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**PUBLIC VERSION -- REDACTED**



BEFORE THE  
SURFACE TRANSPORTATION BOARD

ENTERED  
Office of the Secretary

Finance Docket No. 33388

NOV 12 1998

Part of  
Public Record

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

**NORFOLK SOUTHERN'S REPLY TO  
WHEELING & LAKE ERIE RAILWAY COMPANY'S  
REQUEST TO CLARIFY AND FOR FURTHER INSTRUCTION**

**JAMES C. BISHOP, JR.**  
**WILLIAM C. WOOLDRIDGE**  
**J. GARY LANE**  
**GEORGE A. ASPATORE**  
**JOHN V. EDWARDS**  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23410-2191  
(757) 629-2838

**RICHARD A. ALLEN**  
**SCOTT M. ZIMMERMAN**  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, DC 20006-3939  
(202) 298-8660

*Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company*

November 10, 1998



**PUBLIC VERSION -- REDACTED**

NS-72

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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**NORFOLK SOUTHERN'S REPLY TO  
WHEELING & LAKE ERIE RAILWAY COMPANY'S  
REQUEST TO CLARIFY AND FOR FURTHER INSTRUCTION**

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Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS") hereby reply to the "Request To Clarify and For Further Instruction of Responsive Applicant Wheeling & Lake Erie Railway Company" (WLE-10), filed by the Wheeling and Lake Erie Railway Company ("WLE") on October 21, 1998.

**INTRODUCTION**

In its submission, WLE says it is asking the Board to "clarify" and "confirm the scope" of the conditions the Board granted with respect to WLE in Decision No. 89. WLE-10 at 1. But reviewing WLE's submission in light of the Board's plain language in Decision No. 89, makes it crystal clear that what WLE really seeks is reconsideration and an unwarranted *expansion* of the conditions pertaining to WLE that the Board very clearly set out in that decision. The Board should reject WLE's attempt to broaden the conditions imposed in Decision No. 89, and should

instead adopt NS's proposal, which seeks to resolve issues pertaining to WLE in a manner consistent with both the letter and the spirit of the Board's decision.

Standard for the Board's Review

Although set forth in full in NS's October 21, 1998 Report and Proposal on this subject (NS-71) and in WLE's corresponding filing (WLE-10), it is important to set out once again the language of Ordering Paragraph No. 68:

In STB Finance Docket No. 33388 (Sub. No. 80), the responsive application filed by W&LE is granted in part and denied in part. As indicated in this decision, applicants must (a) grant W&LE overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads in Toledo, (b) extend W&LE's lease at, and trackage rights access to, NS's Huron Dock on Lake Erie, and (c) grant W&LE overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima. Applicants and W&LE must attempt to negotiate a solution with regard to these matters; and, if negotiations are not fully successful, may submit separate proposals no later than October 21, 1998. Further, applicants and W&LE must attempt to negotiate an agreement concerning mutually beneficial arrangements, including allowing W&LE to provide service to aggregates shippers or to serve shippers along CSX's line between Benwood and Brooklyn Junction, WV, and inform us of any such arrangements reached.

Setting out this language again here is important because it is this language, and the clear intent that it reflects, that must guide the parties in negotiating with respect to the matters set out in the Board's order, and guide the Board in resolving any disputes that the parties cannot. The Board itself has noted that in resolving disputes over implementation of conditions it has imposed, it is appropriate to focus on carrying out the "plain language" of the condition and the "clear intent" it expresses. See UP/SP Decision No. 74 at 5.<sup>1</sup>

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<sup>1</sup> *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company*, STB Finance Docket No. 32760, Decision No. 74 (served August 29, 1997).

Moreover, in this context, it is also important to remember the well-established principles (which the Board has reiterated in this proceeding), that conditions generally tend to reduce the benefits of the underlying transaction upon which they are imposed, and for that reason, the Board seeks to carefully tailor the conditions it approves. See Decision No. 89 at 78. These principles further counsel that a proposal for implementing conditions to a Board-approved transaction must be faithful to the Board's plain language and clear intent. In other words, a proposal must indeed *implement* the Board's conditions, and not overreach or seek effectively to expand upon what the Board has granted.

Contrary to WLE's suggestion, *see, e.g.*, WLE-10 at 1, the fact is that the scope of relief the Board granted to WLE, as set out in Ordering Paragraph No. 68, is very clear. On the issues representing the main areas of "impasse" between NS and WLE, NS has worked hard and in good faith to implement those conditions to the full extent the Board provided. The proposal set forth in NS-71, if adopted, would do that. WLE's proposal makes clear, on the other hand, that WLE is seeking to take more than the Board has given—in some respects, going so far as to flatly contradict the plain language of the Board's order.

In the following sections, NS will reply to WLE's comments with respect to the various issues upon which NS and WLE disagree pertaining to (1) trackage rights to Toledo; (2) extension of the Huron Dock lease; and (3) discussions about other "mutually beneficial arrangements," particularly service to aggregates shippers.<sup>2</sup>

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<sup>2</sup> As noted in NS-71, NS has negotiated with WLE with respect to condition (a) (overhead haulage or trackage rights access to Toledo, with connections to AA and other railroads in Toledo) and condition (b) (extension of the Huron Dock lease) of Ordering Paragraph No. 68, and also has discussed with WLE other possibly "mutually beneficial arrangements," including "allowing WLE to provide service to aggregates shippers." Other elements of Ordering Paragraph No. 68, including condition (c) (overhead haulage or trackage rights to Lima, OH, with a connection to IORY at Lima) and a possible "mutually beneficial arrangement" regarding service along CSX's line between Benwood and Brooklyn Junction, WV have been discussed between WLE and CSX. This Reply concerns only matters about which NS has negotiated with WLE.

**I. Overhead Haulage or Trackage Rights To Toledo for Interchange With Other Railroads**

WLE's comments and proposal regarding Toledo, as set forth in WLE-10, err in essentially three respects. First, and most significantly, WLE claims that the Board in subpart (a) of Ordering Paragraph No. 68 ordered that WLE be permitted to serve local industries in Toledo. WLE-10 at 17. NS, on the other hand, believes it quite clearly did not. Additionally, WLE argues that the Board meant to permit WLE to interchange with "all other railroads in the Toledo area (including NS and CSX)." WLE-10 at 17 (emphasis in original). NS, again, believes the Board's decision provides for no such thing, although, as discussed below, NS is willing to agree to permit such interchanges. Finally, WLE seeks to incorporate, within the proposal it asks the Board to adopt, two other matters NS and WLE have discussed: use by WLE of a portion of NS's Homestead Yard, and construction of a "diamond" or "mini-plant" at Bellevue. These matters are not directly linked to conditions ordered by the Board and should not be part of any Board-imposed resolution now.

**A. The Board did not direct that WLE be permitted to serve local industries in Toledo.**

WLE's claim that the Board ordered that it be permitted to serve local Toledo shippers flies in the face of the very clear language of Decision No. 89. Ordering Paragraph No. 68 grants to WLE, and directs that the parties negotiate to implement, "*overhead* haulage or trackage rights access to Toledo, with connections to AA and other railroads in Toledo." Decision No. 89 at 181 (*italics added*). Quite plainly, overhead means overhead, not local. Nowhere in Decision No. 89 does the Board grant service by WLE to *local* Toledo shippers, and there is nothing in the Board's decision that suggests that the Board contemplated — contrary to its clear use of the word "overhead" -- granting such local rights.

WLE, however, ignores the word "overhead" and argues that "access to Toledo" means the right to serve local Toledo shippers, and that the Board "did not intend to limit WLE's access



to Toledo only for the purpose of interchanging traffic there with the Ann Arbor and other railroads in the vicinity." WLE-10 at 17-18. But the Board's decision, and WLE's own responsive application, make clear that WLE's interpretation is wrong. First, WLE did not even seek service to local Toledo shippers in its responsive application. As set out by WLE's witness Steven W. Wait, WLE, under the heading "Access to Toledo," sought the following:

**"2. Access to Toledo:**

The WLE seeks a haulage agreement, with underlying trackage rights from Bellevue to Toledo, Ohio, a distance of 54 miles, *for an interchange* with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad. Also to be included is access to British Petroleum for movement of coke to Cressup, WV."

WLE-4 at 74 (*italics added*).

Moreover, WLE's Operating Plan states that WLE was seeking to operate "one train in each direction per day, six days per week between an existing connection with the Norfolk Southern at Yeomans, Ohio, and Toledo *for interchange* with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio. Additional traffic would be loaded hoppers of petroleum coke received from British Petroleum." WLE-4 at 82 (*italics added*). WLE's own language demonstrates that what WLE sought was overhead access to Toledo for the purpose of interchanging with Ann Arbor and other railroads.<sup>3</sup>

Additionally, the Board's discussion of the WLE request makes clear that the Board correctly understood WLE's request that way; the Board noted that, with respect to Bellevue-Toledo, what WLE sought were "rights to interchange with AA, CN and Indiana & Ohio Railway Company (IORY); and access to British Petroleum, at Cressup, WV." Decision No. 89

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<sup>3</sup> The request for access to one specific shipper, British Petroleum, for one specific movement, clearly supports the conclusion that the other rights WLE sought were overhead rights only.

at 227, n. 349. The Board responded, as discussed above, by very clearly and deliberately granting overhead rights only, with interchanges to other railroads at Toledo.

Putting aside the very clear language of the Board's decision and order, WLE now seeks to amend that order to include access to local Toledo shippers. WLE-10 at 19, para. 4. WLE argues without that additional authority, "WLE would lack sufficient revenue traffic and revenue opportunities to support viable service to Toledo." WLE-10 at 18. But WLE offers no new evidence or changed circumstances to support its bald assertion that additional access is economically necessary.<sup>4</sup>

In sum, WLE seeks relief that is unjustified, that it did not even originally request, and that, in any event, the Board very clearly did not grant. The NS proposal, on the other hand, quite clearly follows the letter and spirit of the Board's order, providing WLE with overhead trackage rights to interchange points in Toledo with the Ann Arbor and Canadian National, and includes implementation terms that the parties have negotiated and agreed upon as to the route, compensation, and effective date for those rights.

**B. The Board did not direct that WLE be permitted to interchange at Toledo with "all" other carriers, including NS and CSX. NS, however, is willing to agree to access to NS and CSX under certain conditions.**

Although not specifically included in the proposal set out at pp. 18-19 of WLE-10, WLE interprets the Board's decision as calling for WLE be permitted to interchange at Toledo with "all other railroads in the Toledo area, (including CSX and NS)" WLE-10 at 17 (emphasis in original). That, too, is incorrect. The Board's order nowhere calls for access to "all" railroads in Toledo. Moreover, WLE quite plainly never *asked* to interchange with CSX or NS in Toledo; its request was limited to interchange with the Ann Arbor, Canadian National, and Indiana & Ohio. See WLE-4 at 74 (WLE seeks to reach Toledo "for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad") and at 82 (WLE trains will operate

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<sup>4</sup> See 49 C.F.R. Section 115.3(b).

between Yeomans, Ohio and Toledo "for interchange with the Ann Arbor, Canadian National, and the Indiana & Ohio.").

And in Decision No. 89, the Board nowhere discussed, or granted, access to NS, CSX, or any railroad other than those to which WLE *requested* access. Indeed, the Board showed that it clearly intended WLE's access to other railroads in Toledo to be no broader than WLE itself sought: The Board found WLE's responsive application to be in the public interest "*to the extent it seeks*" connections in Toledo to "the Ann Arbor Railroad and other railroads in Toledo." Decision No. 89 at 172. The Board thus found the public interest in this regard to be coextensive only with what WLE actually sought. The most reasonable reading of Ordering Paragraph No. 68, therefore, is that the Board did not intend, as WLE claims, to grant WLE interchange rights with "all" other railroads in Toledo, but rather, consistent with the Board's findings, only to the ones to which WLE *sought* access (and which are actually present there)—namely, Ann Arbor and CN.<sup>5</sup> NS's proposal does exactly that. NS-71 at 9.

That having been said, NS nevertheless would be willing, in the interest of reasonably concluding an agreement with WLE, to permit WLE to interchange with NS and CSX at Toledo, even though outside the scope of the Board's order, *provided*, however, that any interchange between WLE and CSX take place at CSX's yard facilities in Toledo, and not NS's.

**C. The Board should not impose terms pertaining to Homestead Yard or the Bellevue "diamond."**

As noted in NS-71, NS and WLE have discussed certain other matters that may be mutually beneficial to NS and WLE; two of these involve possible access by WLE to a portion of NS's Homestead Yard, and construction of a "diamond" at Bellevue.

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<sup>5</sup> Although WLE requested interchange in Toledo with the IORY as well, IORY is not actually present in Toledo. Instead, the Board granted WLE rights to interchange with IORY at Lima.

NS believes there is no reason to think that the parties will not come to an agreement with respect to Homestead Yard, and also continues to be willing to negotiate with WLE with respect to the Bellevue diamond.

But WLE wrongly seeks to include those matters in its October 21 proposal for a Board-imposed resolution. WLE-10 at 19, paragraphs 5 and 6. Those matters are not appropriately the subject of resolution by the Board now. First, those discussions are not at an impasse, as WLE itself admits. WLE-10 at 17 (NS and WLE are "moving forward" on Homestead Yard discussions; discussions about the Bellevue diamond "have not progressed very far, but are not yet at an impasse").

Even more fundamentally, however, these matters are not part of, or necessary to accomplish, any condition imposed by the Board. Nowhere did the Board order either access to Homestead Yard or construction of a diamond at Bellevue. Moreover, neither is necessary to accomplish the access to Toledo approved by the Board. Indeed, with respect to Bellevue, WLE's own operating plan contemplates operating a run-around move at Bellevue to send WLE trains to Toledo. See WLE-4 at 83. And with respect to interchanging in Toledo, WLE could interchange with Ann Arbor using Ann Arbor's yard in Toledo, and with Canadian National using CN subsidiary Grand Trunk Western's yard in Toledo.

## **II. Extending the Lease at Huron Dock**

WLE's proposal with respect to extension of the Huron Dock lease, like its Toledo proposal, is a plain and substantial overreach of the relief the Board granted in Decision No. 89. The Board directed that applicants "*extend W&LE's lease at, and trackage rights to, Huron Dock.*" Decision No. 89 at 181 (*italics added*). What WLE seeks, rather than extension of the current lease and trackage rights arrangement as the Board ordered, is a substantial reformation and rewriting of the substantive terms of the lease, so as to obtain relief that it sought in its responsive application but the Board did not grant.



The initial Huron Dock lease (and associated trackage rights agreement) included a 50-month term, limited WLE's use of the Dock to the transportation of one specific commodity to one specific customer, and permitted NS also to use the Dock (provided that it did not unreasonably interfere with WLE's use). NS submitted a copy of the lease and associated trackage rights agreement under seal as attachments to the Highly Confidential version of NS-71.

In its responsive application, WLE sought unrestricted access to the Dock, and eventual divestiture of the Dock (and the Huron Branch) and acquisition of it by WLE through a lease-to-own arrangement. See WLE-4 at 33 ("Lease to own the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie") and 72 ("unrestricted access, beyond the current restrictions").

The Board did not grant that relief. It did not order divestiture of the Dock, and it did not order unrestricted access by WLE. Instead, the Board quite plainly ordered the parties merely to negotiate an "extension" of the current agreement. Decision No. 89 at 181.

In its proposal, WLE's now again seeks the very relief the Board rejected: divestiture of the Dock from NS to WLE through a lease-to-own arrangement; elimination of the commodity and customer restriction; and permanent trackage rights access to the Dock. WLE-10 at 20. Those requests are plainly well beyond the scope of the "extension" of the current lease that the Board ordered; indeed, it is noteworthy that in its brief discussion of Huron Dock, WLE pointedly fails even to refer to the language of the Board's order. See WLE-10 at 19-20.

The NS proposal, on the other hand, faithfully reflects the Board's directive to negotiate an extension of the current dock lease and associated trackage rights, offering an extension of longer duration than even the original term of the lease. See NS-71 at 9. Indeed, NS makes greater accommodation to WLE than would be required strictly under an extension of the current lease terms. NS, for example, offers to permit WLE to terminate the lease on six months' notice, without reserving a similar right for itself (thus effectively placing on NS all the market risk

during the lease term), and is willing to consider, on a case-by-case basis, exceptions to the current commodity restrictions. NS-71 at 8-9.<sup>6</sup>

The Board should reject the extraordinary overreach sought by WLE, and accept the NS proposal, which reflects a very reasonable plan to implement the condition the Board ordered.

### **III. Service to Aggregates Shippers**

Finally, WLE declares that it and NS have reached an "impasse" in negotiating matters pertaining to WLE service to aggregates shippers, and asks the Board to intervene and compel applicants to conclude an agreement with WLE granting WLE expanded service to such shippers. WLE-10 at 26-27.

This request is completely unwarranted, and again reflects WLE's desire to rewrite the Board's decision rather than implement it.

WLE misconstrues what the Board ordered with respect to aggregates shippers, as is clear, once again, from the plain language of Decision No. 89. The Board quite deliberately distinguished the conditions it imposed in provisions (a), (b), and (c) of Ordering Paragraph No. 68 from its discussion of certain possibly "mutually beneficial arrangements," including service to aggregates shippers. With respect to conditions (a), (b) and (c) (pertaining to Toledo, Huron Dock, and Lima, respectively), the Board mandated specific relief to be granted to WLE, and ordered the parties to implement it, reporting back to the Board by October 21, 1998 if negotiations were not fully successful by then. The Board then went on to direct the parties to discuss certain matters of "mutual benefit," among which it included "allowing W&LE to

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<sup>6</sup> NS should note here that an appraisal and review has been completed since the filing of NS-71. (NS referred to the appraisal of the Dock facilities in NS-71 at pp. 7 and 10.) NS proposes that the W&LE rental of the Dock should be made under the following terms: [[[

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provide service to aggregates shippers.” As distinguished from conditions (a), (b) and (c) of Ordering Paragraph No. 68, the Board did not order particular outcomes with respect to any “mutually beneficial arrangements, did not include them under its October 21, 1998 reporting directive, and did not intend that they be included among the matters to be resolved by the Board through expedited proceedings. Yet again, the plain language of Decision No. 89 makes this very clear. See Decision No. 89 at 109 (“If these parties are unable to agree on a solution *with regards to items (a), (b), and (c)* within 90 days of the service date of this decision [*i.e.*, by October 21, 1998], we will institute expedited proceedings to resolve *these matters*.”) (emphasis added).

Plainly, the Board intended that negotiations concerning matters of “mutual benefit” were to be continuing in nature, conducted over a reasonable period of time, and that agreements on such matters, if any, were to be reported to the Board. NS and WLE have in fact discussed various matters of possible mutual benefit, including, as the Board directed, service to aggregates shippers;<sup>7</sup> other such matters include, as discussed above in Section I.C., WLE access to Homestead Yard and construction of a “diamond” at Bellevue.

During its discussions with WLE regarding service to aggregates shippers, NS proposed a reasonable set of parameters that it believes should govern those discussions – namely, that any agreement with respect to service to aggregates shippers by WLE over NS lines (1) must avoid

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<sup>7</sup> And, with respect to these negotiations, WLE’s allegation that NS has been willing to discuss service opportunities for aggregates shippers “only if W&LE will walk away from the Benwood to Brooklyn Junction issue,” WLE-10 at 26 (emphasis in original), is completely and utterly false. That is not, and never has been, NS’s view. NS does not believe that discussions about possible mutually beneficial opportunities for WLE to serve aggregates shippers preclude discussions about Benwood-Brooklyn Junction, or about any other matter. Indeed, given that NS has not been involved in the discussions between WLE and CSX about Benwood-Brooklyn Junction, WLE’s assertion is patently incorrect.

congesting NS' most heavily used lines; (2) must not simply substitute WLE single line service for NS single line service; and (3) must actually be *mutually* beneficial, as the Board contemplated. Ever since NS suggested these criteria, however, WLE has remained silent, offering no proposals whatsoever regarding service to aggregates shippers.

Nevertheless, even though the parties have not to date identified aggregates traffic that could form the basis for a *mutually* beneficial arrangement for service to aggregates shippers by WLE within the framework outlined above, that does not necessarily mean that such traffic does not exist or might not arise in the future. In any event, the Board's order makes clear that this issue is not appropriately the subject of Board intervention now.

#### CONCLUSION

For the reasons set forth above and in NS-71, NS asks the Board to approve the terms proposed by NS in NS-71, and to reject the terms sought by WLE in WLE-10.

