STB FD 33388 10-20-97 D 182722

182722

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D

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 Northwest Pennsylvania Rail Authority, I enclose for filing an original and twenty-five copies of Northwest Pennsylvania Rail Authority - 2 Comments of Richard M. Novotny, Chairman. Also enclosed is a 3 ½" 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

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
Northwest PA Rail Authority
All Parties of Record

182722

NW Pa Rail Auth - 2

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OCT 20 1997
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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

Comments of Richard M. Novotny, Chairman,
Northwest Pennsylvania Rail Authority, Seeking Reciprocal
Overhead Trackage Rights between Corry, PA and Waterboro, NY

ENTERED
Office of the Secretary
OCT 21 1997
Part of
Public 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 Richard M. Novotny, Chairman,
Northwest Pennsylvania Rail Authority, Seeking Reciprocal
Overhead Trackage Rights between Corry, PA and Waterboro, NY

My name is Rick Novotny. I am Chairman of the Northwestern Pennsylvania Rail Authority. A copy of my cirriculum vitae is attached to these comments. Northwest Pennsylvania Rail Authority was formed by the communities of Meadville and Corry, Pennsylvania in 1995 to acquire and preserve for continued rail service the line of Consolidated Rail Corporation ("Conrail") between Meadville and Corry in Crawford and Erie Counties, Pennsylvania. After protracted litigation, [1]. The Authority and Conrail entered into a settlement agreement in lieu of condemnation under which the Authority acquired the rail line abandoned by Conrail from M.P. 102.3 to M.P. 60.5. A portion of this line from M.P. 60.8 to M.P. 60.5 in Corry, PA was leased by Conrail to the Authority

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[1] See Consolidated Rail Corporation - Abandonment - Between Corry and Meadville in Erie and Crawford Counties, PA, Docket No: AB - 167(Sub No. 1139) and Consolidated Rail Corporation vs. Surface Transportation Board, 93 F.3d 793 (D.C. Cir.1996).

with an obligation to convey upon the expiration of its Southern Tier Agreement with New York State Department of Transportation.[2] In Finance Docket No. 33371, Oil Creek and Titusville Lines - Meadville Division - Operation Exemption, service date April 3, 1997, the Authority's operator, the Oil Creek and Titusville Lines - Meadville Division obtained STB authority to provide common carrier rail service from M.P. 102.3 in Meadville to M.P. 60.5 in Corry.

The Authority has filed these comments with the Surface Transportation Board because the merger application and operating plan submitted by Norfolk Southern Corporation ("NS") indicates that NS will acquire and provide common carrier rail service over the Conrail line from Erie, Pennsylvania via Corry to Hornell, New York. As indicated on the track diagram depicted at Exhibit 1, NS cannot physically provide through rail service between Erie, Pennsylvania and Hornell, New York without operating over the .3 mile leased by Conrail to the Authority. Moreover, since the United States Circuit Court of Appeals for the District of Columbia Circuit in Consolidated Rail Corporation vs. Surface Transportation Board supra, held that Conrail had abandoned the rail line from M.P. 102.3 to M.P. 60.5 the Authority's operator, the Oil Creek and Titusville Lines - Meadville Division is the only railroad common carrier authorized to provide rail service on this track.

NS, through its acquisition of control over this line, stands in no better position with respect to the rights of the Authority and its operator than Conrail itself. Since Conrail does not have any operating rights over the line between M.P. 60.8 and 60.5 in Corry, Pennsylvania, it will be necessary for NS to obtain trackage rights from the

[2] A Memorandum of Lease was recorded on May 30, 1997 at Record Book 500, page 2037 in the Recorder of Deeds Office in Erie County, Pennsylvania.

Authority in order to provide through rail freight service between Erie, Pennsylvania and Hornell, New York.

The Authority and its operator have no interest in impeding the NS control application. In fact the Authority looks forward to the establishment of a positive commercial relationship with NS that will enable the Authority to continue industrial development efforts which originally prompted acquisition and preservation of this rail line. However, operating efficiencies and opportunities for traffic growth on the Meadville - Corry line, can only be advanced if the Authority's operator can establish a connection with its affiliated railroad, the New York & Lake Erie Railroad Company, at Waterboro, New York (M.P. 23.2). Accordingly, the Authority and its operator are prepared to enter into an agreement with NS which would entail the reciprocal grant of overhead trackage rights between the two railroads. The Authority would grant Norfolk Southern a new high speed connection at M.P. 64.1 +/- and trackage rights between M.P. 64.1 +/- and 60.5 and Norfolk Southern would grant trackage rights to the Oil Creek and Titusville Lines - Meadville Divisions between M.P. 60.5 and the connection with the New York and Lake Erie Railroad Line at M.P. 23.2 in Waterboro, New York.

These overhead trackage rights would permit the Authority and its operator to implement a new industrial development and marketing initiative which we have entitled the "Penn Can Rail Link" which seeks to provide rail competition for freight traffic presently moving by truck to or from Canada. The Authority and its operator have identified certain goods and commodities that presently flow by truck over the Peace Bridge from Canada along Interstate 90 in New York and Pennsylvania and down Interstate 79 and 80 in Pennsylvania for distribution to markets in Erie, Youngstown and

Interstate 79 and 80 in Pennsylvania for distribution to markets in Erie, Youngstown and Pittsburgh. The Authority will develop a transload facility for those goods and commodities in Meadville, Pennsylvania. Trucks would then distribute the goods and commodities to their respective local markets which are more readily reached from Meadville given its convenient location near Interstates 90, 80, 76 and 79. The Penn Can Rail Link project is vital for the preservation of the Authority's rail line and to grow jobs in the communities of northwestern Pennsylvania and southwestern New York.

The Authority communicated this proposal to NS as soon as it became aware of the proposed division of Conrail assets between NS and CSXT. While our proposal has been acknowledged by NS, we have not been able to initiate negotiations with them regarding this proposal. We have therefore found it necessary to bring this matter to the attention of the Surface Transportation Board to seek an order from the Board directing the reciprocal grant of trackage rights proposed by the Authority as a condition for approval of the pending control proceeding.

The deterioration of rail service in northwestern Pennsylvania and southwestern New York is well documented. For years, the former Erie Lackawanna Main Line in this region has been preserved only by the efforts of the Pennsylvania Department of Transportation and the New York Department of Transportation together with the persistence of dedicated local officials and determined shippers. The acquisition of Conrail dramatically changes the strategic importance of the Southern Tier Line now that NS and CSXT have proposed to reestablish competitive rail service in the northeast United States. The Southern Tier Line no longer poses a strategic threat to Conrail's dominance in the Northeast and can now be redeveloped to generate traffic to the large

Class I systems. In addition, the Meadville - Corry line segment provides the NS alternative routing capabilities which may prove useful in dealing with capacity limitations on major service corridors as NS grows the business on its expanded rail system.

Accordingly, Northwest Pennsylvania Rail Authority requests that the Surface Transportation Board, as a condition of its approval of the proposed transaction, direct NS and the Authority to grant reciprocal overhead trackage rights as outlined herein. In all other respects, Northwest Pennsylvania Rail Authority supports the applicants' proposed transaction and requests the Board approve the same.

VERIFICATION

I, Richard M. Novotny, 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 Northwest Pennsylvania Rail Authority of which I am Chairman.

Executed on ___ Oct 14 ___, 1997

Richard M. Novotny, Chairman
Northwest Pennsylvania Rail Authority

NORTHWEST PA RAIL AUTHORITY FACILITIES - CORRY, PA

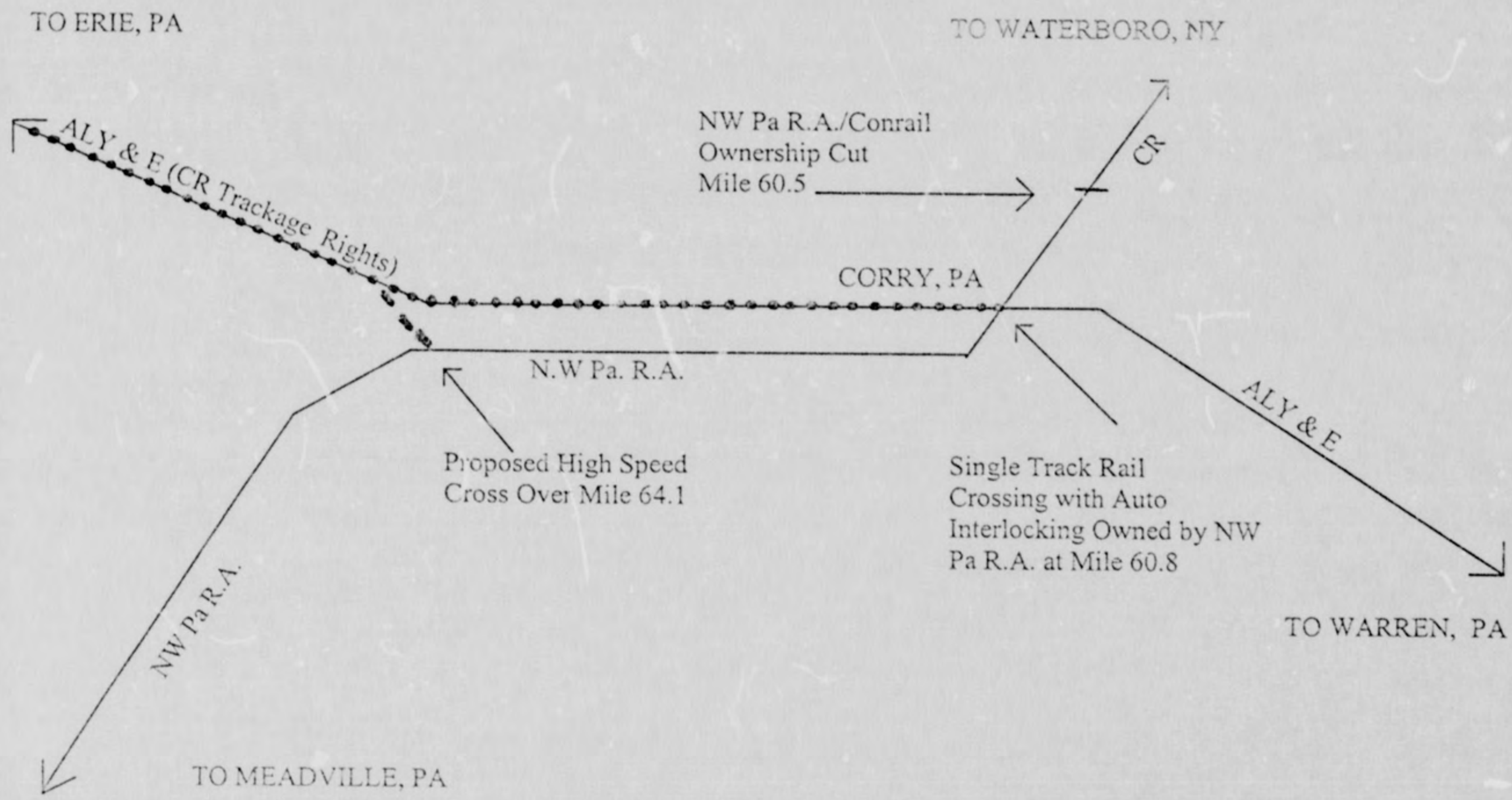

EXHIBIT 1

Richard M. Novotny

17120 Mullen Road • Meadville, PA 16335 • (814) 724-7184

Post-it® Fax Note 7671	Date 10/1/97	# of pages ▶ 2
To Dick Wilson	From Rick Novotny	
Co./Dept.	Co.	
Phone #	Phone #	
Fax # 814-944-6978	Fax #	

EDUCATION: 1991-1992 Graduate Studies in the Masters of Business Administration Program
Clarion University of Pennsylvania, Clarion, PA 16214

1988-1993 The National Development Council
Economic Development Finance Professional Certification

Writing Grant Proposals
Certified by V. Brosky & Associates

Pennsylvania Department of Community Affairs
Municipal Training Division:
Enterprise Zone Coordination
Financing Development

1984-1986 Bachelor of Science Degree
Computer Application & Information Systems
Clarion University of Pennsylvania, Clarion, PA 16214

1976-1978 Undergraduate Studies
Kent State University of Ohio, Trumbull County Branch,
Warren, Ohio 44482

EXPERIENCE: 03/92-Present
THE REDEVELOPMENT AUTHORITY IN THE CITY OF CORRY
380 Sciota Street, Corry, PA 16407
TELEPHONE: (814) 665-5161
SUPERVISOR: Virginia S. Grice, Executive Director
OCCUPATION: Economic and Community Development
DUTIES: Administration and Management of the Corry Industrial Incubator, Corry Area Enterprise Commons Multitenant Facility, Corry Area Industrial Commons, and The Corry Industrial Park. All development aspects of the financing and construction of the newly built Corry Industrial Commons. Enterprise Zone Coordinator for The City of Corry, Wayne, Columbus, Union Townships, Elgin and Union City Boroughs. Activities include various areas of public/private financing, grant writing,entrepreneur development, and industry attraction and retention.

02/87-03/92 NORTHWEST PENNSYLVANIA REGIONAL PLANNING AND DEVELOPMENT COMMISSION, 614 Eleventh Street, Franklin, PA 16323
TELEPHONE: (814) 437-3024
SUPERVISOR: Dale F. Massie, Associate Director
OCCUPATION: Information Systems Specialist/Business Analyst
DUTIES: Development and Maintenance of an IBM System 36 and IBM Personal Computer network. Assistance to staff, local government agencies, and regional businesses in the design implementation, and use of computer systems. Coordination and development of a regional fund raising campaign and quarterly publication of <u>Alliance</u> magazine. Analysis, design, and application of a geographic information system, supporting data base, and computer aided design capabilities. Implementation of a regional product import substitution program as part of a statewide network.

1/85-9/96 THE DEPOT RESTAURANT, 1215 Railroad Street, Franklin, PA 16323
SUPERVISOR: Robert D. Davis, President
OCCUPATION: Part-time Bookkeeper & Payroll Clerk
Duties: Preparation and distribution of various weekly, monthly, and quarterly reports. Coordinate and maintain sales, inventory, accounts receivables, and payroll information. Prepare and update numerous spreadsheets and graphs for managerial analysis.

AFFILIATIONS: Member of:

Corry Area Industrial Development Corporation
Corry Industrial Roundtable
Corry Industrial Benefit Association (Incorporator)
Erie County Strategic Roundtable
Pennsylvania Incubator Association (President)
National Business Incubation Association
Northwest Pennsylvania Rail Authority (Chairman)
Northwest Pa Regional Planning and Development Commission
Metropolitan Planning Organization (Erie Area Transportation Study Coordinating & Technical Committees)
Northwest Development Corporation

AWARDS & HONORS:

National Association of Development Organizations "1991 Innovation Award" for Alliance magazine

Appalachian Regional Commission "1991 Local Development District Award for Outstanding Achievement" for Alliance magazine

Feature story August 4, 1995 in The Wall Street Journal

Finalist in the 1996 Entrepreneur of the Year Awards Program - in the Supporter of Entrepreneurship Catagory

Finalist in the 1997 Entrepreneur of the Year Awards Program - in the Supporter of Entrepreneurship Catagory

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October 15, 1997

RECEIVED
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MAIL MANAGEMENT
STB

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

Re: Comments and Requests for Conditions by the Pennsylvania House Transportation Committee

Dear Mr. Williams:

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

Very truly yours,

RICHARD R. WILSON, P.C.

Richard R. Wilson

Richard R. Wilson

ENTERED
Office of the Secretary
OCT 21 1997
S Part of Public Record

RRW/klh
Enclosures

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

RICHARD A. "RICK" GEIST, MEMBER
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

TRANSPORTATION, CHAIRMAN
COMMERCE AND ECONOMIC DEVELOPMENT
RULES

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October 15, 1997

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Surface Transportation Board
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Washington, D.C. 20423

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

Dear Mr. Williams:

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

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

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

Sincerely yours,

J. Doyle Corman

J. Doyle Corman, Chairman
Senate Transportation Committee

Richard A. Geist

Richard a. Geist, Chairman
House Transportation Committee

J. Barry Stout

J. Barry Stout, Minority Chairman
Senate Transportation Committee

Richard D. Olasz

Richard Olasz, Minority Chairman
House Transportation Committee

Enclosure

xc: Governor Thomas Ridge
All parties of Record

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Richard R Wilson

Richard R. Wilson

RRW/klh
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Representative Richard A. Geist
All parties of record

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

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Vernon A. Williams
Page 2
October 15, 1997

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Richard A. Geist

Richard a. Geist, Chairman
House Transportation Committee

J. Barry Stout

J. Barry Stout, Minority Chairman
Senate Transportation Committee

Richard A. Olasz

Richard Olasz, Minority Chairman
House Transportation Committee

Enclosure

xc: Governor Thomas Ridge
All parties of Record

Pa. H.T.C. 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 Requests for Conditions by the Transportation Committee of the Pennsylvania House of Representatives

Richard R. Wilson, Esq.
Special Counsel to the
Pennsylvania House of Representatives
Transportation Committee
1126 Eighth Avenue, Suite 403
Altoona, PA 16602

Dated: October 21, 1997

INTRODUCTION

On April 8, 1997 CSX Corporation ("CSX") and Norfolk Southern Corporation ("NS") after months of a fierce bidding war to acquire Consolidated Rail Corporation ("Conrail"), announced that they would jointly acquire Conrail and divide the Conrail system between them. As described in the Railroad Control Application filed with this Board, most Conrail lines in Pennsylvania will be operated by NS, but the Philadelphia area and coal origins on the Monongahela Railway Company in southwestern Pennsylvania will be jointly served by CSX and NS. However, due to the broad scope of the proposed acquisition and the potential impact on Pennsylvania jobs and businesses, the Transportation Committee of the Pennsylvania House of Representatives conducted legislative hearings to assess the impact of this transaction on the Commonwealth. Hearings were held in Altoona, PA on May 15, 1997, in Malvern, PA on August 19, 1997 and in Pittsburgh on October 16, 1997.

I. SUMMARY OF TRANSACTION - PENNSYLVANIA

Application documents were filed by NS and CSX with the Surface Transportation Board ("STB") on June 23, 1997. CSX and NS will each have a 50% voting interest in Conrail but will operate 58% and 42% of Conrail's assets respectively. Under the terms of the Transaction Agreement, Conrail will create two corporate subsidiaries, one referred to as New York Central Lines, LLC to which assets to be operated by CSX will be transferred and the other, Pennsylvania Lines LLC, to which assets to be operated by NS will be transferred. Conrail will retain ownership of three "shared asset areas" in northern New Jersey, southern New Jersey/ Philadelphia and Detroit. The Monongahela Railway Company (MGA) in southwestern Pennsylvania will be transferred to Pennsylvania Lines but will be subject to a Joint Usage Agreement which will give CSX access to all MGA lines.

