pp. 2-3.

²Form A of the Trackage Rights Addendum sets forth even more restrictive language: "The Trackage Rights herein granted are granted for the sole purpose of NSR using the same for bridge traffic only between the endpoints of Subject Trackage and NSR shall not perform any local freight service whatsoever at any point located on Subject Trackage." Application, Vol. 8B, p. 314.

Under the TRA, then, NS will not be allowed to provide direct rail service to "2 to 1" customers in Indianapolis. Instead, it will be required to transport its cars directly into Hawthorne Yard at Indianapolis, which will be operated solely by CSX under the Proposed Transaction. Application, Vol. 3A, pp. 210-11. At Hawthorne Yard, NS will not have any contractual rights regarding access to specific trackage. Rather, the Operating Plan only provides that NS will have "sufficient tracks for the arrival, departure and make up of trains, and will have reasonable access to and from the designated tracks." Application, Vol. 3A, p. 211. Moreover, CSX will have exclusive control of the management, operation and maintenance of the trackage from Muncie and Lafayette, as well as the trackage at Hawthorne Yard. In this regard, the TRA: (1) Does not require CSX to dispatch NS' trains equally and without prejudice under all circumstances (Application, Vol. 8B, pp. 232-33); (2) does not require CSX to maintain the subject trackage at its current Track Class and Speed (Application, Vol. 8B, p. 226); (3) makes upgrading of the trackage subject to CSX's operational needs (Application, Vol. 8B, p. 227); (4) allows CSX to retire the subject trackage for economic reasons (Application, Vol. 8B, p. 229); (5) explicitly denies NS any claim against CSX for damages brought about by delay or interruption from any cause, including damages for CSX's failure to maintain or renew the subject trackage (Application, Vol. 8B, pp. 223-26); and (6) does not provide for expedited dispute arbitration or the award of monetary damages by the arbitrator (Application, Vol. 8B, pp. 246-47).

Once NS has transported its cars to Hawthorne Yard, CSX will provide switching services to NS' customers under a separate switching agreement. Application, Vol. 8C, pp. 501-25. The specific charges to NS for CSX's handling of cars under the switching

agreement have not yet been determined by the Applicants. Instead, the switching agreement provides that NS shall pay CSX a "mutually agreed upon rate" for each car switched by CSX for NS during the first six months of the Agreement. Application, Vol. 8C, pp. 505-06. After this initial six month period, CSX and NS will conduct a joint study to determine CSX's "actual costs" for switching cars in the account of NS and to determine the maintenance costs for NS' use of tracks at Hawthorne Yard. The charges to NS for CSX's switching services will thereafter be based upon the results of this joint study. Applicants do not identify conclusively what factors will be relevant to determining these "actual costs."

The number and scope of Indianapolis customers that NS will actually be allowed to serve *via* trackage rights and switching by CSX is very circumscribed. As indicated above, NS will be allowed indirect access only to those customers who qualify as "2 to 1." The definition of "2 to 1" customers for purposes of the Proposed Transaction are those presently existing customers who have the option of rail service from CSX and CR. Application, Vol. 2A, pp. 146-47. It does not include any other customers, including future customers that come into existence after the proposed transaction is consummated. The number and identity of the customers that qualify as "2 to 1" under this restrictive definition is not clear from the Application. In his Verified Statement William Hart states that; "There are 66 shippers located on Conrail lines that have traditionally had a second service option available to them through reciprocal switching service." Application, Vol. 2A, p. 147. Mr. Hart does not identify these 66 shippers. In contradiction to the foregoing Verified Statement of William Hart, Exhibit "I" to the proposed switching agreement identifies only 30 customers who would be served indirectly by NS.

Under the Proposed Transaction, then, CSX will have a monopoly for rail service to a significant number of customers, including those future customers that come into existence after the transaction is consummated.

Legal Standard for the Imposition of Conditions

The Board should not approve the proposed transaction unless it first "finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c) (1997). To determine whether the proposed transaction is consistent with the public interest, the Board must perform a balancing test, weighing the potential benefits to the Applicants and the public against the potential harms to the public:

In determining whether a transaction is in the public interest, the Board performs a balancing test. It weighs the potential benefits to the Applicant and the public against the potential harm to the public. The Board will consider whether the benefits claimed by Applicants could be realized by means other than the proposed consolidation that would result in less potential harm.

49 CFR 1180.1(c).

There are a number of criteria relevant to the determination of whether a proposed transaction is in the public good. Among these criteria is whether the proposed transaction will have an adverse effect on competition among rail carriers in a particular market. 49

U.S.C. § 11324 (1997); *See also* 49 CFR § 1180.1(c)(2).³ If the Board finds an adverse impact on competition, it has broad authority under the Interstate Commerce Act to impose conditions on the transaction that will redress the harm caused by these anticompetitive effects. 49 U.S.C. § 11324(c); Union Pacific-Control-Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982). A number of factors are relevant to determining what conditions are appropriate. The Board has summarized these factors in its Decision No. 40:

The criteria for imposing conditions to remedy anticompetitive effects were set out in Union Pacific-Control-Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982). There, the Interstate Commerce Commission (ICC) stated that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (the reduction or elimination of possible harm) outweighing any reduction to the public benefit produced by the merger.

Even if the Applicants have proposed certain conditions in order to ameliorate the anticompetitive effects of the Proposed Transaction, the Board still has the obligation to modify or add to these conditions if it believes that the conditions proposed by the Applicants fail to fully redress these anticompetitive effects. Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295, 322 (D.C. Cir. 1983).

³The reason this criterion is important is because consolidations that substantially reduce rail transportation alternatives to shippers are not favored under the law. 49 CFR § 1180.1(a).

**The Proposed Transaction has AntiCompetitive Effects for Indianapolis that
Require the Imposition of Conditions**

It has already been noted that the Applicants agree the Proposed Transaction would have an anticompetitive effect on Indianapolis if certain remedies are not adopted. The remedies the Applicants suggest are to grant to NS the trackage rights and switching arrangements outlined above. These remedies will not, however, ameliorate the anticompetitive effects of the Proposed Transaction for Indianapolis. In general this is because the proposed remedies do not give NS sufficient incentive to compete with CSX in Indianapolis, and they allow CSX to have total control over the quality of services that NS can offer to customers. CI Ex. 1, V.S. of Hall, p. 5. More specifically, the remedies are inadequate because: (1) NS's overhead trackage rights under the Proposed Transaction do not address issues that can work to impede or lessen the quality of NS's service to Indianapolis customers; (2) NS will have an inadequate customer and interchange base in Indianapolis because of the narrow definition of "2 to 1" customers and its lack of access to shortline railroads; (3) the switching agreement is too vague on several key items, including the charges to be assessed NS for switching services and the time requirements for the pickup and delivery of NS' cars; (4) NS will be unable to build customer volume given that present customers of CR will not be allowed to rebid traffic to NS after the transaction is consummated; and (5) NS has no competitive way to deliver cars from Indianapolis to Chicago. Because CSX will have the highest traffic density, the shortest route structure to major markets from Indianapolis and an overwhelming physical and management presence in Indianapolis, the foregoing deficiencies will mean that NS will not be a competitor of CSX in the Indianapolis market under the Proposed Transaction. CI Ex. 1, V.S. of Hall, p. 5.

Accordingly, the Board should at minimum impose the following conditions in order to correct these deficiencies.

1. Conditions Relative to Trackage Rights

The TRA under which NS will be allowed indirect access to "2 to 1" customers in Indianapolis gives CSX excessive control of the management, operation and maintenance of the subject trackage, including the trackage at Hawthorne Yard. The TRA does not require CSX to dispatch NS' trains equally and without prejudice in all circumstances. It does not require CSX to maintain the subject trackage at its current Track Class and Speed. It makes upgrading of the trackage subject to CSX's operational needs. It allows CSX to retire the subject trackage for economic reasons. It specifically denies NS any claim against CSX for failure to maintain the subject trackage. It does not give NS any specific trackage at Hawthorne Yard. It neither provides for expedited dispute arbitration in connection with NS's use of the subject trackage, nor gives authority to the arbitrator to award monetary damages to an aggrieved party. These defects in the TRA will mean that NS's ability to compete with CSX for business can be severely impeded by CSX, resulting in a significant reduction of competition for rail service in Indianapolis.

In order to ameliorate the anticompetitive effect to Indianapolis caused by these deficits, the additions and changes set forth in Mr. Hall's Verified Statement should be incorporated into the TRA. These additions and changes are as follows: (1) The TRA should require that CSX maintain the subject trackage at its current Track Class and Speed; (2) the TRA should require CSX to dispatch NS' trains equally and without prejudice under

all circumstances, regardless of whether this will result in the most economical movement of all traffic on the lines from Muncie and Lafayette; (3) the TRA should provide for expedited arbitration of disputes between NS and CSX and should allow the arbitrator to assess monetary damages for violations of the TRA;⁴ and (4) the TRA should provide that NS has the right to lease, buy or build trackage at Hawthorne Yard for NS' exclusive use.

As Mr. Hall notes in his Verified Statement, the foregoing additions and modifications to the TRA would lessen the anticompetitive effects of the Proposed Transaction. In particular, they would address issues that otherwise would allow CSX to seriously impede and lessen the quality of NS' service to Indianapolis customers. Not only are the proposed conditions operationally feasible, they will not result in a reduction of benefits to the public produced by the Proposed Transaction. See CI Ex. No. 1, Verified Statement of Hall, pp. 8-9.

2. Conditions Relative to Definition of "2 to 1" Customers.

The number of customers in Indianapolis that NS will be allowed to serve under the Proposed Transaction is severely limited. NS will be allowed indirect access only to those customers who qualify as "2 to 1"; i.e., those presently existing customers who have the option of rail service from both CR and CSX.⁵ NS will not be allowed to compete with CSX for the business of either presently existing customers who do not fall within this definition

⁴The arbitration provision should require that the parties choose an arbitrator within 30 days of notice; that the arbitrator hear the case within 60 days of notice; and that the arbitrator make a decision within 90 days of notice.

⁵As indicated above, it is unclear whether these customers are 30 or 66 in number.

or customers that come into existence after the proposed transaction is consummated.

ability to develop a volume of traffic that will consistently fill the train service it provides to Indianapolis from Lafayette and Muncie will be severely hampered by this limitation because CSX will have a monopoly for the business of these customers.

In order to ameliorate the anticompetitive effects of this narrow definition of "2 to 1" customers, the Board should adopt as a condition of approval that "2 to 1" customers be defined to include all Indianapolis customers that CSX will be able to serve under the Proposed Transaction after it is consummated. CI Ex. No. 1, V.S. of Hall, p. 6. Moreover, all shortline railroads that can connect or interchange with CSX after the transaction is consummated should be allowed to connect or interchange with NS. The imposition of these conditions would lessen the anticompetitive effects of the transaction

Moreover, they would be operationally feasible and would not harm the public benefits to be realized by the Proposed Transaction. CI Ex. No. 1, V.S. of Hall, p. 8.

3. Conditions Relative to Switching Agreement

CSX will provide switching services to NS' customers under a separate switching agreement. The specific charges to NS for CSX's handling of cars have not yet been determined by the Applicants. Instead, the switching agreement provides that NS shall pay

CSX a "mutually agreed upon rate" for each car switched by CSX for NS during the first six months of the Proposed Transaction. After the initial six-month period, CSX and NS will conduct a joint study to determine CSX's "actual cost" for switching cars in the account of NS and determine the maintenance cost of NS' use of tracks at Hawthorne Yard. The charges to NS for CSX's switching serves will thereafter be based on the results of this joint study, which will not be open to public, shipper or shortline audit. The switching agreement does not set forth any time requirement for CSX's pickup and delivery of NS' cars to and from customer sidings. Finally, like the TRA, there is no provision for expedited arbitration and the award of monetary damages by the arbitrator. The vagueness of the proposed switching agreement on these points is lethal to NS' ability to compete with CSX in the Indianapolis market.

The anticompetitive effects that will result from the vagueness of the switching agreement can be overcome if the Board imposes a few additions to the switching agreement. First, the Board should require CSX and NS agree to a \$130 per car switching charge, adjusted on a yearly basis for inflation/deflation. *CI Ex. No. 1, V.S. of Hall, p. 7.* The Board has found this switching charge adequate to cover cost for switching in previous mergers. Second, the Board should require that CSX and NS agree that at any time during the first ten years of the Proposed Transaction NS has a one time right to elect either to provide its own direct service to Indianapolis customers or to contract with a third party of its own choosing to provide switching services to its Indianapolis customers. If at the end of this ten-year period NS fails to exercise its right of election, CSX would again be required to perform switching services for NS at Indianapolis on a cost-based charge that will be

determined in the manner set forth in the Proposed Transaction. Third, the switching agreement should contain arbitration provisions identical to those requested for the TRA. Finally, the switching agreement should set forth a specific time requirement for CSX's pickup and delivery of NS' cars to and from customer sidings. At a minimum, this time requirement should be that NS' traffic will be given the same treatment as CSX's.

The foregoing additions and modifications to the switching agreement would help ameliorate the anticompetitive effects of the Proposed Transaction. In particular, they would address issues that might allow CSX to impede or lessen the quality of NS' service to Indianapolis customers. Moreover, the proposed conditions would be operationally feasible. Finally, the conditions would not cause a reduction of benefits to the public produced by the Proposed Transaction.

4. Conditions Relative to Traffic Volume

In the usual situation, the private contracts between the customer and the rail carrier cover specific commodities moving over specific routes in specific volumes at specific rates. The term of these contracts is often for a number of years. Because under the Proposed Transaction, it appears that CSX will be assuming the contracts that currently exist between CR and the Indianapolis customers, NS will be unable to compete for those customers. Thus, NS' ability to develop a volume of traffic sufficient to maintain adequate rail service will be severely impaired. Also, under the Proposed Transaction, NS has no competitive way to deliver cars from Indianapolis to the Chicago market (unlike CSX who will have a direct

route to Chicago through Lafayette). Both of these factors will have a significant impact on NS' ability to build the traffic volumes necessary to compete with CSX at Indianapolis.

In order to ameliorate this impairment of NS' ability to compete with CSX at Indianapolis under the Proposed Transaction, CSX should be required to release all of its Indianapolis customers from those provisions of their contracts that would preclude or penalize these customer from rebidding traffic to NS after the proposed transaction is consummated. CI Ex. No. 1, V.S. of Hall, p. 6. Moreover, CSX should provide haulage for NS to the Chicago market. Finally, the Board should maintain oversight of the transaction for a period of ten (10) years with a right to impose additional conditions if a competitive situation between CSX and NS does not develop in the Indianapolis market. These required conditions would be operationally feasible and would have no adverse impact as the benefits to be realized by the Proposed Transaction.