Respectfully submitted,

**JAMES C. BISHOP, JR.**  
**WILLIAM C. WOOLDRIDGE**  
**J. GARY LANE**  
**GEORGE A. ASPATORE**  
**JOHN V. EDWARDS**  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23410-2191  
(757) 629-2838

Richard A. Allen / smz  
**RICHARD A. ALLEN**  
**SCOTT M. ZIMMERMAN**  
Zuckert, Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, DC 20006-3939  
(202) 298-8660

*Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company*



CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 1998, I have served a public and highly confidential version of the foregoing NS-72, "Norfolk Southern's Reply To Wheeling & Lake Erie Railway Company's Request To Clarify And For Further Instruction" by hand delivery on the following counsel for the Wheeling and Lake Erie Railway and for CSX Corporation and CSX Transportation, Inc.:

Keith G. O'Brien, Esq.  
Rea, Cross & Auchincloss  
1707 L St., N.W.  
Suite 570  
Washington, DC 20036

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

A handwritten signature in black ink, appearing to read "Scott M. Zimmerman", written over a horizontal line.

Scott M. Zimmerman  
Zuckert Scoutt & Rasenberger, L.L.P.  
888 Seventeenth Street, N.W.  
Suite 600  
Washington, D.C. 20006-3309

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SURFACE TRANSPORTATION BOARD

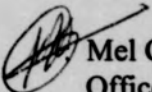
# Memorandum

172121



DATE: November 5, 1998

TO : Ellen Keys, Assistant Secretary  
Section of Publications/Records  
Office of the Secretary

FROM :  Mel Clemens, Director  
Office of Compliance and Enforcement

ENTERED  
Office of the Secretary

NOV 06 1998

Part of  
Public Record



SUBJECT : STB FINANCE DOCKET NO. 33388 - OPERATIONAL MONITORING DATA

Attached are the original and two copies of the public data files provided to this office by CSX and Norfolk Southern as required in the above proceeding, which are to be committed to the docket for public reference. As requested, I am providing the three paper copies to Ron Douglas, two for the docket and one for DC News. If there are any questions, please don't hesitate to contact me or Jim Greene.

Attachments

cc: Chairman Morgan  
Vice Chairman Owen  
Ron Douglas  
Charles Renninger

500 Water Street (J150)  
Jacksonville, FL 32202  
(904) 359-1246  
FAX: (904) 359-1248

J. Randall Evans  
Vice President-Acquisition Development

November 6, 1998

Melvin F. Clemens, Jr.  
Director Office of Compliance and Enforcement  
Surface Transportation Board  
Washington, DC 20422-0001

Dear Mr. Clemens:

Attached to this letter are the Operational Monitoring Reports required in STB Finance Docket No. 33388.

The reports are presented in the following order:

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Construction and Other Capital Projects Table .....	Pages 3-4
Information Technology .....	Pages 5-9
Customer Service .....	Pages 10-11
Training .....	Pages 12-18

Note: Italicized information indicates a change or update from the last report.

Please contact J. Randall Evans, Vice President-Acquisition Development at CSX Transportation (E-mail: [Randy\\_Evans@csx.com](mailto:Randy_Evans@csx.com)) if there are any issues that need clarification or explanation. As information, coincident with filing this report with the STB, CSXT has made this report available on our web site ([www.csx.com](http://www.csx.com)).

Very truly yours,

J. Randall Evans

cys: Peter J. Shudtz, Vice President  
Law & General Counsel

Paul R. Hitchcock - J150  
Senior Counsel

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# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **CSX TRANSPORTATION, INC.**

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Note: Italicized information indicates a change or update from the last report.

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## LABOR

The status of the Labor implementing Agreements is as follows:

Labor Organization	Status
International Brotherhood of Boilermakers, Iron-Ship Builders, Blacksmiths, Forgers and Helpers	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the claim agents	Implementing agreement reached.
United Railway Supervisors Association - on behalf of the engineering supervisors	Implementing agreement reached.
National Conference of Firemen & Oilers	Implementing agreement reached.
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing agreement reached.
Fraternal Order of Police	Implementing agreement reached.
American Train Dispatchers Department of the Brotherhood of Locomotive Engineers	Implementing agreement reached.
International Brotherhood of Electrical Worker	Implementing agreement reached.
Sheet Metal Workers International Association	Implementing agreement reached.
<i>United Railway Supervisors Association on behalf of Mechanical Department Supervisors</i>	<i>The part of the implementing agreement relating to NS has been completed. CSXT is in the process of finalizing its part.</i>
<i>United Transportation Union</i>	<i>Implementing agreement has been reached subject to union ratification.</i>
<i>United Transportation Union - Yardmasters Department</i>	<i>Arbitration on single issue has been concluded in CSXT's favor. Balance of agreement has been negotiated and is subject to union ratification.</i>
<i>Brotherhood of Locomotive Engineers</i>	<i>Implementing agreement has been reached subject to union ratification.</i>
<i>*Brotherhood of Maintenance of Way Employees</i>	<i>Negotiations are being progressed. In addition, application has been made to the NMB for appointment of a New York Dock arbitrator.</i>
<i>*Brotherhood of Railway Signalmen</i>	<i>Negotiations are being progressed. In addition, a New York Dock arbitrator has been selected by the parties.</i>
<i>International Association of Machinist</i>	<i>Implementing agreement has been reached.</i>
<i>Transportation Communication International Clerks Union</i>	<i>Implementing agreement has been reached in principle. (Agreement finalized 11/2).</i>
<i>*Brotherhood Railway Carmen Division - TCU and Transport Workers Union of America</i>	<i>Implementing agreement has been reached subject to ratification by TWU.</i>
* The Notice provided for by Section 4 of the <u>New York Dock</u> conditions has been served on each of these unions.	

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **LABOR**

### **Labor Management Task Force**

*CSXT will continue to send an invitation to each union with which an implementing agreement is reached and which will continue to represent employees on CSXT to participate in a labor task force similar to the one established with the United Transportation Union. To date, the National Conference of Firemen & Oilers has responded to our invitation to participate in a labor task force similar to the one established with the United Transportation Union. CSXT anticipates that many of the other unions will similarly accept the invitation to participate with CSXT in labor task forces.*

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Status	Expected Completion Date
1)	Greenwich, Ohio to Pine Junction, Indiana	Construct 2 <sup>nd</sup> main track with TCS on B&O including connections.	Substantially Complete	4Q 98
2)	Quaker to Greenwich, Ohio	Construction by Conrail of 2 <sup>nd</sup> main track with TCS.	Substantially Complete	4Q 98
3)	Willard, Ohio	Yard Expansion	<i>Substantially Complete</i>	4Q 98
4a)	Crestline, Ohio	a) Construct or rehabilitate connection tracks with Indianapolis Line.	a) Underway	4Q 98
4b)	Sidney, Ohio	b) Connection Track	<i>b) Complete</i>	4Q 98
4c)	Marion, Ohio	c) Rehabilitate Connection Track	c) Underway	
5)	Carleton, Michigan	Connect track with Conrail	Underway	4Q 98
6a)	Alice, Indiana	a) Siding Extension	a) Complete	a) 3Q 98
6b)	Harwood, Indiana	b) Siding Extension	b) Substantially Complete	b) 4Q 98
7a)	Chicago, Illinois	a) Intermodal Expansions	a) Complete	a) 3Q 98
7b)	Cleveland, Ohio	b) Intermodal Expansions	b) Underway	b) 4Q 98
7c)	Philadelphia, Pennsylvania	c) Intermodal Expansions	c) Underway	c) 4Q 98
7d)	Little Ferry, New Jersey	d) Intermodal Expansions	d) Complete	d) 3Q 98
8)	Philadelphia, Pennsylvania	Rebuild Eastwick connection track with Conrail.	Substantially Complete	4Q98
9)	Hobart, Indiana to Tolleston, Indiana	Restoration of connection and main track between Hobart & Tolleston.	Underway	4Q 98



## STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

### CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	Project	Status	Expected Completion Date
10) Chicago, Illinois	Chicago area-upgrade connection tracks and other improvements.	Underway	4Q 98
11) Newell & New Castle, Pennsylvania	Upgrade capacity on the Mon. Subdivision	Underway	4Q 98
12) Albany, New York to Bergen, New Jersey	Extend 3 sidings by Conrail on River Line	Underway	4Q 98
13) Little Ferry, New Jersey	Connection track Conrail/NYSW	Early Stages	1Q 99
14) Dolton, Illinois	Connection track @ Lincoln Avenue CSX/IHB	Underway	4Q 98

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## INFORMATION TECHNOLOGY

### Information Technology

The implementation strategy, training plans, and status of the Information Technology (IT) initiatives affecting the following Operating Areas are summarized:

- ❖ Customer Service
  - Electronic Customer Connectivity
- ❖ Operations Personnel
  - Crew Management
- ❖ Transportation
  - Car Management & Movement
  - Locomotive Management
  - Train Dispatching

Operating Area	Implementation Strategy	Status	Training
<b>Customer Service</b> Electronic Customer Connectivity	All inbound (e.g. bill-of-lading) and outbound (e.g. car tracing) electronic communications with existing Conrail customers are to be migrated to CSX and NS. All customers will be informed of their system migration options and have the opportunity to test the replacement electronic connections prior to a phased transfer of the customer communications links after Day 1.  CSX and NS will work with all affected customers and EDI vendors to develop migration plans	Systems development in process and on schedule  A joint letter was distributed to current Conrail customers  Existing and new Conrail Electronic Commerce customers have been contacted by CSX in separate mailings  Electronic Commerce Certification of Conrail customers acquired by CSX is in progress	All major customers will be provided adequate systems documentation and a detailed description of any changes to their current Conrail-provided electronic services

## STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Operations Personnel</b> Crew Management	<p>Separation of callings desks (CSX, NS, SAC) in Dearborn, MI has been pre-negotiated and is in place. There will be a phased roll-out of eight calling desks to TECS – the CSX Crew Calling System. The first desk will be rolled out 60 days after Day 1.</p> <p>T&amp;E Crews will continue to submit paper time sheets to Dearborn, MI until the TECS desk roll-out. Paperless payroll implementation will take place 2 weeks after each TECS desk implementation. The entire roll-out will take approximately eight months.</p>	Systems development in process and on schedule	CSX Payroll officers will train T&E employees on the CSX Payroll system immediately following the implementation of TECS. Local Chairman will participate in the training. Training documents have been prepared and presented to Conrail personnel.

## STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Car Management and Movement	<p>Field personnel will continue using Conrail application systems supporting yard inventory, train consisting and work orders after Day 1.</p> <p>Disposition and management of empty cars will occur in Jacksonville using CSX systems after Day 1 to ensure coordinated system wide transportation operations.</p> <p>Customers on the acquired territory will continue to order empty cars and obtain information on order status as they do today.</p> <p>CSX systems will be rolled-out to the acquired Conrail territory in 5 phases after Day 1.</p>	Systems development in process and on schedule.	<p>Conrail Car Management team has been hired for the transition period. Training of Conrail Car Management staff will begin 60 days prior to Day 1.</p> <p>Training of affected field location personnel to begin 30 days prior to each field roll-out phase.</p>



## STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Locomotive Management	<p>CSX Locomotive Management System will be used to manage locomotives in CSX acquired territory beginning on Day 1. This will occur from the Operations Center in Philadelphia, PA for 180 days after Day 1. The management team in Philadelphia will consist of one locomotive manager, one CSX consultant, and one senior locomotive manager.</p> <p>Within 180 days of Day 1, locomotive management for the acquired Conrail territory will be relocated to the Kenneth Dufford Center in Jacksonville. The acquired territory at that time will be managed by two CSX Locomotive Managers.</p>	Systems development in process and on schedule	<p>Locomotive managers for the acquired Conrail territory will be trained on the CSX Locomotive Management System 60 days prior to Day 1 with sessions in both Jacksonville, FL and Philadelphia, PA.</p> <p>Management will conduct the training and will include cross training of CSX and Conrail cultures.</p>

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Train Dispatching	<p>Train dispatchers will continue to use current Conrail systems. Phase 1 geographic realignments will separate dispatchers into CSX, NS &amp; SAC entities within current division offices. Phase 1 will complete 90-120 days after Day 1.</p> <p>Phase 2 division realignment will move dispatchers to acquiring road's division. CSX Cleveland East dispatcher in Dearborn, MI will move to CSX headquarters in Indianapolis, IN. CSX Chesapeake &amp; Riverline dispatchers in Mt. Laurel, NJ will move to CSX headquarters in Albany, NY. Phase 2 will complete 90-120 days after an implementing agreement has been reached.</p> <p>Phase 2 moves are contingent upon Phase 1 realignment completion for territory being transferred. Also contingent upon an implementing agreement being in place with the ATDD.</p>	<p><b>Systems development has been completed and implementation is proceeding on schedule.</b></p> <p><b>Phase 1 realignments has been finalized for the Albany Division and started for the Indianapolis Division.</b></p> <p><b>Implementing agreement is now in place.</b></p>	<p>Dispatchers will be trained on their new territory using the current processes in place at Conrail.</p>

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## CUSTOMER SERVICE

The following report outlines our progress toward the twin goals of 1) Achieving and maintaining customer confidence in the transaction, and 2) Insuring the integration of the acquired territories and personnel into the Customer Service Center in Jacksonville.

### The Transition Process

*On October 6<sup>th</sup> and 7<sup>th</sup> we met with the new Shared Area management to define issues and areas needing mutual agreement with NS. Also on October 7<sup>th</sup>, CSX, SAC, and NS met jointly to begin forging agreements regarding the operation of the Shared Areas. Tentative agreement has been reached on a number of items, chief among them being workforce allocation between the three companies. Data reporting and billing requirements for the MGA coal area and Ashtabula, mentioned in the last report, are still under negotiation.*

*The process of physically dividing the work areas in Pittsburgh prior to Split Day into NS, CSXT, and CSAO groups nears completion. The Shared Area functions are now located on the first floor, what will become the NS group are situated on the second, and the areas CSX will manage (along with waybilling) are now located on the third. Only small additional adjustments will need to be made on Split Day.*

### Personnel

We have begun to exchange managers informally between Pittsburgh and Jacksonville and cross train them in preparation for beginning the combined operation. These managers also perform an essential liaison function as we begin bringing the two customer service centers together.

The development of training materials is underway based on a needs assessment and meetings with the subject matter experts. Both Day One and field roll-out needs have been identified and are the basis for the design of the materials. Training will be conducted on the "Training Railroad," a CICS region that provides hands-on activity without impact to production. New sites are being created in the Training Railroad so we can simulate consisting Conrail trains. These sites will be completed and tested during the fourth quarter.

*Classrooms have been identified in Pittsburgh, and renovation/redesign is underway. A syllabus has been developed for the Day One training and a scheduling plan has been approved. Tentative schedules have been set for a pilot class to be conducted in the fourth quarter. This class would be a complete simulation of the Day One training. Also, the training staff will receive special preparatory Split Day training.*

# STB OPERATIONAL MONITORING REPORT

As of October 31, 1998

## CUSTOMER SERVICE

### Customer Familiarization

We have begun the process of converting our new customers to the new data fax and voice 800 numbers they will be using on and after Split Day, minimizing the impact of the changes. Our Commercial Department sent out a fax in September outlining how business will be transacted (including the handling of rates) before and after Split Date. In this same letter, the Electronic Customer Integration Center was explained with a view to helping EDI customers make the transition from Conrail ACCESS to CSX systems. *In reference to the Board's inquiry, we will have our Customer Request Log (CRL) System set up to code Conrail acquisition issues and problems. We will be able to identify and run reports upon request. This task is included in our Day One project plan to be completed in November and will be available on Split Day.*



# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### **Orientation**

*CSX has been, and will continue, communicating with Conrail Employees who are going to become members of the CSX team. The CSX goal is to welcome each new member to the team and help them to become familiar with general policies and procedures. As a first step in this process, many non-contract offer letters were accompanied by a video highlighting CSXT and the community where it is located. Second, CSX mailed an information package to every non-contract employee shortly after they accepted an offer of employment.*

*The final step is to provide each new employee with a packet of information and paperwork on benefits, travel, compensation, professional development, and other areas important to understand when joining our team. This packet will be accompanied by a video that welcomes the individual(s) and walks them through the information contained in the packet to ensure it is clearly understood. These materials are all in production and will be ready well in advance of the Pre-Split Date training. The orientation will be one component of the Pre-Split Date training agenda.*

### **Clerical Employees**

*Significant progress is being made in the completion of Conrail Clerical training. Training needs assessments were conducted to formulate the training strategy. From the assessments, development is complete for Automated Message Switching (AMS), Automated Payroll Systems (clerical and supervisor), Employee Bidding (JBIDS), and Employee Emergency Information (JBEM). Completion of the training programs for the standard computer operating system and mail package is at sixty-five percent.*

*Technology continues to work with Training and Development to identify training requirements in line with system installations. Our plan is to have all of this training complete prior to Split Date. Additionally, application training (MS Office Suite) will be available at each Conrail training facility through the local area network.*

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### **Conductors and Engineers**

*Conductor, Engineer and Trainman training will be conducted in two stages: a Pre-Day One two-hour event followed by a day-long training session during field rollout. All materials have been developed for training on the CSX methods to do the same tasks the employees currently do with Conrail. The Pre-Day One training will focus on the changes that occur on Split Date. Pre-Day One training will begin six weeks prior to Split Date, or when railroad seniority rosters are finalized. It will be comprised of the information needed to function on Split Date, such as how to complete their own CSX payroll form, and other orientation information.*

*The field rollout training will be more extensive and will include CSX computer systems, train documents, and procedural changes. Trainers for the classes have been identified with preliminary work schedules for the trainers and implementers being developed now.*

*Crews identified to move traffic over combined territories at Split Date will also receive a half-day class on Operating Rules.*

### **Crew Management**

*Crew Management training staff will instruct Conrail Crew Dispatchers and Managers on the functionality of TECS, Transportation Employee Calling System. The curriculum has been developed for the Crew Dispatchers and Managers. Our "Training Railroad," a CICS region that mirrors our production systems allowing hands on activity without impact to production, has been updated with Conrail information in order to provide realistic simulation of system functionality for TECS crew calling procedures. Training is planned to begin in Dearborn, MI early first quarter.*

*We are also developing a detailed TECS reference manual that will be distributed to train & engine service employees, field officers, and union representatives that will outline use of the system. These reference guides will be distributed as part of the Day One training for field personnel.*

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### **Customer Service**

*The development of customer service training materials is underway based on a needs assessment and meetings with subject matter experts. Both Day One and fieldroll out needs were identified and are the basis for the design of the materials. The training materials will be complemented via the "Training Railroad." New sites were created in the "Training Railroad" so trains simulating Conrail trains can be consisted. The new data is being tested and used for the development of training materials.*

*Classrooms have been identified in Pittsburgh, and renovation/redesign is underway. A syllabus has been developed for the Day-One training, a scheduling plan has been approved, and a pilot class is set for this month. The class will be instructor-led employing a user guide for reference, exercises giving hands-on experience of the functions trained and evaluations to check the trainees' comprehension of the material. Emphasis will be placed on exercises simulating the production environment. The pilot class will be a complete simulation of the Pre-Day One training.*

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### **Engineering**

*Engineering training materials development and delivery plans are both on schedule for implementation during the first quarter of 1999.*

*In July 1998, CSXT Engineering, with support from CSXT Human Resources, hosted a three-day meeting between CSXT and CR Senior Engineering personnel to analyze what differences existed between the two companies and to determine what transition training methods would prove most effective and least disruptive to operations following Split Date.*

*Representatives from CSXT's training departments followed up on those sessions with visits to Conrail facilities for further analysis of training needs. With partners in Philadelphia, and in various other current CR locations, CSXT HR continues its work of preparing acquired Conrail Engineering employees for a smooth transition to employment with CSXT.*

*Training for most CR employees will involve four major topics:*

- *CSXT Corporate Orientation*
- *CSXT Engineering Department Orientation*
- *Commonly used CSXT Engineering Computer Applications*
- *CSXT Company-Standard Computer Applications*

*A substantial portion of the training materials development is complete. The project team, consisting of both CSXT and CR personnel, is finalizing training locations and developing practical implementation schedules. Teams of trainers (drawn from the Engineering Departments of both CSXT and CR) will conduct training sessions using a detailed instructor's guide and supported by instructional videos, group discussions, hands-on practice, and take-away reference manuals.*



# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### ***Field Transportation Supervisors***

*Training for the supervisory positions of District Superintendent, Trainmaster, Road Foremen, and Yardmaster is fully developed for Pre-Day One classes. The first pilot three-day Trainmaster class, with five CR officers, was successfully completed in October. The first pilot Yardmaster class is scheduled in November. Other Trainmaster classes will begin more than two months prior to Split Date, with the remaining Yardmaster classes beginning at least five weeks prior to Split Date. The Pre-Day One classes will consist of the information needed to function on Split Date at CSX. In addition, the class will provide an overview of the CSX computer systems that will be utilized beginning with field rollout. All training materials have been completed for these classes, with scheduling (at the five CR classroom sites described below under "Training Sites") to begin three months prior to Split Date.*