In effect, NS and CSX have "condoed" Conrail by creating separate units over which they exercise exclusive control and allowing Conrail to retain certain "common areas" where both railroad companies will have access to shippers formerly served only by Conrail. As a consequence, this transaction is exceedingly complex and involves many operating agreements, leases, trackage arrangements and other contracts which specify the rights and obligations of the various entities which have been created to accomplish the division of Conrail assets. We view this complexity with concern because of the potential for disagreement between two competing rail systems and the consequent impact of such disputes on day to day management and operational decisions which can affect rail safety and service.

II. PENNSYLVANIA IMPACTS

A. PHILADELPHIA AREA IMPACTS

NS and CSX have proposed that substantial portions of Conrail facilities in the south Jersey/Philadelphia area in a new "shared asset area". Under the terms of a separate Shared Asset Area Agreement, CSX and NS will be given joint access to customers within this area. The Philadelphia/South Jersey shared asset area will be operated by or through Conrail which will conduct rail operations within this area with its own crews and personnel.

The advantage of the shared asset area is that shippers located within the area will have access to both NS and CSX for the shipment of their goods thereby creating rail to rail competition where none had previously existed. It remains to be seen, however, whether the shared asset areas can be efficiently operated by Conrail in a manner which will provide meaningful rail to rail competition between CSX and NS, particularly since applicants have introduced major charges in Conrail's Philadelphia operations and have submitted no operating plan for this for shared asset area. Moreover, the creation of a shared asset area with reestablished rail to rail competition will necessarily discriminate against those locations outside of the shared asset area which will have service from only one railroad.

The merger application is very sketchy on what impact, if any, the proposed shared asset area operations will have on SEPTA and New Jersey transit operations on Conrail lines. We share the concerns raised by the Pennsylvania Senate Transportation Committee's comments on this topic.

The merger application also outlines significant job reductions and relocations in the Philadelphia area. Based on the information in the Application, approximately 444 agreement positions will be abolished and 134 positions will be relocated to areas outside of southeastern Pennsylvania. Approximately 739 management positions will be terminated and 743 management positions will be relocated to areas outside of southwestern Pennsylvania. While there will continue to be a Conrail headquarters located in Philadelphia, the size of that headquarters and the scope of its operational functions will be drastically reduced.

The merger application also outlines possible new facilities and investments by NS and CSX in the Philadelphia area. NS indicates that it intends to expand the intermodal facility at Morrisville and create a new $4,000,000 Triple Crown Roadrailer terminal at Morrisville. There will be a new $15,000,000 automobile unloading facility near Philadelphia/Norristown and CSX has announced plans for similar improvements to intermodal facilities in the Philadelphia area. Since much of the increased revenues and projected benefits of this merger are dependent upon the substantial growth in intermodal traffic to be handled by both CSX and NS, the future of these intermodal facilities is dependent upon the successful growth of that segment of rail traffic.

B. CONRAIL EMPLOYEE BENEFIT PLANS

The impact of this merger transaction on Conrail retirement plans receives very little attention in the application. The provisions of the Conrail/CSX/NS Transaction Agreement dealing with non-agreement employee benefit plans give applicants broad discretion to continue providing these benefits to non-agreement employees and to make virtually any changes deemed advisable or necessary. The employee benefit plans and programs for those employees which will operate NS assets and CSX assets will become the liabilities of the Conrail subsidiary corporations set up to operate those assets.

CSX, NS and Conrail have agreed to take any actions permitted by law that are necessary or appropriate to determine the amount of excess assets in a Conrail benefit plan and to allow allocation to CSX and NS or their respective affiliates of those excess assets provided that no such transfer shall reduce the assets remaining in any Conrail defined benefit plan to a level that is less than 100% of the liabilities for benefits on a termination basis as reasonably calculated by Price Waterhouse using usual and customary methodologies and assumptions. Thus, the Transaction Agreement specifically permits NS and Conrail to transfer assets from Conrail's benefit plans to the extent that those assets exceed the liabilities of those plans.

Since the liabilities of benefit plans are often calculated based on actuarial and interest rate assumptions which fluctuate from time to time it would appear that the merger agreement provides substantial flexibility and opportunity for NS and CSX to siphon off excess assets from Conrail retirement plans.

C. HARRISBURG IMPACTS

In general, the Harrisburg area may benefit from the NS acquisition of Conrail assets in that area. NS has indicated that Harrisburg will become a major north-south, east-west axis on its expanded system. NS has announced plans to increase freight service on the line from Harrisburg to Buffalo which will provide for increased north-south rail traffic to and from Canada. In addition, NS and Canadian Pacific have announced plans for interchange of traffic at Harrisburg. In addition, NS has announced plans to create a new $40,000,000 intermodal facility at Harrisburg and to increase capacity on the Reading-Harrisburg line by improved signaling and crossovers.

Despite these changes in the Harrisburg area, NS and CSX will abolish 124 agreement positions and transfer 128 jobs out of the Commonwealth. Twenty-one management jobs will be eliminated and eleven management jobs will be transferred out of the Commonwealth.

D. ALTOONA AND HOLLIDAYSBURG REPAIR SHOPS

After the legislative hearings conducted in Altoona, PA in May, NS and CSX clarified their plans and intentions for utilization of these facilities. NS has announced that it intends to transfer locomotive truck overhaul work to Altoona and to transfer most of its freight car program to Hollidaysburg. It has announced approximately $4,000,000 in capital improvements for the Hollidaysburg shop and $63,000,000 for improvements at the Altoona locomotive repair shops. In addition, CSX has agreed to undertake a portion of its car repair work at the

Hollidaysburg and Altoona shops. As a result of these plans, NS projects an increase of approximately 170 jobs in the Altoona area.

E. PITTSBURGH AREA IMPACTS

The southwestern Pennsylvania facilities which will be most directly affected by the allocation of Conrail lines are:

(1) Conrail National Account Service Center

Conrail presently operates its National Accounts Service Center in North Fayette Township along the Parkway West. This office is a centralized customer and service coordination facility which receives calls from shippers and receivers served by Conrail and handles requests for service, rail car tracing, and other service related matters.

NS operates a similar national accounts center for its customers in Atlanta and has stated that this facility will be consolidated with its own facility in Atlanta. This will result in the transfer of approximately 215 jobs from Pittsburgh to Atlanta, GA. CSX will transfer 185 jobs to Jacksonville, Fl. Thirty-one management personnel will be transferred to Atlanta and 16 to Jacksonville.

(2) Conway Yard

At present, Conway Yard is one of the principal east/west classification yards for Conrail. It will be acquired and operated by NS under the proposed operating plan. NS has indicated that it intends to eliminate multiple blocking and classification of trains in order to improve service on east/west routes. As a result of these changes, trains which had previously been blocked and reclassified at Conway yard will be preblocked at other yard facilities and run through Conway Yard. As a result, NS projects a slight reduction in classification and blocking activities at Conway Yard. Approximately 45 agreement and 7 nonagreement jobs (based on 1996 data) will be abolished at Conway Yard.

NS has also announced that it intends to spend approximately $30 million for a new locomotive repair shop at Conway Yard just north of Pittsburgh in Beaver County.

(3) Pitcairn Intermodal Center

Conrail's recent improvement of its intermodal facility Pitcairn Yard never lived up to its billing because Conrail marketing objectives focused on long haul intermodal movements which bypassed this yard. NS has indicated that it intends to concentrate more heavily on short haul intermodal moves of five hundred miles or less and has identified Pitcairn Yard as a facility which it intends to utilize in connection with increased short haul intermodal movements. It remains to be seen whether this strategy will prove successful and create higher utilization levels at this intermodal facility.

(4) NS Regional Headquarters in Pittsburgh

NS has stated that in order to operate its Conrail lines it intends to establish a regional headquarters in Pittsburgh. This headquarters will exercise control over several subordinate division offices and will make Pittsburgh the operational headquarters for all Conrail lines acquired by NS. The STB application does not indicate how many jobs will be associated with this regional headquarters.

F. MONONGAHELA RAILWAY COMPANY

The Monongahela Railway serves the coal fields of Green County, Pennsylvania and northern West Virginia. It is the largest rail traffic generator in the Commonwealth. Prior to 1990, the railroad was owned and operated by three carriers: Conrail, CSX and P&LE. Eventually, Conrail acquired the interests of P&LE and CSX and most recently operated the lines for its own account. NS will acquire operating control over the Railroad under the proposed operating plan but has granted CSX joint use of Monongahela railroad lines. This plan reestablishes competitive rail service from the Monongahela coal fields and should substantially benefit coal production from those coal fields, if daily operations are conducted by NS in an efficient and non-discriminatory manner.

G. ERIE, PA

NS and CSX have announced that as part of the merger application they plan to relocate NS's rail line in Erie out of the middle of 19th Street to an area along the Conrail right-of-way which will be acquired by CSX. As part of this relocation project, NS and CSX have agreed, if feasible, to maintain the connection between the NS line and the Allegheny and Eastern Railroad line which serves northwestern Pennsylvania and connects with the former Conrail line from Corry, PA and Hornell, NY. The NS merger application fails to mention that a portion of the line which it intends to acquire in the Corry area is already leased and operated and will be conveyed to the Northwest Pennsylvania Rail Authority. The Authority has notified NS of this situation and NS has indicated that it is under investigation.

III LEGISLATIVE FINDINGS

A. JOB REDUCTIONS

The acquisition transaction proposed by NS and CSX will have a major adverse affect on employment within the Commonwealth. In particular, the Philadelphia area will be seriously impacted by the loss or relocation of a substantial number of Conrail management positions. The closing of the Conrail National Account Service Center in Pittsburgh is the next largest center for job loss in the Commonwealth. However, in Pittsburgh, NS will establish a

Northeast Operations Center for all of its Conrail lines. Thus, it appears there will be some offset to the job loss at the National Account Center.

Throughout the rest of the Commonwealth, the applicants have identified various reductions in force associated with the closing or consolidation of various facilities. While the numbers are not as large, the loss of those positions will not help these communities.

NS and CSX have indicated that they plan to modestly increase employment levels at the Hollidaysburg and Altoona shops. However, these commitments appear to be interim measures and long term employment commitments are not assured.

In addition, there is substantial concern on the part of Conrail employees that CSX will use its portion of Conrail's overfunded pension plan to offset the underfunded CSX plan. Neither NS nor CSX witnesses were willing to make any commitments as to the future disposition of the overfunded portions of Conrail's retirement plans.

B. RAIL OPERATIONS WITHIN THE COMMONWEALTH

1. Philadelphia/South Jersey "Shared Asset Area". CSX and NS have proposed an extremely complicated terminal switching operation to be performed on their behalf by a truncated Conrail in the Philadelphia area. While theoretically providing increased competition, it remains to be seen whether NS and CSX will provide adequate financial support to the Conrail switching operation to assure efficient service within the Shared Asset Area. Both acquiring railroads will be under extreme financial pressure to cut costs and enhance revenues in order to pay for this transaction. This will not only restrict financial resources available to Conrail, but may cause CSX and NS to favor those east coast ports at which the other is not a significant competitive force

2. Monongahela Railway Company - Joint Access. As noted previously, NS will acquire operating control over the Monongahela Railway under the proposed operating plan and has granted CSX joint use of the Monongahela Railway lines. The plan reestablishes competitive rail service from the Monongahela coal fields and should substantially promote production in those coal fields, if the day to day operations on this railroad are conducted by NS in an efficient and non-discriminatory fashion.

The Bessemer & Lake Erie Railroad Company has sought access to the Monongahela coal fields through trackage rights and appropriate haulage arrangements with Norfolk Southern and/or CSX. Protective conditions granted by the ICC when Conrail's acquired 100% control of the Monongahela Railway Company were not adequate to enable B&LE to become an active competitor for Monongahela coal traffic. B&LE is an effective rail competitor in southwestern Pennsylvania and has excellent port facilities on Lake Erie at Conneaut Dock which would greatly facilitate the marketing of Monongahela coal to lake served electric utilities in the midwest and Canada. Since the relief sought by Bessemer merely reconfirms and implements competitive access rights already recognized by the former ICC, the imposition of meaningful competitive access conditions by the Board would assure effective rail competition and participation in Monongahela coal traffic by B&LE and other regional carriers with B&LE connections. It will also insure that Monongahela coal fields are served by a regional competitor which does not have alternative long haul coal sources which might be preferred by CSX and NS to enhance freight revenues.

3. Relationships with Short Line Railroads. Short line and regional railroads which service communities within the Commonwealth uniformly testified to difficulties in negotiating interchange and access arrangements with NS. While some of those carriers have

reached agreements with NS, it is evident that Pennsylvania short lines will have to make significant adjustments when working with NS. It is also likely that as financial pressures to cut costs and increase revenues grow in the wake of this transaction, NS and CSX will squeeze short line revenues.

4. Intermodal Operations. The application filed by NS proposes substantial investments in intermodal facilities at Philadelphia, Harrisburg, and Pittsburgh. Indeed this entire transaction is financially justified on the basis of increased revenues derived from the diversion of substantial volumes of motor carrier traffic to intermodal trains. The abilities of NS and CSX to realize these revenue gains from intermodal traffic is doubtful. Intermodal traffic is extremely competitive and produces some of the smallest contribution margins of all railroad traffic. Minor changes in technology or configurations of transportation equipment (such as triple trailers) could alter the competitive assumptions upon which railroad revenue projections are based. Captive shippers such as coal and chemical companies are therefore justifiably concerned that when intermodal traffic does not produce the revenues projected by the applicants, they will turn to those shippers who do not have competitive options and seek to maximize revenues on captive traffic.

5. Safety and Operational Concerns. The experience of Union Pacific which has suffered fatal rail accidents, severe equipment shortages and major traffic congestion presents significant concerns on the part of many rail shippers that the premium price which NS and CSX have paid for Conrail will force both carriers to underinvest in capital improvements and equipment necessary to maintain current service levels and safe operations. This is especially true if the economy declines over the next five years. We are also extremely concerned that the

STB does not have adequate staff resources to evaluate the CSX and NS operating plans from a safety standpoint and will rely on outside consultants to perform this assessment.

IV CONDITIONS REQUESTED BY THE PENNSYLVANIA HOUSE TRANSPORTATION COMMITTEE

In view of the foregoing concerns, the Pennsylvania House Transportation Committee has serious reservations concerning whether or not the acquisition of Conrail by NS and CSX is in the public interest. Certainly, we recognize that NS has the best operating and financial performance in the U.S. railroad industry and brings many strengths to this transaction. CSX also has impressive operating statistics and capabilities. Nonetheless, the Committee is unconvinced that the applicants can generate projected revenue levels from the diversion of truck traffic. We are especially concerned that the applicants' intermodal projections are based on assumptions which do not adequately account for economic down turns or changes in equipment availability in years 2 - 5 of this transaction. We certainly hope that the projections presented by the applicants can be achieved, but our evaluation of this transaction is not driven by a predetermined goal to obtain STB approval. If NS and CSX projections are overstated, applicants will have to make up revenues from other sources of traffic or cut costs and defer capital projects which have been presented in the application as part of the public interest justification for this transaction.

Accordingly, it is the position of the Pennsylvania House Transportation Committee that the proposed division and acquisition of Conrail by NS and CSX is a "high risk" transaction and, if approved, should be subject to ongoing monitoring by the Surface Transportation Board to assure compliance with proposed service schedules and FRA safety standards. In particular, STB oversight should monitor the integration of Conrail operations into the NS and CSX systems to insure that management and operational breakdowns such as those experienced by Union Pacific do not occur in this transaction.

Accordingly, the Committee requests the Board condition its approval of this merger on the following public interest commitments, many of which have been proposed by applicants:

A. That NS and CSX give priority for all job vacancies to former Conrail employees whose jobs were abolished or transferred as a result of this transaction.

B. That hiring and placement for agreement and non-agreement positions within the Commonwealth be coordinated and administered through Pennsylvania regional employment councils for the communities adversely impacted by Conrail job terminations and transfers.

C. That for a three year period NS and CSX respectively allocate all equipment and supply purchases for Conrail lines on competitive bid basis to former Conrail suppliers.

D. That the following capital investments in new and improved facilities be undertaken:

(1). NS Triple Crown Railroad terminal at Morrisville, PA - $10 million;

(2). NS improvements to Greenwich Yard - $5 million;

(3). NS construct new automobile unloading facility near Philadelphia/Norristown - $15 million;

(4). CSX construct intermodal facilities in Philadelphia including a new intermodal ramp at Greenwich Yard - $15 million and $14 million for double stack clearance in Philadelphia;

(5). CSX - $4 million investment for Greys Ferry Bridge - Eastwick connection.

(6). NS Construct new intermodal facility at Harrisburg, PA - $40 million;

(7). NS increase capacity on the Reading - Harrisburg line - improved signaling and crossovers - $10 million,

(8). NS - Hollidaysburg, PA car shop - capital improvements - $4 million;

(9). NS improvements at the Altoona, PA locomotive repair shops - $63 million;

(10). CSX assignment of car repair work to the Hollidaysburg and Altoona shops;

(11). NS construct new locomotive repair shop in Beaver County, PA - $30 million;

(12). NS Increase capacity of Pitcairn Yard intermodal facility at Pittsburgh, PA - $5 million;

(13). NS establish and staff Regional and Division operational headquarters in Pittsburgh, PA;

(14). NS upgrade Harrisburg, PA to Binghamton, NY line;

(15). NS relocated NS main line from 19th Street in Erie, PA.

E. That NS and CSX be required to obtain independent review and approval by the Board as to future disposition of any overfunded portion of Conrail's retirement plans.

F. Monongahela Railway Company - Joint Access

That the conditions for competitive access sought by Bessemer and

Lake Erie Railway Company be imposed as a condition of this transaction and that the Board require quarterly reports of coal train originations from the Monongahela Railway Company via CSX, NS and B&LE to assure that joint access is provided on a nondiscriminatory basis.

G. Wheeling and Lake Erie Company

The House Transportation Committee concurs with the conditions sought by the Senate Transportation Committee.

H. Buffalo and Pittsburgh Railway Company

The House Transportation Committee concurs with the conditions requested by the Senate Transportation Committee.

I. Reading and Northern Railroad

The House Transportation Committee concurs with the conditions sought by the Senate Transportation Committee.

J. Canadian Pacific Railway Company

The House Transportation Committee concurs with the conditions sought by the Senate Transportation Committee.