Summary of Requested Conditions

The City of Indianapolis is opposed to the Proposed Transaction unless the following conditions are imposed by the Board:

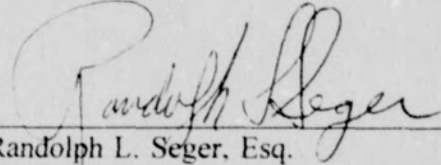
- (1) The TRA requires that CSX maintain the subject trackage at its current Track Classes and Speed;
- (2) The TRA requires CSX to dispatch trains equally and without prejudice under all circumstances;

- (3) The TRA provides for expedited arbitration of disputes between NS and CSX, as well as allowing the arbitrator to assess monetary damages for violation of the TRA;
- (4) The TRA provides that NS has the right to lease, buy or build trackage at Hawthorne Yard for NS' exclusive use;
- (5) "2 to 1" customers are defined in such a way that after the transaction is consummated NS is able to provide rail service to all Indianapolis customers to which CSX is able to provide rail service;
- (6) All presently existing and future shortline railroads that can connect or interchange with CSX after the Proposed Transaction is consummated can also connect or interchange with NS and each other;
- (7) The switching agreement provides that the switching charge for CSX's switching of NS' cars is set at \$130 per car, adjusted each year according to a mutually agreed standard for inflation/deflation;
- (8) The switching agreement allows NS a one-time right to elect during the first 10 years of the Proposed Transaction to provide its own direct service to Indianapolis customers and shortlines or to contract with a third party of its own choosing to provide these switching services;
- (9) The switching agreement contains arbitration provisions similar to those requested for the TRA;

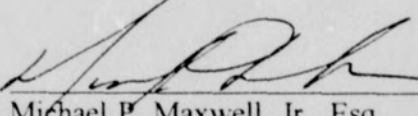
- (10) The switching agreement sets forth a specific time requirement for CSX's pickup and delivery of NS' cars to and from customer sidings in Indianapolis (at minimum that NS' traffic will be given the same treatment as CSX's);
- (11) CSX is required to release all of its Indianapolis customers from those provisions of their contracts that would preclude or penalize them from rebidding traffic to NS after the Proposed Transaction is consummated;
- (12) CSX is required to provide haulage for NS to Chicago; and
- (13) The Board maintains oversight of the transaction for a period of ten (10) years with the authority to impose further conditions if competition between CSX and NS does not develop in the Indianapolis market.

Respectfully submitted,

McHALE, COOK & WELCH, p.c.
1100 Chamber of Commerce Building
320 N. Meridian Street
Indianapolis, IN 46204
(317) 634-7588
(317) 634-7598 - Facsimile



Randolph L. Seger, Esq.
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Michael P. Maxwell, Jr., Esq.

Attorneys for City of Indianapolis

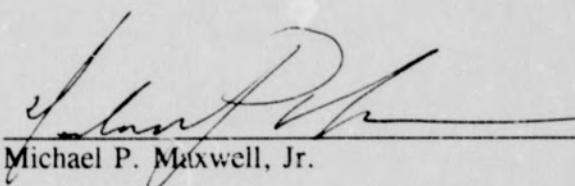
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 20th day of October, 1997, a copy of the foregoing Redacted Version of Comments and Supporting Evidence of the City of Indianapolis in Opposition to the Application of CSX Corporation, et al., Unless Competitive Conditions are Imposed to Applicants' attorneys and on all other persons of record in this proceeding.



Michael P. Maxwell, Jr.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION, ET AL.
NORFOLK SOUTHERN CORPORATION, ET AL.
CONRAIL INC., ET AL.

VERIFIED STATEMENT
OF
JOHN HALL

My name is John Hall. From 1961 to 1968, I was employed by the Soo Line Railroad Company. From 1968 to 1994, I was employed by the Burlington Northern Railroad Company and its predecessor, Great Northern Railway, in a succession of positions of increasing responsibility. I served as Vice President of Business Development from 1986 to 1994. During my career at Burlington Northern, I planned, negotiated, implemented and managed a number of line sales, line acquisitions, trackage rights/haulage agreements and terminal switching operations. I have served as an expert in previous acquisitions, including the UP & SP merger. I am quite familiar with the technical issues and analysis relevant to this proceeding from the perspective of both the landlord and the tenant.

CSX, Norfolk Southern ("NS") and Conrail ("CR") have submitted their Railroad Control Application to the Surface Transportation Board, Finance Docket No. 33388, requesting that CSX and NS be given control and the management of all of the assets of CR. I have been asked by the City of Indianapolis to prepare and submit these comments on various issues involved in the Application. There are several aspects of the proposed transaction that are of particular relevance to the City of Indianapolis:

1. CSX has used the CR switching tariff to define "2 to 1" customers in Indianapolis. The number of these "2 to 1" customers varies between 30 (See Exhibit "I" to the Switching Agreement, Application, Vol. 2B, p. 525) and 66 (see Mr. Hart's Verified Statement, Application, Vol. 2A, p. 147). The proposed transaction allows NS only to serve

these "2 to 1" firms, while CSX would have exclusive access to all other firms, including all new industries in Indianapolis.

2. Today, there are a number of shortline railroads that connect at Indianapolis. The proposed transaction will apparently allow only one of these shortlines, the Indiana Railroad (which is controlled by CSX), to connect with NS at Indianapolis.

3. Under the proposed transaction CSX will assume all of CR's existing transportation contracts.

4. NS will be granted overhead trackage rights from Lafayette, 85 miles to the northwest of Indianapolis, and from Muncie, 54 miles to the northeast. In addition to using these routes to reach Indianapolis, NS will be able to serve "2 to 1" customers at Crawfordsville on the line to Lafayette. These trackage rights are described as "standard, existing trackage rights fees in effect between NS and CSX for over the road movements." At Indianapolis, NS trains will originate/terminate at Hawthorne Yard. CSX will provide switching service between the "2 to 1" customer and NS for a cost-based fee.

5. NS does not have under the proposed transaction a route between Indianapolis and Chicago that is competitive with CSX's.

6. The Trackage Rights Agreement does not specify that the subject trackage shall be maintained at current levels. As a tenant, NS gets to pay .29¢ a car-mile and has no say in how the subject trackage is maintained.

7. In the Trackage Rights Agreement, CSX pledges to operate the track "without prejudice or partiality to either party and in such a manner as will afford the most economical and efficient movement of all traffic." (Emphasis added). Because CSX will have a much larger volume of traffic than NS on these routes, CSX will always have the ability to favor its own traffic.

8. The Trackage Rights Agreement provides that disputes are to be resolved by Arbitration. The arbitrator has the ability to decide issues, but not damages. While the arbitrator's decision is binding on the parties, enforcement lies in judicial action. The process is slow, expensive and time consuming, and it does not work to resolve competitive/commercial problems between tenant and landlord and clearly favors the landlord.

9. Hawthorne Yard in Indianapolis is designated as the place where NS trains will originate and terminate. The yard will be owned and controlled by CSX. NS has no right to lease, buy or build track at Hawthorne Yard for NS' exclusive use.

10. CSX will provide switching services between Hawthorne and "2 to 1" customers. The Switching Agreement does not obligate CSX to any standards of

performance or equality. CSX is apparently free to perform the service as it sees fit. NS pays the car hire and CSX receives any demurrage.

11. The charge for switching services will be "cost based" and be determined at a future date. Any dispute regarding the switching charge will be resolved by binding arbitration. The arbitration provisions are similar to those as the Trackage Rights Agreement. There are no deadlines or penalties.

Given the above, the "2 to 1" solution proposed for the City of Indianapolis will not provide the "balanced competition" envisioned by Mr. Hart in his Verified Statement. NS cannot develop a competitive presence in Indianapolis when CSX always stands between NS and its customer and to a very large measure controls the quality of transportation service NS can offer. This is made all the more difficult when:

1. NS' "2 to 1" customer base is so limited;
2. It cannot interchange traffic with connecting shortline railroads;
3. CSX will control "contracted" rail tonnage;
4. NS has vague contracts governing how its traffic will be handled;
5. Dispute resolution is slow and without consequence; and
6. A significant portion of NS' costs are unknown (switching fees).

In view of the foregoing listed points, as well as the fact that CSX will be able for the most part to control the quality of NS' service to Indianapolis customers, the proposed transaction will have to be modified in the following ways if NS is to have a meaningful opportunity to develop a competitive presence at Indianapolis:

1. "2 to 1" customer should be freed from any contractual prohibition which restricts their ability to rebid traffic between CSX and NS after the transaction is consummated;
2. "2 to 1" customers are defined to include all Indianapolis customers that CSX will be able to serve under the proposed transaction after it is consummated. New customers will be open to NS if NS pays 1/2 the cost of establishing rail service.
3. NS has the right to establish connections and interchange traffic with any shortline that CSX will have connections and interchange with after the transaction is approved.
4. For traffic moving in connection with "2 to 1" customers or originating/terminating on shortlines connecting with NS at Indianapolis, CSX will provide haulage to Chicago.

5. The Trackage Rights Agreement be modified to define the current Track Class and Speed as the Maintenance Standard.

6. The Trackage Rights Agreement be modified to state that CSX and NS trains will be dispatched and operated equally and without prejudice under all circumstances.

7. NS should have the option to lease, acquire and/or build trackage at Hawthorne Yard.

8. The Switching Agreement should be modified to state that CSX and NS traffic will be handled equally and without prejudice.

9. NS should receive demurrage.

10. The arbitration provisions of the Trackage Rights Agreement and the Switching Agreement should be consistent and modified to have:

- a. The arbitrator picked within 30 days of notice.
- b. Hearing by arbitrator within 60 days of notice.
- c. Decision of arbitrator within 90 days of notice.

- d. The arbitrator award damages when either party use the Trackage Rights Agreement or the Switching Agreement to gain a competitive advantage of the other party.

11. There should be an explicit switch charge of \$130 per car for all "2 to 1" traffic. That switch charge was found adequate by the Board to cover system average switching costs in the UP and SP merger. No variation due to commodity, car type, etc. Likewise, there should be an explicit switch charge if and when CSX performs intermediate switching between a shortline and NS. Such charges would be adjusted periodically for inflation/deflation.

12. During the first ten years of the transaction, NS would have the one time right to elect to provide its own exclusive service to "2 to 1" customers and shortline connections with their trains or through those of a designated third party.

13. In a transaction of this scope, it is difficult to anticipate potential problem areas and solutions. I believe that STB should retain oversight for 10 years.

The foregoing conditions would all be operationally feasible and would not lessen the public benefit of the proposed transaction. Instead, if imposed by the Board, these conditions would ameliorate the anticompetitive effects of the proposed transaction as it stands and

increase the chances that NS will be an effective competitor of CSX's in the Indianapolis market.

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Verification

I, John Hall, affirm under penalties of perjury that the statements herein contained are true to the best of my knowledge, information and belief.

John Hall

STATE OF MINNESOTA)
) SS:
COUNTY OF St Louis)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared John Hall, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that the representations therein contained are true.



WITNESS MY HAND and Notarial Seal this 16th day of Oct, 1997

My Commission Expires: _____

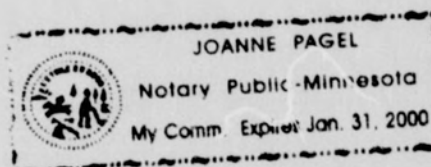
1-31-2000

My County of Residence:

St Louis


 Notary Public - Written

 Notary Public - Printed

NOTARY: AFFIX SEAL



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION, ET AL.
NORFOLK SOUTHERN CORPORATION, ET AL.
CONRAIL INC., ET AL.

VERIFIED STATEMENT
OF
STEPHEN GOLDSMITH
MAYOR OF INDIANAPOLIS

I am Stephen Goldsmith, Mayor of Indianapolis. After graduating from the University of Michigan Law School, I practiced law for 7 years before serving in the public sector as the Marion County Prosecuting Attorney from 1979-90. In 1992, I was elected Mayor and currently am in my second term.

Under my Administration, the City of Indianapolis is focused on stream-lining government, reducing regulations and reinvesting in our communities. Our city government has become more efficient largely through introducing competition to many municipal services. A smaller, more efficient government has saved taxpayer dollars and reduced the burden of government on business while simultaneously increasing service and reducing cost.

Introduction to Indianapolis

According to 1995 estimates of the U.S. Census Bureau, Indianapolis is the twelfth (12th) largest city in the United States with a population of 817,624 and a Metropolitan area of 1.4 Million. Of the cities served by CSX and NS east of the Mississippi, Indianapolis is the fifth (5th) largest.

Indianapolis has a diversified economy with continued strength in manufacturing and distribution while becoming a favorite site for headquarters and technical-related businesses. The Services industry employs 26% our workforce, followed by Retail Trade at 20% and Manufacturing at 16%. Some of our manufacturing industries include pharmaceuticals, automotive components and products, agricultural products, consumer products and chemicals.

Due to our industry make-up and geographic location, Indianapolis has become a major distribution center. Federal Express and U.S. Postal Service have both established distribution hubs in Indianapolis which emphasizes our importance and continued development as a distribution center. In addition, over 75 trucking firms have terminals in the Indianapolis area providing extensive truck transportation and creating a large potential intermodal market.

Overview

As Mayor, I am admittedly not a rail expert. Therefore, I will reserve the technical discussion for the appropriate parties. However, I do recognize that as a major manufacturing and distribution hub Indianapolis must be a marketplace that allows competitive access to transportation and distribution services. Therefore, the railroads servicing our city are very important to the local, state and national economy.

The City of Indianapolis is largely concerned regarding the CSX and NS acquisition of Conrail, and will only intervene, to the extent that the public interest is at stake. This is the case regarding the Conrail acquisition. From an economic development perspective, communities will be placed at a severe competitive and comparative disadvantage if held captive to a single railroad. I believe the acquisition of Conrail by CSX and NS, as currently structured, does not create a competitive rail environment in Indianapolis. Indianapolis will become captive to a single railroad in which competitive market forces will be eliminated.

At a minimum, the competitive presence of two Class-one railroads in Indianapolis must be maintained. It seems very unlikely NS will be in a position to establish any degree of presence, let alone compete, through the ability to only serve one industry directly and without owning any assets.

Situational Overview

Currently, two class one railroads, CSX and Conrail, own and operate track in our city. Three shortline railroads offer service directly to Indianapolis: The Indiana Railroad Company, Indiana Southern Railroad, The Louisville & Indiana Railroad. At a minimum, 66 individual industries are open to both CSX and Conrail. These businesses employ approximately 40,238 workers, ship over 4 Million tons of materials which is over 65,000 car loads, and generate well over \$64 Million in revenue for the railroads. These figures do not account for traffic already captive to a single carrier, the market value of these goods, or the volume of traffic with moves through Indianapolis.