*During field rollout, the classes will increase in length as the CSX computer yard and consist systems are explained to the employees. Materials development is nearly complete for this second phase of the training. Facilitators have been chosen, with their train-the-trainer session scheduled to begin three months prior to Split Date.*

### ***Intermodal***

*CSX Intermodal has planned Pre-Split Date training starting early next year to cover the sixteen Conrail terminals that carry on Intermodal activities. Those terminals include: Boston, Buffalo, Chicago, Cleveland, Columbus, Detroit, East St. Louis, Indianapolis, Kansas City, Marysville, North Bergen, Kearny, Springfield, Syracuse, Waterville, and Worcester.*

*The training will include several audience groups including, Conrail management, contractor exempt, Conrail and contractor clerks, and contractor lift personnel. This will take anywhere from one to three days to implement at each terminal.*

*CSXI Safety training is being planned separately and will begin in December of this year.*

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### **Technology**

*Technology training for the Conrail acquisition is being approached on two fronts. One front addresses former Conrail employees who will be trained how to use CSX systems. This training will most often be delivered in traditional classroom settings and will be incorporated as a part of the job duties of an employee rather than teaching just the system by itself. Intense cross-referencing has taken place to ensure all systems having training implications are being covered.*

*The second front deals with CSX Technology employees being trained on certain Conrail systems which will be maintained past Split Date. This training will be done on a system-by-system basis, either informally by OJT or by short workshops.*

### **Train Control**

*CSXT Train Control, with support from CSXT Human Resources, has already begun conducting orientation sessions in Jacksonville for the Conrail Train Control Managers who will be joining CSXT. This two-day session in Jacksonville includes a preview copy of the book, CSXT Orientation for Train Control Managers, a reference manual which will be the centerpiece of training for Split Date.*

*Chapters in that book combine to cover the four main transition training topics:*

- *CSXT Corporate Orientation*
- *CSXT Train Control Department Orientation*
- *Commonly used CSXT Train Control Computer Applications*
- *CSXT Company-Standard Computer Applications*

*Detailed lesson plans are currently in development and scheduled for completion by November 30. These lesson plans will include use of instructional videos, group discussions, hands-on practice, and take-way reference manuals for each participant. The training begins in January.*

# **STB OPERATIONAL MONITORING REPORT**

As of October 31, 1998

## **TRAINING**

### ***Train Dispatching***

*CR training for Dispatchers, Chief Dispatchers, Train Directors, and Superintendents will include Employee Orientation, CSX Safety, as well as Yard, Crew and Locomotive Management Systems. This training will be completed prior to Split Day. Network Operations Training Center is currently providing training for CR Locomotive Managers in Philadelphia.*

*A team of coaches will be on hand at each CR dispatching center to assist employees around-the-clock during the transition. They will provide on-the-job training and assistance to dispatching personnel as needed.*

### ***Training Sites***

*Thirteen CSX computer-equipped classrooms are being constructed or remodeled at five existing Conrail Yards: Buffalo, Selkirk, Toledo, Indianapolis and West Springfield. These will be the center of the Pre-Day One training efforts for Transportation and Engineering computer systems training. They will also serve as the hub of the field rollout training that will continue on a sequential schedule following Day One.*

*Construction is essentially complete in seven of the classrooms at this time, with the remaining six rooms currently undergoing final renovation. Communications lines have been installed and computer equipment and furniture has been ordered. Classes are planned to begin at the sites more than two months prior to Split Date. A classroom at each site is planned to remain functional after field rollout training is complete to be utilized for future computer systems training.*

# Norfolk Southern Corporation

## STB Operational Monitoring Report

*As of October 31, 1998*

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**Note:** Bold print indicates changes from previous report.

\* To be disclosed under a different cover or in a later report.

\*\* Data not required at this time.



# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## LABOR

### *Labor Implementing Agreements*

Labor Organization	Status
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Implementing Agreement reached
United Railway Supervisors Association – on behalf of claim agents	Implementing Agreement reached
United Railway Supervisors Association – on behalf of engineering supervisors	Implementing Agreement reached
United Railway Supervisors Association – on behalf of the mechanical department supervisors for the Conrail properties operated by NS	Implementing Agreement reached
National Conference of Firemen & Oilers	Implementing Agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing Agreement reached
Fraternal Order of Police	Implementing Agreement reached
International Brotherhood of Electrical Workers	Implementing Agreement reached
Sheet Metal Workers' International Association	Implementing Agreement reached
American Train Dispatchers Department, Brotherhood of Locomotive Engineers	Implementing Agreement reached
International Association of Machinists and Aerospace Workers	Implementing Agreement reached
Brotherhood Railway Carmen – Div. TCU and Transport Workers Union of America	Agreement reached, subject to ratification by TWU
United Transportation Union	Agreement reached, subject to ratification
United Transportation Union – Yardmasters Department	Agreement reached, subject to ratification
Brotherhood of Locomotive Engineers	Agreement reached, subject to ratification
Brotherhood of Maintenance and Way Employees	§4 notice served, arbitration invoked
Brotherhood of Railroad Signalmen	§4 notice served, arbitration invoked, neutral selected
Transportation Communications International Union	Implementing Agreement reached in principle (Agreement finalized on 11/2/98)

Note: Bold print indicates changes from previous report.

# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## LABOR

### *Labor-Management Task Forces*

Norfolk Southern and the United Transportation Union (UTU) have an ongoing Labor Management Task Force consisting of NS's Vice President - Labor Relations and the President of the UTU. The Task Force encourages frequent communications between upper-level management of the two organizations and has worked well to facilitate an implementing agreement and to assure prompt consideration of implementation and safety issues related to the Conrail transaction.

As of the end of the reporting period, NS has invited organizations with which an implementing agreement has been finalized (and which will continue to represent employees) to form Labor Management Task Forces. Similar to the UTU Task Force, each Task Force will enable upper-level management of NS and the particular labor organization to review issues and concerns about implementation of the Conrail transaction with preservation of the highest levels of safety. Invitations have been sent to: the Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; National Conference of Firemen & Oilers; American Train Dispatchers Department of the Brotherhood of Locomotive Engineers; International Brotherhood of Electrical Workers; and Sheet Metal Workers International Association. **An invitation will be sent to the International Association of Machinists and Aerospace Workers.** Each Task Force will be unique to each labor organization, and will involve operations, safety and labor relations staff as appropriate and the craft General Chairmen representing NS and Conrail employees. **A task force meeting has been set with the American Train Dispatchers Department for November 17, 1998.**

**Note:** Bold print indicates changes from previous report.

# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project	Dept.	Phase	Status
Alexandria	IN	Construct track connection Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
				Const	In progress
Allentown - Reading (Lehigh)	PA	Traffic Control System Estimated Completion Date: 4Q99	Signal	Design	In progress
				Const	
Angola	NY	Upgrade existing siding, construct new siding Estimated Completion Date: Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design	Complete
			Signal	Const	Complete
				Design	Complete
Attica	IN	Extend siding 4, 580 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
Boundbrook	NJ	Extend siding 2,500 track feet Estimated Completion Date: Unknown	Track	Const	In progress
				Design	Complete
			Signal	Const	In progress
Bristol	VA	Extend siding 14,255 track feet Estimated Completion Date: 4Q98	Track	Design	Project being defined.
				Grading	
				Const	
			Signal	Design	
			Bridge	Const	
				Design	
Bucyrus	OH	Construct track connection Estimated Completion Date: 4Q98	Land	Design	Complete
				Grading	Complete
			Track	Const	Complete
				Design	In progress
				Const	Complete
					In progress
Buffalo -	NY	Traffic control system and remove pole line.	Signal	Design	In progress
Cleveland	OH	Estimated Completion Date: 4Q99		Const	In progress
Butler	IN	Construct track connection Estimated Completion Date: 2Q99	Track	Design	Project being defined.
				Grading	
			Signal	Const	
				Design	
				Const	

# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project	Dept.	Phase	Status
Chicago	IL	Expand and improve 47th St Yard Intermodal Terminal Estimated Completion Date: 4Q98	Track	Design Grade/Pave	In progress
Cloggsville	OH	Track Rehabilitation Estimated Completion Date: 4Q98	Track	Design Const	Complete In progress
			Bridge	Design Const	In progress
Cloggsville	OH	Construct second main Estimated Completion Date: 4Q99	Track	Design Grading Const	In progress
			Bridge	Design Const	In progress
			Signal	Design Const	
Columbus	OH	Construct track connection Estimated Completion Date: 4Q98	Track	Design Grading Const	Complete In progress In progress
			Signal	Design Const	Complete In progress
Crockett	VA	Construct 9,100 foot new siding Estimated Completion Date: 4Q98	Land		Complete
			Track	Design Grading Const	Complete Complete In progress
			Bridge	Design Const	Complete Complete
			Signal	Design Const	Complete In progress
Croxton	NJ	Expand and improve intermodal terminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	In progress
E-Rail	NJ	Expand and improve intermodal terminal Estimated Completion Date: 3Q99	Track	Design Grade/Pave	In progress
Erie	PA	Erie Track Realign Project Estimated Completion Date: 4Q99	Track	Design Grading Const	In progress
			Signal	Design Const	
Flemington	NJ	Construct 12,500 foot siding Estimated Completion Date: Unknown	Track	Design Grading Const	Project being defined.
			Signal	Design Const	
Hadley Jct (Ft Wayne)	IN	Double tracking Estimated Completion Date: Unknown	Track	Design Grading Const	Project being defined.
			Signal	Design Const	



# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project	Dept.	Phase	Status
Hagerstown Sec (Greencastle)	PA	Construct siding Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design Const	Complete In progress
Hagerstown Sec	PA	Traffic Control Estimated Completion Date: Unknown	Signal	Design Const	Project being defined.
Harrisburg (Rutherford)	PA	Construct intermodal terminal Estimated Completion Date: 2Q00	Track	Design Grade/Pave	In progress
Harrisburg - Reading	PA	Traffic Control System and remove pole line Estimated Completion Date: 4Q99	Signal	Design Const	In progress
KD Tower - Cumberland Falls	KY	Extending double track 40,120 feet Estimated Completion Date: 3Q99	Track	Design	Complete
				Grading	In progress
			Signal	Design Const	Complete
Knoxville - Chattanooga	TN	Double Stack Clearances Estimated Completion Date: Complete	Track	Design	Complete
				Const	Complete
			Bridge	Design Const	Complete Complete
Marshfield	IN	Upgrade and extend siding 7,908 feet Estimated Completion Date: 4Q98	Land		Optioned
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design Const	Complete In progress
			Signal	Design Const	Complete Complete
					Complete
Oak Harbor	OH	Construct track connection Estimated Completion Date: 4Q98	Land		Complete
			Track	Design	Complete
				Grading	Complete
			Signal	Design Const	In progress Complete In progress
Pattenburg	NJ	Clearance-9 Bridges Estimated Completion Date: 4Q98	Bridge	Design Const	In progress In progress
Pattenburg	NJ	Siding Extensions Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
			Signal	Const Design Const	In progress Complete In progress
Pattenburg	NJ	Tunnel Clearance Estimated Completion Date: 2Q99	Bridge	Design Const	Complete
Philadelphia	PA	Construct crossover - Zoo Estimated Completion Date: Unknown	Track	Design	Project being defined.
				Grading	
			Signal	Const Design Const	

**Surface Transportation Board Operational Monitoring Report**  
*As of October 31, 1998*

**CONSTRUCTION AND OTHER CAPITAL PROJECTS**

Location	ST	Project	Dept.	Phase	Status
Piney Flats	TN	Extend siding 6,610 feet Estimated Completion Date: 4Q98	Land		Complete
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
Port Reading	NJ	Chemical Coast Clearance Projects Estimated Completion Date: 4Q99	Track	Design	In progress
				Const	
			Bridge	Design	In progress
Rader	TN	Extend siding 5,189 feet Estimated Completion Date: 4Q98	Land		Complete
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design	Complete
				Const	Complete
			Signal	Design	Complete
Reading - Philadelphia	PA	Traffic Control System and remove pole line Estimated Completion Date: 4Q99	Signal	Design	In progress
				Const	In progress
Riverton Jct - Ro. noke	VA	Clearance projects Estimated Completion Date: 4Q98	Bridge	Design	Complete
				Const	In progress
Sandusky (Bellevue)	OH	Construct Triple Crown Terminal Estimated Completion Date: 4Q98	Track	Design	Complete
				Grade/Pave	In progress
Sidney	IL	Construct track connection Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Signal	Design	Complete
Sido	MO	Double tracking 36,458 track feet Estimated Completion Date: 4Q98		Const	In progress
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design	Complete
				Const	In progress
Sloan	IL	Extend siding 5,027 track feet Estimated Completion Date: Complete	Signal	Design	Complete
				Const	Complete
			Track	Design	Complete
				Grading	Complete
Southern Tier	NY	Southern Tier Rehabilitation Estimated Completion Date: Unknown	Track	Design	Complete
			Bridge	Const	Complete
				Design	Complete
St Louis (Mitchell)	MO	Expand Mitchell Triple Crown Terminal Estimated Completion Date: 2Q99	Track	Design	Project being defined.
				Grade/Pave	In progress
			Signal	Design	In progress
				Const	

**Surface Transportation Board Operational Monitoring Report**  
*As of October 31, 1998*

**CONSTRUCTION AND OTHER CAPITAL PROJECTS**

Location	ST	Project	Dept.	Phase	Status
Toledo	OH	Intermodal Terminal Estimated Completion Date: Unknown	Track	Design Grade/Pave	Project being defined.
Tolono	IL	Track Connection Estimated Completion Date: Unknown	Track	Design Grading Const	<b>Complete</b>
			Signal	Design Const	<b>In progress</b>
Vermillion	OH	Track Connection Estimated Completion Date: 4Q98	Land Track	Design Grading Const	Complete Complete <b>Complete</b>
			Signal	Design Const	<b>In progress</b> Complete <b>In progress</b>

**Note:** Bold print indicates changes from previous report. If status of project phase is blank, work on that part of the project has not yet begun.

**Surface Transportation Board Operational Monitoring Report**  
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**INFORMATION TECHNOLOGY**

***Systems Integration***

The NS technology integration strategy calls for NS systems to be used on the Conrail properties that NS will operate. Some of the NS systems will be operational for the new area effective Closing Date, while others, particularly the transportation systems, will be integrated geographically over a period of several months after Closing Date.

There are two components that are required to implement this strategy. First, NS's systems group must ensure that our systems have the capacity to accommodate the operation of the new territory. Second, the Conrail systems group must modify existing Conrail systems so that they will become compatible with the NS systems upon Closing Date.

In order to prepare for the implementation of the new systems, each project must go through a planning stage and a development stage. The planning stage of the systems integration process involves the analysis and preparation of functional and technical specifications for the systems and the subsequent development stage involves the construction (coding), and testing of the systems. Once the new systems are implemented across all of the NS geography, use of the Conrail systems will be discontinued.

**Note:** Bold print indicates changes from previous report.



# Surface Transportation Board Operational Monitoring Report

As of October 31, 1998

## INFORMATION TECHNOLOGY

### Systems and Personnel Training

Operating Area	Project	Status
TRANSPORTATION		
Car Management and Movement	Systems – Multiple projects	Development stage Estimated completion date: 1Q99
Includes Thoroughbred Yard Enterprise System (TYES) and Central Yard Operations (CYO) System	Personnel Training	
	Prepare training materials for TYES and CYO	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	TYES training at Conrail locations	Estimated beginning date: 1Q99
Train Dispatching	Systems	Development stage Estimated Completion date: 1Q99
	Personnel Training	
	Prepare computer-based training materials for Norfolk Southern Train Information System (TIS) and Train System Accident Reporting System (TSAR).	Complete
	Train Conrail employees at Dearborn, Pittsburgh, and Mt. Laurel	Estimated beginning date: Late 4Q98
Locomotive Management	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	Train employees at 8 Conrail locations	Estimated completion date: 1Q99

**Surface Transportation Board Operational Monitoring Report**  
*As of October 31, 1998*

**INFORMATION TECHNOLOGY**

Operating Area	Project	Status
<b>OPERATIONS PERSONNEL</b>		
Crew Management	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials	Complete
	Train Conrail employees	Estimated completion date: 1Q99
Train and Engine (T&E) Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Train T&E crews	Estimated beginning date: 1Q99
Non-Train and Engine Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	Train Conrail employees	Estimated completion date: 1Q99
<b>CUSTOMER SERVICE</b>		
Electronic Customer Connectivity	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Testing new systems	Estimated completion date: 1Q99
	Customer Coordination	
	Information to be distributed to customers	Estimated distribution date: 4Q98 - 1Q99
National Customer Service Center	Personnel Training	
	Prepare training materials	Complete
	Train employees in Pittsburgh and Atlanta	Estimated beginning date: Late 4Q98

**Note:** Bold print indicates changes from previous report.

**Surface Transportation Board Operational Monitoring Report**  
*As of October 31, 1998*

**CUSTOMER SERVICE**

***Transition Process***

Division of the Pittsburgh National Customer Service Center into NS, CSXT and Shared Asset Area groups has been completed, and additional workstations needed to accommodate these functions have been installed. We are moving forward with systems design enhancements for systems rollout on northern region divisions. We are also moving forward with testing waybill data, as well as event reportings. We have begun to receive some copies of Electronic Data Interchange (EDI) bills of lading from customers for testing purposes, to give us the opportunity to set up adequate profiles and processes. Customer profile information is continuing to be received and updated for efficient handling of customer calls.

***Personnel***

A transition team for Customer Service has been organized, staff selected, and will be functional after split date, in quarters located in Philadelphia, for an undetermined period of time. Additional training stations have been set up at three locations – Conway Yard (Pittsburgh), Elkhart, Indiana, and Columbus, Ohio – for training personnel involved in implementing new data systems on NS portions of Conrail. We have consummated a contract with an outside firm to supply 50 additional trainers, beginning November 30<sup>th</sup>, to assist in systems rollout. Supervisory positions have now all been filled for Data Quality and the Agency Operations Center. We also still expect to make offers to approximately 215 Conrail agreement personnel when implementing agreements have been consummated with TCU.

***Customer Awareness***

NS continues to sponsor advertising programs to highlight consolidation benefits and other facts concerning the Conrail consolidation.

We are continuing with customer meetings to provide them with information on integration of operations. The customer resource manual has been completed and is in the process of being printed for distribution by Sales and Marketing.

Note: Bold print indicates changes from previous report.

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ID-182953



182953  
ORIGINAL

LAW OFFICES

REA, CROSS & AUCHINCLOSS

SUITE 420

1920 N STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE (202) 659-4934

THOMAS M. AUCHINCLOSS, JR.

LEO C. FRANNEY

JOHN D. HEFFNER

KEITH G. O'BRIEN

BRUCE REA, JR.

BRIAN L. TROLANO

ROBERT A. WIMBISH

DONALD E. CROSS (1923-1986)

October 21, 1997

Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
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

TLCPA-3: Notice of Appearance of Robert A.  
Wimbish for Toledo-Lucas County Port  
Authority

Dear Secretary Williams:

Pursuant to the Board's instructions set forth in  
Decision No. 21 of the above-captioned proceeding, I am writing  
on behalf of the Toledo-Lucas County Port Authority ("TLCPA") to  
inform you that the undersigned should be added to the service  
list in this proceeding as counsel for TLCPA. I am filing this  
notice of appearance at this late date because TLCPA has just  
retained our firm to represent it in this matter. Accordingly,  
all Board decisions and all filings from all parties of record in  
this proceeding should be submitted to the undersigned as  
addressed below:

Robert A. Wimbish  
REA, CROSS & AUCHINCLOSS  
Suite 420  
1920 "N" Street  
Washington, D.C. 20036  
(202) 785-3700

Counsel for Toledo-Lucas County Port Authority

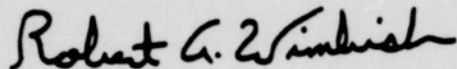
In keeping with the nature of this request, I hereby  
certify that I have submitted a copy of this letter to the  
Primary Applicants, ALJ Jacob Leventhal, and to all parties of

Vernon A. Williams  
October 21, 1997  
Page Two

record via U.S. mail, first class postage prepaid, or more expeditious delivery.

Thank you for your attention.