K. STB Monitoring

That the STB establish a schedule for oversight hearings to monitor applicants compliance with these and other conditions imposed in this transaction.

None of the foregoing conditions should significantly deprive applicants of any benefits anticipated from this transaction. Indeed, most of these conditions have already been proposed by applicants in their filings with the Board. Accordingly, there should be no objection by applicants to the Board requiring that these commitments be honored and that this transaction be subject to further review by the Board in the event that applicants are unable to implement the public interest benefits presented in their application.

IV. CONCLUSION

In the meantime, the Pennsylvania House Transportation Committee will work closely with NS and CSX and other agencies of the Commonwealth to monitor rail operations within the state and to partnership with NS or CSX in the creation of rail served industrial parks, infrastructure improvements and economic development projects. We understand that for better or for worse, the interests of the Commonwealth are inextricably linked to those of NS and CSX in doing whatever is possible to make this transaction succeed and assuring that efficient and safe railroad transportation is provided by the applicants to the citizens of this Commonwealth. If the concerns addressed and the conditions sought in this statement and that of the Pennsylvania Senate Transportation Committee are granted by the Board, this Committee will support the proposed transaction and will look forward to a positive and productive relationship with NS and CSX.

VERIFICATION

We, the undersigned, declare under penalty of perjury, that the foregoing is true and correct. Further, we certify that we are qualified and authorized to file these Comments on behalf of The Pennsylvania House Transportation Committee, of which we are Chairman and Minority Chairman respectively. Executed on ___ October 15, ___, 1997

Richard A. Geist

Richard D. Olasz

Richard A. Geist, Chairman
House Transportation Committee

Richard Olasz
Minority Chairman

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 Requests for Conditions by the Transportation Committee of tne Pennsylvania Senate

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 Requests for Conditions by the Transportation Committee of the Pennsylvania Senate

COMMENTS

A. BENEFITS

Pennsylvania Senate Transportation Committee Statement on the Conrail Acquisition

The Pennsylvania Senate Transportation Committee held hearings in Harrisburg on March 19, 1997, and has studied the proposed acquisition of Conrail by CSX Transportation (CSXT) and

Norfolk Southern (NS) as it impacts Pennsylvania. As outlined by the Applicants, the proposed transaction has some positive impacts on the Commonwealth. Although parts of the Philadelphia region have had multi-carrier competition for years, the proposed transaction will once again provide for competitive choice in the portions of the Philadelphia region included in the joint service territory (CSAO). In southwestern Pennsylvania, coal shippers in the Monongahela coal fields, who formerly had competitive choices until Conrail acquired the Monongahela Railway a few years ago, will once again have competitive options.

The announced agreement between NS and CP Rail to utilize the Harrisburg-Sunbury-Scranton-Binghamton corridor will greatly enhance this central Pennsylvania route, while also providing CP Rail with an improved routing to Philadelphia; however, this will be accomplished at the expense of weakening the Allentown-Scranton corridor used by the Reading and Northern Railroad. The announced agreement between NS and Pennsylvania Power & Light will continue to make central Pennsylvania coals competitive in the marketplace.

In addition, the commitment by both parties to use the Juniata Shop complex should provide additional employment in this region, although we note that CSXT's proposed use of this facility could end shortly after the first three years following the transaction.

These are some of the identifiable benefits to Pennsylvania. In addition, the Commonwealth's shippers will be gaining single-line access to many new markets, particularly in the Southeast. We note, however, that with the exception of shippers in the Philadelphia and Monongahela joint areas and in far northwestern Pennsylvania, the new single-line access points will only be in conjunction with Norfolk Southern. This is because NS is acquiring virtually all of the remaining Conrail lines in Pennsylvania, thereby perpetuating (or transferring) Conrail's near monopoly on trunk line rail service in the Commonwealth.

B. PROBLEMS

The absence of competitive rail options is of great concern to Pennsylvania. Our shippers must have competitive options made available to them when choosing rail carriers. The existing near monopoly is of particular concern when projecting to them next round of rail mergers, when it is forecast that two transcontinental rail carriers will emerge. If the Commonwealth's shippers only have access to one of the eastern carriers as a result of the proposed transaction, then they will have access to only one of the two transcontinental carriers in the event of the next round of rail mergers. This will place Pennsylvania at a severe disadvantage in regard to neighboring regions.

Another problem that might result from the proposed transaction is the access of Pennsylvania shippers to points in the Southeast. While Conrail has had a near monopoly on rail service in Pennsylvania, it has served as a neutral carrier vis a vis CSXT and NS in providing service to the Southeast. Following the transaction, however, the neutrality of Conrail in such traffic flows will be replaced by NS. Pennsylvania's shippers and shortlines are concerned that this change in relationship will adversely impact traffic flowing between CSXT points and various shippers in Pennsylvania. Access to multiple rail options, which may re-establish some degree of neutrality for such traffic, is a concern to most of central and northern Pennsylvania.

Also troubling is the projected and potential loss of employment in Pennsylvania resulting from the transaction. Between 2,000 and 3,000 railroad jobs will be eliminated in Pennsylvania. Philadelphia will be particularly effected. In addition, the Pennsylvania railroad supply industry, a major provider to Conrail, may be adversely impacted as the purchasing functions are moved from Pennsylvania to Florida or Virginia. With the loss of so many primary jobs, it is very likely that the multiplier effect on the economy in the Commonwealth will be noticeably impacted.

While the overall proposal with have both positive and negative impacts on the Commonwealth, there are certain specific issues that we believe warrant the attention of the Surface Transportation Board (STB).

C. SPECIFIC ISSUES

1. Competitive Access for CP Rail

First, the Commonwealth has spend a considerable sum improving the clearances across Pennsylvania in an effort to make Philadelphia more competitive. One of the major users of some of those improvements is CP Rail. CP has been instrumental in bringing new steamship companies to the Port of Philadelphia, as well as in providing competitive alternatives to some shippers in South Philadelphia. CP Rail could also provide competitive options for other Philadelphia shippers, but is restricted in doing so as a result of uneconomic Conrail switching charges to the remainder of the shippers within the Philadelphia switching district.

CP Rail comes to Philadelphia over trackage rights that are restricted to overhead business. The primary functions of CP Rail's Philadelphia service is to handle interchange to CSXT, to carry NS interchange on its way to Potomac Yard, and to serve the Port of Philadelphia (in South Philadelphia only). Following the proposed transaction, it is highly likely that most of all of the CP Rail interchange with CSXT will be handled at other points, such as at Albany, NY, thereby leaving very little CP Rail-CSXT traffic on CP Rail's Philadelphia trains. As a result of their agreement with NS, CP Rail-NS Potomac Yard interchange traffic will now be handled at Harrisburg, instead of travelling through Philadelphia.

As a result, we fear that the only remaining business that will be handled on CP Rail's Philadelphia trains will be the limited traffic it can generate through the Port of Philadelphia. Our concern is that this will not be enough business to sustain a reliable service in this market and that

CP Rail will be forced to retreat from providing service into the Philadelphia market. We believe steps need to be taken to insure that CP Rail is able to economically compete in southeastern Pennsylvania on its Binghamton-Philadelphia corridor.

One solution proposed by CP Rail is that they gain access, through a reasonable switching charge, to the entire Philadelphia-South Jersey joint territory. This would enable CP Rail to compete for a considerable traffic base that would help them sustain their Philadelphia presence. A second suggestion made by CP Rail is that the restrictions on the trackage rights over which they operate be removed and, at the very least, that they be allowed to interchange traffic with the many shortlines along the trackage rights routes. Along the various routes over which CP Rail will have trackage rights in Pennsylvania are about one dozen shortline operations, while several other shortlines are within a few miles of the CP Rail overhead routes. We support the idea of CP Rail gaining access to these shortline companies to provide shippers with rail competition in an area that would otherwise be a Norfolk Southern monopoly.

In addition to these CP Rail proposals, the Senate Transportation Committee has also suggested to CP Rail and NS that the haulage arrangements agreed to between Harrisburg and Mechanicville be extended to Philadelphia and that CP Rail haul NS traffic from the Philadelphia area to Canada and New England on CP Rail trains between Philadelphia and Harrisburg, in addition to being on CP Rail trains between Harrisburg and Mechanicville.

Absent an agreement between CP Rail and the Applicants, we believe the STB must seriously consider these or other proposals to insure that CP Rail is provided with access to enough of a traffic base to insure that they are able to remain in the Philadelphia market. The Commonwealth would have significant concerns if this transaction resulted in Philadelphia losing its third trunk line carrier, particularly after making investments of about $40 million to improve access for all rail carriers to reach Philadelphia.

2. Competitive Access And/Or Interchange Rights for Regional and Short Line Railroads

(a) Reading and Northern Railroad

The potential adverse impacts on three other railroads in Pennsylvania may seriously threaten their continued viability, with the loss of service having significant consequences on the economy of Pennsylvania. First, the proposed CP Rail-NS agreement to route traffic via Harrisburg will divert CP Rail overhead traffic off the former Conrail Lehigh Main Line now owned in part by the Reading and Northern Railroad, which is the sole carrier serving Pennsylvania's anthracite coal industry. The loss of this overhead business will significantly impact this route. Under the terms of Reading and Northern's acquisition of this line from Conrail, there is a significant penalty if local traffic is interchanged to CP Rail, which connects at the north end of the line. The ability of Reading and Northern to freely interchange with CP Rail would enable them to compete for additional traffic to help replace the overhead business that will be lost as a result of the proposed transaction.

(b) W&LE and B&P

Much of the rail network in western Pennsylvania is operated by two regional rail carriers, the Wheeling and Lake Erie (W&LE) and the Buffalo and Pittsburgh (B&P) family of lines. The W&LE operates nearly 100 miles of track in southwestern Pennsylvania, while the B&P family of lines has over 600 miles of track in northwestern and western Pennsylvania. These two companies also operate on more than 100 miles of CSXT lines in western Pennsylvania. The W&LE and B&P operate on about one-half of the entire rail network in the western third of the Commonwealth.

The traffic flows on these two properties are largely dependent on overhead movements and friendly connections at gateway cities. For example, W&LE was spun off by NS and today provides NS with an overhead routing to the Hagerstown gateway, friendly access into the Pittsburgh market, and access into numerous Ohio markets. The B&P was spun off by CSXT and today provides CSXT with an overhead route to Buffalo and friendly access into various western Pennsylvania markets. Both of these railroads also have substantial interchanges with Conrail, while W&LE also interchanges with CSXT and B&P interchanges with NS. The Commonwealth has made sizeable investments to improve the condition of both rail systems.

The proposed transaction puts a substantial portion of the revenues of each of these region carriers at risk. Not only are the overhead traffic volumes at risk, but NS will now be directly competing for business for which the W&LE was a friendly connection, while CSXT will be doing the same vis a vis B&P. Substantial revenue losses threaten the viability of these lines.

W&LE has been negotiating with NS over many of these issues, while B&P has been negotiating with CSXT. We understand the both W&LE and B&P have been requesting access to new gateways and access to various shippers, which will enable them to compete for business to replace the revenues they will be losing as a result of the proposed transaction.

W&LE has proposed access to additional markets and other solutions that it believes are necessary to offset the relatively large revenue losses that will result from the proposed transaction. The financial condition of the W&LE would make it difficult (or impossible) to sustain such revenue losses. NS has offered a series of proposals that it suggests are very generous and will make W&LE whole. W&LE suggests that the proposals by NS are insufficient. Each railroad has conducted a traffic study showing widely varying results, although we understand the traffic studies were conducted by the same individual. We strongly urge the STB to determine which traffic study is most appropriate, to delineate specific terms in regard to the NS proposal and assess their impact on W&LE, and to identify other conditions as necessary to assure the continuance of the W&LE. (We also note that there are several proposals for the W&LE that would involve CSXT, as opposed to NS, and that the STB should also consider these proposals when establishing the conditions necessary to sustain service on the W&LE. For example, W&LE will have to negotiate with CSXT, as well as NS, to improve its access to shippers in the Pittsburgh market.) Absent such conditions necessary to keep it as a viable carrier, we support the "last-resort" W&LE request for inclusion in the proposed transaction as the most appropriate means of preserving service on the W&LE routes.

We also note that Conrail recently spun-off various rail lines to the Pittsburgh Industrial Railroad, which connects to the W&LE. As with the Conrail sale of lines to the Reading and Northern, Conrail imposed various penalties should these shortlines interchange traffic with anyone other than Conrail. We suggest that the STB review such situations in terms of the impact of such penalties on competition in light of the proposed transaction, and where appropriate, allow such carriers as W&LE and CP Rail to compete for such shortline traffic.

B&P also stands to lose significant revenues as a result of the transaction. Such revenue losses, largely from through traffic, have the potential of resulting in the downgrading or abandonment of portions of the B&P route, which is the only north-south through route in northwestern Pennsylvania serving the Pittsburgh-Buffalo corridor. Any reductions or loss of services along this crucial corridor would have a detrimental impact on the development of much of this region.

We understand that B&P has been negotiating with CSXT over several issues. B&P has proposed gaining access to new markets to insure that the service levels on their through route do not deteriorate, which would result in reduced service to many of the key industries in northwestern Pennsylvania. B&P is also negotiating with NS about certain issues, but these negotiations are contingent on B&P and CSXT coming to some type of accord. If the parties cannot come to an understanding, we urge the STB to identify those conditions that are necessary for the B&P to economically maintain an adequate level of service to the region. Absent such conditions, we support B&P's request for inclusion as the last means of preserving these vital services.

We believe it is imperative to aggregates shippers in northwestern Pennsylvania that one carrier be able to provide single-line service to handle significant levels of short-haul traffic. In addition, B&P could provide neutral access to the Indiana County power stations that might receive Monongahela coal from the proposed joint service territory. Otherwise, these shippers would not have the benefits of joint access to the southwestern coal mines, but would be captive to NS. These are examples of new markets that would help B&P offset revenue losses, but which should have little or no adverse impacts on the Applicants.

In addition, one issue potentially involves all four of the carriers. We strongly urge the STB to establish a trackage rights connection between W&LE and B&P so that these carriers may potentially work together to provide competitive options for shippers in western Pennsylvania. Such trackage rights could either be over CSXT lines via Akron or NS lines via Cleveland or both. We believe the ability of W&LE and B&P to efficiently connect and jointly provide competition to CSXT and NS in western Pennsylvania is vital to the economic development of that region. The value of such a connect will be enhanced if W&LE gains access to the Canadian National (Grand Trunk) at Toledo, thereby allowing western railroads to route traffic to much of western Pennsylvania using a GTW-W&LE-B&P routing in competition to CSXT or NS. Such routings will greatly benefit shippers in western Pennsylvania.

(c) B&LE

Such a routing could also be used as an alternative to reach shippers served by the Bessemer & Lake Erie/Union Railroad. The B&LE has brought to our attention a competitive access issue in regard to the Monongahela coal territory that will be jointly served by CSXT and NS. When Conrail acquired 100% control of the Monongahela Railway, the ICC granted protective conditions that were supposed to allow B&LE to compete for coal traffic for which both CSXT and Pittsburgh & Lake Erie previously served as competitors to Conrail. Pricing actions taken by Conrail, however, effectively thwarted such competition. We strongly urge the STB to review the conditions impose on the prior Monongahela Railway transaction and prescribe the necessary remedies to assure that such conditions appropriately reflect the desire of the ICC to allow B&LE to effectively compete for Monongahela coal traffic.

(d) Amtrack/SEPTA Operations

One other area of concern for the Senate Transportation Committee involves the impacts of the proposed transaction on SEPTA and Amtrak operations, particularly in the Philadelphia area. Although they have provided little or no detail on their operations in southeastern Pennsylvania, the Applicants have alleged that there will be no impact on the passenger services provided by Amtrak or SEPTA; however, the division of Conrail's assets in southeastern Pennsylvania will, in fact, result in adverse impacts.

The freight franchise on SEPTA's lines north of Philadelphia, centered around Lansdale, will be transferred to CSXT. The lines are served today from Abrams Yard (Norristown) via a SEPTA-owned freight only line that was recently rehabilitated. We note that this line (the Stony Creek Branch) has been split between NS and CSXT and that Abrams Yard will be transferred to NS. As a result, although it was not delineated in their operating plans, it would appear that CSXT will have to access the Lansdale Cluster via SEPTA's main passenger route from Philadelphia. Such freight service will potentially have adverse impacts on SEPTA operations.

In addition, SEPTA currently dispatches portions of the Trenton Line that will be transferred to CSXT and which will serve as CSXT's main route to the New York market from the South. This routing is traversed by dozens of SEPTA trains each day. The Applicants have not disclosed what their plans are for the dispatching of this route, but any plan to move the dispatching from SEPTA's control in Philadelphia to CSXT's control in Jacksonville would be unacceptable to both SEPTA and the Commonwealth, which underwrites a portion of the SEPTA services.

The Applicants have stated that the proposed transaction will have no impact on passenger operations. However, the addition of numerous freight trains on lines operated by Amtrak and SEPTA will have some impact, while the changes in local freight services dictated by the division of the SEPTA lines between CSXT, NS, and the CSAO will also impact local passenger services. We urge the STB to closely study these very real impacts and impose conditions that will protect these passenger operations. Since the applicant allege the transaction will have no impact on passenger operations, surely they should have no objections to conditions to assure that their allegations are correct.

D. CONCLUSION

In its statement, the Pennsylvania House Transportation Committee has identified numerous investment, purchasing, and employment commitments made by the Applicants in their filings or in communications to Pennsylvania officials. It is these very commitments that have allowed the Commonwealth to make some determination as to the public benefits of the proposed transaction. The Senate Transportation Committee wholeheartedly concurs with the House that the Applicants should be held accountable for their commitments and that as a condition of this transaction the STB retains the right to reopen this application and impose additional conditions should the commitments not be fulfilled.

If the concerns detailed in this statement and that of the Pennsylvania House Transportation Committee are adequately addressed, then the Pennsylvania Senate Transportation Committee will support the proposed transaction and work closely with the Applicants to effectuate the transaction.

VERIFICATION

We, the undersigned, declare under penalty of perjury, that the foregoing is true and correct. Further, we certify that we are qualified and authorized to file these comments on behalf of the Pennsylvania Senate Transportation Committee, of which we are Chairman and Minority Chairman respectively. Executed on October 15, 1997.