Under the proposed CSX/NS acquisition of Conrail, CSX will get all Conrail assets in Indianapolis, leaving it the exclusive provider of Class I rail service. To remedy this problem, CSX proposes to let NS serve existing customers in Indianapolis that are served by CSX and Conrail (2 to 1 customers). NS will enter Indianapolis on trackage owned and controlled by CSX via trackage rights. NS will be assigned interchange tracks at Hawthorne Yard, also owned and controlled by CSX. CSX will provide switching services at 2 to 1 firms for a "to be determined" cost-based charge.

City's Actions

Due to the importance of railroad transportation to our city's economy and the large presence of Conrail, the City of Indianapolis began monitoring the acquisition in January 1997. Once it became apparent CSX and NS would jointly file with the STB to acquire Conrail, the city conducted a forum on May 15 to allow CSX and NS the opportunity to present their preliminary plan and hear comments of local businesses. Through a number of subsequent formal meetings, telephone calls and written comments, the consensus emerged that the current competitive situation within Indianapolis is in jeopardy. In addition, Indianapolis could further become a marketplace captive to one railroad.

In order to most accurately assess the acquisitions effects, we requested information from both NS and CSX. These requests were never responded to in a satisfactory manner with pertinent information. As a result, the city filed discovery and participated in the deposition proceedings established by the Surface Transportation Board.

Indy-ACTS (Association for Competitive Transportation Services) was formed to more efficiently share information and formalize a consensus position. The groups membership consisted of local shippers, shortlines, real estate developers and economic development organizations. John Hall, a former Vice President of Burlington Northern, was hired as a consultant.

The City continued to express its concern as did many members of the Indiana Congressional Delegation. I invited John Snow, Chairman CSX, to Indianapolis to meet with me. Written statements from United States Senator's Richard Lugar and Dan Coats, United States Representatives Dan Burton, Julia Carson and David McIntosh expressed their concern and encouraged an agreement to be reached between CSX and the City of Indianapolis. Despite Congressional and Mayoral objection to the plan in Indianapolis, and our desire to negotiate a reasonable agreement, to date, CSX and the City have not reached an agreement to effectively correct the problems in Indianapolis under the proposed transaction.

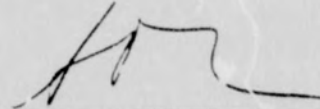
Conclusion

The City has made extensive efforts to gain information and reach a settlement with CSX and NS that would meet our mutual needs. These efforts have not been successful to date. The City of Indianapolis is formally opposed to the proposed CSX and NS acquisition of Conrail unless the conditions outlined by our expert John Hall are adopted by the Board. I ask that the STB strongly consider the recommendations of John Hall.

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Verification

I, Stephen Goldsmith, Mayor of the City of Indianapolis, Indiana, affirm under penalties of perjury that the statements herein contained are true to the best of my knowledge, information and belief.



Stephen Goldsmith
Mayor, City of Indianapolis, Indiana

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Stephen Goldsmith, Mayor of the City of Indianapolis, Indiana, who acknowledged the execution of the foregoing, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS MY HAND and Notarial Seal this 17th day of October, 1997

My Commission Expires:

11-28-97

My County of Residence:

Marion

DALA D. STAHLEY

Notary Public - Written



Notary Public - Printed

NOTARY: AFFIX SEAL

STB

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JEFFREY A. BARTOS
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ELISE B. STEINBERG
ANDREA HOLLAND LARUE*

*NOT ADMITTED IN D.C.

October 21, 1997



VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
325 K Street, N.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding, please find an original and 25 copies of the Comments of the United Railway Supervisors Association ("URSA"). Also enclosed is a 3.5" diskette containing the text of this filing in WordPerfect 6.0/6.1 format.

I have included an additional copy to be date-stamped and returned with our messenger.

Thank you for your attention to this matter.

Sincerely,

Debra L. Willen
Counsel for URSA

DLW:mmw

cc: Norman Schultz
Richard P. Miller
W.P. Hernan, Jr.
L.A. Michaels

182784

FILED
The Secretary

OCT 21 1997

U.S. DEPT. OF
TRANSPORTATION

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388

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

COMMENTS OF THE UNITED RAILWAY SUPERVISORS ASSOCIATION
UPON RAILROAD CONTROL APPLICATION

The United Railway Supervisors Association ("URSA") hereby submits its Comments upon the control and operating leases/agreements application of CSX Corporation ("CSX"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Co. ("NSR"), Conrail, Inc. ("CRR"), and Consolidated Rail Corporation ("CRC") (hereinafter collectively "the Applicants").¹

URSA opposes the proposed transaction. Specifically, URSA opposes the Applicants' plan to abrogate URSA's collective bargaining agreements with Conrail and, in effect, to extinguish certifications issued to URSA by the National Mediation Board ("NMB"), under the guise that such action is necessary to

¹ Hereinafter CSXC and CSXT are referred to collectively as "CSX," NSC and NSR are referred to collectively as "NS," and CRR and CRC are referred to collectively as "Conrail."

effectuate the proposed transaction within the meaning of 49 U.S.C. § 11321(a). In addition, URSA opposes the merger on the grounds that it will have a deleterious impact upon railway safety. Accordingly, URSA respectfully requests that the Surface Transportation Board ("STB" or "the Board") deny the pending application.

In the alternative, URSA urges the STB to condition any approval of this transaction upon the imposition of the New York Dock and other applicable labor protective provisions. Moreover, issues regarding the modification or abrogation of existing labor agreements must first be the subject of negotiation and arbitration pursuant to Article I, Section 4 of the New York Dock conditions and are not properly before the Board at this time. Further, the STB has no authority to interfere with URSA's representational rights pursuant to the Railway Labor Act, 45 U.S.C. §§ 151-88 ("the RLA").

FACTUAL BACKGROUND

URSA represents approximately 800 supervisory employees on the Conrail system. Specifically, URSA has been certified by the NMB to represent the following crafts or classes of Conrail employees: (1) the craft or class of foremen in the maintenance of equipment department and mechanical foreman in the maintenance of way department (Consolidated Rail Corp., 13 N.M.B. 371 (1986)); (2) the craft or class of subordinate officials in the maintenance of way, structures, communications and signal department (Consolidated Rail Corp., 13 N.M.B. 376 (1986)); and (3) the craft or class of

assistant district claim agents and claim agents (Consolidated Rail Corp., 12 N.M.F. 374 (1986)). The Applicants' Labor Impact Exhibit projects that 199 railway supervisor jobs would be abolished and four supervisor jobs would be transferred if the proposed transactions were approved. Applicants' Submission of 1995 Labor Impact Exhibit, CSX/NS-26, based on 1995 average head count, at 24.

In addition, the Applicants assert that implementation of their respective proposed Operating Plans would require the abrogation of existing URSA collective bargaining agreements. Both NS and CSX describe projected seniority, agreement and territory changes deemed necessary under their respective Operating Plans in Appendices A to those Plans. Specifically, NS proposes that all URSA-represented employees on the Conrail routes and facilities allocated to NS under the transaction become non-agreement employees of NS. Application, Vol. 3B at 365-68, 374, 377.

Similarly, CSX proposes that URSA-represented maintenance of way, communications and signal operations supervisors and the general claims agents on CSX's portion of Conrail routes, facilities and territories become non-agreement employees of CSX. Application, Vol. 3A at 493, 496, 506. CSX intends to consolidate URSA-represented mechanical supervisors with CSX's mechanical supervisory workforce and apply CSX collective bargaining agreements to those employees. *Id.* at 503-04. As a result, employees currently represented by URSA would thereafter be subject to an American Railway and Airway Supervisors Association ("ARASA") collective bargaining agreement. Deposition of Robert S. Spenski

and Kenneth R. Peifer (hereinafter "Spenski & Peifer Dep."), Tr. 138.

NS Vice President Labor Relations Robert S. Spenski, the NS official who sponsored the Labor Impact Exhibit and Appendix A to NS's Operating Plan, conceded in his deposition that he had never reviewed the Conrail collective bargaining agreements. *Id.*, Tr. 176. CSX Vice President Labor Relations Kenneth R. Peifer, testified that he "had an opportunity to just casually review some of the Conrail collective bargaining agreements." *Id.*, Tr. 175 (emphasis added). Neither carrier has conducted any studies to determine the costs of alleged inefficiencies that would result from continued application of those agreements. *Id.*, Tr. 88, 132, 139. Finally, the Applicants have made clear that neither NS nor CSX will deal with URSA as a collective bargaining representative after the URSA-represented employees are consolidated into their respective supervisory work forces. *Id.* at 136-37.²

ARGUMENT

I. THE CARRIERS INTEND TO INTERFERE WITH URSA'S REPRESENTATIONAL RIGHTS IN CONTRAVENTION OF THE RAILWAY LABOR ACT.

The proposed acquisition of control by CSX and NSC of Conrail and the division of the use and operation of Conrail's assets between them may be approved only if the proposed transaction is consistent with the public interest. 49 U.S.C. § 11324(c). In

² Apparently, however, Conrail will continue to recognize and deal with URSA as the collective bargaining representative of supervisory employees in the Shared Assets Area. *Id.* at 136.

making its public interest determination, the STB is required to consider "the interest of rail carrier employees affected by the proposed transaction[.]" 49 U.S.C. § 11324(b)(4). As noted above, NS intends to disregard NMB certifications issued to URSA pursuant to the RLA and to convert all URSA-represented employees to non-agreement employees; CSX plans to make the maintenance of way, communications and signal operations supervisors and the general claims agents on CSX's portion of Conrail non-agreement employees and to replace URSA with ARASA as the bargaining representative of URSA-represented mechanical supervisors. In this manner, the Applicants attempt to circumvent the exclusive jurisdiction of the NMB to determine representational questions involving rail carriers, pursuant to Section 2, Ninth of the RLA, 45 U.S.C. § 152, Ninth.

Until recently, a rail carrier could petition for investigation of a representation dispute arising out of a merger. Procedures for Handling Representation Issues Resulting From Mergers, Acquisitions or Consolidations in the Railroad Industry, 17 NMB 44 (1989) (hereinafter "Rail Merger Procedures"). Then, in RLEA V. NMB, 29 F.3d 655 (D.C. Cir. 1994), cert. denied, 514 U.S. 1032 (1995), the Court of Appeals for the D.C. Circuit invalidated this portion of the NMB's Rail Merger Procedures and held that the NMB's investigation of representation matters may be commenced only at the request of employees in the applicable craft or class or by a labor organization acting on those employees' behalf. Id. at 664-71.

That does not mean, however, that a carrier may now engage in self-help to resolve representational questions following a merger of formerly separate railroads. "[T]he National Mediation Board has plenary authority with respect to the impact of corporate mergers, acquisitions and consolidations on NMB representation certifications." Rail Merger Procedures, 17 N.M.B. at 48. Indeed, "all of the courts of appeals to have considered the issue ... have held that the question whether a union's certification survives [a] ... merger is a matter within the exclusive jurisdiction of the NMB." Association of Flight Attendants v. Delta Air Lines, Inc., 879 F.2d 906, 912 (D.C. Cir. 1989), cert. denied, 494 U.S. 1065 (1990), citing International Ass'n of Machinists v. Northeast Airlines, Inc., 536 F.2d 975, 977 (1st Cir. 1976); Air Line Pilots Ass'n v. Texas Int'l Airlines, Inc., 656 F.2d 16, 23-24 (2d Cir. 1981); International Bhd. of Teamsters v. Texas Int'l Airlines, Inc., 717 F.2d 157, 159 (5th Cir. 1983); Brotherhood of Ry. Clerks v. United Air Lines, Inc., 325 F.2d 576, 579-80 (6th Cir. 1963); Air Line Employees Ass'n v. Republic Airlines, Inc., 798 F.2d 967, 968-69 (7th Cir. 1986).

Thus, after a merger, union certifications can only be extinguished by an order of the NMB. Rail Merger Procedures, 17 N.M.B. at 47. Yet NS and CSX have proposed to extinguish URSA's certifications without the NMB's involvement. The immediate effect of the Applicants' proposal to "coordinate" Conrail first-line supervisors into CSX's and NS's non-agreement supervisory workforce (e.g., Application, Vol. 3A at 493; Vol. 3B at 367) would be just

that -- the extinguishment of URSA's certifications to represent those employees. CSX's proposal to place the mechanical supervisors represented by URSA under an ARASA collective bargaining agreement would have the same impact upon URSA's certification to represent that craft or class of employees. Such actions clearly would violate Section 2, Ninth of the RLA.

The Applicants should not be permitted to avoid the requirements of Section 2, Ninth through an override of URSA's collective bargaining agreements pursuant to 49 U.S.C. § 11321(a). Although that provision grants the STB authority to override provisions of a collective bargaining agreement in certain narrowly-prescribed instances, "it is clear that the [Board] may not modify a CBA [collective bargaining agreement] willy-nilly.... The [Interstate Commerce] Commission itself has stated that it may modify a collective bargaining agreement ... only as 'necessary' to effectuate a covered transaction." RLEA v. United States, 987 F.2d 806, 814 (D.C. Cir. 1993) (citation omitted). Presumably, NS and CSX had adequate time before seeking the Board's approval of the instant transaction to assess the benefits and the costs of the transaction with full knowledge of Conrail's pre-existing legal obligations to its unionized employees. The Applicants should not be permitted to totally disregard those legal obligations for the sake of administrative convenience. "[P]arties to contracts should not easily be relieved of obligations voluntarily undertaken." CSX Corp. -- Control -- Chessie System, Inc. and Seaboard Coast Line Indus., Inc., 6 I.C.C. 2d 715, 749 (1990).

More importantly, however, the Board cannot allow the Applicants to utilize this statutory provision as a means of interfering with URSA's representational rights under the RLA, in contravention of the NMB's exclusive jurisdiction.

**II. IMPLEMENTATION OF THE APPLICANTS' PROPOSED
OPERATING PLANS WOULD HAVE A DELETERIOUS IMPACT
UPON RAIL SAFETY.**

There is ample evidence that mergers of major rail carriers create significant new safety problems. Based upon the Applicant's proposed Operating Plans and the safety record of CSX, it is virtually certain that this dangerous pattern will be repeated here.

The U.S. Department of Transportation's Federal Railroad Administration ("FRA") has identified several specific areas of safety concern that have arisen following the Burlington Northern - Santa Fe and Union Pacific - Southern Pacific mergers, including train control systems, training and quality control at dispatch centers, train inspections and identification of hazardous materials, and hours of service for train crews. FRA 17-97, Aug. 21, 1997.