Sincerely,



Robert A. Wimbish  
REA, CROSS & AUCHINCLOSS  
1920 "N" Street, N.W.  
Suite 420  
Washington, D.C. 20036  
(202) 785-3700

Counsel for Toledo-Lucas County  
Port Authority

cc: All parties of record

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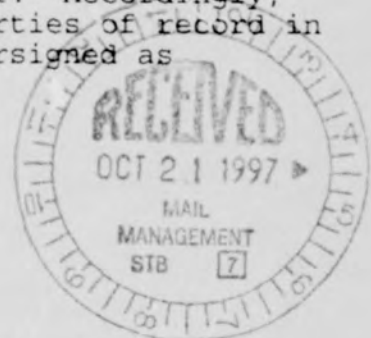
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TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND  
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Counsel for Toledo-Lucas County Port Authority

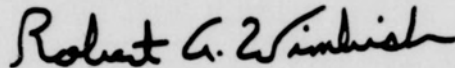
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October 21, 1997  
Page Two

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expeditious delivery.

Thank you for your attention.

Sincerely,



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Suite 420  
Washington, D.C. 20036  
(202) 785-3700

Counsel for Toledo-Lucas County  
Port Authority

cc: All parties of record



TLCPA-4

BEFORE THE  
SURFACE TRANSPORTATION BOARD

RECEIVED  
Office of the Secretary

OCT 21 1997

3 Part of  
Public Record

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

AND

-----  
Finance Docket No. 33388 (Sub-No. 26)  
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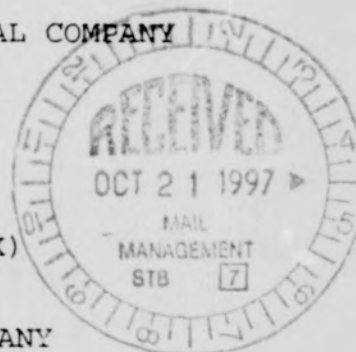
CSX CORPORATION AND CSX TRANSPORTATION, INC.  
-- CONTROL --  
THE LAKEFRONT DOCK AND RAILROAD TERMINAL COMPANY

RAILROAD CONTROL APPLICATION

AND

-----  
Docket No. AB-290 (Sub-No. 197X)  
-----

NORFOLK AND WESTERN RAILWAY COMPANY  
-- ABANDONMENT --  
TOLEDO PIVOT BRIDGE IN LUCAS COUNTY, OHIO



TLCPA-4

REQUEST FOR PROTECTIVE CONDITIONS, OPPOSITION TO ABANDONMENT, AND  
COMMENTS OF THE TOLEDO-LUCAS COUNTY PORT AUTHORITY

Robert A. Wimbish  
REA, CROSS & AUCHINCLOSS  
Suite 420  
1920 "N" Street, N.W.  
Washington, D.C. 20036  
(202) 785-3700

Counsel for the Toledo-Lucas County  
Port Authority

DATED: October 21, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

-----  
Finance Docket No. 33388  
-----

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

AND

-----  
Finance Docket No. 33388 (Sub-No. 26)  
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CSX CORPORATION AND CSX TRANSPORTATION, INC.  
-- CONTROL --  
THE LAKEFRONT DOCK AND RAILROAD TERMINAL COMPANY  
  
RAILROAD CONTROL APPLICATION

AND

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Docket No. AB-290 (Sub-No. 197X)  
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NORFOLK AND WESTERN RAILWAY COMPANY  
-- ABANDONMENT --  
TOLEDO PIVOT BRIDGE IN LUCAS COUNTY, OHIO

TLCPA-4

REQUEST FOR PROTECTIVE CONDITIONS, OPPOSITION TO ABANDONMENT, AND  
COMMENTS OF THE TOLEDO-LUCAS COUNTY PORT AUTHORITY

I. INTRODUCTION

In a Decision served July 23, 1997, the Surface  
Transportation Board accepted for consideration the primary  
application (hereinafter, the "Application") and related filings

submitted by Applicants CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT")<sup>1</sup>, Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR")<sup>2</sup>, Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")<sup>3</sup> for Board approval and authorization under 49 U.S.C. §§11321-25 for, as is relevant here -- (1) the acquisition by CSX and NS of control of CR; and (2) the division of assets owned by CR by and between CSX and NS.<sup>5</sup>

In its July 23rd Decision, the Board confirmed the procedural schedule previously prescribed for this proceeding. As pertinent here, the Board has required that all parties wishing to offer comments, protests, and requests for protective conditions, and any other opposition evidence and argument must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, The Toledo-Lucas County Port Authority ("TLCPA") hereby submits its comments and requests for

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<sup>1</sup> CSXC and CSXT, collectively, will be referred to hereinafter as "CSX."

<sup>2</sup> NSC and NSR, collectively, will be referred to hereinafter as "NS."

<sup>3</sup> CRR and CRC, collectively, will be referred to hereinafter as "CR."

<sup>4</sup> Hereinafter, CSX, CSXT, NSC, NS, CRR, and CR collectively and severally will be referred to as "Applicants."

<sup>5</sup> Hereinafter, the series of transactions proposed in Applicants' primary application and related supplements shall be referred to as the "Transaction."

protective conditions in response to Applicants' proposed Transaction.<sup>6</sup>

Applicants would have the Board believe that the proposed Transaction is in the best interests of shippers and communities throughout the eastern half of the United States. While Applicants may be correct that, in general, this Transaction will promote robust competition in various eastern corridors, the Applicants have failed adequately to address those instances where competition will be reduced. Once such instance where the Transaction promises anti-competitive consequences is at dock facilities in and around the Port of Toledo. Today, two strategically significant rail-to-water transfer facilities located at the Port of Toledo -- an iron ore ship-to-rail loading facility known as the Lakefront Dock and Railroad Terminal Company,<sup>7</sup> and a coal rail-to-ship loading facility known as Presque Isle<sup>8</sup> -- are jointly served by CSX and CR. However, CSX proposes to acquire full control of operations at the Toledo Docks, and this will leave these facilities as so-called "2 to 1" points served exclusively by CSX.

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<sup>6</sup> On July 27, 1997, TLCPA filed its Notice of Intent to Participate in this proceeding ("TLCPA-1"), and submitted on August 29, 1997, a Certificate of Service ("TLCPA-2"). Simultaneous with this filing, TLCPA is submitting as "TLCPA-3" a Notice of Appearance for TLCPA's designated Washington counsel.

<sup>7</sup> Hereinafter, the Lakefront Dock and Railroad Terminal Company will be referred to as "LD&RT."

<sup>8</sup> LD&RT and Presque Isle are adjacent dockside facilities that are commonly referred to as the "Toledo Docks." Hereinafter, TLCPA will refer to these facilities collectively as the "Toledo Docks."



In addition to its grave concerns regarding the loss of competitive service to the Toledo Docks, TLCPA opposes NS's proposed abandonment of the so-called "Toledo Pivot Bridge" across the Maumee River. TLCPA believes that NS has conveniently understated the operational significance of this bridge and that abandonment would be imprudent and anti-competitive.

## II. BACKGROUND

TLCPA is a public agency chartered under the laws of the State of Ohio. It is entrusted with a mandate to develop transportation facilities and infrastructure in the Toledo and northwestern region of Ohio. TLCPA owns the Port of Toledo, operates two airports in the Toledo area, and owns Central Union Plaza -- the passenger rail facility serving Toledo, OH.<sup>9</sup>

The Port of Toledo consist in part of the two adjacent and connecting LD&RT and Presque Isle facilities which together are known as the Toledo Docks. As is mentioned above, the Toledo Docks are rail-to-water and water-to-rail transfer facilities for two separate commodities -- coal (Presque Isle) and iron ore (LD&RT). In fact, 100% of the Toledo Docks' throughput consists of coal and iron ore. All of the coal and iron ore passing through the Toledo Docks is handled to or from these facilities

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<sup>9</sup> See, "Verified Statement of Robert E. Greenlese" -- attached hereto as Exhibit A -- at page 1. (Hereinafter, the "Verified Statement of Robert E. Greenlese" will be referred to as the "Greenlese V.S.")

via class 1 rail connections. Over the past five years Toledo Docks' coal and iron ore throughputs have been as follows:

<u>YEAR</u>	<u>Coal (tons)</u>	<u>Iron Ore (tons)</u>
1992	6,381,893	2,993,816
1993	5,348,283	3,214,445
1994	4,819,031	3,945,508
1995	4,757,682	4,581,393
1996	5,288,197	3,668,484 <sup>10</sup>

On average, assuming that a railcar can handle about 100 tons of coal or iron ore, and assuming further that the coal and iron ore passing through the Toledo Docks is handled in unit train movements of approximately 115 cars per train, then the Toledo Docks originate or terminate in the neighborhood of 463 coal trains and 320 iron ore trains annually.

Today, the LD&RT and Presque Isle facilities are open to both CSX and CR, but this was not always the case. Originally, the Chesapeake & Ohio Railway ("C&O") (a predecessor to CSX) owned and operated the Presque Isle facility. Presque Isle was, during the C&O days, used for the loading and unloading of coal and iron ore. LD&RT, on the other hand, was jointly owned and operated by the Baltimore & Ohio Railroad ("B&O") (another CSX predecessor) and the New York Central System ("NYC")

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<sup>10</sup> See, Greenlese V.S. at 2.

(a predecessor to CR), and it too was operated as both a coal and iron ore terminal.

In 1964, TLCPA purchased Presque Isle, and entered into a long term-lease with C&O, enabling that carrier to continue service to Presque Isle.<sup>11</sup> Then, in 1980, Chessie System ("Chessie") (successor to the B&O and C&O), sought to consolidate operations at Presque Isle and LD&RT. Specifically, Chessie converted LD&RT into an "all-iron ore" ship unloading facility, while Presque Isle's docks became a ship loading terminal for coal only. In order to accomplish this conversion, CR was afforded equal access rights to Presque Isle. By this arrangement -- governed by a 1980 document entitled "Toledo Docks Operating Agreement" -- CR continued to have the use of both coal and iron ore terminal facilities at the port of Toledo.<sup>12</sup>

Although not within the Toledo Docks facilities itself, NS currently owns a rail line in the vicinity of Toledo that could become a critical link for these lakeside properties. Specifically, NS owns and operates main line trackage in Lucas County which crosses the Maumee River on a structure known as the "Toledo Pivot Bridge." Today, approximately 4 to 6 daily trains traverse this bridge.<sup>13</sup> According to Docket No. AB-290 (Sub-No. 197X), NS intends to abandon the trackage on the Toledo Pivot

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<sup>11</sup> While TLCPA owns the Presque Isle terminal, it has no ownership interest in LD&RT.

<sup>12</sup> See, Greenlese V.S. at 1.

<sup>13</sup> See, Greenlese V.S. at 3.

Bridge, and re-route its trains to other lines over which NS will operate post-Transaction. As will be presented below, TLCPA questions whether or not NS is acting prudently in seeking to abandon this service over the Toledo Pivot Bridge, and whether its actions are designed to frustrate competing rail carrier access to Toledo.

### III. SUMMARY OF PROTECTIVE CONDITION RELIEF AND COMMENTS

Simply put, the Transaction contemplates that CSX will assume full ownership and control of the LD&RT and that, as a result, CSX will enjoy sole access to the Toledo Docks. This means that the Toledo Docks will become a "2 to 1" point, and that the Toledo Docks will be without the benefit of the competing rail service options it enjoys today.<sup>14</sup> This must be remedied. According to recent Board precedent, the Toledo Docks are entitled to competitive rail access relief. See, Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company (Decision No. 44), served August 12, 1996, at

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<sup>14</sup> While TLCPA acknowledges that CR has had a negligible presence at the Toledo Docks in recent years, CR has never relinquished or abandoned its rights to serve these facilities. Thus, even if CR is not currently a particularly successful competitor for Toledo Docks traffic, its mere presence is a competitive counterbalance to CSX.



pp. 121-124 (merger approved largely because merging parties introduced a competing carrier -- Burlington Northern Santa Fe -- to those points where a shipper or community would lose the benefit of dual rail carrier access); and Finance Docket No. 32549, Burlington Northern Inc., and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company (Decision No. 38), served August 23, 1995, at pp. 54-55 (competitive harm is very evident and subject to I.C.C./Board remedy "where the possible routing options on a rail-bound commodity drop from two originating or terminating railroads to one.")

In connection with the abandonment notice of exemption captioned as Docket No. AB-290 (Sub-No. 197X), TLCPA urges the Board either to reject this filing because it is an inappropriate use of the exempt abandonment regulations or to deny it as contrary to the public interest.

Therefore, and for the reasons set forth more fully in the sections below, TLCPA requests the following relief:

1. The Board must require as a condition to approval of Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, that -- (a) the Wheeling & Lake Erie Railway Company ("W&LE") be provided trackage rights access to and in the Toledo Docks; (b) CSX be required to offer to W&LE equal access to the Toledo Dock facilities; and (3) trackage rights conveyed by Applicants to W&LE be established at rates ensuring competitive and viable access to the Toledo Docks.
2. Should W&LE prove unwilling or unable to provide service to the Toledo Docks upon a reasonable request for service, or if W&LE should abandon or otherwise relinquish its rights of access to the Toledo Docks,

then the Board must, upon appropriate request from TLCPA, reopen this proceeding. Upon such reopening, the Board shall, at TLCPA's election, direct either NS or another rail carrier of TLCPA's choosing to serve the Toledo Docks pursuant to the terms and conditions set forth in relief request no. 1, above.

3. The Board must reject or deny NS's notice of exemption docketed as Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in Lucas County, Ohio. In the alternative, the Board must hold this abandonment proceeding in abeyance for at least one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

In this filing, TLCPA will also register its support for W&LE, and in particular W&LE's request for access to industries and potential connecting rail carriers in the vicinity of Toledo, OH.

In assessing the impacts of the proposed Transaction, and in preparing this filing, TLCPA has worked closely with the Toledo Metropolitan Area Council of Governments ("TMAC"). As can be seen from the attached verified statement of Mr. Greenlese, TLCPA is a member of TMAC.<sup>15</sup> The comments and requests for relief presented in this filing and in TMAC's submissions reflect the interests and concerns of both TMAC and TLCPA. Therefore, TLCPA strongly commends to the Board TMAC's concurrently filed submissions and evidence, which TLCPA understands will be captioned as "TMAC-1," "TMAC-2," and "TMAC-3."

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<sup>15</sup> See, Greenlese V.S. at 4.

IV.  
REQUESTS FOR PROTECTIVE CONDITIONS:  
W&LE EQUAL ACCESS TO TOLEDO DOCKS

In Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, CSX proposes to acquire CR's 50% ownership interest in the LD&RT, and thereby assume 100% stock ownership control of LD&RT. (CSX already possesses a 50% stock ownership interest in the LD&RT rail facility.) The transaction encompassed in Finance Docket 33388 (Sub-No. 26) would result in only one rail carrier [CSX] providing service to the Toledo Docks where today there are two rail carriers [CSX and CR] serving these same facilities. Applicants have made no arrangements of their own to rectify for obvious loss of competitive rail service alternatives that the Toledo Docks would suffer. Thus, the Toledo Docks would become a textbook 2-to-1 facility entitled to Board-imposed relief.

TLCPA has been discussing this issue with the W&LE, and TLCPA understands that W&LE will request, by way of a responsive application, the authority to access and serve the Toledo Docks, as well as access to other rail shippers and connecting carriers in the general vicinity of Toledo.<sup>16</sup> W&LE is an obvious and acceptable competitive alternative for the Toledo Docks, and

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<sup>16</sup> See, Greenlese V.S. at 3.

TLCPA supports W&LE as a suitable substitute for the loss of CR.<sup>17</sup>

Since W&LE has established its desire and has expressed its ability to serve the Toledo Docks, and since W&LE has confirmed with TLCPA that W&LE will request access to the Toledo Docks, TLCPA supports W&LE's responsive application. The fundamental issue to TLCPA is that the Toledo Docks have competitive rail access alternatives into the future. Therefore, in the event that W&LE proves unable or unwilling to provide service to the Toledo Docks, or should W&LE at some future date seek to abandon its rights to and from the Toledo Docks, then TLCPA requests that the Board permit the re-opening of this proceeding. If circumstances arise warranting such re-opening, the Board should take action to require that NS or another rail carrier designated by TLCPA be authorized to provide service to and from the Toledo Docks in lieu of W&LE.

#### V. OPPOSITION TO ABANDONMENT OF TOLEDO PIVOT BRIDGE

In Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in

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<sup>17</sup> If the Application is approved, NS will serve three existing Lake Erie coal and iron ore dock facilities in Ohio -- Sandusky, OH; Ashtabula, OH; and Huron, OH. With this potential abundance of lakeside access for NS, TLCPA does not believe that NS would have much incentive to dilute its presence at these other facilities just for the purposes of also serving the Toledo Docks. Thus, TLCPA has concluded that NS would be a poor choice as a substitute for CR service at the Toledo Docks.



Lucas County, Ohio, the Norfolk and Western Railway Company,<sup>18</sup> a wholly owned subsidiary of NS, has submitted an abandonment notice of exemption to abandon the 0.2 miles of trackage that traverse the Toledo Pivot Bridge (hereinafter, "The Bridge"). Evidently, NS has concluded that it will no longer require use of the Bridge as it does today. Although it may ultimately be that NS will not need the Bridge, TLCPA has determined that other carriers will. Furthermore, TLCPA questions NS's decision to rely upon the notice of exemption procedures of 49 CFR §1152 to accomplish the intended abandonment.

Time may confirm that NS really does not need the Bridge, but other filings expected to be submitted to the Board will show that at least one other rail carrier will need it. TLCPA has conferred with W&LE, and has determined that W&LE will submit a variety of trackage rights requests in its responsive application. Among the requests TLCPA understands W&LE will submit to the Board are trackage rights access to shippers and rail carriers in the Toledo area. To efficiently operate to the new Toledo-area points W&LE intends to serve post-Transaction,<sup>19</sup> W&LE will require use of the Bridge.<sup>20</sup> Having assessed for

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<sup>18</sup> For the sake of convenience, the Norfolk and Western Railway Company hereinafter will also be referred to as "NS."

<sup>19</sup> See, Part VI below for a description of those Toledo area shippers and rail carriers to which W&LE will seek access.

<sup>20</sup> W&LE representatives, including W&LE's in-house counsel, have confirmed that if W&LE obtains the Toledo-area relief it intends to request in its responsive application, it will require the use of the Toledo Pivot Bridge. TLCPA further understands that, as a part of W&LE's October 21, 1997 filings,

itself the network of rail lines in and around Toledo, TLCPA has independently determined that the Bridge would serve as a portion of the most efficient route for W&LE access to shippers and connecting rail carriers in the Toledo area.<sup>21</sup> Indeed, TLCPA has concluded that alternative routes for W&LE access to various Toledo points would be so circuitous, inefficient and/or congested as to threaten W&LE's ability to compete at all in the Toledo market.<sup>22</sup>

TLCPA recognizes that the Bridge is a component of an existing NS through route. As mentioned above, the trains now running over the bridge will be transferred to other main lines in the Toledo area that are projected to experience significant traffic increases post-Transaction. (According to TMAC figures, approximately 90 daily trains traverse CR's Maumee River bridge. Even assuming this figure is high, there can be no dispute that this bridge crossing is projected to handle an additional 8 to 10 daily trains.) While NS appears confident that re-routing overhead traffic to the CR Maumee River bridge (4 miles to the

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W&LE will itself oppose the abandonment proposed in Docket No. AB-290 (Sub-No. 197X).

<sup>21</sup> See, Greenlese V.S. at 4 and 5.

<sup>22</sup> As it has with other aspects of this pleading, TLCPA has worked closely with TMAC -- of which TLCPA is a participating member -- to develop the case against NS's proposed abandonment of the Bridge. TLCPA has reviewed preliminary versions of TMAC's opposition to this abandonment, which will be filed as "TMAC-2," and fully supports the representations and conclusions contained in that filing. TLCPA refers the Board to TMAC-2 because that document contains an even more detailed analysis of the strategic significance of this Bridge and the complications that would arise if the abandonment is permitted. See, Greenlese V.S. at 4.

south) will not pose any problems to traffic fluidity, TLCPA is deeply concerned that the CR route via its southerly Maumee River crossing will actually face debilitating congestion in the near future. If such congestion should occur -- and the lessons of the Union Pacific - Southern Pacific merger demonstrate how easily they may -- NS will have forfeited an alternative route to ease traffic problems.<sup>23</sup>

Even if it does not handle what is technically "local" traffic (and TLCPA cannot think of a time when a 0.2 mile bridge generated local traffic), the line over the Bridge is anything but dormant. According to TLCPA, approximately 4 to 6 NS trains use this line daily -- 4 through freights and one NS yard transfer run in each direction between NS's Homestead Yard and Maumee, OH. While it may be that these trains can be re-routed to other lines, NS has nowhere established that the proposed re-routing would be neither unduly circuitous or inefficient.<sup>24</sup>

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<sup>23</sup> TLCPA has determined that, since the Bridge traverses a navigable waterway, NS may be required by law promptly to remove the Bridge upon consummation of abandonment. The Army Corps of Engineers would have to review and approve any future re-building of the Bridge if it is removed in the first place.