J. Doyle Corman

J. Doyle Corman, Chairman
Senate Transportation Committee

J. Barry Stout

J. Barry Stout
Minority Chairman

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182720

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October 16, 1996

RECEIVED
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MAIL MANAGEMENT
STB

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 Southwestern Pennsylvania Regional Planning Commission, I enclose for filing an original and twenty-five copies of SPRPC - 2 Comments of Robert Kochanowski, Executive Director. Also enclosed is a 3 ½" 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

ENTERED
Office of the Secretary
OCT 21 1997
Part of Public Record

RRW/klh
Enclosures

xc: The Honorable Jacob Leventhal
Southwestern Pennsylvania Regional Planning Commission
All Parties of Record

182720

SPRPC - 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 of Robert Kochanowski, Executive Director,
Southwestern Pennsylvania Regional Planning Commission

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 Robert Kochanowski, Executive Director,
Southwestern Pennsylvania Regional Planning Commission

My name is Robert Kochanowski. I am Executive Director of the Southwestern Pennsylvania Regional Planning Commission ("SPRPC"). Southwestern Pennsylvania Regional Planning Commission was formed in 1962 as a forum for its member constituents to reach consensus on common issues involving regional development and transportation. The Commission is a six county agency representing Allegheny County, Armstrong County, Beaver County, Butler County, Washington County and Westmoreland County. It also includes the City of Pittsburgh.

Transportation planning has always been SPRPC's primary focus. In 1972, the Commission was certified as the Metropolitan Planning Organization for Southwestern Pennsylvania. As such, it is responsible for the region's long range transportation planning and its Annual Transportation Improvement Program updates which, in turn, determine how federal transportation funds are spent in this region. SPRPC is also involved in local government assistance, business information services, airport system planning and assisting transit agencies.

In the 1980's, as southwestern Pennsylvania experienced major economic reversals, economic development became increasingly important to the region. This ultimately led to the formation of the Southwestern Pennsylvania Regional Development Council which, in 1992, was named the Administrator of the Local Development District by the U.S. Appalachian Regional Commission and the Pennsylvania Department of Commerce. Because the Local Development District consists of nine counties - including Indiana, Fayette and Green - the Council and SPRPC operate as separate agencies with common board members and shared staff.

In 1994 SPRPC adopted a long range transportation plan for Southwestern Pennsylvania addressing issues of mobility, land use and air quality through the year 2015. Based on a collaborative decision making process the $14.7 billion plan includes nearly 200 specific projects and $6.7 billion for future infrastructure maintenance. This federally mandated plan will be revised as needed with the next update due in the fall of 1997.

In 1996 SPRPC conducted a comprehensive examination of the freight railroad system in southwestern Pennsylvania, with particular attention to the freight operating and service status of individual lines. It also reviewed the needs of shipping and receiving firms, how well those needs were being met by freight railroad service on branch lines and lines whose operating status was characterized as "in transition". This study also sought to identify capital improvement projects which would support railroad freight service and could be included in the SPRPC long range transportation plan and short term capital improvement programs.

Accordingly, SPRPC was well situated to evaluate and assess the impact of this rail merger on the freight transportation needs of southwestern Pennsylvania. During the last several months, representatives of Norfolk Southern and SPRPC have conducted several meetings and have exchanged information regarding the proposed transaction and regional industrial and economic development projects. As a result of this process, SPRPC has identified regional facilities which will be beneficially or adversely impacted by this transaction. Since CSX will continue to operate its existing rail lines in southwestern Pennsylvania, most of these impacts are related to Norfolk Southern's acquisition of Conrail lines in the region.

Southwestern Pennsylvania facilities which will be most directly affected by the Norfolk Southern take-over of Conrail lines are:

1. <u>Conrail's National Account Service Center-North Fayette Township, PA.</u>

Conrail presently operates its National Account Service Center in North Fayette Township along the Parkway West. This office is a centralized customer service coordination facility which receives calls from shippers and receivers served by Conrail throughout its system and handles requests for rail service, rail car tracing and other service related matters.

Norfolk Southern operates a similar national accounts center for its customers in Atlanta, GA and CSX has a similar center in Jacksonville, FL. NS and CSX have announced that the Conrail facility will be consolidated with their own facilities in

Atlanta or Jacksonville. This will result in the transfer to Atlanta or Jacksonville of 400 Conrail employees. An additional 92 positions at the Conrail center will be abolished. In addition, 31 management personnel will be transferred to Atlanta and 16 to Jacksonville.

2. Conway Yard, Beaver County, PA

At present, Conway Yard is one of the principal east/west classification yards for Conrail. It will be operated by Norfolk Southern under the proposed operating plan. Norfolk Southern has indicated that it intends to eliminate multiple blocking and classification of trains in order to improve service on east/west routes. As a result of these changes, trains which had previously been blocked and reclassified at Conway Yard will be pre-blocked at other yard facilities and run through Conway Yard. As a result, Norfolk Southern projects a reduction in classification and blocking activities at Conway Yard. Overall, traffic levels at Conway Yard are projected to decrease approximately 29% largely as a result of CSX competition. Approximately 45 agreement and 7 non-agreement jobs (based on 1996 data) will be abolished at Conway Yard.

Norfolk Southern has also announced that it intends to spend approximately $30 million for a new locomotive maintenance and inspection facility at Conway Yard in Beaver County. In addition, a new $1.5 million freight car light maintenance facility is also proposed at Conway Yard. It is essential to preservation of the rail employment base in Beaver County that the proposed car and locomotive maintenance facilities be constructed and brought on line. SPRPC and other local government development agencies stand ready to work with Norfolk Southern to assist in the planning and coordination of these new facilities. SPRPC would encourage Norfolk Southern to explore an additional regional intermodal facility in the Conway Yard area. Previous work by SPRPC has shown the Beaver County area to be the center for significant regional freight activity.

3. Norfolk Southern Regional Headquarters, Pittsburgh, PA

Norfolk Southern has stated that in order to operate Conrail's lines, it intends to establish a regional headquarters in Pittsburgh. This headquarters will exercise control over several subordinate division offices and will make Pittsburgh the operational headquarters for all Conrail lines operated by Norfolk Southern. The STB application, however, does not indicate how many new jobs will be associated with this regional headquarters. SPRPC is pleased that Norfolk Southern has selected Pittsburgh for its regional headquarters and again stands ready to assist Norfolk Southern in the establishment of this headquarters office. Here again the creation of new jobs associated with this regional headquarters is essential to offset the jobs lost through the elimination of the National Customer Service Center.

4. Pitcairn Intermodal Center, Pitcairn, PA

Conrail's recent improvement of its intermodal facility at Pitcairn Yard has not fulfilled expectations because Conrail marketing objectives focused on long haul intermodal movements which bypass this yard. Norfolk Southern representatives have indicated that they intend to concentrate more heavily on short haul intermodal moves of 500 miles or less. They have identified Pitcairn Yard for increased use in connection with short haul intermodal traffic. SPRPC applauds Norfolk Southern's commitment to the Pitcairn Yard facility and will support Norfolk Southern's intermodal operations. SPRPC will help to develop the Turtle Creek Valley Strategic Action Plan which is being developed to foster economic development through a public/private partnership capitalizing on the Pitcairn double-stack intermodel transportation center. This plan was recently submitted by the Redevelopment Authority for Allegheny County to the Pennsylvania Department of Community and Economic Development to address specific problems and capitol improvements which require financial assistance. SPRPC looks forward to working with the Norfolk Southern Industrial Development staff as an active partner in the Turtle Creek Valley Strategic Action Plan.

5. <u>Joint use of and competitive access to the Monongahela Railway Company</u>

The Monongahela Railway Company serves coal fields of Green County, Pennsylvania and Northern West Virginia. It is the largest rail traffic generator in the Commonwealth. Prior to 1990, the railroad was owned and operated by three carriers: Conrail, CSX and P&LE. Eventually, Conrail acquired the interests of P&LE and CSX and most recently operated the line for its own account. Norfolk Southern will acquire operating control over the Monongahela Railway under the proposed operating plan and has granted CSX joint use of the Monongahela Railway lines. This plan re-establishes competitive rail service from the Monongahela coal fields and should substantially promote production in these coal fields. This is a significant benefit of the proposed merger for southwestern Pennsylvania.

SPRPC has also noted that Bessemer & Lake Erie Railroad Company has sought access to the Monongahela coal fields through trackage rights and appropriate haulage arrangements with Norfolk Southern and/or CSX. The Commission supports these efforts by Bessemer & Lake Erie inasmuch as previous conditions imposed by the former ICC in connection with Conrail's acquisition of 100% control of the Monongahela Railway Company were not adequate to enable B&LE to become an active competitor for

Monongahela coal traffic. B&LE is an effective rail competitor in southwestern Pennsylvania and has excellent port facilities on Lake Erie at Conneaut Dock which would greatly facilitate the marketing of Monongahela coal to lake served electric utilities in the Midwest. Since the relief requested by Bessemer merely reconfirms and seeks to implement competitive access rights already recognized by the former Interstate Commerce Commission, SPRPC supports the imposition of meaningful competitive access conditions sought by B&LE and requests that the Board impose conditions which will assure effective rail competition and participation in Monongahela coal traffic by B&LE.

6. Regional/Short Line Railroads - Wheeling & Lake Erie Railway Company and Buffalo & Pittsburgh Railroad Company

The merger application submitted by Norfolk Southern and CSX indicates that the Buffalo & Pittsburgh Railroad Company will experience a loss of $8.3 million in freight revenue largely as the result of the elimination of CSX overhead traffic handled by the B&P. The Wheeling & Lake Erie Railway Company will experience a diversion of $1.4 million largely as the result of Norfolk Southern rerouting traffic presently handled by the Wheeling to new Conrail lines to be obtained by Norfolk Southern as a result of the merger. Each of these regional carriers provides essential rail service to southwestern Pennsylvania. W&LE has been the price setter for industrial shippers in the Monongahela River Valley. The Buffalo & Pittsburgh Railroad Company provides rail service to many regional shippers and provides alternative routes from southwestern Pennsylvania to Canadian markets via Buffalo, New York.

SPRPC understands that both carriers have experienced financial difficulties and have conducted extensive negotiations with Norfolk Southern and CSX. If appropriate measures cannot be found to address the severe financial impact which this merger transaction poses for these regional carriers, SPRPC is extremely concerned that southwestern Pennsylvania will lose the competitive and service benefits provided by these railroads to this region.

CONCLUSION

On balance, SPRPC believes that the proposed operation of Conrail lines by Norfolk Southern in southwestern Pennsylvania presents important benefits and opportunities to this region. Pittsburgh will become a major operating hub for Norfolk Southern. There is the prospect for increased intermodal growth at Pitcairn Yard intermodal terminal. Norfolk Southern has proposed important new capital investment in equipment maintenance and repair facilities at Conway Yard. Fina , competitive rail service is being restored to southwestern Pennsylvania coal fields. If these proposals are implemented with appropriate conditions, SPRPC believes that they can offset the loss of employment at Conrail's National Customer Service Center and the reduction of classification activities at Conway Yard.

The most serious problem presented by this merger to our region is the threat posed to the Wheeling & Lake Erie Railway and the Buffalo & Pittsburgh Railroad. If the applicants and those regional carriers are unable to negotiate appropriate measures to preserve the essential rail services provided by these regional carriers to southwestern Pennsylvania shippers, then SPRPC strongly supports the imposition of appropriate competitive access trackage rights or other merger conditions which will assure the continued economic viability of these regional carriers and preserve the rail freight service which they provide in southwestern Pennsylvania.

VERIFICATION

I, Robert Kochanowski, 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 Southwestern Pennsylvania Regional Planning Commission, of which I am Executive Director. Executed on 10/15, 1997

DATED: 10/15/97

Robert Kochanowski
Robert Kochanowski
Executive Director,
Southwestern Pennsylvania Regional
Planning Commission

STB FD 33388 10-20-97 D 182718

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WILLIAM C. VAN SLYKE
Legislative Analyst

The Business Council of New York State, Inc.

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October 16, 1997

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MAIL MANAGEMENT
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The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001

Dear Secretary Williams:

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

On behalf of The Business Council of New York State, Inc., I enclose for filing an original and twenty-five copies of our comments regarding the above-referenced application. Also enclosed is a 3 ½" computer disk containing the document in WordPerfect 5.1 format, which can be read by WordPerfect 7.0. A copy of the enclosed document also has been sent by first class mail to all parties contained on the service list.

Please call should you have any questions or concerns. Thank you.

Sincerely,

ENTERED
Office of the Secretary

OCT 21 1997

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bvs /
Enclosure

152 Washington Avenue • Albany, New York 12210 • 518/465-7511 • Fax 518/465-4389 • www.bcnys.org

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DANIEL B. WALSH
CEO/President

The Business Council of New York State, Inc.

October 16, 1997

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

Dear Secretary Williams:

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

The Business Council of New York State, Inc., which represents nearly 4,000 businesses, chambers of commerce and trade associations, conditionally supports the above-referenced application for the division and acquisition of Conrail.

Our membership includes manufacturers of paper, steel, glass, automobiles and chemicals, as well as several major utility companies. These industries have come to depend on reliable rail service.

The acquisition of Conrail holds promise for significant improvements to rail service. The introduction of increased competition is a welcome and long overdue change, as is the anticipated increase in the number of single-line service avenues which will become available post-transaction.

We are particularly pleased with what appears to be genuine initiative on the part of the Applicants to actively foster economic development in New York state, which is essential if our state, and the Northeast, is to experience true economic resurgence.

152 Washington Avenue • Albany, New York 12210 • 518/465-7511 • Fax 518/465-4389 • www.bcnys.org

Notwithstanding the many merits of the proposal, however, there are issues which the Surface Transportation Board, STB, must address prior to approval of the application:

- Ensure the viability of short line and regional carriers, and, as a direct result, the viability of those businesses which rely on service from the short line and regional carriers. The STB must bear in mind that the loss of a short line or regional railroad can yield serious adverse impacts well beyond those directly associated with a defunct rail company. The potential for significant job loss among established major manufacturers which rely on short line or regional service cannot be overlooked.

- To any extent possible, the Board must ensure that the inordinately high switching charges found in the Port of New York and upstate population centers, especially Buffalo, be set at reasonable levels. The Applicants argue they are unable at this point to commit to a reduction due to their inability to access Conrail data regarding current switching costs. We feel confident the Applicants, who were able to value a $10 billion purchase price, can produce reliable estimates as to such current costs and should therefore be able to determine a reasonably accurate rate proposal based on such estimates.

- Allow short line, regional and other Class I railroads to interchange with Conrail/Applicants' lines and other proximate rail roads in areas where they are currently prohibited from doing so. These "firewalls" represent missed opportunities for better competition and increased viability for businesses served by Conrail/Applicants, as well as those businesses served by other rail roads in New York state.

- Allow a third carrier trackage rights from upstate New York to the metropolitan area and the Port of New York, especially on the east side of the Hudson River. Maximize the freight capabilities of the lines east of the Hudson River. It is imperative that there be established a direct route along the Hudson River from Long Island and metro New York to upstate New York and points north. This will be particularly important considering the increasing levels of trade occurring between Canada and the United States.

In conclusion, as representatives of the business community, we cannot advocate that the Applicants be held responsible for correcting every perceived rail problem which currently exists in the Northeast.

As advocates for thousands of businesses and more than one million employees in New York state, however, we recognize the responsibility of the Applicants and the STB to address the concerns listed above. Therefore, we respectfully request the STB give our concerns due consideration.

Thank you for this opportunity to comment on the application.

Sincerely,

Daniel B. Walsh

DBW/bvs

STB FD 33388 10-20-97 D 182717

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DELAWARE VALLEY
REGIONAL PLANNING COMMISSION
The Bourse Building, 111 South Independence Mall East
Philadelphia, PA 19106-2515

Telephone: (215) 592-1800
Fax: (215) 592-9125

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October 17, 1997

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and 25 copies of the Comments of the Delaware Valley Regional Planning Commission (DVRPC). These comments were approved and adopted by the DVRPC Board on September 25, 1997. Also enclosed is a 3.5-inch disk containing the text of the Comments in WordPerfect format.

Copies of DVRPC's statement are being served via first-class mail, postage prepaid on the Honorable Jacob Leventhal and all Parties of Record, including counsel for Applicants. Please date-stamp the enclosed extra copy of the pleading and return it in the enclosed self-addressed envelope. If you have any questions, please contact me at (215) 592-1800. Thank you.

ENTERED
Office of the Secretary
OCT 21 1997
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Respectfully submitted,

John J. Coscia

John J. Coscia
Executive Director

Certificate of Service

I hereby certify that I have this 17th day of October, 1997, caused the foregoing document to be served by first-class mail on counsel for the applicants and on FERC Administrative Law Judge Leventhal. Copies have also been served by first-class mail on all parties of record on the official service list.

John J. Coscia

John J. Coscia
Executive Director
Delaware Valley Regional Planning Commission
The Bourse Building
111 South Independence Mall East
Philadelphia, PA 19106-2515

182717

DVRPC-02

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

COMMENTS OF:
THE DELAWARE VALLEY REGIONAL PLANNING COMMISSION
TO BE FILED ON OR BEFORE OCTOBER 21, 1997

Introduction

The Delaware Valley Regional Planning Commission (DVRPC) possesses a vital interest in the proposed transaction before the Surface Transportation Board (STB): the acquisition of the Consolidated Rail Corporation (Conrail) by CSX Transportation, Inc. and the Norfolk Southern Corporation.

DVRPC is the metropolitan planning organization (MPO) for the nine-county, bi-state Delaware Valley area. The region includes Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania, and Burlington, Camden, Gloucester, and Mercer counties in New Jersey. Owing to the agency's organizational mission and its diverse constituency base, DVRPC's concerns span land use, transportation, environmental, and economic development considerations.

The acquisition of Conrail by CSX and Norfolk Southern will have a profound impact on the Delaware Valley Region. Some impacts will be beneficial, including increased rail competition, more direct service routings to other regions, new and upgraded infrastructure, and greater potential for the diversion of truck trips.

However, with the dissolution of Conrail, the region also stands to lose a crucial employer, transportation provider, and civic leader. As they assume a greater presence in the region, CSX and Norfolk Southern will be looked upon to continue Conrail's example.

Conditions

Due to the importance of rail freight to the quality of life, DVRPC urges the railroads and the STB to advance the following points as conditions and enhancements of the filing:

1. The railroads' own labor impact statements and accepted economic parameters indicate that losses to the region resulting from the Conrail sale will exceed the following levels: 1,800 direct jobs, 1,800 indirect jobs, and $100 million of annual income. A commitment for economic development should be proposed by the railroads to help offset these losses. One desirable element of this plan would be the aggressive reuse of large, fallow railroad assets, such as the Port Richmond Yard near the Tioga Marine Terminal.