In particular, Union Pacific ("UP") has experienced "a fundamental breakdown in the railroad's ability to effectively implement basic railroad operating procedures and practices essential to safe railroad operations." FRA 19-97, Sept. 10, 1997. Last summer, there were three collisions on the UP system, causing the death of seven individuals, including five railroad employees, and millions of dollars in property damage. Two additional

collisions followed. Moreover, since the beginning of the year, four UP train service employees lost their lives in yard switching accidents. FRA Summary, Union Pacific Railroad Safety Assurance Assessment, Sept. 10, 1997.

As a result of these incidents, the FRA conducted a comprehensive safety inspection of UP in late August. The agency found several deficiencies resulting in significant safety hazards, including the following: ineffective crew utilization, causing crews to work longer hours with less off-duty time; inadequate supervision of employee performance; dispatching supervisors' unfamiliarity with the territories of the dispatchers they supervise; dispatcher fatigue; dispatching conflicts; failure to comply with operating rules; infrequency of safety job briefings; lack of employee training on new equipment; use of defective equipment on trains; locomotive defects; inconsistent drug testing of train crews; lack of proper familiarization trips for locomotive engineers; and widespread harassment and intimidation of employees to not report defects and injuries. Id.; FRA 19-97, Sept. 10, 1997.

Given the safety record of CSX, we can only expect the transaction proposed in the instant proceeding to have a similar impact upon public safety. Thus, a series of incidents this past summer led to a comprehensive FRA audit of the CSX system: a CSX collision in West Virginia that caused one fatality and other employee injuries; a 34-car derailment in Florida resulting in a leak of hazardous materials and evacuation of local citizens; a

derailment of a CSX intermodal freight train that then side-swiped a passing Amtrak passenger train in Virginia; the fall of a truck trailer from a flat car in Maryland; and a side-swipe collision in Illinois that caused the derailment of a hazardous materials tank car, which then caught fire. FRA 25-97, Oct. 16, 1997.

Based upon its audit, the FRA presented an extremely critical report to CSX Chairman John Snow. Id.; Safety Assurance and Compliance Program Report for CSX Transportation, Inc., Executive Summary. The FRA found severe shortcomings in each of the functional areas of railroad operation. In the signals and train control area, FRA inspectors discovered poorly maintained pole lines, poor visibility of wayside signals and grade-crossing lights, incorrect and incomplete circuit plans, defective switches and insufficient training of signal employees. Id. at iv-v. Operational testing is insufficient; crew management inefficiencies result in extended duty days and inadequate rest periods; and employee injuries and rail equipment accidents are significantly under-reported. Id. at v-vi. In the hazardous materials area, FRA agents uncovered instances in which defective tank cars were moved, hazardous cars were not properly placarded, and employees had not received sufficient training. Id. at vii. FRA track inspectors found overgrown vegetation, saturated subgrade and defective rails on main tracks. Id. at viii. Locomotive inspections are inadequate and infrequent, and there is a lack of quality control over outside contractors who load trailers and containers. Id. at ix. Finally, the FRA found serious deficiencies in CSX's safety

culture. Train operations are emphasized over safety considerations, and employees who raise safety concerns face harassment and intimidation. Id. at ix-x.

The Applicants' own Operating Plans further indicate that the UP experience is likely to be repeated here. For example, the Applicants have touted their plans to centralize dispatcher supervision (Application, Vol. 3A at 504-05; Vol. 3B at 376-77), plans that make supervisor unfamiliarity with the territories of the dispatchers they supervise a greater likelihood. In addition, the Applicants intend to increase seniority districts for train crews, communications and signal employees and maintenance of way employees (Application, Vol. 3A at 486-88, 490-91, 493-94; Vol. 3B at 357-58, 365-372), which will mean that those employees will work more frequently in unfamiliar territory and have to travel greater distances. Reductions in maintenance of way employment and in the number of shopcraft employees who maintain and repair locomotives and cars, (Applicants' Submission of 1995 Labor Impact Exhibit, CSX/NS-26), without corresponding reductions in fleet size, rail lines or traffic, is certain to create maintenance deficiencies and lead to the use of defective equipment.

Accordingly, the proposed transaction would have a deleterious effect upon public safety in general and the safety of rail labor in particular. For this reason also, URSA opposes the instant application.

III. IN THE EVENT THAT THE PENDING APPLICATION IS APPROVED, THE BOARD SHOULD IMPOSE THE NEW YORK DOCK PROTECTIVE CONDITIONS AND LEAVE TO THE ARTICLE I, SECTION 4 PROCESS ISSUES REGARDING THE CONTINUED APPLICABILITY OF CONRAIL COLLECTIVE BARGAINING AGREEMENTS.

The Applicants have acknowledged that approval of the primary application is subject to the employee protective conditions set forth in New York Dock Railway--Control--Brooklyn Eastern District, 360 I.C.C. 60, aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979) and that related trackage rights, abandonments, and lease approvals are subject to the Norfolk and Western, Oregon Short Line and Mendocino Coast conditions. Application, Vol. 1 at 25; Joint Verified Statement of Kenneth R. Peifer and Robert S. Spenski at 6, contained in Vol. 3A at 525 and Vol. 3B at 498. URSA respectfully requests that approval by the Board of the primary application be conditioned upon the standard New York Dock protections.

Moreover, it is well established that Article I, Section 4 of the New York Dock conditions sets forth the required procedure for reaching an implementing agreement to effect a subject transaction. Thus, although the Applicants have set forth in Appendices A to their Operating Plans projected changes in collective bargaining agreements, any such changes would be subject to collective bargaining and ultimately arbitration pursuant to Article I, Section 4. Indeed, the Interstate Commerce Commission "g[a]ve arbitrators the prime responsibility for achieving a balance between collective bargaining rights and consolidation

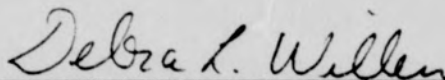
efficiencies...." CSX Corp. -- Control -- Chessie System, Inc. and Seaboard Coast Line Indus., Inc., 6 I.C.C. 2d at n. 31.

Accordingly, prior to the parties' exhaustion of the Article I, Section 4 procedure, it would be premature for the Board to make any findings regarding the necessity of overriding any provisions of the Conrail collective bargaining agreements to effectuate this covered transaction.

CONCLUSION

For all these reasons, URSA respectfully submits that the instant application should be denied. In the event that the application is approved, however, approval should be conditioned upon the New York Dock protective provisions.

Respectfully submitted,



Debra L. Willen
GUERRIERI, EDMOND & CLAYMAN, P.C.
1331 F Street, N.W.
Suite 400
Washington, D.C. 20004
(202) 624-7400

Counsel for the United Railway
Supervisors Association

Date: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of the United Railway Supervisors' Association were served this 21st day of October, 1997, by first-class mail, postage pre-paid, upon all parties of record in this proceeding.

Debra L. Willen

Debra L. Willen

STB

FD

33388

10-20-97

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182754

NEFCO

182754

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING & DEVELOPMENT ORGANIZATION

969 Copley Road, Akron, Ohio 44320-2992

(330) 836-5731 • Fax (330) 836-7703

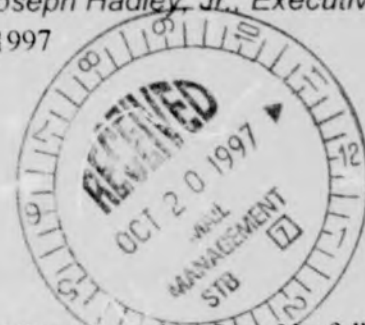
Christopher Smeiles, Chairman

Joseph Hadley, Jr., Executive Director

October 21, 1997

VIA HAND DELIVERY

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



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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty-five (25) copies of a Request for Conditional Operating Rights for METRO Regional Transit Authority (MRTA-1). Also enclosed are a 3.5-inch disk containing the text of this request in WordPerfect 6.1 format and certificate of service.

This submission is being made by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO) as a party of record on behalf of METRO Regional Transit Authority (RTA). NEFCO is a regional council representing Portage, Stark, Summit, and Wayne counties and their local governments in northeast Ohio in the areas of economic and environmental planning. NEFCO also serves as a forum for regional issues such as the establishment of commuter rail. The attached document requests trackage rights for a rail corridor that will directly affect at least two of NEFCO's counties. In making this request, METRO RTA is acting as an agent of one of our member counties.

Copies of MRTA-1 are being served via first-class mail, postage prepaid on the Honorable Jacob Leventhal, counsel for Applicants, the U.S. Secretary of Transportation, All Parties of Record, the U.S. Attorney General. If you have any questions, please contact me at (330) 836-5731. Thank you.

Sincerely,

Sylvia R. Chinn-Levy
Economic Development Planner

SRC:rlm

Enclosures

pc: U.S. Secretary of Transportation
Counsel for Applicants
All Parties of Record
U.S. Attorney General
Hon. Jacob Leventhal



Cooperation and Coordination in Development Planning
among the Units of Government in Portage, Stark, Summit and Wayne Counties

182754

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 LEASE/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY
--OPERATING RIGHTS--
LINES OF CONSOLIDATED RAIL CORPORATION

REQUEST FOR CONDITION

Sylvia Chinn-Levy
Economic Development Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44310
(330) 762-7267

Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Dated: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33386

NORTHEAST OHIO FOUR COUNTY REGIONAL PLANNING AND DEVELOPMENT
ORGANIZATION

on behalf of

METRO REGIONAL TRANSIT AUTHORITY

**REQUEST FOR CONDITIONAL OPERATING RIGHTS
FOR THE METRO REGIONAL TRANSIT AUTHORITY**

The Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") is a regional council of local governmental units in Portage, Stark, Summit, and Wayne Counties, Ohio, based at 969 Copley Rd., Akron, Ohio 44320-5731, and participant of record in this proceeding. The METRO Regional Transit Authority ("METRO") operates a county-wide mass transit system transporting citizens of Summit County within the Cleveland-Akron-Lorain Consolidated Metropolitan Statistical Area ("CMSA") authorized by Ohio Revised Code section 306.31. METRO is a political subdivision of the state with all the powers of a corporation; its office location is at 416 Kenmore Boulevard, Akron, Ohio 44301-1099 and is served by NEFCO.

METRO believes the proposed control and realignment of trackage operations in Northeast Ohio by CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") will have serious impacts on future commuter rail operations in Ohio which could prohibit adequate

public transportation absent conditions to ameliorate this potential harm. Therefore, METRO opposes the merger-acquisition of the Consolidated Railway Corporation ("Conrail") by CSX and NS without a condition¹ for commuter rail operating rights on what is currently the Conrail mainline connecting Cleveland and Hudson, Ohio.

METRO has been actively pursuing a commuter rail transportation system to link the cities of Canton, Akron, and Cleveland ("CAC corridor") in Ohio. The Ohio Department of Transportation ("ODOT") initially recognized the potential for economic growth and business development through the construction of a commuter rail system in the CAC corridor.² Paralleling the State's policy statement, a study conducted by URS in 1995 identified the Conrail mainline connecting Hudson and Cleveland³ as the "favor[ed]" alternative rail line to connect the cities of Akron and Cleveland. Again in January 1997, ODOT recognized commuter rail service in its Major Investment Study ("MIS") of Interstate I-77, affirming commuter rail service as a component⁴ of the "preferred alternative" to reduce traffic congestion on I-77 between Canton and Akron.⁵

Extensive resources are already invested in the CAC corridor; the Hudson to Cleveland mainline is a key component to completing this project. Cooperating agencies have spent or

¹METRO is relying upon Board Decision No. 33, served September 17, 1997, which provided a waiver of the formal responsive application process for commuter rail systems currently operating. METRO requests that the Board offer instruction as to what information must be submitted to grant conditional operating rights for potential commuter rail operations.

²State Policy Statement on Commuter Rail, Excerpt from: ACCESS OHIO, OHIO MULTI-MODAL STATE TRANSPORTATION PLAN TO THE YEAR 2020, Ohio Department of Transportation, October 1993, p. 21.

³SCATS/METRO RTA-AKRON/GREATER CLEVELAND RTA: Alternative Implementation Report Canton-Akron-Cleveland via Kent/W&LE, conducted by URS Consultants, October 1995, p. 3-28. "In the context of the project objectives, a comparison of technical characteristics favors the selection of the route via Hudson for further consideration of Canton-Akron-Cleveland commuter rail demonstration service" (emphasis added). See also, URS Study, Figure 2, Route Via Hudson (CR/CSX).

⁴See, n.5. In addition to the development of a commuter rail system, the MIS report recommended the addition of a general purpose lane being added to I-77 in each direction.

⁵See, "Interstate 77 Corridor Major Investment Study: Stark/Summit Counties," Ohio Department of Transportation, Office of Planning, prepared January 9, 1997, p. 50.

appropriated \$10,726,627⁶ for the development of commuter rail service. In addition, the Northeast Ohio Areawide Coordinating Agency⁷("NOACA") was appropriated approximately \$1.5 million to conduct the Northeast Ohio Commuter Rail Feasibility Study in ISTEA.⁸ There is currently a proposed allocation of \$2.0 million pending in Congress for an MIS to study the impact of commuter rail, specifically in the CAC corridor.⁹

One of the proposed regional commuter rail routes in Northeast Ohio would operate on what is currently the Conrail mainline. METRO's working relationship with Conrail will be dissolved as a result of the acquisition. According to the proposed realignment, NS will have ownership rights to this trackage. NS has been responsive to the invitation for dialogue concerning the use of this line for passenger service; however, in light of the magnitude and funds invested in this project, the absence of guaranteed Conditional Operating Rights would jeopardize the efficient implementation and operation of commuter rail in Northeast Ohio.

⁶ Federal Highway Administration's Surface Transportation Program ("FHWA STP")		
Freedom Secondary and	FHWA STP (AMATS)	\$ 517,475
Akron Secondary Purchase Price	FHWA STP (ODOT)	394,297
	FHWA STP (ODOT)	76,200
	METRO	<u>71,658</u>
	Sub-Total	\$ 1,059,630
CSX (Sandyville Local)	FHWA STP (SCATS)	\$ 1,000,000
Purchase Allocation	FTA Sec. 5309	<u>992,500</u>
	Sub-Total	\$ 1,992,500
Other Federal Approp.	FY 96-Sec. 5309	\$ 4,198,917
For Sandyville Rehab.	FY 97-Sec. 5309	<u>3,475,580</u>
	Sub-Total	<u>\$ 7,674,497</u>
Total		\$10,726,627

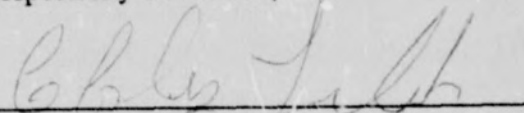
⁷NOACA is the Metropolitan Planning Organization ("MPO") for portions of Cuyahoga, Medina, Lorain, Lake, and Geauga Counties.