<sup>24</sup> In Futurex Industries, Inc. v. I.C.C., 897 F.2d 866, 872 (7th Cir. 1990), the 7th Circuit Court of Appeals employed the following test to assess a rail line abandonment:

When segmentation of transportation lines is involved, we consider whether the segmentation satisfies three conditions: (1) does the proposed segment have logical termini?; (2) does the segment have substantially independent utility?; and (3) will abandonment of the disputed segment foreclose alternate treatment of the remaining segments?

TLCPA submits that the proposed abandonment of the Bridge fails

Presumably, since only the Bridge itself is slated for abandonment, there must be shippers near the Bridge or it would be very likely that NS would abandon portions of the lines leading up to the Bridge as well. Either that, or NS is employing here a "surgical strike" strategy designed to ensure that the line connecting to the Bridge can no longer be used by anyone as a through route. Under these circumstances, TLCPA believes that the proposed abandonment fails to comport with the requirements of 49 CFR §1152, and it requests that the Board reject the notice of exemption and require NS to file an application for abandonment pursuant to 49 CFR §1152, Subpart C (Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use) instead.

TLCPA urges that it would be imprudent to permit NS to abandon the Bridge at this time. Even assuming that the W&LE did not require Bridge access to reach its intended Toledo points, Toledo shippers (including the Toledo Docks) cannot be assured that the existing NS through route, of which the Bridge is a part, is unnecessary. TLCPA requests, at the very least, that this abandonment proceeding be held in abeyance for a period of one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

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the Futurex test.



#### VI. COMMENTS -- SUPPORT FOR W&LE ACCESS TO TOLEDO AREA

As this pleading suggests throughout, TLCPA recognizes the need for a viable, independent, and competitive W&LE. In order for the Toledo Docks to have access to competitive rail service, TLCPA must have a W&LE that is ready, willing and able to provide that service. Thus, TLCPA knows that a healthy W&LE depends on more than mere access to the Toledo Docks. TLCPA believes strongly that the Applicants have done far too little to ensure that the W&LE can survive post-Transaction. It is for these reasons that TLCPA supports the W&LE and urges the Board to act favorably on the responsive application it will submit.

TLCPA anticipates that W&LE will, among other relief, request trackage rights access in the Toledo area to the following carriers and shippers: (a) the Ann Arbor Railroad, (b) the Canadian National Railway ("CN") at CN's Lang Yard in North Toledo, (c) the Indiana and Ohio Railroad, and (d) the British Petroleum coke facility at Toledo. These requests are of particular interest to TLCPA, and TLCPA supports these requests as constructive, pro-competitive and essential to assure not only the continued viability of W&LE but more specifically to ensure the preservation of competitive service to the Toledo Docks.

#### VII. CONCLUSION

In the tide of potential sweeping changes in rail service east of the Mississippi, it is easy to identify general service corridors, highlight expanded single-carrier service

routes, or focus on the general cost savings presumed to result from consolidation. These are all things that the Applicants have done well enough. Unfortunately, and presumably in their haste, the Applicants have overlooked those instances where certain shippers, locations or facilities will lose the benefit of two competing rail carriers. The Toledo Docks at the Port of Toledo are one such instance where the anti-competitive consequences of the Transaction have been overlooked, and it is therefore incumbent upon either the Applicants or the Board to remedy the situation.

As a classic example of a "2-to-1" point there can be little dispute that the Toledo Docks are entitled to relief. Since the Applicants themselves have taken no initiative, TLCPA urges the Board to permit the W&LE to have access to the Toledo Docks. On a related note, TLCPA urges the Board not to permit abandonment of the Toledo Pivot Bridge, insofar as this Bridge -- (1) will be necessary to assure W&LE access to the greater Toledo area, and (2) represents a component of an existing NS through route that may be needed post-Transaction to alleviate congestion on other through routes. Finally, TLCPA urges favorable Board action on the responsive application W&LE has indicated it will file in this proceeding.

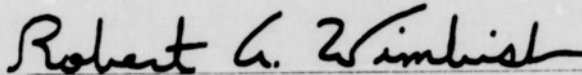
Specifically, and as was outlined above, TLCPA urges the Board to grant the following protective conditions in favor of the Toledo Docks:

1. The Board must require as a condition to approval of Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, that -- (a) the Wheeling & Lake Erie Railway Company ("W&LE") be provided trackage rights access to and in the Toledo Docks; (b) CSX be required to offer to W&LE equal access to the Toledo Dock facilities; and (3) trackage rights conveyed by Applicants to W&LE be established at rates ensuring competitive and viable access to the Toledo Docks.
2. Should W&LE prove unwilling or unable to provide service to the Toledo Docks upon a reasonable request for service, or if W&LE should abandon or otherwise relinquish its rights of access to the Toledo Docks, then the Board must, upon appropriate request from TLCPA, reopen this proceeding. Upon such reopening, the Board shall, at TLCPA's election, direct either NS or another rail carrier of TLCPA's choosing to serve the Toledo Docks pursuant to the terms and conditions set forth in relief request no. 1, above.
3. The Board must reject or deny NS's notice of exemption docketed as Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in Lucas County, Ohio. In the alternative, the Board must hold this abandonment proceeding in abeyance for at least one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

The various shippers and communities of the State of Ohio are caught squarely in the middle of what promises to be revolutionary change in the rail industry. The Board is entrusted to ensure that these changes, if permitted at all, are executed carefully and in a manner consistent with the public interest. No community or shipper should pay the price for "progress" elsewhere, and the Board must both prescribe suitable remedies for those points (such as the Toledo Docks) where competition will be lost, and assume a thorough analysis of those

facilities that have not adequately been shown to be superfluous  
(such as the Toledo Pivot Bridge). TLCPA expects no less.

Respectfully submitted,



Robert A. Wimbish

REA, CROSS & AUCHINCLOSS  
1920 "N" Street, N.W.  
Washington, D.C. 20036  
(202) 785-3700

Counsel for the Toledo-Lucas County  
Port Authority

DATED: October 21, 1997





Verified Statement

of

Robert E. Greenlese

My name is Robert E. Greenlese. I am the Director of Surface Transportation and Logistics for the Toledo-Lucas County Port Authority ("TLCPA") located at 1 Maritime Plaza, Suite 700, Toledo, Ohio 43604. In my present position, which I have held for two years, I am responsible for all rail and highway-related infrastructure and development matters as related to the Port Authority's mission and operating area. Prior to this position, I was the Manager of Trade Development for TLCPA for three years. TLCPA is a public agency chartered under the laws of the State Of Ohio and whose mandate it is to develop transportation facilities and infrastructure in the Toledo and Northwestern Ohio region. TLCPA owns the general cargo facility as well as the coal transfer facility at the Port of Toledo, operates two airports in the Toledo area and owns the Central Union Plaza, the passenger rail facility serving Toledo, Ohio.

By way of background, in 1964 TLCPA purchased what was historically known as the Presque Isle dock facility from the C&O Railway ("C&O"), a predecessor to CSX. TLCPA then leased the facility backed to the C&O pursuant to a long-term lease arrangement. Under the lease terms, CSX currently pays TLCPA a fixed amount to cover retirement of revenue bonds which TLCPA sold to purchase the facility in the first place. CSX also pays a minimum rental amount of \$5,000 per year or a wharfage charge of \$.02 per ton of product handled over the wharves of the facility subject to a maximum of \$250,000 per year. In the year 2004, the wharfage charge increases to \$.03 per ton.

In 1980, another CSX predecessor, Chessie System ("Chessie"), sought to consolidate the Presque Isle facilities with the adjacent Lakefront Dock and Railroad Terminal Company ("LD&RT") facilities, such that Presque Isle would be converted into a Coal-only facility and LD&RT would become an iron ore-only facility. (Until then, both Presque Isle and LD&RT handled both coal and iron ore.) Since Conrail had access at that time to only the LD&RT facility (of which it is half-owner with CSX), the railroads established the "Toledo Docks Operating Agreement," which permitted Conrail equal access to both Presque Isle and the LD&RT terminals. (Presque Isle and the LD&RT facilities are typically referred to collectively as the "Toledo Docks.")

At that time (1980), Chessie established an entity called the Toledo Ore Railroad Company ("TORCO"), which manages the actual ship unloading and railcar loading operations and on-site storage space connecting to the LD&RT terminal. TORCO is, evidently, a separate venture from the LD&RT, even though the two



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companies have an obvious relationship. TLCPA assisted TORCO in completing the Toledo Docks consolidation program undertaken by Chessie by financing equipment purchases necessary to convert the LD&RT into an "iron ore-only" terminal. I understand that Conrail may use TORCO's services according to the same terms and conditions as does CSX today, and I would expect that any rail carrier that would replace Conrail at the Toledo Docks would have unrestricted access to the loading and unloading facilities located there in exactly the same manner as Conrail does today.

As I have mentioned, Conrail enjoys full access to the Toledo Docks by virtue of their 50% ownership in the LD&RT. Needless to say, the two-carrier service the Toledo Docks enjoy today is important to a facility such as this inasmuch as the business of the Toledo Docks is rail business. 100% of all business handled at the Toledo Docks is transported in one way or another by rail. On the coal side, all tonnage comes into Presque Isle via rail and is transferred to vessels. The reverse is true at LD&RT. All iron ore comes into the facility via vessels and is moved inland via rail. The amount of traffic is considerable. The following table shows the tonnage of coal and iron handled through the Toledo Docks for the past five years:

Year	Coal (tons)	Iron Ore (tons)
1992	6,381,893	2,993,816
1993	5,348,283	3,214,445
1994	4,819,031	3,945,508
1995	4,757,682	4,581,393
1996	5,288,197	3,668,484

Both commodities are handled in unit train movements of up to 115 cars per train. Using that number, and assuming 100 tons per car, coal averages about 463 trains per year into the facility and iron ore averages about 320 trains per year. To move this amount of tonnage annually via any other surface mode than rail would be impossible. Competitive rail access to the and TLCPA's economic interests as outlined above. Toledo Docks is vital to protecting the viability of the facility



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Robert E. Greenlese  
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### Competitive Rail Access at Toledo Docks

I cannot stress enough how important it is that the Toledo Docks retain access to two rail carriers. Much of TLCPA's support for the consolidation leading to the "Toledo Docks Agreement" -- including our funding for TORCO equipment upgrades in 1980 -- was predicated on the understanding that it would help facilitate the interests of both Chessie and Conrail as well as improve the competitive position of the Toledo Docks vis-a-vis other Lake Erie ports. Admittedly, Conrail has not had much of a presence at the Toledo Docks in recent years. This is due to the fact that CSX was able to win away from Conrail iron ore traffic that Conrail had previously routed from the Toledo Docks. However, Conrail serves as an effective counterbalance to CSX, and their presence effectively ensures competitive rail rates to and from the Toledo Docks. Conrail continues from time to time to deliver coal to the Toledo Docks.

During the course of this Conrail acquisition proceeding, I have had numerous discussions with CSX officials regarding potential loss of rail competition at the Toledo Docks. My intention was to explore with them the possibility of installing a new rail carrier at the Toledo Docks to replace Conrail if the application is approved. Unfortunately, CSX did not think much of my request and indicated no desire to compensate for the loss of Conrail's competitive presence. I gathered from my discussions that CSX reasons that the Toledo Docks are already a single-carrier served facility, since CSX today provides virtually all of the service to and from these facilities.

I have been able to confirm with the Wheeling & Lake Erie Railway Company ("WLE") that they desire to obtain access to the Toledo Docks. TLCPA supports WLE in this objective. I understand that WLE will request the right to serve the Toledo Docks in a responsive application, and this, too, has the support of TLCPA.

### Preservation of the Toledo Pivot Bridge

The loss of the NS pivot bridge across the Maumee River at Toledo would bode very badly for the future. It is a vital component of the complicated maze of rail lines that comprise the Toledo terminal area. I have learned from recent conversations with NS personnel that NS moves up to four road trains a day over this bridge in addition to a round-trip "yard transfer" train. I



Verified Statement  
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Robert E. Greenlese  
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understand that the bridge enables NS to connect their Homestead Yard in East Toledo with Ann Arbor Railroad ("AA") lines on the other side of the river. Through a trackage rights agreement with the AA, NS connects its Homestead Yard with its Detroit - St. Louis mainline at Milan, Michigan.

I wish to point out that TLCPA is certainly not alone in its opposition to abandonment of the pivot bridge. We are joined by, WLE, the Ohio Rail Development Commission, and the Toledo Metropolitan Area Council of Governments ("TMAC"). TLCPA is a member of TMAC, and I, as a member of the TMAC Railroad Task Force, have assisted in developing a comprehensive strategy concerning responses to locally-based consequences of the Conrail acquisition. I am aware that TMAC will submit its own opposition to the pivot bridge abandonment -- to be filed with the STB as "TMAC-2." I expect that the TMAC filing will offer a more fully-developed explanation of the current role of the bridge as well as its strategic significance to WLE and other carriers. I commend TMAC's filings to the STB, and urge that the STB carefully consider TMAC's evidence.

NS contends that if the Conrail acquisition is approved by the STB, they will no longer need the bridge. Specifically, NS has decided that the four daily road trains and the yard transfer run will be able to use an alternate route which NS will acquire from Conrail. The proposed arrangement will put additional traffic onto the existing Conrail bridge upriver from NS's pivot bridge. That will increase traffic over the Conrail route, and may pose congestion problems in the future.

I am deeply concerned that once the bridge is abandoned, it will be gone forever. The NS pivot bridge traverses the Maumee River -- a navigable waterway. On the basis of my experience with other abandoned rail bridges over the Maumee, I am certain that the Army Corps of Engineers will find the unused structure to be an impediment to waterway navigation and will ultimately require that this bridge be removed. Once removed, it would be exceedingly expensive to re-build, assuming in the first place that the Army Corps of Engineers permits construction (a highly unlikely proposition).

As I have mentioned above, TLCPA understands that WLE will seek trackage rights to access Toledo, including the Toledo Docks. I will state again that TLCPA strongly supports WLE's requests. Through discussions with WLE personnel, we have learned that, if WLE is to obtain the trackage rights it seeks in the Toledo area, such trackage rights would depend upon the preservation of the NS pivot bridge. This is because the bridge





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Robert E. Greenlese  
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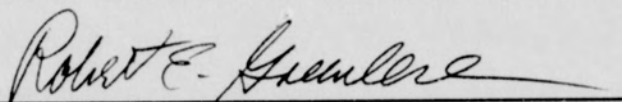
is absolutely essential to allow WLE an efficient connection with the AA as well as the Canadian National ("CN"). The bridge is also a part of a vital WLE connection to a newly announced Chrysler Jeep assembly plant in North Toledo.

According to recent conversations I have had with WLE personnel, NS has evidently indicated that they are willing to work with the WLE, the Ohio Rail Development Commission, and other public agencies (such as TLCPA) to protect the bridge. (Although it would appear that NS recognizes both WLE's potential need for the bridge and TLCPA's concerns, I am not aware of any action by NS to withdraw the abandonment filing.) We expect that WLE will request in its October 21, 1997 pleadings to request protection for the pivot bridge and oppose its abandonment. TLCPA regards the NS pivot bridge as essential to the future success of WLE. Thus, the pivot bridge must be preserved to both ensure WLE's future success as well as the success of the Toledo Docks.


VERIFICATION

STATE OF OHIO           )  
                                  ) ss:  
COUNTY OF LUCAS       )

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

  
Robert E. Greenlese  
Director of Surface Transportation and Logistics

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

  
Margaret J. Hutchinson  
Notary Public

My Commission Expires:



MARGARET J. HUTCHINSON  
Notary Public, State of Ohio  
Commission Expires 8-19-2002

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.

Robert A. Wimbish  
Robert A. Wimbish

STB

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SURFACE TRANSPORTATION BOARD

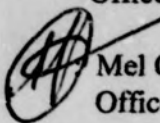
# Memorandum

621489



DATE: October 6, 1998

**TO** : Ellen Keys, Assistant Secretary  
Section of Publications/Records  
Office of the Secretary

**FROM**  Mel Clemens, Director  
Office of Compliance and Enforcement

ENTERED  
Office of the Secretary

OCT 06 1998

Part of  
Public Record



**SUBJECT : STB FINANCE DOCKET NO. 33388 - OPERATIONAL MONITORING DATA**

Attached are the original and two copies of the public data files provided to this office by CSX and Norfolk Southern as required in the above proceeding, which are to be committed to the docket for public reference. As requested, I am providing the three paper copies to Ron Douglas, two for the docket and one for DC News. If there are any questions, please don't hesitate to contact me or Jim Greene.

**Attachments**

cc: Chairman Morgan  
Vice Chairman Owen  
Ron Douglas  
Charles Renninger

500 Water Street (J150)  
Jacksonville, FL 32202  
(904) 359-1246  
FAX: (904) 359-1248

J. Randall Evans  
Vice President-Acquisition Development

October 6, 1998

Melvin F. Clemons, Jr.  
Director Office of Compliance and Enforcement  
Surface Transportation Board  
Washington, DC 20422-0001

Dear Mr. Clemons:

Attached to this letter are the Operational Monitoring Reports required in STB Finance Docket No. 33388.

The reports are presented in the following order:

Labor Implementing Agreements .....	Page 1
Labor Task Force .....	Page 2
Construction Projects .....	Pages 3-5
Construction and Other Capital Projects Table .....	Pages 6-7
Information Technology .....	Pages 8-12
Customer Service .....	Pages 13-14

Note: Italicized information indicates a change or update from the last report.

Please contact J. Randall Evans, Vice President-Acquisition Development at CSX Transportation (E-mail: [Randy\\_Evans@csx.com](mailto:Randy_Evans@csx.com)) if there are any issues that need clarification or explanation. As information, coincident with filing this report with the STB, CSXT has made this report available on our web site ([www.csx.com](http://www.csx.com)).

Very truly yours,

J. Randall Evans

cys: Peter J. Shudtz, Vice President  
Law & General Counsel

Paul R. Hitchcock - J150  
Senior Counsel

# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

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The reports are presented in the following order:

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Note: Italicized information indicates a change or update from the last report.