2. A third Class I freight railroad, the CP Rail System, also operates in the Delaware Valley, although it is barely referenced in the filing. The conditions of the sale should seek to

maintain and expand the competitive position of CP Rail in this region. Existing trackage rights agreements with Conrail should continue to be honored by successor railroads. In addition, CP Rail should be granted the right to participate in terminal operations established to serve Philadelphia and the port area, including Pavonia Yard in Camden.

3. As an ozone nonattainment area, the region is affected by ozone precursors emitted by mobile sources and is supportive of short line and railcar direct operations. Therefore, the plan's environmental assessments must include greater specificity about the air quality impacts of proposed new rail facilities, including the impact of changed levels of trucking.

4. The region's passenger operators [the Southeastern Pennsylvania Transportation Authority (SEPTA), the New Jersey Transit Corporation, and the National Railroad Passenger Corporation (Amtrak)] and Conrail currently share use of each other's tracks. Under the sale, all existing trackage rights and dispatching agreements should remain in force for a minimum period of ten years. Further, the passenger carriers should have reasonable access to regional freight lines, including lines not currently served (e.g., Morrisville Line from Thorndale to Morrisville; Harrisburg Main from Norristown to Reading; Bordentown Secondary from Woodbury to Trenton; Vineland Secondary from Woodbury to Glassboro; and Pemberton Secondary from Camden to Mt. Holly.). Correspondingly, freight operators should have adequate access to shippers located on passenger lines.

5. The ports of the region serve as an international gateway for the import and export of goods. Therefore, the railroads must provide guarantees for the continuation of current levels of daily doublestack and conventional intermodal services, from Ameriport and the new, proposed Greenwich intermodal terminal to the Midwest, Canada, and the South.

6. The concept of the Shared Assets Area is unique and, in fact, is being implemented in only three locations. To safeguard the region's interests, an official mechanism should be prescribed which would allow public input into the management of the shared assets area. Also provisions to ensure long-term maintenance of shared asset facilities in good operating condition should be obtained.

7. The filing calls for continued train operations on the left bank of the Schuylkill River through Center City Philadelphia between Park Junction and Grays Ferry. This sensitive area runs adjacent to a park and residential neighborhoods. To limit the adverse impacts of rail operations, the diversion of all train traffic to the Highline Branch on the right bank of the Schuylkill River should be pursued.

8. Currently, short lines operate the outer ends of former Conrail lines in southern New Jersey. These short lines should be granted the opportunity to acquire trackage rights to Pavonia Yard which would permit direct interchange with CSX, Norfolk Southern, and possibly CP Rail. This would improve the efficiency of rail operations by eliminating the need for a second interchange for moves to locations beyond the reach of the shared trackage.

9. The Winchester and Western Railroad and the Southern Railroad of New Jersey should be granted the right to interchange loaded cars at Vineland. The railroads currently have the right to exchange empty cars, but not loaded ones.

Conclusion

DVRPC requests the conditions listed above to mitigate potentially harmful impacts resulting from the Conrail partition. Their adoption will assure that the transaction balances the railroads' objectives with the public interest.

Respectfully submitted,

DELAWARE VALLEY REGIONAL
PLANNING COMMISSION

STB FD 33388 10-20-97 D 182724

182724

General Mills
General Offices

Post Office Box 1113
Minneapolis, Minnesota 55440

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Via Overnight Express Delivery

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

Re: Finance Docket No. 33388

Dear Secretary Williams:

On behalf of General Mills, Inc. I enclose for filing an original and twenty six copies of Verified Statement of the impact of this proceeding on General Mills and its operations in Western New York. Also enclosed is a 3.5 inch diskette containing the texts of the comments in Word 5.1 format.

Please stamp the extra copy of the foregoing and return it to General Mills at the above address via first class U.S. Mail.

Respectively Submitted,

Leo J. Wasescha
Transportation Manager
General Mills Operations Inc.

10/16/97

cc: registered parties of record

file:stbfile

Before the

SURFACE TRANSPORTATION BOARD

Washington, D.C.

Finance Docket No. 33388

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

Verified Statement of
Leo J. Wasescha
Concerning Impact of Application
on its operations
in Western New York

General Mills
Number One General Mills Blvd.
Minneapolis, MN 55426

Dated: October 16, 1997

Verified Statement
In the matter of:
STB Finance Docket No. 33388
CSX and NS Corporations Acquisition of Conrail

Introduction and cause of interest.

My name is Leo J. Wasescha, I am Division Transportation Manager for General Mills Operations, Inc. My responsibilities include management of transportation for milling and warehousing of food products located throughout the country including the Northeastern United States. One major operation is located in Buffalo New York which includes a flour mill, grain elevator, cereal plant and several warehousing operations all presently located on Conrail.

General Mills' flour mill in Buffalo New York is one of three remaining. One major competitor has recently closed their facility. The other mills including General Mills are not currently running at capacity due to competitive factors. General Mills is running at capacity at its other 6 wheat milling facilities across the country and currently ships from Midwestern mills to the Northeast over 200 million pounds of flour per year despite the fact that its Buffalo mill is underutilized. This is done because of lowered delivered cost. Freight expense is the second largest cost in flour milling, second only to the cost of wheat.

Prior to the establishment of current reciprocal switching charges, General Mills' Buffalo mill was run at capacity and as demand exceeded supply, during peak periods of demand, General Mills bought up to four carloads of flour per day from competitors in the Buffalo area to keep up with demand.

Additionally, Buffalo was a distribution center for other packaged products for customers throughout the Northeast. At it's peak, the facility received over 6000 cars inbound and shipped over 12000 cars outbound per year. This distribution center was consolidated in the Harrisburg PA area as rail rates rose to a level above truck rates and equipment quality and service provided by Conrail deteriorated. General Mills at Buffalo currently handles approximately 3600 cars per year.

Surface Transportation Board Conditions of Approval

The ICC Termination Act of 1995, 49 U.S.C. 11324(b) provides that the Board shall consider five factors when reviewing merger or control of at least two Class I railroads. General Mills would like the Board to consider the following comments for each factor prior to it's decision.

(1) the effect of the proposed transaction on the adequacy of transportation to the public.

The institution of the current switch charge in Buffalo (approximately $450) resulted in Conrail economically shutting down the Buffalo/Niagara Frontier Rail Gateway and forced shippers to tender all traffic to it at Chicago or East St. Louis. By doing this, Conrail was able to economically force shippers to use these gateways and increase revenue for itself at the expense of other carriers serving the area. Prior to this charge, over 90% of General Mills' inbound traffic into Buffalo was shipped via other carriers because of better service. After the switch charge was elevated, virtually 99% of inbound traffic to General Mills' facilities in the Buffalo area must economically come in via Conrail. Conrail has successfully pushed up it's rate level to point just below the threshold of General Mills' ability to economically use alternate carriers. General Mills estimates that it is paying in excess of $1 million dollars annually for rail into and out of the Buffalo area compared to comparable rates at other facilities.

In the merger application, applicants devote one paragraph in Volume One, to the Buffalo terminal. In that paragraph, applicants provide for joint operations in Seneca Yard for the purpose of "improving access to the South Buffalo Railroad." The South Buffalo Railroad serves a major production facility of the Ford Motor Company. General Mills and others requested prior to the filing the same access for the Ohio Street Yard which serves our industries and were denied. The combined shipments handled by the Ohio Street Yard is in excess of 14,000 cars per year. This brings into question of how well the filing addresses the adequacy for the shipping public when it provides for an improvement of service for one industry with high leverage and fails to address improvement of service for other industries in the same immediate vicinity adjacent to Seneca Yard.

Additionally, General Mills has repeatedly asked applicant CSXT for its plans as to service for the Ohio Street Yard, without a tangible reply. General Mills has also asked CSXT whether it will lower its switch charge to the level applicant currently maintains with the NS Railroad. Applicant CSXT has responded that it must operate the terminal for a period of 2 to 3 years to gain experience prior to reviewing the level of the current Conrail switch charge. This is an unacceptable length of time. General Mills questions how the CSXT can offer a plan to run thousands of miles of newly acquired railroad profitably while paying off acquisition debt yet it can not estimate the cost of running a yard operation in Buffalo.

(2) The effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

Prior to the establishment of the current switch charge in the Buffalo area, General Mills routed cars into and out of the area by DH, BP, CN and NS. Approximately 90% of inbound was handled by the predecessor of the NS Railroad, the N&W Railroad because of superior service. Outbound service to customers located on other railroads mentioned above has converted to truck as the unabsorbed switch charge plus linehaul rate exceeds that of truck and those shipments have converted to that mode. Without the CSXT addressing the high level of the anticipated switch charge, General Mills will not be able to avail itself to other carriers serving the Buffalo area despite physical track connections because of rates that are too high which preclude movement.

(3) The total fixed charges that result from the proposed transaction.

It is General Mills' belief that switching rates in the Buffalo/Niagara Frontier are unreasonably high. Yet, General Mills is precluded from challenging the level of the rates due to the Board's determination that current serving railroad, Conrail is revenue inadequate. Because of the $10 Billion dollars of debt that applicants are taking on, both applicant carriers will become revenue inadequate and shippers will be unable to challenge rates including switching rates as unreasonably high. General Mills believes that the ability to raise funds in the open market is a better measure as to revenue adequacy than current regulatory measurements.

General Mills feels that applicants' debt for acquisition expense should be precluded from any revenue adequacy standards and be precluded from calculation for rate making purposes for a period of 5 years after the acquisition.

General Mills experience with Western mergers has shown that promised efficiencies are not immediately attainable and post merger activity requires increases in expense for locomotive capacity and management activity. The large increase in debt load will make it extremely difficult for applicants to cover increased short term merger related expenses and service the acquisition debt at the same time.

(4) The interest of rail carrier employees affected by the proposed transaction.

General Mills has no position on this consideration.

(5) Whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national system.

The current high switch charge which the CSXT has informed shippers will remain in effect for the Buffalo/Niagara Frontier will preclude General Mills from using other railroads either into or out of Buffalo. To date we have not received an official response back from either NS or CSX as to the amount of the CSX switch in Buffalo that the NS will absorb. Additionally, we have not gotten a response as to whether or not rates which are currently local on Conrail and will be joint line CSX-NS will be protected.

Summary of position and request for conditions

Under 49U.S.C. 11324(c) the Board may impose conditions governing the merger application provided those conditions are consistent with the public interest.

Accordingly, General Mills respectfully requests the Board consider the following conditions:

1. reduce the reciprocal switch charge in the Buffalo/Niagara Frontier to a uniform reasonable $130 per car. This request is consistent with the request advanced by the National Industrial Transportation League as well as a statement on our behalf presented by the National Grain and Feed Association. A switch charge at this level can be economically absorbed by all carriers doing business in this area which will allow for competitive alternatives to shippers in Western New York.

2. prevent the acquiring carriers from factoring acquisition costs in rate making calculations for a period of five years.

3. require that the applicants protect current Conrail single factor local rates that post merger will become two factor joint rates for five years subject to RCAF-U (unadjusted). Included in this condition is the full switch absorption at either destination or origin if applicable.

4. finally, require that applicants amend the current Buffalo switching district to include a new industrial park located in West Seneca New York. This new industrial area is literally a hundred yards from the current limit of the switch district. Inclusion of this area in the switch limits will allow competitive rail service for new industries and warehouses located in this park. This will improve opportunities for business growth in the greater Buffalo New York area and increase job opportunities.

File:stbfiling

VERIFICATION

State of Minnesota)
) ss:
County of Hennepin)

LEO J. WASESCHA, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

Leo J. Wasescha

Leo J. Wasescha
Transportation Manager
General Mills Operations, Inc.

Subscribed and sworn to
me before this 16th
day of October, 1997.

JoAnn M. Hasslen

Notary Public

JOANN M. HASSLEN
Notary Public-Minnesota
Hennepin County
My Comm Expires Jan 31, 2000

STB FD 33388 10-20-97 D 182714

182714

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.

D

COMMENTS OF CITY OF CINCINNATI

The City of Cincinnati hereby submits its comments on the Application filed in the above-referenced proceeding. The City is generally supportive of the transactions proposed by the Applicants, because they will offer improved freight service to freight customers in and around the City of Cincinnati, in the long-term. The City is concerned about the potential adverse impact of certain trackage rights that the Indiana & Ohio Railway Company intends to seek and therefore submits these comments and the accompanying Verified Statement of Richard Mendes, Deputy City Manager of the City of Cincinnati, in opposition to the grant of any such trackage rights that encompass use of Norfolk and Western Railway Company's (NW) Riverfront Running Track. Norfolk and Western is a wholly owned subsidiary of the Joint Applicant, Norfolk Southern Corporation (NS).

I. ANTICIPATED RESPONSIVE APPLICATION OF INDIANA & OHIO RAILWAY COMPANY

The Indiana & Ohio Railway Company ("IORY") is a Class III rail carrier operating over 244 miles of track between Cincinnati, OH and Diann, MI. IORY's anticipated responsive application seeks trackage rights over 13 segments of rail line, totaling approximately 550 miles in length. IORY is a subsidiary of RailTex, Inc., which controls 22 Class III railroads in 22 states as well as 3 rail carriers in Canada.

IORY's trackage right requests include local trackage rights over the Riverfront Running Track in Cincinnati, OH, which is owned by Norfolk Southern Railway Company ("NSR"). IORY Description of Anticipated Responsive Application, IORY-2, at 2.

The authority to condition the primary application (e.g., by imposing the conditions to be sought by Applicants, is found in 49 U.S.C. 11324(c). The statutory criteria for regulatory consideration of the proposed transaction are provided in 49 U.S.C. §§ 11323-11325. Section 11324(d) states:

> (d) In a proceeding under this sections which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that –
>
> (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

The Board interprets Section 11324 (d) to require the imposition of conditions in the consolidate "may produce effects harmful to the public interest (such as 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 (thourgh reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger." Union Pacific – Control – Missouri Pacific; Western Pacific, 366 I.C.C. 462, 562-65 (1982).

The City of Cincinnati would be opposed to the imposition of the requested trackage rights. As we would anticipate Applicants will fully explain, the harms alleged by IORY do not seem to have any connection whatsoever to the proposed transactions among the Applicants. Moreover, and more importantly from the standpoint of the City of Cincinnati, the proposed conditions would have a material adverse impact on a number of city, county and state projects in Cincinnati involving the Riverfront Running Track.

The Riverfront Running Track bisects a series of City of Cincinnati riverfront parks and the resulting train/pedestrian/auto conflicts have been a concern of the City's since an increase in rail traffic resulted after the formation of Conrail in 1976. Because a fire rendered it inoperable as a through route for NS, the line's owner, the subject trackage is currently inactive and has not hosted any through trains operated by NS or IORY's predecessor, Grand Trunk Western, at any time during this decade. Furthermore, through an innovative public-private partnership arrangement negotiated by the State, Norfolk Southern and the City, additional rail capacity has been added through the Millcreek Valley, and NS has rerouted its trains off of the Riverfront Running Track and out of downtown riverfront City streets. NW and the City have signed an agreement to make the rerouting permanent. Freed from concerns of freight-rail/pedestrian interfaces, the City has planned intensive family-oriented projects along its historic riverfront.

Planned projects that would be adversely impacted include a new professional football stadium; new or rehabilitated professional baseball stadium; interstate highway reconstruction and renovation; upgraded street grid system; construction of multi-purpose parking facilities; development of a multi-modal passenger transportation center; development of a regional family oriented cultural/entertainment district, including a large screen format as well as multi-plex theaters; construction of a new National Underground Railroad Freedom Center; extension of the riverfront park system; and improvement of pedestrian access between downtown and the riverfront. Moreover, the millions of additional visitors expected to be attracted to the riverfront seriously exacerbate safety concerns about pedestrian/freight-rail conflicts. Thus, the trackage rights proposal submitted by the IORY threatens to undo years of City efforts. These projects and the adverse impact of the Riverfront Running Track trackage rights are fully described in the attached Verified Statement of Richard Mendes. For the reasons explained in the Verified

Statement of Richard Mendes, the City of Cincinnati respectfully requests that an IORY request for local trackage rights over the Riverfront Running Track in Cincinnati, OH, be denied.

Respectfully submitted,

[signature]

Fay D. Dupuis
City Solicitor
City of Cincinnati
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
513-352-3334

Dated October 17, 1997

VERIFIED STATEMENT

RICHARD MENDES, DEPUTY CITY MANAGER

My name is Richard Mendes. I am Deputy City Manager of the City of Cincinnati, and I will set forth, in detail, issues of importance to the City of Cincinnati and stress the adverse impact that reinstated freight rail traffic on the Riverfront Running Track as proposed by the Indiana & Ohio Railway will have on public safety and numerous projects in the City of Cincinnati, Ohio.

While it is clear that there is no connection between the claims alleged by the Indiana and Ohio Railway Company and the transactions among the Applicants, even if such connection existed, the imposition of the requested trackage rights would not be in the public interest because exercise of such rights are incompatible with proposed and potential development of the City of Cincinnati's riverfront as set forth below.

For more than twenty years, the City of Cincinnati has sought to reduce or eliminate through-freight movements from the linear park system it has created along the North Bank of the Ohio River. It has been successful in this effort: no through freight trains of NS or IORY's predecessor, Grand Trunk Western, have operated over the Riverfront Running Track at any time in this decade.

More recently, the City has sought to relink downtown Cincinnati with its historic origins on the Ohio River by removing or mitigating the three barriers of expressways, surface parking lots and railroad lines. The City is now rapidly moving forward on a Twenty-first Century integrated plan of family-oriented parks, museums, stadiums, and riverfront development interlaced with people-friendly transit and walkways.

We have partnered with Norfolk Southern to ensure effective and efficient rail service to both Cincinnati and the nation. In the past quarter century, Cincinnati has become the most important north-south rail gateway east of the Mississippi with the volume of trains at least double that of any other north-south gateway. As part of that effort, the City of Cincinnati worked with Norfolk Southern to expedite permitting and support its application for federal funding to construct a third main track through Cincinnati's Millcreek Valley. This track opened recently. In return, Norfolk Southern (NS), through its subsidiary (NW), agreed to abandon its Riverfront Running Track adjacent to and through the Cincinnati riverfront parks and thereby forever and the potential safety hazard from conflicts between park-using pedestrians/motor vehicles and freight trains.