⁸Inter-modal Surface Transportation Efficiency Act of 1991, Publ. L. No. 102-240 (codified as amended at 49 U.S.C. Section 1601 et seq.).

⁹See, Fiscal Year (FY) 1998 Transportation Appropriations Act, H.R. 2169, 105th Congress, (1997) (recently passed as a conference agreement by the House and Senate on October 9, 1997).

WHEREFORE, NEFCO, representing its members' interests, on behalf of METRO Regional Transit Authority respectfully submits this request for conditional operating rights as a condition precedent to the acquisition's approval in this proceeding.

Respectfully Submitted,



Charles Zumkehr
Roetzel & Andress Co. LPA
75 East Market Street
Akron, Ohio 44308
(330) 376-2700
Counsel

Sylvia Chinn-Levy
Economic Planner and Intergovernmental
Review Coordinator
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, Ohio 44320-2992
(330) 836-5731
Filing on behalf of METRO Regional Transit Authority
as a Participant of Record

Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44310
(330) 762-7267

Dated: October 21, 1997

RALPH REGULA
16TH DISTRICT, OHIO

RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3516
(202) 225-3676

DISTRICT OFFICE
4150 BELDEN VILLAGE STREET NW
SUITE 408
CANTON, OH 44718
(330) 439-4414

TOLL-FREE DISTRICT NUMBER
1-800-828-9015



Handwritten signature/initials

COMMITTEE:
APPROPRIATIONS
SUBCOMMITTEES:
CHAIRMAN, INTERIOR
TRANSPORTATION
COMMERCE, STATE, JUSTICE

Congress of the United States
House of Representatives
Washington, DC 20515-3516

October 14, 1997

Mr. Robert K. Pfaff
General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44301

Dear Mr. Pfaff:

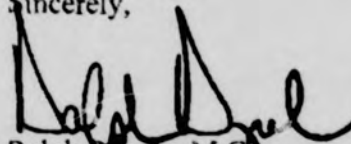
I believe the implementation of a passenger rail system in the Canton-Akron-Cleveland corridor is vital to the continued economic development of the region. This passenger rail system will improve the mobility of people in the region and provide a viable alternative to automobile usage. The rail corridor parallels areas of Interstate 77 that, according to the Ohio Department of Transportation, has reached unacceptable congestion levels. By using an alternative mode of transportation, the need for additional highway infrastructure could be reduced.

We understand that METRO purchased, or is attempting to purchase, nearly forty miles of trackage with federal transportation funds. This purchase has preserved this vital transportation infrastructure for future development and transit use.

In order to protect the public investment in these rail rights-of-way, I support METRO's efforts to secure operating rights in the Conrail mainline between Hudson and Cleveland. If this condition is not granted in the merger on Conrail with Norfolk-Southern and CSX, passenger rail service in Northeast Ohio may never become a reality.

Thank you for your leadership in this effort. With best wishes, I am

Sincerely,


Ralph Regula, M.C.



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE, 25 S. FRONT STREET, P.O. BOX 899, COLUMBUS, OHIO 43216-0899

October 17, 1997

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

RE: Finance Docket No. 33388

Dear Mr. Williams:

The Ohio Department of Transportation supports the petition of the METRO Regional Transit Authority of Akron, Ohio to secure operating rights on the Conrail mainline between Hudson and Cleveland, Ohio. This petition is filed in response to the Surface Transportation Board's review of the Conrail merger with CSX and Norfolk Southern.

The METRO Regional Transit Authority currently owns more than fifteen miles of trackage and is negotiating with CSX to purchase another twenty-one miles. Federal Transit Administration (FTA) funds were used for these purchases. These expenditures have preserved rail infrastructures for future development and commuter rail service use.

We believe the implementation of a passenger rail system in the Canton-Akron-Cleveland (CAC) corridor is vital to the continued economic development of the region. The CAC corridor, specifically the Conrail segment, is crucial to the implementation of a passenger rail system in Northeast Ohio. This system will provide a viable alternative to the automobile while improving the mobility of people in the region. This rail line parallels areas of Interstate 77 which is considered one of the most congested corridors in the state. By using this alternative mode of transportation, the need for additional highway infrastructure could be reduced.

Respectfully,

A handwritten signature in cursive script that reads "Jerry Wray".

Jerry Wray
Director

JW:llf

c: Robert Pfaff, METRO


**AMATS****AKRON METROPOLITAN AREA TRANSPORTATION STUDY**806 CitiCenter / 146 South High Street / Akron, OH 44308-1423
(330) 375-2436 FAX (330) 375-2275

October 14, 1997

Mr. Robert K. Pfaff
General Manager
METRO Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44301

Dear Mr. Pfaff

The Akron Metropolitan Area Transportation Study (or AMATS) is the Metropolitan Planning Organization responsible for regional transportation planning in Summit and Portage Counties and portions of Wayne County in Ohio. The purpose of this letter is to respond to your request for an AMATS letter of support for the implementation of a passenger rail corridor linking Canton, Akron and Cleveland in northeast Ohio.

As you know, the AMATS Policy Committee has supported various rail preservation projects in northeast Ohio in the past. These projects include:

1. Freedom Secondary and
Akron Secondary Purchases - \$ 1,059,630
2. CSX (Sandyville Local) Purchase - 1,992,500
3. Sandyville Local Rehab - 7,674,497

TOTAL - \$10,726,627

Furthermore, the AMATS Policy Committee officially endorsed the concept of Canton-Akron-Cleveland (or CAC) passenger rail service at their meeting on January 22, 1997. At this meeting, the Policy Committee amended the AMATS Statement of Long Range Public Transportation Needs for the CAC project and indicated that the most probable alignment for this service (pending the completion of a Major Investment Study) includes the CSX (Sandyville Local) trackage between Canton and Akron, the Summit County Port Authority trackage between Akron and Hudson, and CONRAIL trackage between Hudson and Cleveland.

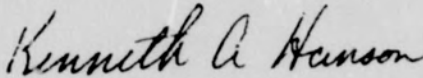


Mr. Robert K. Pfaff
October 14, 1997
Page 2

In conformance with the AMATS Policy Committee's action on January 22, 1997, the Staff supports METRO's efforts to secure operating rights on the CONRAIL mainline between Hudson and Cleveland. If this condition is not granted in the acquisition of CONRAIL by Norfolk Southern and CSX, it may never be possible to implement passenger rail service between Canton, Akron and Cleveland.

If you have any questions regarding this letter of support, please contact me or Bill Murphy at 330-375-2436.

Yours truly,



Kenneth A. Hanson, P.E.
Technical Director

KAH:lmw

cc: Mr. Murphy
Mr. Schafer, ODOT District 4



STARK AREA REGIONAL TRANSIT AUTHORITY

1600 GATEWAY BLVD., SE
PHONE: (330) 454-6132

CANTON, OHIO 44707
FAX: (330) 454-5476

October 12, 1997

Mr. Robert K. Pfaff, General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, OH 44301

Dear Mr. Pfaff:

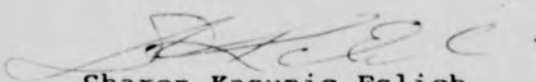
We believe the implementation of a passenger rail system in the Canton-Akron-Cleveland corridor is vital to the continued economic development of the region. This passenger rail system will improve the mobility of people in the region and provide a viable alternative to automobile usage; this rail corridor parallels areas of Interstate 77 that, according to the Ohio Department of Transportation, has reached unacceptable congestion levels. By using an alternative mode of transportation, the need for a 'ditional highway infrastructure could be reduced.

We understand that METRO purchased or is attempting to purchase nearly forty miles of trackage with federal transportation funds. This purchase has preserved this vital transportation infrastructure for future development and transit use.

In order to protect the public investment in these rail rights-of-way, we support METRO's efforts to secure operating rights in the Conrail mainline between Hudson and Cleveland. If this condition is not granted in the merger on Conrail with Northfolk-Southern and CSX, passenger rail service in Northeast Ohio may never become a reality.

If you have any questions, please feel from to contact our offices.

Sincerely,


Sharon Kasunic Eslich
Executive Director

SUMMIT COUNTY, OHIO

TIM DAVIS, EXECUTIVE

October 12, 1997

Mr. Robert K. Pfaff, General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, Ohio 44301

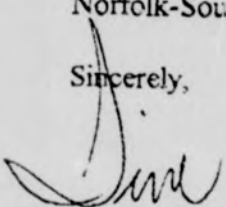
Dear Mr. Pfaff:

I believe the implementation of a passenger rail system in the Canton-Akron-Cleveland corridor is vital to the continued economic development of this region. The passenger rail system will improve the mobility of people in the region and provide a viable alternative to automobile usage. This rail corridor parallels some areas of Interstate 77 which has reached unacceptable congestion levels according to the Ohio Department of Transportation. With an alternative mode of transportation, the need for additional highway infrastructure could be reduced.

It is my understanding that METRO purchased, or is attempting to purchase nearly forty miles of track with federal transportation funds. This purchase has maintained this vital transportation infrastructure for future development and transit use.

I whole heartedly support METRO's efforts to acquire operating rights in the Conrail mainline between Hudson and Cleveland. If this condition is not granted in the merger on Conrail with Norfolk-Southern and CSX, passenger rail service in Northeast Ohio may never become a reality.

Sincerely,


TIM DAVIS
EXECUTIVE

TD:kp

OFFICE OF EXECUTIVE

175 S. MAIN STREET □ AKRON, OHIO 44308-1308

(330) 643-2510 C: FAX: (330) 643-2507

Home of the All-American
Soap Box Derby



OCT 11 1997

City of Stow

3760 Darrow Road • Stow, Ohio 44224 • Phone (330) 688-8206

October 9, 1997

Donald J. Coughlin, Mayor

Mr. Robert K. Pfaff, General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44301

Dear Mr. Pfaff:

I believe the implementation of a passenger rail system in the Canton-Akron-Cleveland corridor is vital to the continued economic development of the region. This passenger rail system will improve the mobility of people in the region and provide a viable alternative to automobile usage; this rail corridor parallels areas of Interstate 77 that, according to the Ohio Department of Transportation, has reached unacceptable congestion levels. By using an alternative mode of transportation, the need for additional highway infrastructure could be reduced.

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I grew up outside New York City and the safest and most reliable means of transportation was either bus or rail, both public mass-transportation systems. As the population of northeast Ohio grows, we must be prepared to offer the entangled motorist, an alternate, safe method of travel to and from work and this is commuter rail service.

I fully support METRO's efforts to gain operating rights on the Conrail mainline.

Sincerely,

Donald J. Coughlin
Mayor of Stow

Proud of our Progress



The Right Time, The Right Place

9699 Valley View Road • Macedonia, Ohio 44056
216 / 468-1300
FAX: 216 / 468-3758



*Office Of The Mayor
Joseph Migliorini, Mayor*

OCT 14 1997

October 10, 1997

Mr. Robert K. Pfaff, General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, OH 44301

Dear Mr. Pfaff:

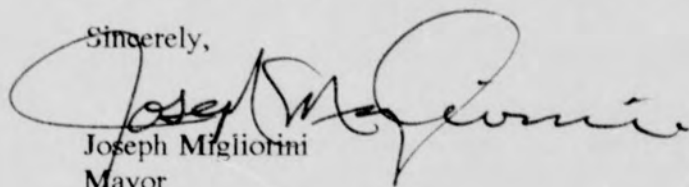
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If you have any questions, please feel free to contact our offices.

Sincerely,


Joseph Migliorini
Mayor
JM/mh

October 12, 1997

Mr. Robert K. Pfaff, General Manager, Secretary-Treasurer
METRO Regional Transit Authority
416 Kenmore Blvd.
Akron, OH 44301

Dear Mr. Pfaff:

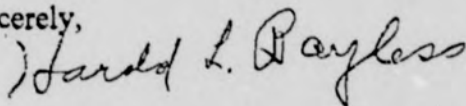
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If you have any questions, please feel free to contact our offices.

Sincerely,



Signature

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 1997, I served a copy of the Request for Conditional Operating Rights for The METRO Regional Transit Authority by first class mail, postage prepaid, upon:

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

Administrative Law Judge Jacob Leventhal
Federal Energy Regulatory Commission
888 First Street, NE, Suite 11F
Washington, D.C. 20004-1202

Paul A. Cunningham, Esq.
Markins Cunningham
1300 19th Street, N.W., Suite 600
Washington, D.C. 20002

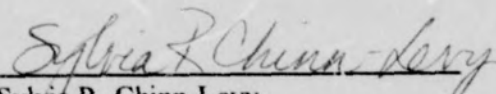
Dennis G. Lyons
Arnold & Porter
555 12th St. NW
Washington, D.C. 20004-1202

Janet Reno
U.S. Attorney General
U.S. Dept. of Justice
Tenth St. and Constitution Ave. NW
Washington, D.C. 20530

Rodney Slater
Secretary of Transportation
U.S. Dept. of Transportation
400 Seventh St. SW
Washington, D.C. 20590

Samuel M. Sipe, Jr., Esq.
Steptoe and Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795

and upon all other Parties of Record in this proceeding.


Sylvia R. Chinn-Levy
Northeast Ohio Four County Regional Planning
and Development Organization
969 Copley Road
Akron, OH 44320

STB

FD

33388

10-20-97

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QUANTUM RESEARCH CORPORATION

7315 Wisconsin Avenue • Suite 400W • Bethesda, MD 20814-3202
(301) 657-3070 • Fax: (301) 657-3862 • <http://www.qrc.com>

October 21, 1997

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW, Suite 700
Washington, DC 20423-0001



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

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding are an original and twenty-five copies of Indiana Port Commission's **Request for Conditions**. The submission is marked IPC-2.

Copies of this IPC-2 have been served by first class mail, postage prepaid on all designated parties of record in this proceeding.

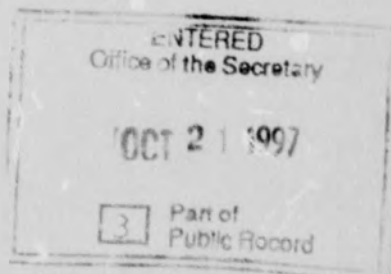
A computer diskette containing the text of this filing, in Microsoft Word 97 is also enclosed.