**STB OPERATIONAL MONITORING REPORT**  
As of September 30, 1998

**LABOR**

The status of the Labor Implementing Agreements is as follows:

Labor Organization	Status
International Brotherhood of Boilermakers, Iron-Ship Builders, Blacksmiths, Forgers and Helpers	Implementing agreement reached
United Railway Supervisors Association - on behalf of the claim agents	Implementing agreement reached
United Railway Supervisors Association - on behalf of the engineering supervisors	Implementing agreement reached
National Conference of Firemen & Oilers	Implementing agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing agreement reached
<i>Fraternal Order of Police</i>	<i>Implementing agreement reached</i>
<i>American Train Dispatchers Department of the Brotherhood of Locomotive Engineers</i>	<i>Implementing agreement reached</i>
<i>International Brotherhood of Electrical Worker</i>	<i>Implementing agreement reached</i>
<i>Sheet Metal Workers International Association</i>	<i>Implementing agreement reached</i>
United Transportation Union	Agreement has been substantially negotiated. Those parts of the agreement relating to the common issues, the Shared Assets Areas and NS have been completed. CSXT is in the process of resolving its remaining issues.
<i>United Transportation Union - Yardmasters Department</i>	<i>Agreement negotiated except for a single issue. An arbitration hearing was held on that issue on September 23, 1998.</i>
Brotherhood of Locomotive Engineers	Agreement has been substantially negotiated. Those parts of the agreement relating to the common issues, the Shared Assets Areas and NS have been completed. CSXT is in the process of resolving its remaining issues.
<i>*Brotherhood of Maintenance of Way Employees</i>	<i>Negotiations have and are being conducted</i>
<i>*Brotherhood of Railway Signalmen</i>	<i>Negotiations have and are being conducted</i>
<i>*International Association of Machinist</i>	<i>Negotiations have and are being conducted</i>
<i>*Transportation Communication International Union</i>	<i>Negotiations have and are being conducted</i>
<i>*Brotherhood Railway Carmen Division - TCU and Transport Workers Union of America</i>	<i>Negotiations have and are being conducted</i>
<i>* The Notice provided for by Section 4 of the New York Dock conditions has been served on each of these unions.</i>	



## **LABOR**

### **Labor Management Task Force**

*CSXT has sent an invitation to each union with which an implementing agreement has been reached and which will continue to represent employees on CSXT to participate in a labor task force similar to the one established with the United Transportation Union. A labor task force may be established with a single union as with the United Transportation Union or where there is a community of interest among certain unions, such as shopcraft unions, a task may be include several unions. The ultimate configuration of the task forces of course will be decided in collaboration with the union(s).*

*The purpose of each labor task force will be to provide an established avenue of communications between CSXT and its unions to address any issues which arise either with respect to CSXT's implementation of the Transaction or its application of the Safety Integration Plan. Each task force will have scheduled, regular meetings at which the union(s) and CSXT can discuss implementation and safety issues associated with the Transaction. In addition, the task forces are envisioned by CSXT to be "quick-response" mechanisms capable of resolving issues in their infancy before developing into serious operating problems.*

*To facilitate that objective, CSXT will assign its Vice President-Labor Relations to each for the established task forces. CSXT, likewise, will request that each union's president or his appointee serve as the union's member to the task force. The reason for this limited, but high level of representation is to have a task force which can gather quickly, but which also is empowered to call upon the necessary resources to understand the problem and then to formulate and authorize necessary corrective actions.*

## **CONSTRUCTION PROJECTS**

*As a result of the Conrail Acquisition, CSXT sponsored construction projects have progressed to provide both flexibility and capacity improvements necessary to handle "Day 1" traffic. Discussed below is a narrative, briefly describing projects. Most of which are complete or substantially complete.*

### **CLEVELAND - CHICAGO**

*Greenwich, Ohio to Pine Junction, Indiana*

- *This corridor represents a combination of projects by CSXT between Pine Junction and Greenwich, Ohio and by Conrail between Greenwich and Berea, Ohio.*
- *On Conrail double track segments have been completed and are in service, between M.P. 17 and M.P. 54, along with related signal work.*
- *On CSXT between Greenwich and Pine Junction, the signal work is essentially complete, with about twenty miles of newly constructed track being progressed to final surface and alignment. Over 80% of the corridor is in service with a new signal system and is double track TCS.*
- *Minor track construction remains on the additional 3<sup>rd</sup> main tracks at Garrett, Indiana and Willard, Ohio.*
- *Critical connection tracks at Willow Creek, Indiana and Greenwich, Ohio are operational.*
- *All remaining track and signal work should be completed by 4<sup>th</sup> quarter.*

### **YARD EXPANSION - WILLARD OHIO**

- *CSXT is expanding the existing yard to allow the "Block Swapping" ability between trains. Seven tracks averaging 7,800 feet are being built. Grading and drainage work is nearly complete, with trackwork progressing on final grade. Estimated completion during 4<sup>th</sup> quarter. Infrastructure improvements for train line air, safety lighting and yard access roads are on schedule for completion at the same time.*

### **INDIANAPOLIS LINE**

*Crestline, Sidney, and Marion Ohio*

- *Conrail forces are currently working at Crestline, Sidney and Marion, Ohio. Sidney, Ohio is essentially complete with only minor signal and track work remaining. Grading, site preparation, material acquisition has proceeded at Crestline and scheduled for a 1<sup>st</sup> quarter 1999 completion. Marion, Ohio is an existing connection, requiring track upgrades and signaling changes that are progressing forward.*

## STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

### CONSTRUCTION PROJECTS

#### DETROIT, MICHIGAN

Carleton, Michigan

- *Conrail has completed 90% of requested work on the Lincoln Secondary to restore the line to service, after CSXT installs the turnout at Carleton, Michigan. Track and signal work by CSXT forces will be complete in 4<sup>th</sup> quarter 1998.*
- *Conrail will complete the minor remaining work for speed upgrades to 25 mph in 4<sup>th</sup> quarter 1998.*

#### CHICAGO - NASHVILLE CORRIDOR

Alice and Harwood, Indiana

- *Alice siding is complete and in service. Harwood Siding is essentially complete waiting signal testing and cutover in 4<sup>th</sup> quarter 1998.*

#### CHICAGO AREA

Cleveland, Ohio; Philadelphia, Pennsylvania; Little Ferry, New Jersey

- *59<sup>th</sup> Street Intermodal Yard is complete and in operation.*
- *At Bedford Park work continues by CSXT and the BRC on a 2<sup>nd</sup> track entrance into the west end of the Intermodal Facility. Track construction is progressing and will finish in the 4<sup>th</sup> quarter 1998. Track and signal improvements including the addition of crossovers and TCS between Bedford Park and Blue Island Junction will be completed during the 4<sup>th</sup> quarter 1998.*
- *Construction of a connection track between CSXT and IHB at Lincoln Avenue is progressing with completion scheduled in 4<sup>th</sup> quarter 1998.*
- *A main line rail relay has been completed on Track #2 (eastbound) between Pine Junction and Blue Island Junction on the Barr Subdivision to improve speed and reliability.*
- *Norfolk Southern forces have begun rehabilitation of the Tolleston to Hobart, Indiana section of the former Ft. Wayne line. Norfolk Southern forces will finish 4<sup>th</sup> quarter 1998. Restoration of crossing warning system is scheduled to be completed by Split Day.*

#### CLEVELAND AREA

- *Conrail forces are completing construction of the 2<sup>nd</sup> track between Collinwood and Berea. Grading, drainage and track construction is complete. Ballasting and surfacing is rapidly being completed. Final signal testing will be complete for TCS operation during 4<sup>th</sup> quarter 1998. The bridge at the Cuyahoga River is undergoing major repairs to allow increase in speed and full double track operation. Work is complete on the south track and traffic has been shifted allowing work to complete on the north track. Estimated completion is 4<sup>th</sup> quarter 1998.*
- *Intermodal expansion is progressing at Collinwood yard with completion expected before Split Day.*

## **STB OPERATIONAL MONITORING REPORT**

As of September 30, 1998

### **CONSTRUCTION PROJECTS**

#### **PHILADELPHIA AREA**

- *Track construction is complete at Belmont Siding awaiting signal testing in October 1998, to release for service. Eastwick connection is on schedule for completion by mid November. A new bridge spanning 51st Street is complete. Grading and drainage is complete. Track work is progressing on both Conrail and CSXT, with less than 4000 feet to construct. All work is expected to be complete by 4<sup>th</sup> quarter 1998.*

#### **BERGEN, NEW JERSEY TO ALBANY, NEW YORK**

*Little Ferry, New Jersey*

- *At CSXT request, Conrail has extended sidings at Milton, Orangeburg and Alsen, New York. Milton and Alsen are complete and in service. Orangeburg is awaiting final track and signal work to be complete in 4<sup>th</sup> quarter 1998.*
- *Intermodal expansion at Little Ferry, New Jersey is complete. Two connection tracks are planned at Little Ferry between new CSXT and NYS&W. One will be completed 4<sup>th</sup> quarter 1998, and the second before Split Day.*

#### **MGA COAL ROUTES**

*Newell and New Castle, Pennsylvania*

- *CSXT projects at Newell Yard, Glassport Siding, Webster Siding and New Castle Yard have grading, drainage and track construction completed. The remaining ballasting, surfacing and final alignments will finish during 4<sup>th</sup> quarter 1998.*

#### **EXERMONT, ILLINOIS**

- *Archeological research and discovery have deferred grading for this connection until 1999.*



# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Status	Completion Date
1)	Greenwich, Ohio to Pine Junction, Indiana	Construct 2 <sup>nd</sup> main track with TCS on B&O including connections.	Substantially Complete	4Q 98
2)	Quaker to Greenwich, Ohio	Construction by Conrail of 2 <sup>nd</sup> main track with TCS.	<i>Substantially Complete</i>	4Q 98
3)	Willard, Ohio	Yard Expansion	Underway	4Q 98
4a)	Crestline, Ohio	a) Construct or rehabilitate connection tracks with Indianapolis Line.	a) Underway	4Q 98
4b)	Sidney, Ohio	b) Connection Track	<i>b) Substantially Complete</i>	4Q 98
4c)	Marion, Ohio	c) Rehabilitate Connection Track	c) Underway	
5)	Carleton, Michigan	Connect track with Conrail	<i>Underway</i>	4Q 98
5a)	Alice, Indiana	a) Siding Extension	<i>a) Complete</i>	a) 3Q 98
6b)	Harwood, Indiana	b) Siding Extension	b) Substantially Complete	b) 4Q 98
7a)	Chicago, Illinois	a) Intermodal Expansions	<i>a) Complete</i>	a) 3Q 98
7b)	Cleveland, Ohio	b) Intermodal Expansions	<i>b) Underway</i>	b) 4Q 98
7c)	Philadelphia, Pennsylvania	c) Intermodal Expansions	<i>c) Underway</i>	c) 4Q 98
7d)	Little Ferry, New Jersey	d) Intermodal Expansions	<i>d) Complete</i>	d) 3Q 98
8)	Philadelphia, Pennsylvania	Rebuild Eastwick connection track with Conrail.	<i>Substantially Complete</i>	4Q98
9)	Hobart, Indiana to Tolleston, Indiana	Restoration of connection and main track between Hobart & Tolleston.	<i>Underway</i>	4Q 98



# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location		Project	Status	Completion Date
10)	Chicago, Illinois	Chicago area-upgrade connection tracks and other improvements.	Underway	4Q 98
11)	Newell & New Castle, Pennsylvania	Upgrade capacity on the Mon. Subdivision	Underway	4Q 98
12)	Albany, New York to Bergen, New Jersey	Extend 3 sidings by Conrail on River Line	Underway	4Q 98
13)	Little Ferry, New Jersey	Connection track Conrail/NYSW	Early Stages	1Q 99
14)	Dolton, Illinois	Connection track @ Lincoln Avenue CSX/...L	Underway	4Q 98

# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## INFORMATION TECHNOLOGY

### Information Technology

The implementation strategy, training plans, and status of the Information Technology (IT) initiatives affecting the following Operating Areas are summarized:

- ❖ Customer Service
  - Ø Electronic Customer Connectivity
- ❖ Operations Personnel
  - Ø Crew Management
- ❖ Transportation
  - Ø Car Management & Movement
  - Ø Locomotive Management
  - Ø Train Dispatching

Operating Area	Implementation Strategy	Status	Training
<b>Customer Service</b> Electronic Customer Connectivity	All inbound (e.g. bill-of-lading) and outbound (e.g. car tracing) electronic communications with existing Conrail customers are to be migrated to CSX and NS. All customers will be informed of their system migration options and have the opportunity to test the replacement electronic connections prior to a phased transfer of the customer communications links after Day 1.  CSX and NS will work with all affected customers and EDI vendors to develop migration plans.	Systems development in process and on schedule.  <i>A joint letter was distributed to current Conrail customers.</i>  <i>Existing and new Conrail Electronic Commerce customers have been contacted by CSX in separate mailings.</i>  <i>Electronic Commerce Certification of Conrail customers acquired by CSX is in progress.</i>	All major customers will be provided adequate systems documentation and a detailed description of any changes to their current Conrail-provided electronic services.

## STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Operations Personnel</b> Crew Management	<p>Separation of callings desks (CSX, NS, SAC) in Dearborn, MI has been pre-negotiated and is in place. There will be a phased roll-out of eight calling desks to TECS – the CSX Crew Calling System. The first desk will be rolled out 60 days after Day 1.</p> <p>T&amp;E Crews will continue to submit paper time sheets to Dearborn, MI until the TECS desk roll-out. Paperless payroll implementation will take place 2 weeks after each TECS desk implementation. The entire roll-out will take approximately eight months.</p>	Systems development in process and on schedule.	CSX Payroll officers will train T&E employees on the CSX Payroll system immediately following the implementation of TECS. Local Chairman will participate in the training. Training documents have been prepared and presented to Conrail personnel.

## STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Car Management and Movement	<p>Field personnel will continue using Conrail application systems supporting yard inventory, train consisting and work orders after Day 1.</p> <p>Disposition and management of empty cars will occur in Jacksonville using CSX systems after Day 1 to ensure coordinated system wide transportation operations.</p> <p>Customers on the acquired territory will continue to order empty cars and obtain information on order status as they do today.</p> <p>CSX systems will be rolled-out to the acquired Conrail territory in 5 phases after Day 1.</p>	Systems development in process and on schedule.	<p>Conrail Car Management team has been hired for the transition period. Training of Conrail Car Management staff will begin 60 days prior to Day 1.</p> <p>Training of affected field location personnel to begin 30 days prior to each field roll-out phase.</p>



## STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

### INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Locomotive Management	<p>CSX Locomotive Management System will be used to manage locomotives in CSX acquired territory beginning on Day 1. This will occur from the Operations Center in Philadelphia, PA for 180 days after Day 1. The management team in Philadelphia will consist of one locomotive manager, one CSX consultant, and one senior locomotive manager.</p> <p>Within 180 days of Day 1, locomotive management for the acquired Conrail territory will be relocated to the Kenneth Dufford Center in Jacksonville. The acquired territory at that time will be managed by two CSX Locomotive Managers.</p>	Systems development in process and on schedule.	<p>Locomotive managers for the acquired Conrail territory will be trained on the CSX Locomotive Management System 60 days prior to Day 1 with sessions in both Jacksonville, FL and <b>Philadelphia, PA.</b></p> <p>Management will conduct the training and will include cross training of CSX and Conrail cultures.</p>



# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## INFORMATION TECHNOLOGY

Operating Area	Implementation Strategy	Status	Training
<b>Transportation</b> Train Dispatching	<p>Train dispatchers will continue to use current Conrail systems. Phase 1 geographic realignments will separate dispatchers into CSX, NS &amp; SAC entities within current division offices. Phase 1 will complete 90-120 days after Day 1.</p> <p>Phase 2 division realignment will move dispatchers to acquiring road's division. CSX Cleveland East dispatcher in Dearborn, MI will move to CSX headquarters in Indianapolis, IN. CSX Chesapeake &amp; Riverline dispatchers in Mt. Laurel, NJ will move to CSX headquarters in Albany, NY. Phase 2 will complete 90-120 days after an implementing agreement has been reached.</p> <p>Phase 2 moves are contingent upon Phase 1 realignment completion for territory being transferred. Also contingent upon an implementing agreement being in place with the AT&amp;T.</p>	Systems development in process and on schedule.	Dispatchers will be trained on their new territory using the current processes in place at Conrail.

# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## CUSTOMER SERVICE

The following report outlines our progress toward the twin goals of 1) Achieving and maintaining customer confidence in the transaction, and 2) Insuring the integration of the acquired territories and personnel into the Customer Service Center in Jacksonville.

### The Transition Process

In order to progress our objective of accomplishing a smooth transition, *we held a two-day conference incorporating major Jacksonville and Pittsburgh customer service personnel early in September.* Our intent was to discover any tasks left out of our workplan, and to bring our plans into step with each other. We made considerable progress toward all these goals. Next session will be meeting early in October to determine requirements from the Shared Areas, and immediately afterward we will conduct a similar session with Norfolk Southern. Along these lines, *we have also held several meetings (some of them with NS) to determine the data reporting and billing requirements for the MGA coal area and Ashtabula.*

*As an update on the plan to physically divide up the work areas in Pittsburgh prior to Split Day into NS, CSXT, and CSAO groups: we are ready to begin the process in October, and plan to be finished during 4<sup>th</sup> quarter, 1998.*

### Personnel

*We have begun to exchange managers informally between Pittsburgh and Jacksonville and cross train them in preparation for start-up of the combined operation.* These managers also perform an essential liaison function bringing the two customer service centers together.

*The development of training materials is underway based on a needs assessment and meetings with the subject matter experts.* Both Day One and field roll-out needs have been identified and are the basis for the design of the materials. Training will be conducted on the "Training Railroad," a CICS region that provides hands-on activity without impact to production. *New sites are being created in the Training Railroad so we can simulate consists for Conrail trains.* These sites will be completed and tested during the fourth quarter.

*Classrooms have been identified in Pittsburgh, and renovation is underway.* A syllabus has been developed for the Day One training and a scheduling plan has been approved. *Tentative schedules have been set for a pilot class to be conducted in the 4<sup>th</sup> quarter.* This class will be a complete simulation of the day-one training. Also, the training staff will receive special preparatory Split Day training.

# STB OPERATIONAL MONITORING REPORT

As of September 30, 1998

## CUSTOMER SERVICE

### Customer Familiarization

*We have begun the process of converting our new Conrail area customers to the new data fax and voice 800 numbers they will be using on and after Split Day, minimizing the impact of the changes. Our Commercial Department sent out a fax in September outlining how business will be transacted (including the handling of rates) before and after Split Date. In this same letter, the Electronic Customer Integration Center was explained with a view to helping EDI customers make the transition from Conrail ACCESS to CSX systems.*

# Norfolk Southern Corporation

## STB Operational Monitoring Report

*As of September 30, 1998*

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**Note:** Bold print indicates changes from previous report.

\* To be disclosed under a different cover or in a later report.

\*\* Data not required at this time.



# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## LABOR

### *Labor Implementing Agreements*

Labor Organization	Status
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Implementing Agreement reached
United Railway Supervisors Association -- on behalf of claim agents	Implementing Agreement reached
United Railway Supervisors Association -- on behalf of the engineering supervisors	Implementing Agreement reached
National Conference of Firemen & Oilers	Implementing Agreement reached
American Railway and Airway Supervisors Association, Division of TCU, representing bridge inspectors	Implementing Agreement reached
Fraternal Order of Police	Implementing Agreement reached
International Brotherhood of Electrical Workers	Implementing Agreement reached
Sheet Metal Workers' International Association	Implementing Agreement reached
American Train Dispatchers Department, Brotherhood of Locomotive Engineers	Implementing Agreement reached
United Transportation Union covering Shared Asset Areas	Agreement reached, subject to ratification
United Transportation Union for the Conrail properties operated by NS	Agreement reached, subject to ratification
Brotherhood of Locomotive Engineers for the Conrail properties operated by NS	Agreement reached, subject to ratification
Brotherhood of Maintenance and Way Employees	§4 notice served, negotiations ongoing
Brotherhood of Railroad Signalmen	§4 notice served, negotiations ongoing
Brotherhood Railway Carmen -- Div. TCU and Transport Workers Union of America	§4 notice served, negotiations ongoing
International Association of Machinists and Aerospace Workers	§4 notice served, negotiations ongoing
Transportation Communications International Union	§4 notice served, negotiations ongoing

Note: Bold print indicates changes from previous report.

# **Surface Transportation Board Operational Monitoring Report**

*As of September 30, 1998*

## **LABOR**

### ***Labor-Management Task Forces***

Norfolk Southern and the United Transportation Union (UTU) have an ongoing Labor Management Task Force consisting of NS's Vice President – Labor Relations and the President of the UTU. The Task Force encourages frequent communications between upper-level management of the two organizations and has worked well to facilitate an implementing agreement and to assure prompt consideration of implementation and safety issues related to the Conrail transaction.

As of the end of the reporting period, NS has invited all organizations with which an implementing agreement has been finalized (and which will continue to represent employees) to form Labor Management Task Forces. Similar to the UTU Task Force, each Task Force will enable upper-level management of NS and the particular labor organization to review issues and concerns about implementation of the Conrail transaction with preservation of the highest levels of safety. Invitations have been sent to: the Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; National Conference of Firemen & Oilers; American Train Dispatchers Department of the Brotherhood of Locomotive Engineers; International Brotherhood of Electrical Workers; and Sheet Metal Workers International Association. Each Task Force will be unique to each labor organization, and will involve operations, safety and labor relations staff as appropriate and the craft General Chairmen representing NS and Conrail employees.

Note: Bold print indicates changes from previous report.

# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project and Est. Completion Date	Dept.	Phase	Status
Alexandria	IN	Construct track connection Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
				Const	In progress
Allentown to Reading (Lehigh)	PA	Traffic Control System Estimated Completion Date: 4Q99	Signal	Design	In progress
Angola	NY	Upgrade existing siding, construct new siding Complete	Track	Design	Complete
				Grading	Complete
				Const	Complete
			Bridge	Design	Complete
				Const	Complete
			Signal	Design	Complete
				Const	Complete
Attica	IN	Extend siding 4,580 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Signal	Design	Complete
				Const	In progress
Boundbrook	NJ	Extend siding 2,500 track feet Estimated Completion Date: 4Q99	Track	Design	Project being defined.
				Grading	
				Const	
			Signal	Design	
Bristol	VA	Extend siding 14,255 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design	Complete
				Const	Complete
			Signal	Design	Complete
Bucyrus	OH	Construct track connection Estimated Completion Date: 4Q98	Land		Complete
					Complete
			Track	Design	Complete
				Grading	In progress
				Const	In progress
			Signal	Design	Complete
				Const	In progress
Buffalo to Cleveland	NY	Traffic control system and remove pole line. Estimated Completion Date: 4Q99	Signal	Design	In progress
	OH			Const	In progress
Butler	IN	Construct track connection Estimated Completion Date: 2Q99	Track	Design	Project being defined.
				Grading	
				Const	
			Signal	Design	
				Const	

# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project and Est. Completion Date	Dept.	Phase	Status
Catlin	IL	Double tracking 25,980 track feet Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design	Complete
			Signal	Const	Complete
				Design	Complete
Chicago	IL	Expand and improve 47th St Yard; Relocate METRA at 47th Street* Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design	In progress
				Grade/Pave	
Cloggsville	OH	Track Rehabilitation Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	In progress
				Const	In progress
			Bridge	Design	In progress
Cloggsville	OH	Construct second main Estimated Completion Date: 4Q99	Track	Design	In progress
				Grading	
				Const	
			Bridge	Design	In progress
			Signal	Const	
				Design	
Columbus	OH	Construct track connection Estimated Completion Date: 4Q98	Track	Design	Complete
				Grading	In progress
				Const	In progress
			Signal	Design	Complete
Crockett	VA	Construct 9,100 foot new siding Estimated Completion Date: 4Q98	Land		Complete
			Track	Design	Complete
				Grading	Complete
				Const	In progress
			Bridge	Design	Complete
			Signal	Const	In progress
				Design	Complete
				Const	In progress
Croxton	NJ	Expand and improve intermodal terminal Estimated Completion Date: 4Q99	Track	Design	In progress
E-Rail	NJ	Expand and improve intermodal terminal Estimated Completion Date: 3Q99	Track	Design	In progress
				Grade/Pave	
Erie	PA	Erie Track Realign Project Estimated Completion Date: 4Q99	Track	Design	In progress
				Grading	
			Signal	Design	
				Const	

\*Previously reported as separate projects.



# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project and Est. Completion Date	Dept.	Phase	Status
Flemington	NJ	Construct 12,500 foot siding <b>Estimated Completion Date: 4Q99</b>	Track	Design Grading Const	Project being defined.
			Signal	Design Const	
Hadley Jct (Ft Wayne)	IN	Double tracking <b>Estimated Completion Date: 4Q99</b>	Track	Design Grading Const	Project being defined.
			Signal	Design Const	
Hagerstown Sec (Greencastle)	PA	Traffic Control <b>Estimated Completion Date: 4Q99</b>	Signal	Design Const	
Harrisburg (Rutherford)	PA	Construct intermodal terminal <b>Estimated Completion Date: 2Q00</b>	Track	Design Grade/Pave	In progress
Harrisburg to Reading	PA	Traffic Control System and remove pole line <b>Estimated Completion Date: 4Q99</b>	Signal	Design Const	In progress
KD Tower to Cumberland Falls	KY	Extending double track 40,120 feet <b>Estimated Completion Date: 3Q99</b>	Track	Design Grading Const	Complete In progress
			Signal	Design Const	In progress
Knoxville to Chattanooga	TN	Double Stack Clearances <b>Complete</b>	Track	Design Const	Complete Complete
			Bridge	Design Const	Complete Complete
Marshfield	IN	Upgrade and extend siding 7,908 feet <b>Estimated Completion Date: 4Q98</b>	Land Track	Design Grading Const	Optioned Complete Complete
			Bridge	Design Const	In progress Complete
			Signal	Design Const	In progress Complete In progress
Oak Harbor	OH	Construct track connection <b>Estimated Completion Date: 4Q98</b>	Land Track	Design Grading Const	Complete Complete In progress
			Signal	Design Const	Complete In progress
Pattenburg	NJ	Clearance-9 Bridges <b>Estimated Completion Date: 4Q98</b>	Bridge	Design Const	Complete In progress
Pattenburg	NJ	Siding Extensions <b>Estimated Completion Date: 4Q98</b>	Track	Design Grading Const	Complete Complete
			Signal	Design Const	Complete In progress

# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project and Est. Completion Date	Dept.	Phase	Status
Pattensburg	NJ	Tunnel Clearance <b>Estimated Completion Date: 2Q99</b>	Bridge	Design Const	Complete
Philadelphia	PA	Construct crossover - Zoo <b>Estimated Completion Date: 4Q99</b>	Track	Design Grading Const	Project being defined.
			Signal	Design Const	
Piney Flats	TN	Extend siding 6,610 feet <b>Estimated Completion Date: 4Q98</b>	Land		Complete
			Track	Design Grading Const	Complete In progress In progress
			Signal	Design Const	Complete In progress
Port Reading	NJ	Chemical Coast Clearance Projects <b>Estimated Completion Date: 4Q99</b>	Track	Design Const	Complete In progress
			Bridge	Design Const	Complete In progress
Rader	TN	Extend siding 5,189 feet <b>Estimated Completion Date: 4Q98</b>	Land		Complete
			Track	Design Grading Const	Complete Complete In progress
			Bridge	Design Const	Complete Complete
			Signal	Design Const	Complete In progress
Reading to Philadelphia	PA	Traffic Control System and remove pole line <b>Estimated Completion Date: 4Q99</b>	Signal	Design Const	In progress In progress
Riverton Jct to Roanoke	VA	Clearance projects <b>Estimated Completion Date: 4Q98</b>	Bridge	Design Const	Complete In progress
Sandusky (Bellevue)	OH	Construct Triple Crown Terminal <b>Estimated Completion Date: 4Q98</b>	Track	Design Grade/Pave	Complete In progress
Sidney	IL	Construct track connection <b>Estimated Completion Date: 4Q98</b>	Track	Design Grading Const	Complete Complete In progress
			Signal	Design Const	Complete In progress
Sido	MO	Double tracking 36,458 track feet <b>Estimated Completion Date: 4Q98</b>	Track	Design Grading Const	Complete Complete In progress
			Bridge	Design Const	Complete In progress
			Signal	Design Const	Complete In progress
Sloan	IL	Extend siding 5,027 track feet <b>Complete</b>	Track	Design Grading Const	Complete Complete Complete
			Signal	Design Const	Complete Complete

# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## CONSTRUCTION AND OTHER CAPITAL PROJECTS

Location	ST	Project and Est. Completion Date	Dept.	Phase	Status
Southern Tier	NY	Southern Tier Rehabilitation Estimated Completion Date: 4Q00	Track	Const	Project being defined.
			Bridge	Design Const	<b>In progress</b>
St Louis (Mitchell)	MO	Expand Triple Crown Terminal Estimated Completion Date: 2Q99	Track	Design Grade/Pave	In progress
			Signal	Design Const	In progress
Toledo	OH	Intermodal Terminal Estimated Completion Date: 4Q99	Track	Design Grade/Pave	Project being defined.
Tolono	IL	Track Connection Estimated Completion Date: 3Q99	Track	Design Grading Const	Project being defined
			Signal	Design Const	
Vermillion	OH	Track Connection Estimated Completion Date: 4Q98	Land		<b>Complete</b>
			Track	Design Grading Const	Complete In progress
			Signal	Design Const	<b>Complete</b>

**Note:** Bold print indicates changes from previous report. If status of project phase is blank, work on that part of the project has not yet begun.

# Surface Transportation Board Operational Monitoring Report

*As of September 30, 1998*

## INFORMATION TECHNOLOGY

### *Systems Integration*

The NS technology integration strategy calls for NS systems to be used on the Conrail properties that NS will operate. Some of the NS systems will be operational for the new area effective Closing Date, while others, particularly the transportation systems, will be integrated geographically over a period of several months after Closing Date.

There are two components that are required to implement this strategy. First, NS's systems group must ensure that our systems have the capacity to accommodate the operation of the new territory. Second, the Conrail systems group must modify existing Conrail systems so that they will become compatible with the NS systems upon Closing Date.

**In order to prepare for the implementation of the new systems, each project must go through a planning stage and a development stage. The planning stage of the systems integration process involves the analysis and preparation of functional and technical specifications for the systems and the subsequent development stage involves the construction (coding), and testing of the systems. Once the new systems are implemented across all of the NS geography, use of the Conrail systems will be discontinued.**

**Note:** Bold print indicates changes from previous report.



# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## INFORMATION TECHNOLOGY

### *Systems and Personnel Training*

Operating Area	Project	Status
TRANSPORTATION		
Car Management and Movement	Systems – Multiple projects	Development stage Estimated completion date: 1Q99
Includes Thoroughbred Yard Enterprise System (TYES) and Central Yard Operations (CYO) System	Personnel Training	
	Prepare training materials for TYES and CYO	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	TYES training at Conrail Locations	Estimated beginning date: 1Q99
Train Dispatching	Systems	Development stage Estimated Completion date: 1Q99
	Personnel Training	
	Prepare computer-based training materials for Norfolk Southern Train Information System (TIS) and Train System Accident Reporting System (TSAR).	Complete
	Train Conrail employees at Dearborn, Pittsburgh, and Mt. Laurel	Estimated beginning date: Late 4Q98
Locomotive Management	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	Train employees at 8 Conrail locations	Estimated completion date: 1Q99

# Surface Transportation Board Operational Monitoring Report

As of September 30, 1998

## INFORMATION TECHNOLOGY

Operating Area	Project	Status
<b>OPERATIONS PERSONNEL</b>		
Crew Management	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Prepare training materials	Complete
	Train Conrail employees	Estimated completion date: 1Q99
Train and Engine (T&E) Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Train T&E crews	Estimated beginning date: 1Q99
Non-Train and Engine Payroll	Personnel Training	
	Prepare training materials; conduct pilot sessions	Complete
	Trainer orientation	Estimated beginning date: Late 4Q98
	Train Conrail employees	Estimated completion date: 1Q99
<b>CUSTOMER SERVICE</b>		
Electronic Customer Connectivity	Systems	Development stage Estimated completion date: 1Q99
	Personnel Training	
	Testing new systems	Estimated completion date: 1Q99
	Customer Coordination	
	Information to be distributed to customers	Estimated distribution date: 4Q98 - 1Q99
National Customer Service Center	Personnel Training	
	Prepare training materials	Complete
	Train employees in Pittsburgh and Atlanta	Estimated beginning date: Late 4Q98

Note: Bold print indicates changes from previous report.

# **Surface Transportation Board Operational Monitoring Report**

*As of September 30, 1998*

## **CUSTOMER SERVICE**

### ***Transition Process***

Effective October 3, 1998, NS will begin to divide physically the Pittsburgh National Customer Service Center (NCSC) into NS, CSXT and Shared Asset Company groups. Waybilling workstations have been ordered to accommodate additional anticipated needs. We are receiving Electronic Data Interchange test Conrail waybill data which is used to create test waybills. These waybills test route conversions, as well as help to update reference files used to identify customers, reciprocal switching and rates. Customer profiles are also being created and/or updated with information to enhance and facilitate call handling.

### ***Staffing and Training***

We are continuing our training of newly hired employees in the Atlanta Agency Operations Center to fill waybill positions to accommodate the increase in expected workload. We continue to remain prepared to make offers to Conrail employees to fill approximately 215 agreement positions as soon as implementing agreements are consummated with Transportation Communications International Union (TCU).

### ***Customer Awareness***

Advertising programs have begun to highlight the benefits of the consolidation for customers, communities and employees. We are erecting billboards at various locations and are providing television spots during local morning and evening news. Additionally, national newspapers, magazines and trade publications are publishing articles about the transaction.

NS continues to meet with customers to provide them with information on handling procedures after consolidation. Information has also been furnished and will be included in customer information packages being prepared by Sales and Marketing.

**Note:** Bold print indicates changes from previous report.

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ENTERED  
Office of the Secretary

JUN 15 1998

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

NOTICE OF CHANGE OF AFFILIATION OF COUNSEL  
FOR THE ALLIED RAIL UNIONS

Please be advised that Richard S. Edelman is no longer a principal in the firm of Highsaw, Mahoney & Clarke, P.C. but is now Of Counsel to O'Donnell, Schwartz & Anderson, P.C. Mr. Edelman will continue as counsel for the Allied Rail Unions in this proceeding but all decisions and copies of pleadings and correspondence in this matter should be served on Mr. Edelman at the following address:

O'DONNELL, SCHWARTZ & ANDERSON, P.C.  
1900 L Street, N.W., Suite 707  
Washington, DC 20036

Respectfully submitted,

A handwritten signature of Richard S. Edelman, written in dark ink, positioned above a horizontal line.

Richard S. Edelman  
Of Counsel  
O'DONNELL, SCHWARTZ & ANDERSON, P.C.  
1900 L Street, N.W., Suite 707  
Washington, DC 20036  
(202) 898-1824  
Counsel for Allied Rail Unions

June 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of June, 1998 caused to be served a copy of the foregoing Notice of Change of Affiliation of Counsel for the Allied Rail Unions by first class mail, upon all parties of record on the service list in this proceeding.

  
Richard S. Edelman

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**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1206

(202) 942-5000  
FACSIMILE: (202) 942-5099

DENNIS G. LYONS  
(202) 942-5858

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

188122

June 6, 1998

ENTERED  
Office of the Secretary

JUN 08 1998

Part of  
Public Record



Via Hand Delivery

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:

I am writing on behalf of Applicants to provide the information that Chairman Morgan requested from us at the close of the oral argument on June 4, 1998. The information is set forth in Attachments 1 through 4 to this letter, which I describe below.

Attachment 1 – Settlements With Provisions to be Imposed as Conditions

This contains a list of settlements with other parties all or portions of which the Applicants wish the Board to impose as conditions to any approval of the Primary Application.

Attachment 2 – List of Proffered Conditions

This contains a description of other conditions that are not set forth in settlement agreements but that Applicants consent to have imposed to accommodate concerns that have been expressed.

Attachment 3 – Other Settlement Agreements with Parties

This contains a list of other settlement agreements with various parties. The terms of these, of course, are binding on the parties thereto, but are not requested to be imposed as conditions to the Board's approval of the Transaction. Under the Board's precedent in the UP/SP proceeding, the Board may choose to require that Applicants adhere to their



**ARNOLD & PORTER**

The Honorable Vernon A. Williams  
June 6, 1998  
Page 2

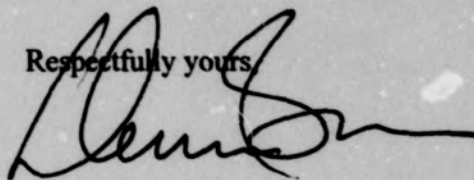
representations in these agreements. See Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, et al., at p. 12, fn. 14.

Attachment 4 -- Parties That Have Withdrawn From the Proceeding

This contains a list, to the best of our information and belief, of parties to the proceeding that filed comments, requests for conditions or responsive applications on or before October 21, 1997 that subsequently filed notices withdrawing from the proceeding or withdrawing their comments, requests for conditions or responsive applications in whole or in part.

Twenty-five copies of this letter and the attachments are being handed to you, together with a diskette containing the text hereof and thereof, readable in Word Perfect 7.0 format.

Respectfully yours,



Dennis G. Lyons  
Counsel for CSX Corporation and  
CSX Transportation, Inc

cc: Richard A. Allen, Esq.  
All Parties of Record

## **ATTACHMENT 1**

### **Settlements with Provisions to be Imposed as Conditions**

Buffalo & Pittsburgh Railroad and its affiliates, Allegheny & Eastern Railroad, Rochester & Southern Railroad, and Pittsburgh & Shawmut Railroad – Agreement with NS – Overhead trackage rights to Buffalo and Pittsburgh to be imposed.

Chicago, SouthShore and South Bend Railroad – Agreement with NS – Sale of Dillon-Michigan line to be imposed.

Cities of Bay Village, Rocky River and Lakewood – Agreement with NS – Agreement to be imposed in its entirety.

Cleveland, OH (subject to approval by City Council): Agreement of June 4, 1998 between CSX and City of Cleveland concerning various environmental mitigation measures to be imposed in its entirety (copy attached). The parties' intent is that this agreement supersedes the following Recommended Conditions of the Final Environmental Impact Statement ("FEIS") with respect to the City of Cleveland: 11, 37(A-F), 38(D). With respect to Recommended Condition 38(C), please note CSX's proposed modification in CSX's Comments on the FEIS, filed June 2, '998.

Cleveland, OH (subject to approval of City Council): Agreement between NS and City of Cleveland concerning various mitigation conditions.

Indiana & Ohio Railway Company – Agreement with NS – Trackage rights in Middleton, OH to be imposed.

Indianapolis, IN: Agreement of June 1, 1998 between CSX and City of Indianapolis concerning various commercial matters to be imposed in its entirety. (This agreement was submitted to the Board on June 1, 1998).

Maryland and Delaware Railroad – Agreement with NS – Overhead trackage rights at various locations on the Delmarva Peninsula to be imposed.

National Industrial Transportation League (NITL): Provisions I(A), II(A), II(B), and II(C) of the Agreement of December 12, 1997 among CSX, NS and NITL concerning various commercial matters to be imposed. (This agreement was submitted to the Board as an attachment to Applicants' December 15, 1997 Rebuttal.)

National Railroad Passenger Corporation (Amtrak): Paragraph 2(a) (oversight condition) of the agreement among CSX, NS, CR and Amtrak entitled Principles of Cooperation Concerning the Northeast Corridor, May 1, 1998 to be imposed. (This agreement was submitted to the Board on May 15, 1998.)

Wisconsin Central Ltd. - Agreement with NS - Sale and trackage rights on Chicago  
Panhandle Line to be imposed.

~~the City of Cleveland~~

## CLEVELAND SETTLEMENT

This Settlement Agreement dated June 3, 1997 by and between the City of Cleveland and CSX Corporation on behalf of its self and the railroad subsidiaries.

1. Community Impacts Fund - In consideration of Cleveland's concerns about adverse environmental impacts from the transaction, and in order to assist Cleveland with mitigation thereof, CSX will provide a total amount of \$10,700,000 (ten million seven hundred thousand dollars) to Cleveland over a period of five years for a Community Impacts Fund ("CIF") to be established by the City
  - A. Schedule of CSX Payments - CSX will make payments to Cleveland to fund the CIF as follows: An initial payment of \$2,140,000 (two million one-hundred forty thousand dollars) will be made no later than 30 days after the Closing Date of the Transaction, the balance of \$8,560,000 (eight million three hundred thousand dollars) will be paid in four equal annual installments, each installment of \$2,140,000 (two million one hundred forty thousand dollars) to be paid no later than 12 months after the prior payment.
  - B. Purpose and Use of CIF - Subject to Subsection 1D hereof, Cleveland will utilize the CIF at its sole discretion for mitigation projects designed to mitigate what the City deems to be adverse environmental impacts resulting from the Transaction and associated with the rail lines and facilities that will be operated in Cleveland by CSX post-Transaction. Such impacts may include, but are not limited to those in the areas of noise and vibration, noise mitigation structures and landscaping, emergency response and vehicular delay, hazardous materials transport and response, hazmat responder training, and emergency vehicular access, pedestrian and vehicular safety, grade crossing maintenance, and cultural preservation. CIF funds may be used for purposes determined by the City to be related to protection of the City's neighborhoods from the adverse impacts of the Transaction, which



may include but are not limited to projects designed to mitigate some or all of these impacts, including but not limited to noise mitigation projects, hazardous materials training and equipment, grade crossing maintenance projects, home value guarantees, fencing projects adjacent to parks and other pedestrian safety projects, landscaping, a maintenance endowment fund for maintenance of landscaping constructed or installed by the City, and other projects that, in the sole discretion of the City, are reasonably related to the impacts of the Transaction and are associated with the lines and facilities to be operated by CSX post-Transaction. It is also understood that the City may expend up to \$250,000 of CIF monies for improvements to Rockefeller Park, to the extent that the City determines that such proposals merit such expenditures. *and the African-American Cultural Garden*

C. Ownership and Maintenance of Noise Mitigation Structures and Landscaping -

Any noise mitigation structures and landscaping constructed or installed on CSX right of way or CSX property shall become the property of CSX and CSX shall be solely responsible for maintaining the structural integrity of such noise mitigation structures in accordance with applicable law and regulations, including all necessary preventive maintenance, ongoing maintenance and repairs; provided, however, that the City shall bear responsibility for keeping the walls free from graffiti or other visual defacement of such structures. The parties understand that the cost of construction of any such noise mitigation structure shall be paid out of the CIF funds or will be credited towards any obligation of CSX to contribute funds to <sup>City</sup> ~~CSX~~. The cost of maintaining such structures shall be borne by CSX, <sup>installed by the City</sup> ~~under Subsection 1-B hereof~~. The cost of maintaining the landscaping shall be borne by the City out of CIF funds.

D. Mitigation Required by STB The parties understand that the Surface Transportation Board may require mitigation for environmental impacts resulting from the transaction, including noise and safety mitigation in the City of Cleveland. The parties will request the STB to impose this Settlement Agreement as a condition to its approval of the Conrail Transaction and the Community

(initials)

JWS

within the City of Cleveland

Impact Fund as its sole mitigation for environmental impacts resulting from this transaction. The parties will cooperate in securing the STB's approval.

- E. Fencing and Other Landscaping - CSX will expend \$2.4 million (two million four hundred thousand dollars) in Cleveland over a five year period for fencing,

landscaping or other improvements to limit access to railroad property, and for the cost of installation of landscaping related to noise mitigation measures, and any other mitigation condition imposed by the Board relating to the City of Cleveland.