I say potential hazard, because NS has not operated through freight trains over the line in this decade due to an unusable, fire-damaged bridge west of the riverfront. Prior to that time, the City was constantly concerned that someone would be injured as a train would wend its way through out City streets and park system, especially during festivals. Moreover, in the mid-1980's, a ten year old girl lost her leg in a train accident on the Riverfront Running Track. NS had retained the line only as a contingency as necessary to meet possible future capacity requirements. As the need for such capacity has been replaced by the agreement and construction detailed above, the City has moved forward with its alternative land use planning. Increased development is expected to attract millions of additional visitors annually to the riverfront, a significant portion of whom will be children. These conditions further exacerbate safety concerns related to riverfront freight train movement.

Now, IORY seeks to use the Conrail Acquisition proceedings to its own advantage, to recreate a through rail route where one has not existed since the 1980's and in direct contravention of public safety and community planning initiatives. The City asks the Surface Transportation Board not to create new operating rights so clearly in contradiction of the public interest.

Cincinnati's Central Riverfront planned improvement projects listed below are incompatible with through freight rail traffic, including but not limited to such traffic using Norfolk and Western Railway Company's (NW) Riverfront Running Track:

- the new Cincinnati Bengals football stadium and a possible new Cincinnati Reds baseball stadium;
- a reconfigured Fort Washington Way interstate highway project, including I-71 and US 50 with connections to I-471 and I-75, as well as a new Second and Third Street boulevard;
- multi-purpose, structured parking facilities;
- a multi-modal passenger transportation center;
- a regional family-oriented cultural/entertainment district, anchored by the National Underground Railroad Freedom Center, and a new large-screen format and multiplex cinema theater complex.

To this end, the Riverfront Running Track is the subject of a 4/11/95 Transition Agreement between the City and NW. The Agreement facilitated the construction of NS's "Third Main" track through the Millcreek Valley. Under the terms of the Agreement, the City was granted rights to purchase the NW property referred to as the Riverfront Running Track. Accordingly, NW has recently published its notice of intent to file with the Surface Transportation Board an application permitting abandonment of the eastern portion of the Riverfront Running Track, and the City intends to purchase the property as soon as abandonment is accomplished. The western portion of the RFRT will proceed in a similar manner as soon as the existing rail customers are relocated. This relocation is due to acquisition of property required for construction of the new professional football stadium.

Freight rail traffic within Cincinnati's Central Riverfront is not in the public interest because of its adverse impacts on the following public investments and proposed riverfront activities:

1. Hamilton County is beginning cons ction of the Cincinnati Bengals new 67,000 seat football stadium and 5,000 adjacent dedicated parking spaces. Hamilton County's agreement with the Bengals requires the **nearly one-half billion dollar** stadium project to be available by August, 2000.
2. The existing CINergy Field, home of the Cincinnati Reds, also located in the Central Riverfront, may be replaced on an adjacent site with a new 45,000 seat, **one-quarter billion dollar** baseball complex, targeted by the Reds for completion in the year 2002.

3. The Fort Washington Way reconstruction project, which will narrow the existing I-71/US 50 interstate roadway, will improve transportation safety and provide unfettered movement of I-71 and US 50 traffic, and by cross connecting bridges, will provide a vitally needed link between the Central Business District and the Central Riverfront. This project will also restore downtown's historic surface street pattern south to the

Riverfront. New sidewalks and street trees will be part of an urban design framework to create a grand civic boulevard which replaces the current mass of highways, confusing exits and unused spaces. This project is the central focus of a 33-mile long bi-state I-71 Corridor Major Investment Study. The engineering design and construction of this project is fast-tracked as a result of extraordinarily cooperative partnering by the City, Hamilton County, the states of Ohio and Kentucky, federal agencies, the regional Metropolitan Planning Organization, and downtown business organizations. This narrowed east/west highway corridor is a **$120-million** federal/state/locally funded project, and it is a key component to insuring successful redevelopment of the Central Riverfront.

4. A basic element of the Central Riverfront development is the proposed centrally located, multi-purpose parking made possible, in part, by the reclaiming of land available because of the narrowing of Fort Washington Way. The new structured parking is proposed in conjunction with the stadium development, riverfront retail and public attractions, as well as downtown retail and offices. The City is working with Hamilton County to reach agreement to construct the structured parking to serve stadium events, daily downtown office commuters, an expected new major retail anchor department store, the proposed Cincinnati Museum Center Theater as well as the proposed National Underground Railroad Freedom Center.

5. Another fundamental component of this redevelopment area is the proposed intermodal public passenger transportation center. It is expected to incorporate bus staging requirements for the Museum Center Theater and the Freedom Center, along with serving regional and inter-city buses, a possible future light rail transit or busway station, a possible future commuter rail station, and provide access to adjacent auto parking.

6. The Underground Railroad Freedom Center will be the first national museum in Cincinnati and the first of its kind in the U.S. As part of an underground railroad network of historically significant sites dating from the Civil War era, this 125,000 square foot interpretive museum and education center is expected to attract up to one million visitors annually, and will represent an **$80-million** public/private investment. Its expected location is at the north terminus of the historic Roebling (Suspension) Bridge, adjacent to the Fort Washington Way project. It is targeted to open in 2002.

7. As a complement to the Freedom Center, the existing Cincinnati Museum Center (which combines a Natural History Museum and Cincinnati Historical Society exhibits) has reaffirmed its strong interest in a Central Riverfront site to develop a large screen format theater (i.e.,

3-D I-MAX) in order to assure the financial viability of the Museum Center as an important Cincinnati cultural institution.

8. The regional family-oriented cultural/entertainment district is expected to attract consumers who are not currently traveling to downtown, and will compliment rather than compete with existing downtown entertainment venues. This cultural/entertainment development is also required to support the financing of the new multi-purpose parking garage and new street infrastructure investment, estimated to approach **$50-million** in its initial phase.

9. Two major urban design principles driving riverfront redevelopment are: (1) reconnecting the downtown to the riverfront; and (2) extending the riverfront parks system to the Central Riverfront. Accordingly, the transformation of existing isolated parks into a public riverfront parks/open space system is expected to form the new "front door" for downtown. Existing parks east of downtown already form one of the world's most inviting riverfront greenspaces, and together serve as a buffer between downtown and riverfront activities. A new riverfront park system will reconnect downtown and neighborhood pedestrian networks, and residential and commercial activities. At its western end, Mehring Way, which defines the current alignment of the Riverfront Running Track, will be reconfigured to create a northern edge to the riverfront park. At its central focus, the new park system is

proposed to expand northward and inland toward the center of downtown, and to encompass the north landing of the historic Roebling Suspension Bridge and to insure an appropriate gateway setting for the National Underground Railroad Freedom Center museum.

At its eastern end, the riverfront park system will include the existing Yeatman's Cove Park as well as Bicentennial Commons at Sawyer Point park. The NW Riverfront Running Track runs through both of these popular existing parks. Through freight rail traffic operating on this track would conflict not only with activities in both parks and in other parks proposed to the west, but would also conflict with activities in International Friendship Park proposed just east of Sawyer Point and along the "Oasis" rail line. Oasis connects to the east end of the NW Riverfront Running Track.

10. Both of the above design principles and a third one -- to "eliminate the highway barrier between downtown and the river" -- require convenient, safe and attractive pedestrian facilities to reconnect downtown with the riverfront. Millions of pedestrian visitors and sports fans already frequent the riverfront, and millions more will be attracted by proposed activity centers. These require an inviting pedestrian environment. Pedestrian-friendly streetscapes must be part of the

rebuilt street grid pattern to attract users back to the river's edge. Street bridges across the narrowed Fort Washington Way will offer wide sidewalks and landscaping to reduce this highway as a major obstruction to riverfront access. As new cultural/entertainment attractions extend from downtown across Fort Washington Way into the riverfront, the riverfront will become part of a vibrant, seamless downtown -- a true 24-hour city.

The Central Riverfront redevelopment will represent public investments of nearly **$1-billion** -- including $700-million+ for stadiums, and $162-million for the Fort Washington Way reconstruction and the multimodal transit center. This is characterized as one of the most massive and costly public works project in the City's history. Additional public/private investments in new parking facilities, museums, entertainment and retail development in the next few years will re-shape the Central Ohio Riverfront as the "front door" of the Cincinnati metropolitan area. The quality and safety of this image-setting urban environment must not be compromised.

VERIFICATION

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

Richard Mendes, being duly sworn, deposes and says that he is Deputy City Manager of the City of Cincinnati, that he is qualified and authorized to submit this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct.

Richard Mendes

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

Dawn L Williams
Notary Public

NOTARIAL SEAL
STATE OF OHIO

DAWN L. WILLIAMS
Notary Public, State of Ohio
My Commission Expires May 29, 2001

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE OF THE COMMENTS OF THE CITY OF CINCINNATI

I hereby certify that on this 17 th day of October, 1997, a copy of the Comments of the City of Cincinnati was served by first class mail, postage prepaid upon each Party of Record designated on the service list and Judge Leventhal.

Fay D. Dupuis
City Solicitor
City of Cincinnati
Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
513-352-3334

Dated: October 17, 1997

STB FD 33388 10-20-97 D 182711

182711

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GEORGE P. O'CONNELL
WILLIAM M. O'CONNELL, III

October 17, 1997

RECEIVED
OCT 20 1997
MANAGEMENT
STB

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

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

Dear Secretary Williams:

We have enclosed an original and 25 copies of Comments, Protests and Requests for Conditions of Paul J. Engelhart, William J. McIlfatrick, H. C. Kohout, Thomas F. Meehan, Jr., Lawrence Cirillo, Charles D. Nester, Jacqueline A. Mace, Donald E. Kraft, and Robert E. Graham, Former Employees of Consolidated Rail Corporation ("Retirees").

We have also enclosed an original and ten copies of a Certificate of Service certifying that the above Comments, Protests and Requests for Conditions were served upon all Parties of Record and The Honorable Jacob Leventhal by first class mail, postage prepaid, on the above date.

Also enclosed is a 3.5-inch IBM compatible floppy disk containing the above documents.

Very truly yours,

BARBIN, LAUFFER & O'CONNELL

Harry C. Barbin

Harry C. Barbin

HCB:lpt

Enclosures

cc: The Honorable Jacob Leventhal
All Parties of Record (per Service List)

182711

RETR-7

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, PROTESTS AND REQUESTS FOR CONDITIONS
OF
PAUL J. ENGELHART, WILLIAM J. McILFATRICK,
H. C. KOHOUT, THOMAS F. MEEHAN, JR.,
LAWRENCE CIRILLO, CHARLES D. NESTER,
JACQUELINE A. MACE, DONALD E. KRAFT
AND ROBERT E. GRAHAM, FORMER EMPLOYEES OF
CONSOLIDATED RAIL CORPORATION ("RETIREES")

On August 5, 1997, certain former employees of Consolidated Rail Corporation ("Conrail") and certain railroad companies that were merged into Conrail ("Retirees") filed their Notice of Intent to Participate in this proceeding as Parties of Record. Pursuant to the Board's Decision No. 12, all parties are required to file their comments, protests and requests for conditions by October 21, 1997. In accordance with the Board's Decision, the following are the Retirees' comments, protests and requests for conditions:

I. INTRODUCTION

The Retirees consist of five (5) former non-agreement employees (non-union employees), and four (4) former agreement employees (union employees) as follows:

(a) Paul J. Engelhart, 516 Meadowyck Lane, R.R. #4, Vincentown, New Jersey 08088, non-agreement (non-union employee;

(b) William J. McIlfatrick, 311 North Avenue, Secane, Pennsylvania 19018, non-agreement (non-union) employee;

(c) H. C. Kohout, 5341 Burning Tree Circle, Stuart, Florida 34997, non-agreement (non-union) employee;

(d) Thomas F. Meehan, Jr., 3616 Gradyville Road, P.O. Box 204, Newtown Square, Pennsylvania 19073, non-agreement (non-union) employee;

(e) Lawrence Cirillo, 3743 Brisban Street, Harrisburg, Pennsylvania 17111, agreement (union) employee;

(f) Charles D. Nester, 100 Bonsall Avenue, Aldan, Pennsylvania 19018, non-agreement (non-union) employee;

(g) Jacqueline A. Mace, Moorestowne Woods Apartments, 215 E. Camden Avenue, Apartment D-10, Moorestown, New Jersey 08057, agreement (union) employee;

(h) Donald E. Kraft, 560 Hopewell Road, Atco, New Jersey 08004, agreement (union) employee; and

(i) Robert E. Graham, 110 Oakwood Drive, Cinnaminson, New Jersey 08077, agreement (union) employee.

The Retirees are all participants in the Supplemental Pension Plan of Consolidated Rail Corporation ("Supp. Plan") which is an overfunded, contributory defined benefit pension plan.

The Retirees have an interest in the Supp. Plan with respect to maintaining the financial integrity of the Supp. Plan to secure the defined benefits payable to them under the Supp. Plan. The Retirees also have an interest in a pro rata share of the surplus assets of the Supp. Plan to the extent that the surplus is attributable to the employee contributions which they made to the Supp. Plan or certain predecessor plans. These predecessor plans were merged into the Supp. Plan after Conrail came into existence on April 1, 1976.

The Retirees represent themselves and a class consisting of all other similarly situated retirees who are participants or beneficiaries of participants of the Supp. Plan.

II. PROCEDURE

The application in this proceeding is to obtain the approval and authorization under 49 U.S.C. §11321-25 for the acquisition by CSX Corporation ("CSX") and Norfolk Southern Corporation ("NSC") and related companies of control of Conrail and the division of the assets of Conrail by and between CSX and NSC ("Application"). This is an extremely complex transaction which will have a major impact upon the interests of the employees and former employees of Conrail. According to the Application, the proposed transaction will result in the creation of 1,152 positions, the transfer of 2,306 positions, and the abolition of 3,807 positions in both the CSX and NSC expanded system. (See Railroad Control Application, Volume 1, p. 28).

The employees and former employees of Conrail have a vital interest in preserving the financial security of their pensions and the surplus assets of the Supp. Plan.

It is not stated on the Application how the interests of the employees and former employees in the Supp. Plan will be protected. The Application merely states that "standard labor protective conditions" will be applied and that no employee protective agreements have been reached as of the date of the Application. (See Application, Volume 1, pp. 28-29).

In a proceeding involving the merger or control of two Class 1 railroads, the Board shall consider at least among other matters the interests of the employees affected by the proposed transaction. See 49 U.S.C. ¶1134(b)(4). Also see 49 CFR 1180.1(b). 49 CFR 1180.1(f) provides as follows:

> "(f) *Labor protection*. The Commission is required to provide applicants' employees affected by a consolidation with adequate protection. Similarly situated employees on the applicants' system should be given equal protection. Therefore, absent a negotiated agreement, the Commission will provide for protection at the level mandated by law (49 U.S.C. 11347), unless it can be shown that because of unusual circumstances more stringent protection is necessary to provide employees with a fair and equitable treatment of affected employees."

In addition, the Board has broad authority to impose conditions governing the transaction. See 49 U.S.C. 11324(c) and 49 CFR 1180.1(d).

The interests of the Retirees and employees of Conrail in the Supp. Plan are set forth herein with their request to the Board to adequately protect such interests in approving the transactions involved in this Application.

III. FACTS

The following are the facts relevant to the Supp. Plan in these proceedings which relate to the interests of the Retirees:

A. **Background**

Conrail came into existence on April 1, 1976 under the Regional Rail Reorganization Act of 1973 at 45 U.S.C.S. §701 et seq., to acquire the rail properties of several bankrupt railroads. The Penn Central Transportation Company ("Penn Central") was the largest of these railroads ("Merged Railroads") merged into Conrail on April 1, 1976. Virtually all of the Merged Railroads maintained contributory defined benefit pension plans ("Merged Plans"). The Supp. Plan was adopted by Conrail as a successor to the Merged Plans in order to provide Conrail employees, including those employees of the former Merged Railroads, with continuing pension benefits. Conrail employees were classified as either non-agreement (management) employees, or agreement (union) employees. Benefits under the Supp. Plan were funded from the assets of the Merged Plans, and from both Conrail and agreement employee contributions. The Penn Central Transportation Company Supplemental Pension Plan ("Penn Central Plan") was the largest of the Merged Plans in terms of the number of participants and asset values. The Penn Central Plan had been funded by both employer and employee contributions, as well as by the transfer of assets from the supplemental pension plans of the Pennsylvania Railroad Company ("PRR") and the New York Central Railroad Company ("New York Central"). Both the PRR and the New York Central maintained contributory defined benefit pension plans. The Retirees were participants in one or more of the Merged Plans as well as either the PRR or New York Central pension plans.[1]

Between 1976 and 1984, the Supp. Plan was funded by both Conrail and participant contributions. Due to the large surplus which was accumulating in the Supp. Plan, Conrail made no contributions in the period between 1985 and the present. The January 1, 1985 surplus, i.e. excess of plan assets over liabilities, was $197,100,589.00. By January 1, 1994, the Supp. Plan had accumulated a surplus of $538,162,706.00. The growth of this surplus paralleled the evolution of Conrail from a federally subsidized corporation into a publicly held corporation on March 26, 1987 under the Conrail Privatization Act at 45 U.S.C.S. §1301 et seq.

B. The Supp. Plan Surplus

Paul J. Engelhart ("Engelhart") was born September 2, 1928 and, like the other named class representatives, was a long-term railroad employee, having first been hired by the PRR on September 16, 1948. He worked through its transition into Penn Central and ultimately into Conrail, from which he retired on August 31, 1988. Engelhart was a participant in the relevant supplemental pension plan of each of his railroad employers. The Retirees named in these proceedings are all in substantially similar circumstances as Paul J. Engelhart, and should be considered as named class representatives of all other employees and former employees who are participants in the Supp. Plan ("Engelhart Class").

---

[1] Mandatory contributions by management employees to the PRR plan were discontinued by the PRR in 1965.

On December 9, 1992, the Engelhart Class commenced an action in the United States District Court for the Eastern District of Pennsylvania, (Engelhart, et al v. Consolidated Rail Corporation, et al., No. 92-7056). In that action, the Retirees claimed that they had an interest in the Supp. Plan surplus attributable to their employee contributions during their railroad careers ("the Surplus Claims"). The District Court dismissed the Surplus Claims pursuant to Federal Rule of Civil Procedure 12(b)(6) at 1993 U.S. Dist. LEXIS 11371, (E.D. Pa., August 16, 1963). Subsequently, the District Court granted summary judgments against the Retirees who had challenged the calculation of certain categories of pension benefits and the payment of certain administration expenses from the Supp. Plan assets at 1996 U.S. Dist. LEXIS 13160 (E.D. Pa., September 10, 1996). These District Court Decisions were affirmed by the United States Court of Appeals for the Third Circuit at 1997 U.S. App. LEXIS 26153 (3rd Cir., 1997, No. 96-1920, decided August 5, 1997). The Engelhart Class intends to file a Petition for Writ of Certiorari with the United States Supreme Court to seek a review of the Decision by the Third Circuit.