Respectfully submitted,

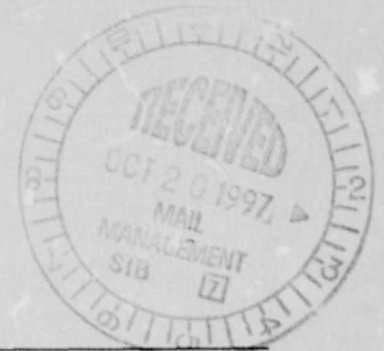
A handwritten signature in dark ink, appearing to read "David G. Abraham".

David G. Abraham
Registered Representative for
Indiana Port Commission

enclosures



182752



BEFORE THE
SURFACE TRANSPORTATION BOARD

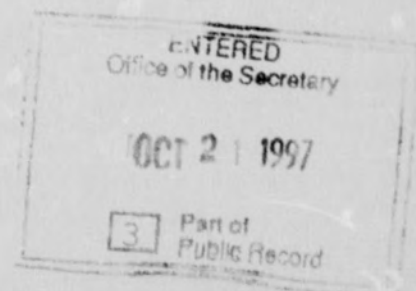
Finance Docket No. 33388

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

INDIANA PORT COMMISSION
REQUEST FOR CONDITIONS

By: David G. Abraham
Quantum Research Corporation
7315 Wisconsin Avenue, #400W
Bethesda, Maryland 20814
(301)657-3070

Date: October 21, 1997



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

INDIANA PORT COMMISSION
REQUEST FOR CONDITIONS

I am David G. Abraham, a Vice President of Quantum Research Corporation, Bethesda, Maryland and long-time practitioner before Federal Transportation agencies. In this matter, I represent Indiana Port Commission (IPC), Indianapolis, Indiana in whose behalf this statement is submitted.

BACKGROUND

IPC is an agency of and in the State of Indiana created to promote the agricultural, industrial and commercial development of the state and to provide for the general welfare by the construction and operation, in cooperation with the Federal Government, or otherwise, of a modern port on Lake Michigan and/or the Ohio River, and/or the Wabash River, with terminal facilities, to accommodate water, rail, truck and airborne transportation. The Indiana Port commission is empowered "...to construct, maintain, and operate public ports with terminal facilities and traffic exchange points for **all forms of transportation...**" (emphasis supplied) (Statutes of Indiana, Article 10, Ports).

Indiana Port Commission ports are the newest state-wide port system in the United States. It comprises the international port on Lake Michigan and two Ohio River ports located across from Louisville, Kentucky and just west of Evansville, Indiana. Federal, state and local governments have invested more than \$130 million in these ports. In addition, the private sector has invested about \$10 for each public dollar such that well in excess of \$1.3 billion of private capital has been invested in facilities located at the three public ports.

These ports have become a critical asset to Indiana's and surrounding states' economic and transportation base. Agriculture, mining and manufacturing industries, including large components of the very highly northern Indiana concentrated steel industry, have come to rely for their very existence, and for their economic viability, on this state-of-the-art port infrastructure. For 1995, the last year for which these data are available, the economic impact of Indiana's public ports as measured in a comprehensive study by the Center for Urban Policy and the Environment, School of Public and Environmental Affairs, Indiana University, was \$587 million and 5,770 well-paying jobs. Also, these ports contributed more than \$12 million in state and local taxes.

Beginning in 1969, IPC constructed its International Port of Indiana, commonly known as Burns Harbor, located at Portage, Porter County, on the southeastern shore of Lake Michigan. Since then, this vibrant and very active port has been expanded and modernized numerous times such that investment in its port facilities and infrastructure, exclusive of capital expenditures by private sector port tenants and users, have exceeded \$100 million. Tenants and other port users have invested \$660 million in their port-located facilities and several additional large tenant investments are in progress. Of the economic impacts noted before, the International Port accounted for \$409 million and 3,730 jobs. The port's revenues exceeded \$2.5 million.

For years traffic growth at the International Port was inhibited by lack of reliable, competitively-priced railroad services. This situation was caused by the single carrier

access, represented by Conrail's exclusive franchise, a carrier which does not possess adequate interchange facilities with most of the western railroads in the Chicago terminal area. This situation was cured when years of negotiations finally resulted in 1993 in Conrail's agreement to permit its majority-owned terminal and switch carrier, Indiana Harbor Belt Railroad (IHB), to access the port over Conrail's mainline and switch at the port. Since then, IHB and Conrail have provided valuable railroad services which saw traffic to increase very substantially in every year. During the port's open sailing season – when the St. Lawrence Seaway Locks are inoperable during the winter months, port intermodal traffic is limited to inter and intra-lake barge movements – an average of two (?) switches are performed each workday. In sum, not only is provision of railroad services by both franchised railroads deemed to be imperative, but private sector investments made during the last several years and all those planned or presently in progress depend on these services for their on-going and future viability. The 1,310 persons employed at the International Port depend directly or indirectly on the continued, uninterrupted availability of these railroad services.

IPC's SPECIFIC INTERESTS and CONCERNS

As noted before, IPC is charged by Indiana statute, among other duties, with the development and operation of intermodal transportation facilities. In this context the availability of transportation services by water, highway and railroad is, obviously, a critical concern. Regarding each of these transport modes, in particular railroads, specific issues are adequacy of service, quality of service and price. Adequacy and quality of service are largely synonymous. They include frequency of service, responsiveness to shippers and consignees needs including car supply, switching services, and protection of loadings against loss and damage transit times and originating or terminating carriers' ability to interchange traffic, where needed, with not less efficient connections so that origin-to-destination transportation is performed efficiently and cost-effectively. Similarly, pricing is always a critical issue, especially when transportation costs represent a relatively large share of delivered product or commodity costs, and shippers or

consignees compete with vendors in locations more advantageous to their markets and/or areas with lower costs.

All of these and many other matters are of great concern to IPC and its constituency of port users. All of these matters are believed to be "in play" in the proposed transaction. A case in point is IPC's experience with greatly inadequate railroad services at its International Port when, for years, Conrail was the only railroad serving this port. Industrial and traffic development was impeded due to Conrail's mostly unsatisfactory provision of services along with non-competitive pricing; shippers were reluctant to invest in rail transportation-dependent facilities. This economic progress-inhibiting situation was not cured or even ameliorated until Conrail, after years of prodding and negotiations, finally agreed to permit its majority-owned subsidiary Indiana Harbor Belt Railroad (IHB) to access the port. This event resulted in a significant and almost immediate increase in both inbound and outbound rail traffic with considerable benefits to the railroads, the port community and many other affected parties.

Below we shall address our specific service-related concerns. We will also deal with other principal concerns, pertaining to the future of IHB; the vital services it provides to numerous parties as an originating and terminating railroad and very importantly, as a switch and terminal carrier; and the profound financial issue. First, we should note, however, that attempts have been made to obtain needed information and understandings directly from the applicants so that understandings outside of this proceeding might have been reached. Regrettably, written and oral requests were only met with a very general response and unfulfilled promises for specifics intended to satisfy stated concerns. As early as May 21 and a month prior to applicants' filing with the Board, the questions in Appendix A were posed to both acquiring railroads. As noted, only a response in very general terms with a promise for more was received.

ADEQUACY OF SERVICE

Chicago is the foremost railroad hub of this Nation. No other gateway handles as much carload and intermodal traffic and, hence is as critical to the American economy. Nevertheless, the position of Chicago as the keystone of the country's railroad system is precarious. Its yards are congested, and its railroad lines taxed. Indeed, among the claimed benefits of the proposed transaction is the applicants ability to effect connections with the western railroads at other junctions and thereby to avoid the difficulties and delays of traversing the Chicago gateway.

Industries in the area, however, cannot escape Chicago's transportation problems and are largely dependent upon one or another of the three local railroads rendering line haul and interchange operations to safeguard adequate service – The Belt Railway Company of Chicago (BRC), The Baltimore and Ohio Chicago Terminal Railway Company (BOCT) and, of greatest interest to the Indiana Port Commission and its Lake Michigan port, Burns Harbor, the Indiana Harbor Belt Railroad Company (IHB).

Burns Harbor is situated on the main line of Consolidated Rail Corporation (Conrail), approximately 10 miles east of Gary, Indiana. IHB operates on tracks immediately adjacent and parallel to those of Conrail. As noted, since 1993, IHB has been afforded direct access to Burns Harbor and has rendered vital services to and from the shippers situated in the port.

The introduction of IHB's service has made a world of difference to Burns Harbor and its industries. Although Conrail holds a fifty-one percent interest in the stock of IHB, Conrail has allowed IHB to be managed and operated independently. In short, Burns Harbor and the shippers situated there for the past four years have enjoyed two-railroad service, with all of the attendant benefits, including relatively lower rates, improved car supply and routings, and responsive service.

Moreover, various pronouncements and plans of applicants espouse the acquisition of additional traffic, principally by diversion from over-the-road movements. Also, as Burns Harbor has witnessed extensively, there is continuing traffic growth in this region of northwestern Indiana--northeastern Illinois, so much so that railroad infrastructure and service capacity are continually strained.

It follows that shippers and their facilitators, prominently including this public Port Commission, have serious concerns about present and future service adequacy.

Taking a lesson from the chaotic situation prevailing on the Union Pacific Railroad system, which was recently described as "a complete collapse" (Cool Outlook, Vol. 21, No. 36, September 15, 1997, page 1), **the Board should prescribe conditions which aim at the preservation and improvement of railroad services for this region.**

Fundamentally, the Board should either define on its own motion the parameters for acceptable service standards, or alternatively, applicants should be ordered to present their detailed service standards and then subject such to interested parties' comments, and thereupon prescribe acceptable service parameters.

Further, applicants must be required to prove to the Board, by submission of periodic reports, that, indeed, they are complying consistently and reliably with the service quality prescribed by the Board. Applicants should be restrained from implementation of any changes in presently existing services in the affected area until such time as it is clear that prescribed service standards are being maintained consistently and reliably.

These requested conditions may well be without precedent. They are, however, in the Board's purview and their imposition is imperative if the disruptive and very harmful conditions which have arisen as a result of and/or incidental to recent mergers and consolidations in the railroad industry are to be avoided. We emphasize the proposed transaction is far more complex than any predecessor transactions. Here the plan is the break-up of a Class I railroad and the absorption of its properties and operations by two

distinct railroad competitors. This is an unprecedented proposal. While we do not doubt that it may incorporate positive developments, serving the public interest, it is a situation which, in spite of the applicants' proposed operating models, raises very serious concerns on the part of railroads' dependent shippers. It is for the reasons stated that the Board is urged to make use of its limitless conditioning power and to apply these in an innovative and resourceful manner.

INDIANA HARBOR BELT RAILROAD (IHB)

As indicated in Appendix A, several specific concerns have arisen regarding the proposed methods of operation and control of IHB's railroad plant, including yards and rolling stock. Put simply, Burns Harbor is fearful that the service advantages of an independently managed and operated IHB will be lost as a result of the proposed transaction. While title to Conrail's shares of IHB stock will remain in Conrail, the Agreement between CSX and NS, set out beginning at page 693 of vol. 8C of the Application, permits of no doubt that IHB will become a shared asset, to be exploited by CSXT and NS to the advantage of each.

Nothing in the Agreement between them will deny CSXT and NS the right to use IHB's tracks for the operation of their road trains, including the cherrypicking of choice volume movements to and from industries on Lake Michigan's shore. The inevitable result will be that IHB will be relegated to the role of a switching railroad, handling what CSXT and NS chose to leave behind for IHB.

Terms of the before noted agreement are both ambiguous and likely to lead to disputes among the parties. We make this assertion on the basis of the agreement's provision for adjudication of disagreements. A case in point is the item dealing with Dispatching (page 7, Section 2. (2)(d)). IHB continues to be responsible for dispatching but CSX will have the right to exercise its Ownership Rights with respect to IHB dispatching, including Gibson Crossing. This provision continues by assigning identical rights to NSC, and if a disagreement results from each party's assertion of its rights, the matter will be submitted

to binding arbitration. With this provision evident, is it likely that IHB will indeed continue to dispatch and thereby control traffic on its tracks and yards? We reason this is not very likely.

Another potent example causing great concern is the selection of IHB's General Manager. In accordance with Section 2.(b) on page 6 of the Agreement, provision is made for the election of a General Manager by one party with the approval of the other. If the other party turns out to be dissatisfied with the person selected, even though it had agreed to that selection, it may require the selection of a different person not sooner than 12 months after the last change. **This raises the potential for an annual change in IHB management, resulting in instability and upheavals especially among the General Manager's subordinates and the carriers' customers** who would normally look to a pattern of managerial continuity and the stability logically associated therewith.

Several additional examples could be given. For sake of brevity we refrain from citation of such and move to **request that the implementation of the proposed agreement as written not be permitted.** We have noted the virtual certainty of IHB being relegated to **a role which serves in the main** its owner's interests, not necessarily those of the public and the unbiased discharge of IHB's common carrier obligations.

The applicants can be counted on to contend to the contrary, but their exuberance is no substitute for the careful, controlled and conditioned implementation of their proposal, if otherwise found to be in the public interest by the Board. The lesson to be learned from the experience of the Union Pacific Railroad Company, first, following its acquisition of the North Western and, more recently, of the Southern Pacific, as already noted before, is that the optimism of the merger applicants must be met with a good bit of healthy skepticism.

IPC concurs with certain assertions made in the Description of Anticipated Responsive Application of Wisconsin Central Ltd., WC-2, as well as that of Transtar, Inc., and Elgin,

Joliet and Eastern Railway Company, EJE-3. In particular, IPC agrees that the proposed allocation of Conrail's IHB assets will have deleterious effects on the interchange of traffic between carriers and the provision of intermediate switching services. In addition, we express grave concern over prospective routing decisions which would benefit the acquiring parties but not their patrons. There is no way to prevent NS from routing Burns Harbor originating westbound traffic via its Kansas City, Kansas gateway even if such results in extended transit time compared with present-day routing via the Chicago Switching District. For NS such rerouting action would result in a longer line haul on its system and an entitlement to a larger share of revenue, possibly excluding altogether IHB's participation, all to potential shipper/consignee detriment.

As stated in the Description of Anticipated Responsive Application of Illinois Central Railroad Company, IC-2, there is much to be concerned about the ability as a result of the merger, of the Primary Applicants (and in particular CSXT), to regulate, and therefore control, nearly all traffic moving through the Chicago terminal. This will give rise to the ability of those carriers (and in particular CSXT) to favor their traffic vis a vis the traffic of other carriers with whom they are in direct competition. This aggregation of control and market power is patently unhealthy and must be avoided.

For the reasons stated, **it is believed to be in the best public interest if all or a portion of Conrail's IHB stock be divested or placed in a perpetual voting trust.** A neutral carrier or group of carriers unrelated to the applicants should be appointed, or if acceptable to buyers and sellers, given the opportunity to acquire effective control, and be made responsible for non-discriminatory dispatching, operation and control of IHB assets.