In the District Court, the Engelhart Class did not seek an increase in the benefits from the Supp. Plan. Instead, the Engelhart Class sought (1) a determination of their interest in the Supp. Plan surplus under the Employee Retirement Income Security Act (ERISA), 29 U.S.C.S. §1132(a)(1)(B), and (2) a determination under 29 U.S.C.S. §1132(a)(3) that the defendants have breached their fiduciary duties to the Engelhart Class by using surplus assets attributable to employee contributions to fund an early retirement program and certain retiree health care accounts in violation of their rights under the Supp. Plan and the fiduciary standards of ERISA.[2] On August 13, 1993, the District Court, in dismissing the Engelhart Class Action, held that Conrail's action in amending the Supp. Plan to provide for these special benefits for certain employees was not actionable pursuant to ERISA's fiduciary duty provisions.

The Engelhart Class continues to challenge the use of the Supp. Plan surplus by Conrail, or any successors of Conrail, in a manner that violates their interests in the Supp. Plan.

The Supp. Plan is an overfunded pension plan in that the current value of Supp. Plan assets exceeds the value of anticipated benefit liabilities. This surplus in the Supp. Plan was attributable to contributions and forfeitures by Merged Railroad and Conrail employees, contributions from the Merged Railroads, earnings and appreciation on assets held in trust under the Merged Plans and the Supp. Plan, and contributions by Conrail during the period that it was wholly owned and subsidized by the United States Government. Since its emergence as a publicly held corporation, Conrail has not been actuarially required to make contributions to the Supp. Plan. In the period between December 31, 1984 and December 31, 1991, the Supp. Plan surplus doubled from $197 million

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[2] These claims are described in more detail on pages 8-9 hereof.

to $394 million.[3]

The nine Engelhart Class representatives are all receiving retirement benefits as participants of the Supp. Plan. The Supp. Plan is the successor to the Merged Plans which, including the Penn Central Plan, were transferred to Conrail under the Regional Rail Act. Prior to February 1, 1965, all PRR employees were required, as a pre-condition to participation, to make contributions to the PRR Plan, and the PRR made matching contributions to fund their pensions. In 1965, the non-agreement PRR employees were advised by management that in lieu of further salary increases, they would not be required to make matching contributions to the PRR Plan. Agreement employees were still required to make contributions to the PRR Plan until retirement. That practice has continued through the gradual evolution into the Supp. Plan.

In the District Court proceeding, the Engelhart Class challenged the use by the defendants of the surplus assets of the Supp. Plan to fund (a) the special voluntary pension program; and (b) the cost of certain retiree health care benefits claims ("Retirees Health Care") previously paid by Conrail. Conrail had also announced its intention to make annual transfers to pay for Retiree Health Care in the future. The Engelhart Class challenged these uses of the Supp. Plan surplus as an impairment of the fiscal

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[3] This surplus was determined by examining Schedule B, Actuarial Information attached to the 1985 Form 5500. Lines 6d(iii) and 6e were added to determine total benefit liabilities of $315,938,552.00. That sum was then subtracted from line 6c which stated the current value of plan assets of $513,039,141.00.

integrity of the Supp. Plan, and as impermissible reversions of the assets of the Supp. Plan to Conrail. The class representatives alleged that the Engelhart Class members have a proprietary interest in the Supp. Plan surplus based upon their contributions, forfeitures and the earnings. As participants in and beneficiaries of the Supp. Plan, the Engelhart Class has a direct interest in preserving the fiscal integrity of that fund, which pays their pension benefits, and in maintaining adequate safeguard with respect to the administration of the Supp. Plan. Further, the class representatives alleged that the rights of class members as predicated upon ERISA at 29 U.S.C. §1344(d) represent contingent liabilities that must be satisfied before any reversion of the surplus to Conrail may occur. The Engelhart Class representatives, on behalf of themselves and all other subclass members, have alleged that Conrail violated the fiduciary duties imposed upon it by ERISA, the Supp. Plan and the common law. They also alleged that Conrail failed to discharge its fiduciary duties under ERISA as set forth in ERISA at 29 U.S.C. §1104(a)(1), and 29 U.S.C. §1103(c)(1), and under the common law of trusts, by converting a portion of the Supp. Plan surplus attributable to employee contributions to the use and benefit of Conrail. The Retirees alleged that Conrail impaired the fiscal integrity of the fund and failed to take the appropriate steps to cure the breaches of their fiduciary duties.

IV. Law With Respect To The Supp. Plan

In a non-contributory defined benefit pension plan, the employer promises plan participants that the employer will provide a benefit as defined by the plan's benefit accrual formula upon retirement, termination or disability. Typically, the employer must satisfy any shortfalls from its general assets if the actuarial assumptions used in calculating the employer's annual contribution are determined to be incorrect. Malia v. General Electric Company, 23 F.3d 828, 831 (3rd Cir. 1994). Therefore, the financial risk of plan underfunding falls solely upon the employer.

The Supp. Plan, however, is an overfunded contributory defined pension plan to which both Conrail and its agreement employees theoretically contribute. Historically, the Merged Plans, which were the contributory defined benefit plans maintained by the Merged Railroads, required both employees and the employers to make matching contributions. Conrail's operations were subsidized by the United States Government until 1987 when Conrail ceased being a ward of the Federal government and became a publicly held corporation. Conrail has not made any employer contributions to the Supp. Plan since it became a publicly held corporation, although Conrail agreement employees, i.e. union employees, have continued to make employee contributions as required by the Supp. Plan.

An actuarial surplus exists in a pension plan such as the Supp. Plan when its assets increase in value more rapidly than the value of expected benefit liabilities. See Johnson v. Georgia-

Pacific Corporation, 19 F.3d 1184, 1189 (7th Cir. 194). In the period between December 31, 1984 and December 31, 1991, the Supp. Plan was the direct beneficiary of favorable investment experience as its surplus doubled from $194 million to $394 million, and that favorable investment experience has continued with the tremendous growth in the stock market over the last several years.

What financial risk has Conrail assumed relating to pension costs since its emergence as a publicly held corporation? The answer, quite simply, is none! Rather, Conrail has sought to use the Supp. Plan surplus to fund both special early retirement programs and to provide retiree health care benefits for those Conrail employees fortunate to participate in these programs. Conrail has reaped the benefit of the Supp. Plan surplus, the existence of which is primarily attributable to plan assets representing the matching contributions of the Merged Railroads and their employees and Federal subsidies which supported Conrail from 1976 to 1987.

In the very current leading case of Jacobson v. Hughes Aircraft Company, 105 F.3d 1288, 1296 (9th Cir. 1997), the Court stated:

> "If employees contribute to the plan, the employer has a fiduciary duty to the employees when it amends the plan to use an asset surplus. In essence, when a plan is funded by both employer and employee contributions, both the employer and the employees are co-settlors of the plan."

This concept is reflected in both the common law of trusts and the Employee Retirement Income Security Act ("ERISA") at 29 USCS

§1344. The resulting trust doctrine under common law provides that any residual assets remaining after a trust's purposes have been fulfilled become a resulting trust for the benefit of the original settlors of the trust. See Jacobson, 105 F.3d at 1295. ERISA at 29 USCS §1344 governs the allocation of the residual assets of a pension plan upon its termination and mandates that any residual assets of the plan attributable to employee contributions must be equitably distributed to the contributing participants or their beneficiaries before any reversion to the employer may occur. Thus, ERISA at 29 USCS §1344 provides a statutory corollary to the common law resulting trust doctrine, and, indeed, goes even further in granting priority to the contributing plan participants in the distribution of the residual assets of a terminating pension plan.

The Retirees have sought to prevent Conrail from dissipating that portion of the Supp. Plan surplus attributable to their contributions and those of other members of the Engelhart Class. Their principal concern is to preserve the fiscal integrity of the Supp. Plan and to preserve that portion of the surplus attributable to their contributions and those of other Engelhart Class members.

While 29 USCS §1344(d) cannot serve as the source of such rights, it is indicative of the existence of such rights under the general principles of trust law which are applicable in interpreting and defining fiduciary rights and obligations in a pension plan under ERISA.

The Retirees contend that the Applicants in these proceedings have violated ERISA's anti-inurement provision at 29 USCS

§1103(c)(1) by using the Supp. Plan surplus for purposes that do not take into account their interest and that of the other Engelhart Class members in that surplus. This precise issue was presented in Jacobson where the court at 105 F.3d 1294 stated:

> "We therefore, hold that when both the employer and employees contribute to a pension plan, the employer does not have sole discretion to use that part of a plan's asset surplus attributable to employee contributions."

The Retirees wish to preserve their interest in the surplus assets of the Supp. Plan, and to maintain the financial security provided by the overfunded contributory plan. In Jacobson, the Court explicitly recognized that the participants in an overfunded contributory defined benefit plan have a legally protectible interest in preserving the fiscal integrity of their pension fund. See Jacobson, 105 F.3d at 1296, n.4.

V. COMMENTS AND PROTESTS BY RETIREES WITH RESPECT TO CSX'S AND NSC'S INTENTIONS REGARDING THE SUPP. PLAN

The documents submitted by the Applicants fail to explain what their intentions are with respect to the Supp. Plan. There appear to be three viable alternatives for the future of the Supp. Plan:

1. It could be terminated;

2. It could be merged with the pension plans of CSX and NSC, or either of them; or

3. It could survive in its present form and continue to be administered by Conrail.

Each of these possibilities raises unique subsets of legal and practical issues and requires careful analysis so that their impact upon retired plan participants and others may be evaluated.

If the Supp. Plan is formally terminated, then ERISA's scheme of asset allocation under 29 U.S.C. §1344(a) is implicated. Section 1344(a) provides for the allocation of assets among the participants and beneficiaries upon the termination of a single employer pension plan, and directs the plan administrator to allocate assets in accordance with the following priorities:

1. To that portion of each individual's accrued benefit attributable to voluntary employee contributions;

2. To that part of a participant's accrued benefit attributable to mandatory employee contributions;

3. To the benefits of retirees who have been in pay status or deferred vested status for at least three years prior to the date of plan termination;

4. To all benefits guaranteed by the Pension Benefit Guaranty Corporation under Title IV of ERISA;

5. To all other nonforfeitable benefits under the plan; and

6. To all other benefits under the plan.

The Supp. Plan is substantially overfunded in that the value of plan assets exceeds the estimated plan liabilities. If the plan is terminated, there will be a substantial pool of residual, or surplus, assets. ERISA provides for the allocation and distribution of these residual assets at 29 U.S.C. §1344(d)(1) through (4). Subsection 1344(d)(1) permits the reversion of these residual assets to Conrail if:

1. All plan liabilities to participants and their beneficiaries have been satisfied;

2. The distribution does not contravene any provision of law; and

3. The plan provides for a reversion of surplus to the employer.

Employer compliance with these requirements is mandatory. Parrett v. American Ship Building Co., 990 F.2d 854 (6th Cir. 1994). However, before an employer reversion can occur under subsection 1344(d)(1)(A), the requirements of 29 U.S.C. §1344(d)(3) must be met as well. That subsection permits an employer reversion only if the residual assets attributable to employee contributions are first equitably distributed to the participants who made such contributions or their beneficiaries.

If the Supp. Plan is merged with another plan, e.g. a plan sponsored by CSX or NSC, then attention must shift to ERISA, Section 208 at 29 U.S.C. §1058.[4] That section provides:

> "A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan .... unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if the plan had then terminated).

In short, ERISA provides that the participant's accrued benefit after a plan merger must be at least equal to what that benefit was prior to the merger. Such an analysis is particularly relevant here because of the concerns of the Retirees about the financial security underlying those benefits which they will

[4] That section is a mirror image of 26 U.S.C. §414(l). A district court has noted this parallelism and stated that sources useful in interpreting 26 U.S.C. §414(l) can also be used to interpret ERISA Section 208. See Gillis v. Hoechst Celanese Corp., 889 F.Supp. 202 (E.D. Pa. 1995).

receive in the future. As one commentator has observed:

> "Plan amendments transferring assets and benefit liabilities of some participants from one plan to another or merging two plans, can dilute the security of participants' benefits as measured by the difference in the amount of benefits that would be paid them if the plan terminated immediately before or immediately after the asset or liability transfer or plan merger."

See Stephen Bruce, Pension Claims: Rights and Obligations, 2nd Ed., Bureau of National Affairs, Wash. D.C. (1993), p. 509.

Once again, given the current lack of direction with respect to the Supp. Plan, the retiree participants cannot assess the applicability of either 29 U.S.C. §1344 or 29 U.S.C. §1058 to their benefits.

Superficially, the continued survival of Conrail and the maintenance of the Supp. Plan would appear to be the most straightforward scenario. Questions remain as to what form, if any, Conrail might exist in if the proposed merger is successfully completed. Assuming that Conrail survives in one form or another as a viable entity, and continues to maintain the Supp. Plan, then a partial termination of the Supp. Plan will have occurred by virtue of the proposed mass layoffs of Conrail personnel.[5] In

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[5] A partial termination is not specifically defined by ERISA, however, the Internal Revenue Code attempts to fill the gaps at 26 U.S.C. §411(d)(3), which states:

> "Notwithstanding the provisions of subsection (a) [the minimum vesting standards], a trust shall not constitute a qualified trust under section 401(a) unless the plan provides that upon its termination or partial termination the rights of all affected employees to benefits accrued to the date of such termination, partial termination or discontinuance, to the extent funded as of such date, as nonforfeitable."

Gluck v. Unisys Corp., 960 F.2d. 1168, 1992 U.S. App. LEXIS 5647, *41 (3rd Cir. 1992), the Court stated:

> "Partial termination thus involves a significant reduction in plan liability by means of a corresponding reduction in employee benefits. That reduction may be achieved by excluding a segment of employees, or by reducing benefits generally. The former reduction, the exclusion of participants, is referred to as a "vertical reduction" ... and may result in a "vertical partial termination"... A vertical partial termination may result from events such as mass firing or lay-offs due to closing divisions or moving plants ....."

If a partial termination does occur, then the distribution of residual assets under 29 U.S.C. §1344(d) is again implicated. Article 6.4 of the Supp. Plan explicitly recognizes the application of Title IV of ERISA, including 29 U.S.C. §1344(d), and states:

> "6.4 Allocations on Termination. In the event that the Plan is completely or partially terminated, the rights of all affected Participants to accrued benefits under the Plan to the date of such termination shall become fully vested and nonforfeitable to the extent funded; and the assets of the Plan available to provide benefits shall be allocated to the persons who are entitled or who may become entitled to benefits under the Plan, subject to and in the manner prescribed by the applicable provisions of Title IV of ERISA. Any other provision of the Plan to the contrary notwithstanding, if there remain any assets of the Plan after all liabilities of the Plan to Participants, Terminated Participants and their beneficiaries have been satisfied or provided for, such residual assets shall be distributed to the Company subject to and in accordance with Title IV or ERISA." (Emphasis supplied).

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[5] Continued

The Treasury Regulations at §1.411(d)-2(b)(1) attempt to define when a partial termination has occurred, but this Regulation merely allows the Internal Revenue Service to apply a facts and circum-stances test to a given situation. Courts may consider these Treasury Regulations as well to determine whether a partial termination has occurred in a particular factual context. See Gluck v. Unisys Corp., 960 F.2d 1168, 1992 U.S. App. LEXIS 5647, *44 (3rd Cir. 1992).

with respect to the Supp. Plan. Clarification of the Applicants' intentions vis-a-vis the Supp. Plan is essential.

It is interesting to observe that Conrail's position is that any Supp. Plan assets in excess of benefit obligations may be used by Conrail to provide benefits to Supp. Plan participants. (See letter from Debbie Melnyk, Administrator, Pension Plan Administration Committee, to Thomas Robinson dated June 9, 1997 - highlighted sentence in second paragraph (Exhibit 1 attached). This position has many legal ramifications such as whether the plan surplus assets are going to be used to pay severance allowance to Conrail employees, or CSX or NSC will use plan surplus assets to fund their employees' pension obligations. In addition, Mrs. Melnyk's letter states that if the Supp. Plan terminates, any residual assets after all Plan obligations are satisfied, will be paid to Conrail. This statement is directly contrary to the law of ERISA as cited above that residual assets can be distributed to the employer only if the residual assets attributable to employee contributions are first equitably distributed to the participants who made such contributions. (ERISA at 29 U.S.C. 1344(d)(3).

V. RETIREES' REQUESTS FOR CONDITIONS

The Retirees request the Board to impose appropriate conditions governing the contemplated transaction, pursuant to the provisions of 49 U.S.C. 11324(c) and 49 CFR 1180.1(d), to protect the interests of all of the participants of the Supp. Plan in the Supp. Plan and its assets.

In addition, the Retirees request the Board to impose the following specific conditions governing this transaction:

1. Require that the Applicants make legally binding agreements and commitments that specify the disposition of the Supp. Plan and its assets after the proposed merger.

2. If the Supp. Plan will be amended, terminated or merged into another plan, the Applicants must specify how the interests of the participants of the Supp. Plan in the security of their pension rights and in the surplus assets of the Supp. Plan are to be protected.

3. Require the applicants to specify how the Supp. Plan and its assets will be administered after the merger.

4. Require the Applicants to specify if the assets of the Supp. Plan will be used to provide any kind of severence benefits to employees of any of the Applicants.

5. Require the Applicants to amend the Supp. Plan to provide adequate security for the pension benefits of the participants of the Supp. Plan.

6. Require the Applicants to amend the Supp. Plan to determine the interests of the participants in the surplus assets, which may not be used for any purpose except the payment of benefits to the Retirees and all of the present participants of the Supp Plan.

7. If the Supp. Plan is to be terminated or partially terminated, require that the Applicants allocate and pay to the Retirees and all of the present participants of the Supp. Plan their equitable share of the surplus assets of the Supp. Plan.

their equitable share of the surplus assets of the Supp. Plan.

8. Require that the Applicants amend the Supp. Plan to provide for adequate independent representation of the particpants in the Supp. Plan Administration Committee, with appropriate arrangements for the selection, compensation and reimbursement of expenses for such participants' representation.

9. Require that all commitments and agreements which are made by the Applicants shall be legally binding upon the Applicants, their successors and assigns, and shall be for the benefit of the Retirees and all of the participants and their beneficiaries.

10. Permit the Retirees to conduct all necessary discovery of the Applicants relating to othe disposition of the Supp. Plan.

11. Require the Applicants to pay all legal costs and expenses, including reasonable counsel fees and expenses for the Retirees' counsel.