Further, we request that the Board order additional conditions including the following:

- its decision to be effective no sooner than thirty days after the date of service, and, even then, it should provide for an orderly implementation of the proposed transaction. The applicants, before the effective date of the Board's decision, should

be required to file a timetable setting out the sequential phasing in of Conrail into CSXT and NS, in terms of the applicants' ability to entertain shipper requests for service, to respond with sufficient cars and locomotives, to dispatch trains and to handle them without undue delays at intervening yards and to effect deliveries within reasonable times, by specific locales and identified routes.

- The Board should order that IHB, as it heretofore has done, provide no less than daily service to Burns Harbor and the shippers situated there.
- The Board should order that IHB be permitted to retain its ownership interests in the nearly 1,500 gondola cars bearing its markings, which are of such critical importance to the steel companies which it serves, and that, when interlined with CSXT and NS, the cars shall be returned empty at the junction points where they were delivered under load.
- The Board should order that IHB's Blue Island Yard remain under the control of IHB for its handling of cars going to or from local industries served by it and that it not be assigned to CSXT to be utilized for the handling of Chicago gateway traffic, as the applicants' operating plans contemplate. The Board should order that IHB's Michigan Avenue Yard remain under the control of IHB for the support of IHB's industrial traffic in Northwest Indiana, including Burns Harbor, and that it not be downgraded by CSXT and NS, as their operating plans project.
- The Board should order that it will retain jurisdiction for a period of at least five years' time to monitor the implementation of the proposed transaction and should require CSXT and NS to file and serve quarterly and annual reports, which, among other things, will detail its stewardship of the IHB, if its ownership and control remain unchanged, contrary to the conditions requested herein, and afford interested persons the opportunity to respond.

ECONOMIC/FINANCIAL CONCERNS

The financial terms of applicants' proposed acquisition of Conrail raises serious concerns. The agreed-to purchase price is on the order of \$10.2 billion; all or most of this enormous sum has been obtained in the form of loans, as distinct from equity investments. The

reported blended interest rate is 7% per annum. Accordingly, interest payments alone, exclusive of any loan repayment, will amount to about \$714 million per year. Conrail's 1996 operating income was reported to be \$601 million. This sum represents a 68% increase from the amount reported for the prior year, and therefore it may not be a reliable benchmark on which to base any financial projections. If that sum of \$600 million were available for debt service, it would only meet 84% of the required interest payment.

Taking this theme one step further, if interest plus loan repayment are calculated, it is seen that at the favorable 7% interest rate annual payments would amount to \$1.452 billion for a 10-year debt repayment, and \$963 million at a 20-year repayment schedule. Both amounts far exceed Conrail's historical operating income amounts.

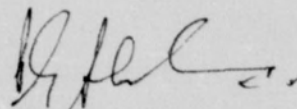
The net effect will be that applicants will have to dedicate very large shares of their net incomes to their newly acquired debt service requirements, thereby potentially starving both systems of much needed investment capital for plant improvement and expansion. Worse than this inevitable reality is the resulting pressure upon revenue and income generation; this pervasive need for increased cash can only result in higher rate levels.

The argument that competitive factors will preclude widespread rate increases is without merit in light of the fact that this competition, if indeed it exists, consists of the two applicants' competing carriers, both of which would be exposed to like revenue and income pressures. Not unlike recent experience in the airline industry, it could be expected that one will take the lead and the other will follow.

Suffice it to say that, as explained, the financial terms for the proposed transaction raise serious concerns. It is therefore requested that the Board use its investigative and ordering powers to assure itself and the public the Board serves that, indeed, this transaction is in the public interest, that it is not bound to lead to otherwise avoidable financial debacles and that, if found necessary, the transaction be denied or conditions

imposed which would preclude occurrence of financial adversity and the need for otherwise unnecessary rate increases.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'D. G. Abraham', with a stylized flourish at the end.

David G. Abraham
Registered Representative for
Indiana Port Commission

APPENDIX A

CSX - NS CONRAIL Acquisition

General Issues

1. The proposed systems map (the version available to the public) is not sufficiently detailed to ascertain which carrier will serve each regional interchange, industry and yard. That information is needed to make determinations of adequacy, changes in what were single route/carrier movements and which may become two-line moves.
2. Is it correct to assume that existing Conrail contracts will continue to be honored by the successor carrier(s) and is it likely that successors will desire to reopen and renegotiate? If the latter is in the affirmative, please indicate to which situations this may apply.
3. Apparently, some Conrail yards will be transferred to one of the two railroads not providing future services at or near that site. How will the servicing carrier obtain the use of necessary yard facilities? More specifically, based on projected traffic divisions, is it not likely that congestion will ensue on some of the reassigned lines, especially between the Chicago interchanges, South Chicago, Gary, Porter and beyond? How would such congestion problems be dealt with?
4. Further, in regards to item one above, an issue of particular concern is shared service. So far, we do not have any information about any shared service in this area. For example, will you agree to permit access by both carriers to the Whiting refinery complex and its chemical plants?
5. At sites in this region at which weekend service is presently unavailable (Conrail at the International Port, for example) will provision of such services be initiated?

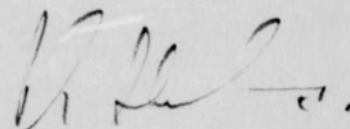
Specifics as to IHB

1. Will IHB remain as an independently operated terminal and switch carrier? This is believed to be imperative if that 'road's flexibility and capability to provide essential services are to continue.
2. Will IHB services and facilities continue to be concentrated on industrial service in its territory rather than acquiring owners' through-traffic?

3. Will IHB continue to market its services independently and set rates for all its connections without regard to owners' interest in attracting traffic to its lines?
4. Will IHB continue to have its independent access to the International Port at Portage/Burns Harbor, the Bethlehem and National Steel complexes at this location or will Conrail's successor become the switcher?
5. Will IHB power, car yard and trackage facilities remain in its exclusive domain or will the owners make use of any of these? If yes, which, and to what extent?
6. Might IHB's access to other carriers with which presently interchange facilities and/or arrangements exist be modified? If yes, how?
7. Will the IHB Service Center located in Riverdale, Illinois remain as is or will customers have to deal with an owner's national center?
8. If any changes in IHB's present relative autonomy are planned to occur how would such retain and possibly enhance the competitive posture and avoid this occurrence of a monopoly situation?
9. IHB presently employs more than 900 people with approximately half being residents of Indiana. If there are plans for integration of systems will these folks be absorbed into a parent?

CERTIFICATE OF SERVICE

I, David G. Abraham, Registered Representative for Indiana Port Commission, a public agency in the State of Indiana, hereby certify that I have served copies of the appended Request for Conditions upon all Parties of Record. Honorable Jacob Leventhal, including the provision of extra copies as requested in attorneys for applicants letter of October 9, 1997 all by depositing copies in the U.S. Postal Service, First Class Mail, postage paid, this 21st day of October 1997.



David G. Abraham

STB

FD

33388

10-20-97

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LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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October 20, 1997

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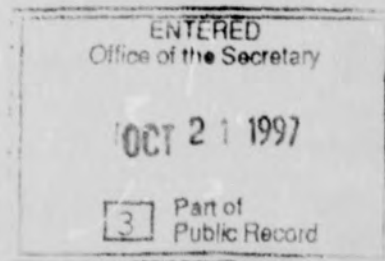
VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed are the originals and 25 copies each of the highly confidential and redacted versions of the "Comments, Evidence, and Request for Conditions of American Electric Power Service Corporation" (AEP-5) for filing in the above-referenced proceeding. The highly confidential pleading is being filed under seal in accordance with the Protective Order. Also enclosed is a 3.5" diskette containing the documentation in WordPerfect format.



Mr. Vernon A. Williams
October 20, 1997
Page 2

Please date stamp and return the enclosed three additional copies of each pleading via our messenger.

Very truly yours,

Michael F. McBride

Michael F. McBride
Brenda Durham

Attorneys for American Electric
Power Service Corporation

Enclosures

cc: All Parties on the Certificate of Service

182753

AEP-5

Public Version--Highly Confidential
and Confidential Information Has Been Redacted

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS
OF AMERICAN ELECTRIC POWER SERVICE CORPORATION

Michael F. McBride
Brenda Durham
LeBoeuf, Lamb, Greene
& MacRae, L.L.P.
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Suite 1200
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Phone: (202) 986-8000
Fax: (202) 986-8102

Attorneys for American Electric
Power Service Corporation

Due Date: October 21, 1997
Dated: October 20, 1997



Public Version--Highly Confidential
and Confidential Information Has Been Redacted

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

**COMMENTS, EVIDENCE, AND REQUEST FOR CONDITIONS
OF AMERICAN ELECTRIC POWER SERVICE CORPORATION**

American Electric Power Service Corporation ("AEP")
hereby submits its Comments concerning the Application of CSX
Corporation and CSX Transportation, Inc. (collectively, "CSX")
Norfolk Southern Inc. and Norfolk Southern Railway Inc.
(collectively, "NS"), Conrail Inc. and the Consolidated Rail
Corporation (collectively, "Conrail") to acquire and divide among
themselves the assets of Conrail. (We use the terms "merger," or
"acquisition," or "control" synonymously, unless otherwise
indicated.)

The purpose of these Comments is to request that the
Board impose a condition on the proposed transaction concerning

AEP's Cardinal Plant, a large coal-fired electric generating station located in Brilliant, Ohio on the Ohio River.

Today, AEP's Cardinal Plant has access to two rail carriers: the Wheeling & Lake Erie Railroad ("WLE"), directly, and Conrail (see AEP Ex. 3 (TDC-2)), via

See AEP Ex. 4 (TDC-3) at 2. As a result of the proposed transaction, Norfolk Southern will acquire Conrail's rights and access to AEP's Cardinal Plant, and the obligations therewith. So far as that goes, the two-carrier access that the Cardinal Plant currently enjoys will not be affected.

AEP's concerns, however, center on WLE and continued dual access to its Cardinal Plant if the Board approves the Application. Separately, WLE has announced that it may not survive as a result of the proposed transaction. AEP is not privy to evidence regarding whether WLE will or will not survive if the Board approves the Application. However, if the proposed transaction causes WLE to go out of business or be unable to serve AEP, AEP will lose one of its two carriers serving the Cardinal Plant. Thus, the Board should ensure continued dual access to AEP's Cardinal Plant, if AEP loses its delivery carrier as a result of the proposed transaction. See AEP Ex. 1.

Although technically the Cardinal Plant may not fall within the definition of a "2 to 1" shipper as previously defined by the Board, see, Union Pacific Corp., et al.,--Control and Merger--Southern Pacific Corp., et al., Finance Docket No. 32760 (served Aug. 12, 1996), AEP should be given the same relief that "2 to 1" destinations have received in prior merger and acquisition proceedings because it may lose access to its second carrier, WLE, as a result of the proposed transaction and thus literally would be a "2 to 1" shipper under those circumstances.

The Board can and should safeguard AEP's dual access by requiring CSX to assume the rights and obligations of WLE, including the requirement to serve the Cardinal Plant as a common and contract carrier, should WLE no longer be able to serve the Cardinal Plant. See AEP Ex. 1.

REQUEST FOR CONDITION

Accordingly, AEP requests that the Board adopt the following protective condition if it approves the proposed transaction:

If WLE is unable to perform its obligations to serve AEP's Cardinal Plant, CSX Transportation, Inc. is required to assume WLE's common and contract obligations to do so, and is further required to provide the Board with a specific proposal for carrying out those obligations forthwith. NS is required to permit CSX to have access to the Conrail line serving AEP's Cardinal Plant, at a trackage rights fee at the

same terms and conditions as provided in the current WLE/Conrail agreement, if WLE's line is not capable of carrying CSX's trains into the Cardinal Plant.

Respectfully submitted,

Michael F. McBride

Michael F. McBride

Brenda Durham

LeBoeuf, Lamb, Greene

& MacRae, L.L.P.

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1875 Connecticut Ave., N.W.

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Attorneys for American Electric
Power Service Corporation

Dated: October 20, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that I have served this 20th day of October, 1997, a copy of the foregoing "Comments, Evidence, and Request for Conditions of American Electric Power Service Corporation" (AEP-5) by first-class mail, postage prepaid, or by more expeditious means, upon all parties of record. The "highly confidential" version was served on persons on the Highly Confidential Restricted Service List only; a redacted version was served on all other parties of record. The following persons were served by hand delivery:

Office of the Secretary
Case Control Unit
ATTN: STB Finance Dkt. 33388
Surface Transportation Board
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1925 K Street, N.W.
Washington, DC 20423-0001
VIA HAND DELIVERY

Mr. Vernon Williams, Secretary
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David M. Konschnik, Director
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VIA HAND DELIVERY



Brenda Durham



**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

**Verified Statement
of
Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.**

**On Behalf of
American Electric Power Service Corporation**

Due Date: October 21, 1997

INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314. My qualifications and experience are attached as Exhibit 2 (TDC-1) to this Verified Statement.

I have been asked by American Electric Power Service Corporation ("AEP") to review the Railroad Control Application filed by CSX Transportation Inc. ("CSX") and Norfolk Southern Railway Company ("NS") in Surface Transportation Board ("STB") Finance Docket No. 33388. This application specifies the terms of the purchase of the assets of Consolidated Rail Corporation ("Conrail") by CSX and NS. Specifically, I have been asked to determine the impact that this transaction will have on coal deliveries to AEP's Cardinal plant located in Brilliant, Ohio. In making my evaluation, I have reviewed the CSX/NS/Conrail Control Application, the workpapers supporting the railroads' Application, the deposition of the various witnesses supporting the Application, and the Applicants' responses to interrogatory and document requests.

My comments are organized below under the following topical headings:

II. Summary and Findings

III. Railroad Access to Cardinal Plant

II. SUMMARY AND FINDINGS

Based on my review of the Railroad Control Application filed by CSX, NS and Conrail as well as the workpapers, depositions and Applicants' responses to discovery, my findings regarding the acquisition of Conrail by CSX and NS are as follows:

1. AEP's Cardinal plant receives coal from CSX origins for interchange with the Wheeling and Lake Erie Railway Company ("WLE");
2. In addition to access by the WLE, the Cardinal plant is accessible by Conrail
3. After the acquisition of Conrail by CSX and NS, the Conrail rail line () will be the responsibility of NS;
4. WLE has publicly stated that its viability is in doubt because of the acquisition of Conrail by CSX and NS. The elimination of WLE would result in NS becoming the only railroad serving AEP's Cardinal plant; and,
5. If the acquisition of Conrail by the CSX and NS is approved and WLE is unable to serve the Cardinal plant, then CSX should be granted access to the Cardinal plant via Benwood, West Virginia or the nearest practical interchange with NS. Compensation for these trackage rights should be based on the same level as

The basis for my findings are addressed below.