12. The Retirees reserve the right to request further conditions, depending upon the Applicants' response to this or other pleadings in these proceedings.

VI. CONCLUSION

The Retirees request the Board to render an appropriate decision to protect the interests of all participants of the Supp. Plan for the reasons set forth above.

The Retirees reserve the right to submit supplemental pleadings and other documents relating to the transaction in these proceedings related to the Supp. Plan.

Respectfully submitted,

Harry C. Barbin

Harry C. Barbin, Esquire
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(215)379-3015

Counsel for Paul J. Engelhart, et al.

CONRAIL

June 9, 1997

Mr. Thomas F. Robinson
6653 Malvern Ave.
Philadelphia, PA 19151-2346

Dear Mr. Robinson:

I am writing in response to your letter dated May 6, 1997 regarding the future of Conrail's Supplemental Pension Plan (the "Conrail Plan"). I understand your concern but I am afraid that your information is not entirely accurate. The purpose of my May 1 letter was to address the concerns of some retirees who questioned what would happen to their monthly pension payments after the merger. The Conrail Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") and to the extent that a participant's retirement benefit is vested or nonforfeitable it cannot be taken away.

As you know under the Amended Merger Agreement, CSX Corporation and Norfolk Southern Corporation have agreed to purchase the shares of Conrail. Included as part of this purchase are the assets of Conrail, including the Conrail Plan which Conrail has sponsored. As the Plan's sponsor under ERISA, Conrail has the obligation to fund, through contributions if necessary, the retirement benefits of the Plan participants. Contributions by Conrail have not been required in the past several years because of the Plan's overfunded status. To the extent there are Plan assets in excess of the benefit obligations owed to participants and beneficiaries, these are assets which Conrail may use to provide benefits to Plan participants. However, if the Conrail Plan were to terminate, any assets which remain after all liabilities and benefit obligations of the Conrail Plan to participants and their beneficiaries have been satisfied are returned to the plan sponsor, Conrail or its successors. If the Conrail Plan is merged with the CSX Plan, such action is permitted under the provisions of ERISA as long as the vested or nonforfeitable retirement benefits of participants are protected. The fiduciaries of the Conrail Plan consider the interests of the plan participants and beneficiaries in the discharge of their duties with respect to their actions which will affect the Conrail Plan. The provisions of the current Amended Merger Agreement are completely within the laws that protect plan participants.

If you have any other questions, please contact me at the address below.

Sincerely,

Debbie Melnyk

Debbie Melnyk
Administrator-Pension Plan Administration Committee

EXHIBIT 1

RETR-8

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

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CERTIFICATE OF SERVICE OF
PAUL J. ENGELHART, ET AL.

I hereby certify that, on this 17th day of October, 1997, a copy of Comments, Protests and Requests for Conditions of Paul J. Engelhart, William J. McIlfatrick, H.C. Kohout, Thomas F. Meehan, Jr., Lawrence Cirillo, Charles D. Nester, Jacqueline A. Mace, Donald E. Kraft and Robert E. Graham, Former Employees of Consolidated Rail Corporation ("Retirees") (RETR-7) was served by first class mail, postage prepaid, upon all Parties of Record in the above-captioned matter, and upon Administrative Law Judge Jacob Leventhal.

Harry C. Barbin, Esquire
BARBIN, LAUFFER & O'CONNELL
608 Huntingdon Pike
Rockledge, PA 19046
(215)379-3015

Counsel for Paul J. Engelhart, et al.

Dated: October 17, 1997

STB FD 33388 10-20-97 D 182725

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October 17, 1997

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OCT 20 1997
3 Part of Public Record

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

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are an original and twenty-five (25) copies of a Verified Statement filed on behalf of Eastman Kodak Company, a party of record in the above proceeding. Also enclosed is a 3.5-inch disk containing the text of this pleading in WordPerfect 6.1 format is provided.

Please date stamp the enclosed extra copy of this letter and return in the enclosed, self-addressed envelope. Copies of the enclosed Verified Statement are being served via Federal Express upon the Honorable Jacob Leventhal and counsel for Applicants. All other parties are being served via first class mail, postage pre-paid.

Respectfully submitted,

Byron D. Olsen

Byron D. Olsen

ENTERED
Office of the Secretary
OCT 20 1997
3 Part of Public Record

mcd
Enclosures

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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

VERIFIED STATEMENT OF LINDA L. KELLEY on behalf of EASTMAN KODAK COMPANY

My name is Linda L. Kelley. I am the Manager of Inbound Transportation, Rail and Bulk, at Eastman Kodak Company. This Verified Statement is being submitted on behalf of Eastman Kodak Company, 343 State Street, Rochester, New York 14650. My business address is 2400 Mt. Read Boulevard, Rochester, New York 14650-3061.

I joined Kodak in 1981. Prior to coming to Kodak, I was employed at Mobil Chemical Company, Plastics Division, Macedon, New York, for 15 years. While at Mobil Chemical, I was supervisor of transportation rates and negotiations for the last seven years of my employment there.

For the past 15 years at Kodak, I have been responsible for the inbound transportation of raw materials used in Kodak manufacturing processes. My responsibilities include, but are not limited to, negotiating rail rates, rail contracts and maintaining a relationship with the railroads who provide delivery of the raw materials. Our corporate mission is to be the "World Leader in Imaging" and continue to enhance our position as the largest manufacturer of film, chemicals and paper used for taking pictures, not only by individual consumers, but also in various industries like publishing, entertainment, professional photography and the health care markets.

Our largest manufacturing facility is located at Kodak Park in Rochester, New York, and rail service is a vital part of these operations. Kodak carries out a wide variety of manufacturing, warehousing and distribution functions at this location. Rail accounts for forty to fifty percent of the transportation cost of inbound raw materials and other commodities coming into Kodak Park. Kodak receives between 10,000 and 15,000 carloads of bulk materials every year. Plastics, chemicals and forest products, including pulp for paper making, are important inbound commodities moving by rail. Kodak also makes heavy use of intermodal service, both in the United States, as well as worldwide. Significant volumes of Kodak products are containerized and exported through both east and west coast ports.

Kodak's most significant inbound railborne commodity at Rochester is coal. Approximately 8,000 to 9,000 carloads a year of coal are delivered to Kodak for steam generation to support the extensive manufacturing operations at Kodak Park, as well as for power generation and heating.

Kodak currently is a party to a transportation contract with Conrail for the transportation of coal to Kodak Park in Rochester, New York. This is a significant coal movement amounting to upwards of 800,000 tons per year. In fact, other than electric power generating utilities, Kodak is the largest single user of steam coal on the Conrail system and acknowledged to be Conrail's largest industrial coal customer. Kodak is clearly a major user of Conrail service.

Kodak has a considerable interest in the successful rationalization of the eastern railroad network in view of Kodak's significant use of rail transportation service and dependence on this service in our manufacturing process. This should place in perspective Kodak's desire to ensure that the proposed acquisition and dissolution of Conrail will bring with it the immediate competitive benefits that the Applicants have claimed.

The Applicants' proposed dissolution of Conrail is presented as the return of two-line railroad competition to much of Conrail's service territory. Indeed, it resurrects Conrail's predecessors, the New York Central and the Pennsylvania Railroad, in a manner that unravels the 1968 merger of the Penn Central to a fair extent. Kodak is prepared to support this effort and regards it as the rearrangement of the eastern rail system that should have happened in 1968, instead of the merger that created the Penn Central at that time.

Kodak supports and accepts what CSXT and NS are telling the STB and the world, that they are bringing back viable major rail carrier competition to the northeastern United States. But there are some disturbing footnotes to this presentation that could cause Kodak to withdraw its support for the transaction. Consequently, Kodak supports the proposed transaction only on condition that the STB favorably resolve with two important concerns. These concerns are:

1. The STB must use care to avoid taking any steps that might impair the contractual rights of shippers under existing transportation contracts; and
2. The STB must ensure that the viability of the Rochester & Southern Railroad ("RSR") is not jeopardized.

The division of Conrail between CSXT and NS will radically change the rail service relationships available to Kodak at Rochester. Not only will CSXT assume control and operation of the Conrail line between Buffalo, Syracuse and Albany, of equal significance, NS will assume control of the line from Buffalo through Silver Spring to Corning and east. At Silver Spring the NS will connect with the Rochester & Southern, which provides a direct link to Kodak Park in Rochester. Both CSXT and NS have extensive routes throughout the coal-producing regions of the eastern United States. Thus, both carriers will be in a position to provide competitive rates, routes and service specifically with respect to the large-volume coal movements from the shared or "dual"

MGA area to Rochester, New York. CSXT will have single-line capability and NS can interline with Rochester & Southern for delivery to Kodak. This will provide truly competitive rail service.

This competition will emerge, however, only if the Board makes sure that both carriers have the right to compete for Kodak's business as soon as the acquisition of Conrail is consummated. Unfortunately, it appears that CSXT intends to monopolize Kodak's business until well into the next century and bar other carriers from the opportunity to compete. CSXT has informed Kodak that it intends to continue the existing Conrail/Kodak coal transportation contract until the end of the contract term, December 31, 2001. In the meantime, while CSXT is willing to negotiate, they will not consider any changes in contract terms that would become effective prior to that date.

The Applicants claim to be bringing back two-system rail competition to Conrail territory. They propose to divide Conrail's assets and route structure in a manner that appears to accomplish that result. They support and argue in favor of their proposal by frequently referring to that basic premise. In instances where present two-line competition is reduced to one line, trackage rights and other arrangements are proposed to restore two-carrier competitive balance.

Nevertheless, the Applicants appear to want the STB to attempt to nullify provisions in Existing Transportation Contracts which provide rights to the shipper parties to these contracts. The STB has no authority to invade the sanctity of these contracts and such changes would be outside the scope of the Board's statutory authority under the Interstate Commerce Act to review and approve mergers and consolidations.

As I have noted, CSXT has advised that it has no intention of making any changes in the Conrail/Kodak coal transportation contract until it expires at the beginning of the year 2002. Since the proposed transaction dismembering Conrail will radically alter all transportation relationships in the eastern United States long before that date, Kodak cannot understand why it should not be permitted to reexamine its competitive alternatives under the new regime as soon as it becomes effective. The Existing Transportation Contract with Conrail permits Kodak to do just that under the changed circumstances that will result from the Conrail sale.

When Conrail was the only game in town, Kodak entered into an arms-length agreement for Conrail to deliver substantial volumes of coal to Kodak Park over a term of years expiring at the end of the year 2001. One of the provisions of this agreement states as follows:

> *15. AGREEMENT: This contract is not assignable in whole or in part by one party without the prior written consent of the other parties. This contract shall inure to and be binding upon the parties hereto and their respective successors and permitted assigns.*
>
> *16. MODIFICATION: This contract may not be modified except by an express written agreement signed by the parties hereto, and filed with the ICC.* (My Emphasis)

In addition, there are other provisions making the Contract inapplicable whenever Conrail sells or disposes of a line of railroad used to carry out the Contract. This provision was entered into by Kodak with full awareness of the somewhat fluid state of the eastern railroad network since World War II. This period has witnessed the disappearance of the Baltimore & Ohio, the Chesapeake & Ohio, the Erie, the Delaware, Lackawanna & Western, and the Pere Marquette, to name just a few. The mainstay of New York State, the New York Central, was swallowed up by the Penn Central in 1968, which became Conrail in the 70's. And now, not too surprisingly, another page in the history of railroad mergers is turning.

Kodak claims no crystal ball, except that certain provisions of the coal transportation contract, including the ones cited above, were entered into advisedly, and with the anticipation that there was a major probability that further changes were ahead for the eastern railroad system. Kodak wanted the right to reexamine its competitive options should that happen. The Application now before the STB proves the soundness of that expectation.

The consent to assignment and sale provisions were put in for the express purpose of giving Kodak options in just this situation. When Conrail was the only delivering carrier with multiple coal origins on its line, Kodak was willing to enter into a long-term requirements contract for the supply of coal. However, the world that will emerge following consummation of the CSXT/NS acquisition will be radically changed. Like any member of the shipping public, Kodak wants to have the opportunity to deal with more than one supplier of rail transportation service. That is exactly what the Applicants contend they will offer. But, at the same time they are taking this position before the STB, they are also asking the Board to nullify the "consent to assignment" clause cited above. The result is that two private parties are carving up and allocating markets without a competitive alternative in a most egregious anti-competitive fashion. Kodak submits that (1) the Board has no authority to violate the sanctity of a private contract and nullify the consent to assignment clause, and (2) as the antitrust custodian of rail mergers, it should have no part of any such activity.

Unlike some recent rail mergers which have suffered service failures at times, the disassembly of Conrail permits marketplace competition to provide alternatives to service failures by any one carrier, provided, however, that the Board does not place any artificial restraints on the ability of shippers such as Kodak to exercise new competitive alternatives.

The Application is far from clear when it comes to what the Board is being asked to do with respect to Existing Transportation Contracts. These contracts are considered allocated assets or shared assets, depending upon which carrier or carriers will service the origin and which will serve the destination. Most of the language in the Application appears to reassure the shipping public that service provided by Conrail under Existing Transportation Contracts will continue unchanged under the new regime. See, for example, CSX/NS-18, page 41:

> *The (Transaction Agreement) also provides that the two carriers shall cooperate as necessary to assure shippers under the Existing Transportation Contracts all benefits, such as volume pricing, volume refunds and the like, to which they are contractually entitled, notwithstanding any division of responsibility in performing the service between the two carriers.*

All this seems comforting. But when the Transaction Agreement is examined more closely, objectives become murkier. The specifics of how the transportation contracts are going to be divided up are found at CSX/NS-25, volume 8b, at pages 24-29, specifically section 2.2 of the Transaction Agreement dated June 10, 1997. Among other matters, 2.2(c)(i) states:

> *All CRC transportation contracts in effect as of the Closing Date ("Existing Transportation Contracts") shall remain in effect through their stated term*-- (My Emphasis)

Nothing is said with respect to existing contract provisions entitling a contracting party to terminate the agreement short of the stated term in accordance with the provisions of the contract.

Section 2.2(c) of the Transaction Agreement concludes with a provision that appears reassuring, but may simply create ambiguity:

> *(vi) Nothing in this section 2.2(c) shall limit any right of the parties to provide service to or enter into transportation contracts with shippers with Existing Transportation Contracts.*

Kodak is very concerned with the prayer for relief found in Volume[1] (CSX/NS-18, pages 101-105). This is the "bottom line" that Applicants would like to have the STB ordain with respect to the future of Conrail. The provision that causes concern to Kodak is the following:

> *Similarly, with respect to the Allocated Assets or in the Shared Assets Areas consisting of assets other than routes (including, without limitation, the Existing Transportation Contracts), authorization and declaration that CSXT and NSR may use, operate and perform and enjoy such assets to the same extent as CRC itself could, notwithstanding any provisions purporting to limit or prohibit CRC's*

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assignment of its rights to use, operate and perform and enjoy such assets to another person or persons. (My emphasis)

As I have stated earlier, Kodak objects to this prayer for relief.

Kodak is mindful and appreciative of CSXT's representations that it will honor most provisions of the Conrail transportation contract now in place with Kodak. It is entirely possible that will prove to be Kodak's best transportation option in the years between now and 2002. But the fact remains that CSXT, under the allocation terms of the Transaction Agreement, has presented itself as the sole provider of coal transportation under the Kodak/Conrail contract. CSXT will deliver all the coal and collect all the revenues from Kodak. It will then divide the revenue with any other carriers involved, notably NS, on a private basis. Historically, about 25% of the coal moved under the Kodak contract has originated at points which will become exclusive Norfolk Southern origination points after the Conrail sale is consummated. The remaining 75% of the Kodak coal movements originate at points that both CSXT and NS will have the right to serve after the Conrail sale. Thus, if the Kodak coal movements were allocated on the basis of which acquiring carrier has the right to serve the origins, CSXT would not inherit all of the business. Kodak objects strongly to having no say in how its business is divided between two major entities with whom Kodak has had no opportunity to bargain. That is the essence of Kodak's position: we seek the freedom to bargain with NS and other carriers, as well as with CSXT, for our transportation business as soon as those two carriers take over Conrail. This objective is wholly consistent with the announced goals of the Applicants.

If Kodak and other shippers in the Rochester, New York area are to have viable two-line railroad competition in the future, the survival of the Rochester & Southern Railroad is also essential.

The Rochester & Southern Railroad is part of the Genesse & Wyoming railroad group. Other railroads in this group include the Buffalo & Pittsburgh Railroad, the Allegheny & Eastern, and the Genesse & Wyoming Railroad. The Applicants estimate that, collectively, this group will incur a revenue loss from traffic diversions in excess of $7 million per year. Kodak is very concerned that, if diversions of this magnitude come to pass, the viability of all of the railroads in the Genesee & Wyoming group will be threatened, including the RSR. Either agreement must be reached between the Applicants and Genesee & Wyoming group, or conditions should be imposed to at least give the G&W group a fighting chance for survival. The Genesee Transportation Council of Rochester, New York is submitting a Verified Statement in this proceeding with a number of suggestions with regard to the Rochester & Southern. Kodak generally agrees with and supports the proposals contained in the Verified Statement to be submitted October 21, 1997 by H. Douglas Midkiff on behalf of the Genesee Transportation Council of Rochester, New York, particularly with respect to those recommendations which would help the Rochester & Southern remain viable and become a full partner with NS in providing alternate competitive routes to Rochester.

To summarize, Kodak supports the application of CSXT and NS to divide and absorb Conrail, provided that nothing is done by the STB to impair Kodak's rights under Existing Transportation Contracts. If the Applicants are serious about reestablishing two-line competition, they should have no objection to permitting shippers to exercise all of their contractual rights as soon as the Conrail acquisition is effective. Shippers such as Kodak should remain free to exercise their contractual rights to withhold consent to the assignment of Conrail Transportation contracts to CSXT.

VERIFICATION

I, LINDA L. KELLEY, hereby affirm and state that I have read the foregoing statement, that I am personally familiar with its contents, that I have executed it with full authority to do so, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

Executed by the undersigned on this 17th day of October, 1997.

Linda L. Kelley

Linda L. Kelley

CERTIFICATE OF SERVICE

I, Mary C. Drewitz, certify that on October 17, 1997 I have caused a true and correct copy of the foregoing EKC-2 pleading, a Verified Statement filed on behalf of Eastman Kodak Company, a party of record, to be served by Federal Express upon the Surface Transportation Board, the Honorable Jacob Leventhal, and counsel for Applicants, and by first class mail upon all other parties of record.

Dated: 10/17/97

Mary C. Drewitz

Mary C. Drewitz

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