III. RAILROAD ACCESS TO CARDINAL PLANT

AEP's Cardinal plant is located in Brilliant, Ohio. Based on the 1995 plant traffic data furnished by the railroads in response to AEP's discovery requests tons originated at CSX origins and moved to the Cardinal plant via interchange with the WLE^{1/}. Additional coal delivered to the Cardinal plant was transported via truck or barge movement.

Both Conrail and WLE have access to the plant. Exhibit 3 (TDC-2) is a schematic of the rail lines serving the Cardinal plant, including the WLE interchange location with the CSX at Benwood, West Virginia. The schematic was prepared by Conrail or WLE and obtained in discovery from Conrail. The Cardinal plant is located approximately miles from the Benwood interchange.

WLE has publicly stated that the acquisition of Conrail by CSX and NS will jeopardize the viability of that railroad. On August 22, 1997, WLE filed its "Description of Responsive Application of Wheeling & Lake Erie Railway Company", identified as WLE-2 ("Responsive Application"). In the Responsive Application, WLE stated that the acquisition of Conrail by CSX and NS places WLE in a "unique and highly vulnerable position" (Responsive Application,

^{1/} In 1996, 298,537 tons moved from CSX origins to the Cardinal plant (via the WLE). In 1997, CSX originated 169,986 tons of which 160,896 tons moved via WLE and 9,090 moved via Conrail through the interchange at Potomac Yard.

page 1). WLE went on to state that the Conrail transaction will "lead to WLE's bankruptcy within a year of the merger..." (Responsive Application, page 2).

In order to maintain the dual railroad access at the plant (and thus preserve the pre-merger level of competition) the Surface Transportation Board ("STB") should require that, as a condition of the merger, CSX be granted trackage rights to the Cardinal plant if WLE is not able to provide the service. Specifically, the STB should allow CSX trackage rights from Benwood, West Virginia (the current CSX/WLE interchange) to the Cardinal plant over the WLE line.

If the trackage connecting that interchange to the Cardinal plant is eliminated, or not maintained at a level that allows coal traffic to traverse it, then CSX should be granted trackage rights over the current Conrail lines that serve the Cardinal plant^{2/}. The alternative routing over Conrail trackage is consistent with the WLE's planned operation shown in Exhibit 3 (TDC-2) where WLE would eliminate several sections of WLE track to the Cardinal plant and operate over trackage rights on the Conrail line.

If service cannot be performed via Benwood, West Virginia, CSX should be granted trackage rights from the nearest interchange between the post-acquisition NS and CSX. I suggest that Martins Ferry, West Virginia, on the current Conrail line shown in Exhibit 3 (TDC-2), is a suitable alternative interchange.

Finally, compensation for the CSX trackage rights lines to the Cardinal plant should follow the same terms and conditions as

^{2/} The Conrail line can be accessed at Bellaire, Ohio utilizing 2.9 miles of the existing WLE line.

VERIFICATION

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

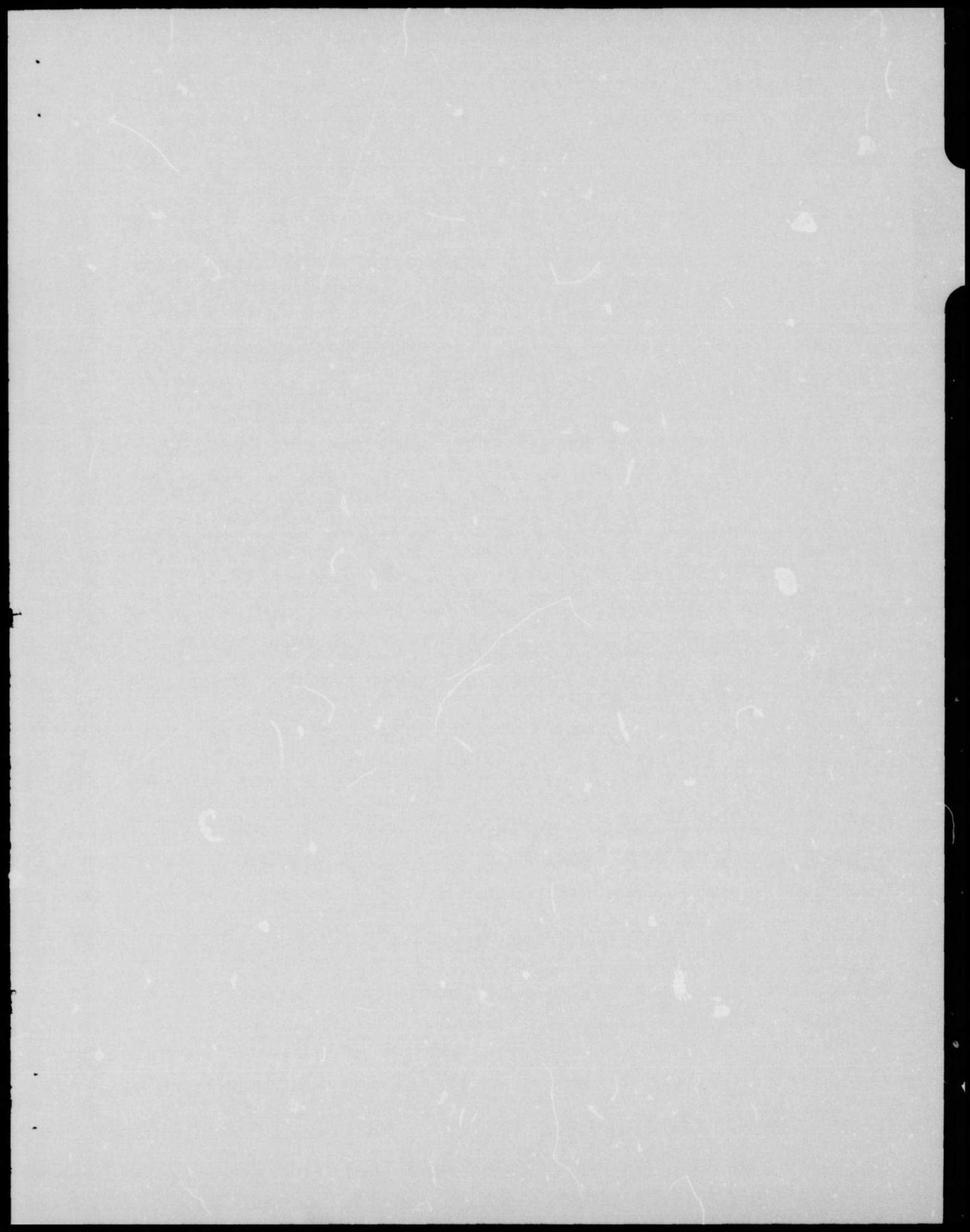
THOMAS D. CROWLEY, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true as stated.

Thomas D. Crowley
Thomas D. Crowley

Sworn to and subscribed
before me this 15th day
of October, 1997.

Witness my hand and official seal.

James M. Patton
Expires 12/31/98



STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering Association.

The firm of L. E. Peabody & Associates, Inc. specializes in solving economic, marketing and transportation problems. As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United

STATEMENT OF QUALIFICATIONS

States. The nature of these studies enabled me to become familiar with the operating and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected both railroad terminal and line-haul facilities used in handling various commodities to various destinations in all portions of the United States. These field trips were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal, both inbound raw materials and outbound paper products to and from paper mills, crushed stone, soda ash, aluminum, fresh fruits and vegetables, TOFC/COFC traffic and numerous other commodities handled by rail.

I have presented evidence before the Interstate Commerce Commission ("ICC") in Ex Parte No. 347 (Sub-No. 1), Coal Rate Guidelines - Nationwide which is the proceeding that established the methodology for developing a maximum rail rate based on stand-alone costs.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the ICC for the development of variable costs for common carriers with particular emphasis on the basis and use of Rail Form A. I have utilized Rail Form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.^{1/}

^{1/} Rail cost finding has been the cornerstone of this firm. Dr. Ford K. Edwards the senior partner of the firm Edwards & Peabody*, was the major architect in the development of Rail Form A. Mr. Peabody carried on this tradition of innovative cost finding until his retirement in 1983. Mr. Peabody's work included participation in the Tennessee Valley Authority's ("TVA") computerization of Rail Form A. Mr. Peabody was a member of a committee of transportation consultants which was organized to assess the TVA procedure in order to make available more complete and simplified input data for the Rail Form A computer program.

* Subsequent to the retirement of Dr. Edwards in 1965, the firm name was changed to L. E. Peabody & Associates, Inc.

STATEMENT OF QUALIFICATIONS

I have also analyzed in detail, the Uniform Railroad Costing System ("URCS") and presented the results of my findings to the ICC in Ex Parte No. 431, Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations. I have been involved in the URCS process, either directly or indirectly, since the first interim report of the contractors was released.

I have frequently presented both oral and written testimony before the Surface Transportation Board (and its predecessor, the Interstate Commerce Commission), Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations, including interest. I have also presented testimony in a number of court and arbitration proceedings concerning the level of rates and rate adjustment procedures in specific contracts.

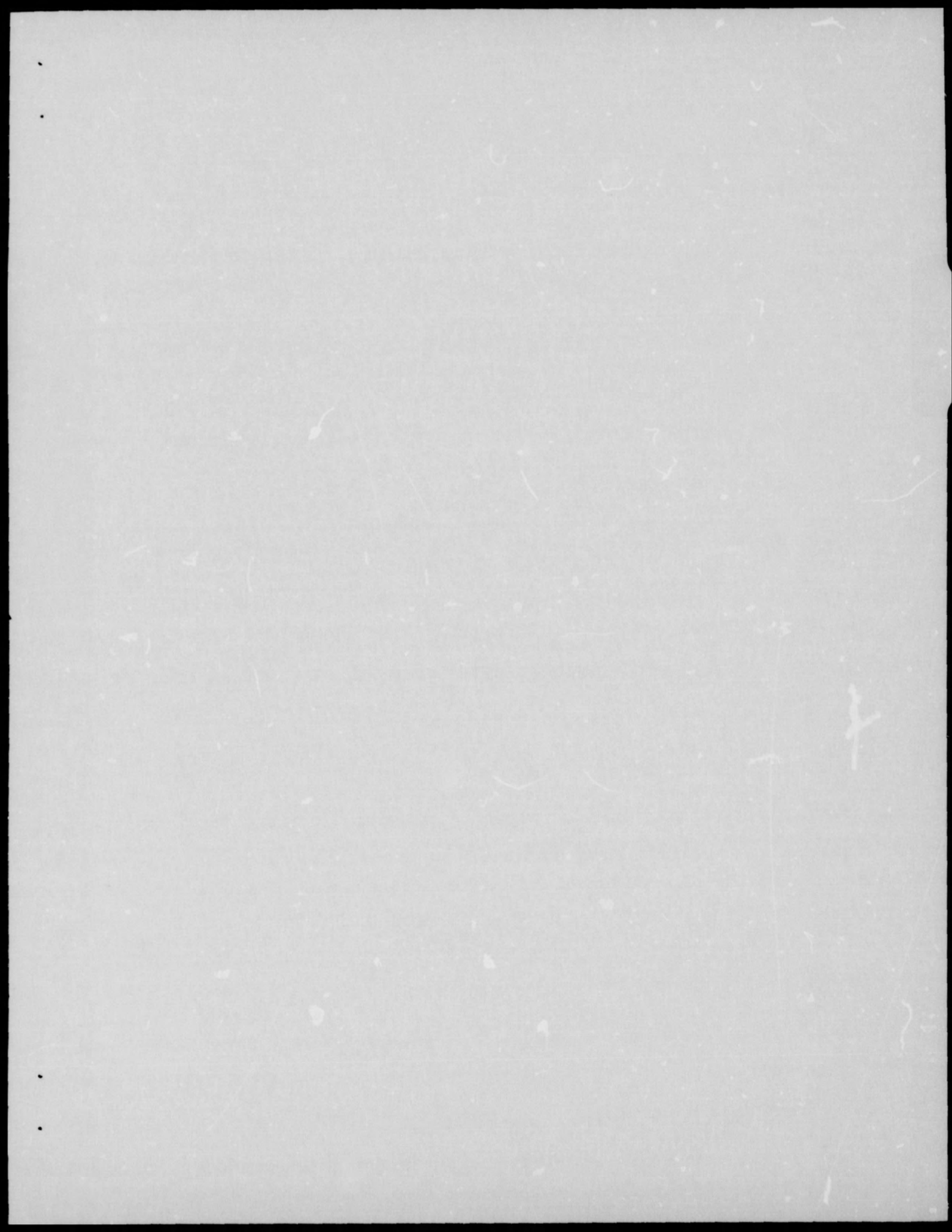
Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity, and cost-based ancillary charges. In particular, I have advised shippers on the theory and application of different types of rate adjustment mechanisms

STATEMENT OF QUALIFICATIONS

for inclusion in transportation contracts. As a result of assisting shippers in the eastern and western portions of the United States, I have become familiar with operations and practices of the rail carriers that move traffic over the major rail routes in the United States as well as their cost and pricing practices.

In the two recent Western rail mergers that resulted in the creation of BNSF and UP/SP, I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and midwestern rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and midwestern rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.



OMITTED

ANDREWS OFFICE PRODUCTS CAPITOL HEIGHTS, MD (K)

OMITTED

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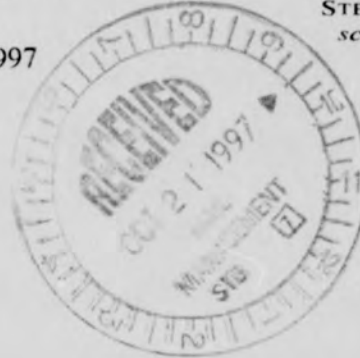
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STEPHEN C. HERMAN
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October 20, 1997



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

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

Dear Mr. Williams:

This is to advise that as a result of a recent agreement reached between Kokomo Grain Co., Inc. and applicants in the above proceeding, Kokomo Grain Co., Inc. will not file the responsive application for trackage rights that was referred to in its description of anticipated responsive application, KGC-2, filed August 22, 1997.

Twenty five copies and a diskette accompany the original of this notification. Counsel for applicants are being served by overnight mail. All other parties are being served by regular mail.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for Kokomo Grain Co., Inc.

TMcf:kl:enc:d:\wp7.0\631\trstb5

cc: All parties of record
Mr. Raymond L. Ortman