(initials)

JWS

- F. Further Study of Sensitive Receptors - The City and CSX specifically agree that the monies in the CIF agreed upon for measures to mitigate noise in the City of Cleveland were based on the City's assumption that 185 habitable homes will require home insulation under the criteria for mitigation established by the STB in the Final EIS. The parties agree that, within 90 days after the effective date of the STB's approval of the Transaction, they will conduct a joint assessment of the number of habitable houses that meet such criteria. If the parties agree that there are additional habitable houses that meet such criteria, CSX and the City each will contribute 50 percent of the cost of the noise mitigation for such houses, up to an additional \$10,500 per habitable house for mitigation of noise impacts. Should the City and CSX agree that there are fewer than 185 habitable homes requiring home insulation then CSX's contribution to the CIF shall be reduced by an amount equal to the average actual expenditure per house times the number of houses below 185.

JWS

(initials)

- G. Liability - In providing funds to the CIF, CSX does not in any way acknowledge that the mitigation projects to be implemented through the CIF are required as a matter of law. Nor does CSX acknowledge or warrant that the projects to be implemented through the CIF will necessarily achieve any mitigation or any particular level or degree of mitigation of the adverse impacts they are intended to remedy. To the extent permitted by law, Cleveland agrees to bear full legal responsibility for any and all damages, claims or injury arising out of the

administration of the CIF by the City, the selection, construction and installation of projects undertaken with CIF funds by the City. CSX agrees to bear full legal responsibility for any and all damages, claims or injury arising out of the construction and/or maintenance of noise mitigation structures by CSX pursuant to this Agreement. Further, Cleveland agrees to include in any contract related to the CIF for projects undertaken with CIF funds which requires the contractor to enter onto any property owned by CSX a requirement that the contractor maintain appropriate insurance and indemnify and hold harmless CSX against any claims related to the construction, installation or maintenance of such projects.

H. Approval Standards - To the extent that any noise mitigation structures are to be constructed or installed on CSX's right of way or other CSX property, the City shall be required to consult with CSX and to obtain CSX's concurrence with respect to the design, schedule for construction and/or installation, and, to the extent permitted by law, the identity of individuals or entities performing the construction and/or installation. CSX agrees not to unreasonably withhold such concurrence. The City understands that all noise mitigation structures or landscaping constructed and/or installed on CSX's right of way and/or property must be in compliance with any applicable federal law or regulations governing railroads, including but not limited to the regulations of the Federal Railroad Administration, and must conform with any applicable engineering and other standards of CSX. CSX shall grant the City such easements or licenses as may be necessary for construction and/or installation of such noise mitigation structures and landscaping.

2. Capital Improvements - CSX intends to spend \$28.1 million (twenty-eight million one hundred thousand dollars) for major track and infrastructure improvements, including the installation of continuous-welded rail, on the Short Line and to invest \$10.1 million (ten million one hundred thousand dollars) to construct a new intermodal terminal and make other improvements at Collinwood Yard.



3. Bridges, Crossings and Properties - CSX agrees to maintain the railroad bridges, at-grade crossings and properties in Cleveland that it will acquire from Conrail, consistent with any existing Conrail agreements pertaining to those bridges, crossings and properties, and in accordance with all enforceable and applicable laws.
4. Surplus Property Within 90 days of the Closing Date of the Transaction, CSX agrees to provide the City with an inventory of all non-operating properties in Cleveland that will be acquired. CSX commits to work with the City to establish a process to develop and market those properties which CSX determines to be surplus. The City further agrees to provide to CSX all City services that are commensurate with its standing as a valued corporate citizen of the City of Cleveland.
5. Billboards - CSX will provide the City with an inventory of all billboard leases for billboards on CSX's post-Transaction rights of way, bridges and other property in Cleveland, within 90 days from the Closing Date of the Transaction. Such inventory shall indicate, to the extent that the information is available to CSX, the locations of the billboards covered by the lease and the terms of such leases. Where such information is not available to CSX, CSX shall provide the City with pertinent information about the lease or prior parties interest to the lease that is reasonably available to CSX. CSX agrees not to enter into any lease that would have the effect of adding a billboard to a location where there is no billboard or increasing the number of billboards at a location where there is already one or more billboards, as of the Closing Date of the Transaction.
6. Emergency Response and Training - CSX is committed to working with the City of Cleveland to develop comprehensive pre-emergency response plans that are realistic and effective for the prevention and mitigation of CSX rail incidents. A detailed proposed Emergency Response Plan has been submitted to the City. CSX agrees to adopt and implement this plan. Furthermore, CSX agrees to reimburse the City for the following costs, which may be associated with response to a hazardous materials incident:



- A. Use of expendable items on an as used basis (firefighting foams, absorbents, detector tubes, disposable protective clothing or other similar one time use items). Costs will be on a replacement cos. basis using current items prices.
- B. Overtime costs for response or support personnel used beyond normal shifts or hours.
- C. Callback costs for manpower necessary to provide normal coverage for fire, rescue and police protection.
- D. The City will prepare one invoice for the incident detailing costs by city department to include listings for manpower costs, expendables used and other cost incurred during the response. This invoice will be forwarded to CSX Transportation, 300 Water Street, Jacksonville, FL 32202 Attn: Hazardous Materials Group.

In addition to its own program, CSX agrees to install two OREIS software packages and to train the City's personnel in the use of such software; and to provide the City with annual reports of the number of carloads of hazardous materials that have moved through the City (including a breakdown by four digit STCC code of the types of materials transported.) The cost of such OREIS installation, software and training shall be paid out of or credited towards the CIF.

7. Community Advisory Committee - The parties hereby acknowledge their intent to continue the working relationship that has developed between them and to work together to strengthen that relationship over time as long as CSX conducts operations in the City. CSX and the City agree to jointly establish a Community Advisory Committee comprised of members approved by the Mayor, CSX, and the City Council. The purpose of the Committee shall be to provide a forum for ongoing discussion and dialogue between CSX and the City regarding any issues of concern. The Committee shall meet regularly beginning in the first quarter after the Closing Date of the Transaction.

The Advisory Committee shall include 3 members from CSX, 3 appointed by Mayor, 3 by City Council, and 3 members of the community appointed by the Mayor, with City Council

8. Job Opportunities/Economic Development - CSX will work cooperatively with the City of Cleveland to create job opportunities at local CSX facilities and to identify rail-served businesses that can be located within Cleveland. CSX will make the resources of its Industrial Development program available to the City to assist in economic development initiatives. CSX will endeavor to hire up to 40% of the permanent terminal jobs established during the start up period at its expanded intermodal facility from among qualified residents of Cleveland.
9. Train Operations - CSX has not offered to restrict any train operations by hour of day because that would impair the service demanded by our shippers and would result in loss of business and loss of jobs. However, as information, the current Operating Plan provides that 70% of the CSX trains will operate between 7:00 a.m. and 9:00 p.m. Based on current projections, CSX has discussed limiting maximum train lengths to no more than Conrail's current maximum train lengths during construction of sound mitigation. Train speed will be limited to 30 miles per hour from Collinwood to the ~~RPT tracks near University Circle~~. *Handwritten: TWS, MLW, Howard Tunnel*
10. Conditions No. 65 and Consultation with City - CSX agrees that it will not oppose the imposition by the STB as a condition of its approval of the Transaction of Condition No. 65 in the Final Environmental Impact Statement, which states the following: "If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental conditions in this Decision, and upon petition by a party who demonstrates such material changes, the Board may review the continuing applicability of its final mitigation, if warranted." CSX agrees that, for the purposes of this Agreement, the implementation of any tunnel enlargement to the five existing railroad tunnels in the City of Cleveland on the Short Line will constitute a "material change in the facts or circumstances" within the meaning of Condition No. 65. Six months prior to making any such tunnel enlargement, CSX will notify the City of such improvement and provide it an environmental assessment of anticipated noise or safety impacts associated therewith and any mitigation proposed by CSX for such impact. CSX and the City will

consult on such assessment and mitigation and use their good faith efforts to resolve any differences over the 120-day period immediately following such notice. In the event that CSX and the City are unable to agree, then CSX will not oppose on procedural grounds a petition by the City of Cleveland to reopen the Proceeding based upon the aforesaid material change in the facts or circumstances, in accordance with said Condition No. 65. Notwithstanding the foregoing, CSX reserves the right to take such position on the merits of any request for additional mitigation that Cleveland may make in such a petition to reopen. The parties understand that the aforesaid references to tunnel enlargement do not include any maintenance or repair of any such existing tunnel or any improvement to such tunnels necessary in CSX's reasonable judgment for safe operations.

11. Frequency Study - CSX has previously advised the City that its Operating Plan contemplates the routing of approximately 44 trains on the Short Line and approximately 12 trains on the Lakeshore on an average daily basis, and that the crossover at Hayes limits the number of trains that CSX can safely and efficiently operate over the Lakeshore. CSX hereby reaffirms the above and commits to operate 12 trains on the Lakeshore on an average daily basis subject to NS making its facilities available for CSX's safe and efficient operation with schedules satisfying customer requirements. In addition to the foregoing, with respect to the Lakeshore CSX shall conduct, within six months from the Closing Date of the Transaction, a study with Norfolk Southern to determine whether two additional CSX trains can be operated over the Lakeshore in a safe and efficient manner, without interference with CSX and NS main line train operations, and with schedules that satisfy customer requirements. CSX shall furnish the City a copy of the study. The parties understand that Condition 65 may apply in the event of any material change in accordance with its terms.

12. East 152<sup>nd</sup> Street Improvements - CSX agrees to Condition 37 (e) of the Final EIS that states CSX will make traffic and signal improvements along 152<sup>nd</sup> Street to improve the movement of trucks to the Collinwood Intermodal facility.

If the study concludes that two additional trains can be operated over the Lakeshore in a safe and efficient manner, without interference with main line trains and with schedules satisfying customer requirements, CSX will do so.



13. Other Community Projects - CSX agrees to sponsor the annual model train exhibit in Cleveland that was previously sponsored by Conrail.
14. Submission to the City Council - Upon execution of this Agreement, the City's Mayor and appropriate Director(s) shall immediately take all actions necessary to place this Agreement before the Council of the City of Cleveland for its earliest consideration. The Mayor and such Director(s) shall recommend to the City Council that its approve this Agreement and shall take all other necessary and appropriate actions to ensure the most expeditious consideration of the Agreement by the City Council.
15. STB Notification - Promptly upon execution of this Agreement and its approval by the City Council:
- as the side one exclusive obligation for the City*
- A. CSX and Cleveland will notify the STB in writing that they have entered into this Agreement and will advise the STB of the terms of this Agreement. CSX and Cleveland will further request at that time that the STB adopt the terms of this agreement as a condition of the STB's approval of the Conrail Application; and
- JWS*
- B. The City will advise the STB in writing that, in consideration of this Agreement, it is withdrawing its opposition to, and its request for conditions upon, so much of the Conrail Application as it relates to CSX's acquisition of control of Conrail and CSX proposed post-transaction rail operations.
16. STB Approval Process - The proposals made herein by CSX are conditioned upon: (1) CSX being able to secure the Surface Transportation Board's approval of the Conrail Transaction and acceptance of this Settlement Agreement as provided herein; (2) CSX being able to implement the CSX/Norfolk Southern Operating Plan that will move CSX trains over the Short Line and to the Collinwood terminal; and (3) the City of Cleveland's withdrawal of its opposition to the transaction; and (4) agreement by the City not to initiate or be a party to litigation related to either the transaction or the proposed CSX Operating Plan except for any action related to the enforcement of this Agreement or the



City's participation in the STB's oversight process. Upon joint acceptance of this proposal, CSX and the City of Cleveland agree to work cooperatively toward implementation of the Operating Plan.

Agreed and Accepted this 4th day of June, 1998.

The City of Cleveland, Ohio

CSX Corporation

By: 

Michael R. White  
Mayor

By: 

John W. Snow  
Chairman, President & CEO

## **ATTACHMENT 2**

### **List of Proffered Conditions**

NS and CSX consent to the imposition of the following conditions, as indicated in the respective attachments:

1. Indianapolis Power & Light. See attached.
2. Three Ohio Aggregate Shippers. See attached.
3. "East of Hudson" Issues. See attached.
4. "Chinese Wall" regarding APL Conrail Contracts. See attached.
5. Wheeling & Lake Erie Railway Company. See attached.
6. Buffalo-Niagara. See attached document "CSX Agreements and Proffer of Conditions and Representations with Respect to the Buffalo-Niagara Area."

**PROFFER OF CONDITIONS WITH RESPECT TO  
IP&L COAL TRAFFIC TO STOUT PLANT AND  
PERRY K PLANT IN INDIANAPOLIS**

**CSX and CSXT proffer the following conditions:**

**1. IP&L STOUT PLANT**

**A. CSXT and the Indiana Rail Road Company (INRD), CSXT's subsidiary, shall file a tariff or otherwise provide for the movement of coal traffic for the account of IP&L between Indiana Southern Rail Road (ISRR) (Crawford Yard) and the Stout Plant. The charge will be equal to the sum of the Conrail charge that has existed for the last several years, to move coal trains from the Indiana Southern Railroad (ISRR) interchange to the INRD interchange plus the INRD charge to move coal trains from the Conrail interchange to the Stout Plant.**

**B. INRD shall file a tariff or otherwise provide for the movement of coal traffic for the account of IP&L between NS at Hawthorne Yard and the Stout Plant. That charge will be the same as the total charge in 1.A above. This will provide the economic access which IP&L asserts it will lose because of the loss of the alleged "build out" option from Stout, and will be in lieu thereof.**

**C. The term of the tariff or arrangements covering the rate for the movements in 1.A shall be twenty years. Rates shall not be adjusted for a period of five years from the effective date. Thereafter, rates shall be adjusted upward or downward quarterly by a factor equal to RCAF(U). At no time will the rates be adjusted below the rate on the effective date of the division of Conrail's routes.**

**2. PERRY K PLANT. While CSXT asserts that Perry K is not a two-to-one facility, CSXT treats it as such in the Application. Thus, after the division of Conrail's routes, Perry K will be open to reciprocal switching. For switching of non-CSXT traffic from Hawthorne Yard to Perry K, CSXT shall publish a cost based tariff charge subject to the cap provided for in the Settlement Agreement with the City of Indianapolis dated June 1, 1998. For existing CR contract rates for switching INRD and ISRR traffic from interchange to Perry K, CSXT shall publish a tariff charge that will maintain the status quo. The tariffs referred to in this paragraph shall also each contain a provision prohibiting any increase in the charges for a period of five years from the effective date.**

\* \* \* \* \*

**CSXT and INRD shall take all necessary steps in connection with Board filings to give effect to the foregoing conditions. The foregoing conditions will become effective upon the commencement of separate operations by CSXT and NS after the Closing Date under the Transaction Agreement dated as of June 10, 1997.**

**This proffer of conditions will not be effective if any condition not consented to by CSX or CSXT is imposed in this docket with respect to the handling of traffic, assignment or allocation of routes, or provision of trackage rights, in Indianapolis.**



**PROFFER OF CONDITION WITH RESPECT TO  
THREE OHIO AGGREGATE SHIPPERS**

CSX, CSXT, NS and NSRC proffer the following condition:

**The benefits of that certain "Settlement Agreement" attached hereto shall be made available to the shipper parties named therein regardless of whether they agree to such Agreement or not.**

This proffer of condition will not be effective if any condition not consented to by CSX, CSXT, NS and NSRC is imposed in this Docket with respect to the handling of traffic, assignment or allocation of routes, or provision of trackage rights, with respect to the service to be provided to the shippers named in such Agreement.

## **SETTLEMENT AGREEMENT**

**NORFOLK SOUTHERN CORPORATION (NS) and CSX CORPORATION (CSX) on behalf of their rail carrier subsidiaries, have filed an application before the Surface Transportation Board (STB) in Finance Docket No. 33388 (Application) for the authority to operate and control specified portions of Conrail.**

**CSX and NS recognize that the transportation attributes of short-haul aggregate do not in all instances lend themselves to efficient joint line rail service.**

**CSX and NS further recognize that CSX will operate certain Conrail lines in western Ohio that will serve stone origin points of MARTIN MARIETTA MATERIALS, INC. (Martin), NATIONAL LIME AND STONE COMPANY (National) and WYANDOTTE DOLOMITE, INC. (Wyandotte) and NS will operate certain Conrail lines in eastern Ohio that will serve stone destination points for these stone shippers.**

**In light of the foregoing, CSX and NS agree as follows:**

- 1. NS will grant CSX operational rights between Crestline and Wooster, Ohio, so that CSX may provide the functional equivalent of single-line service to National's aggregate traffic between Spore and Wooster, Ohio.**
- 2. NS will grant CSX operational rights between Crestline and Alliance, Ohio, so that CSX may provide the functional equivalent of single-line service for Wyandotte's aggregate traffic between Carey and Alliance, Ohio.**
- 3. CSX will grant NS operational rights between Toledo and Woodville, Ohio, so NS may provide the functional equivalent of single-line service to Martin for aggregate traffic between Woodville and Twinsburg, Ohio, and between Woodville and Hugo, Ohio.**
- 4. CSX will have full pricing authority for rates and transportation contracts for the rail transportation outlined in Paragraphs 1 and 2 above. NS will have the same pricing authority for the rail transportation outlined in Paragraph 3 above.**
- 5. The above-mentioned operating rights and single-line service will pertain to shipments to current receivers of stone shipments at the above-referenced destinations in unit trains or blocks of 40 or more cars, and will apply only to movements of aggregate, and not to lime, shipments. This arrangement will remain in place for five (5) years. Renewal will be at the mutual discretion of NS and CSX.**

6. NS and CSX will endeavor to provide competitive rates and joint-line service from Woodville, Carey and Spore, Ohio, to lime receivers local on NS.

**NORFOLK SOUTHERN  
CORPORATION**

By: \_\_\_\_\_

**MARTIN MARIETTA MATERIALS, INC.**

By: \_\_\_\_\_

**NATIONAL LIME AND STONE COMPANY**

By: \_\_\_\_\_

**WYANDOTTE DOLOMITE, INC.**

By: \_\_\_\_\_

**CSX CORPORATION**

By: \_\_\_\_\_

Martin, National, and Wyandotte agree to promptly rescind and withdraw their requests for protective conditions, rescind their support for conditions proposed by others, and opposition to the Application at the STB, and support the proposed transaction.



**PROFFER OF CONDITIONS WITH RESPECT TO  
EFFECTIVENESS OF SUPPLEMENTAL  
RATEMAKING AGREEMENT WITH CANADIAN  
PACIFIC RAILWAY COMPANY (CP) AND ITS  
AFFILIATES FOR CP INTERMODAL SERVICE  
EAST OF THE HUDSON AND FOR OTHER  
ENHANCEMENTS REGARDING THE PROVISION  
OF RAIL SERVICE EAST OF THE HUDSON**

CSX and CSXT (collectively "CSX") proffer the following conditions:

1. That certain "Supplemental Ratemaking Agreement" dated May 29, 1998, between and among CSXT, CSXI and CP and its affiliates shall be permitted to come into effect by CSX and shall not be terminated by CSX pursuant to the power reserved to CSX under Section 4 of such Supplemental Agreement, notwithstanding the failure of any governmental entity referred to therein to support CSX's proposed acquisition of the East of the Hudson lines.

Explanation: Under an Agreement ("Agreement") dated October 27, 1997, and a Supplemental Agreement ("Supplemental Agreement") dated May 29, 1998,<sup>1</sup> CSX has agreed to provide Canadian Pacific (CP) with competitive access by means of minimum revenue factors and haulage to specified points in New York City and Long Island to be served by CSX or for interchange with New York & Atlantic at rates mutually agreed to by CP and CSX for specified intermodal and carload traffic. CSX and CP have agreed to negotiate in good faith and, from time to time, make modifications to the Supplemental Agreement and/or enter into new agreements to increase overall rail freight traffic to and from these markets. CSX intends to use reasonable commercial efforts to operate trains moving CP traffic in an efficient manner in accordance with its agreements with CP involving the aforesaid service. The effectiveness of the Supplemental Agreement could be terminated by CSX, under Section 4 of the Supplemental Agreement, if certain State and/or local authorities did not support the Transaction. Although that support was not forthcoming, CSX is willing to permit the Supplemental Agreement to remain in force despite the failure of those authorities to give their support, if the Board approves the Transaction without further relevant conditions. Condition No. 1 accordingly would waive CSX's right to terminate the

---

<sup>1</sup> A copy of the Supplemental Agreement is attached hereto. Certain rate information has been redacted as confidential.



Supplemental Agreement set forth in Section 4 of the Supplemental Agreement.

2. **CSX shall offer to support New York City's Cross Harbor Freight Movement Major Investment Study, at CSX's expense. This support will include the provision of technical analysis and railroad operational and marketing information and such other advice and support as may be reasonably requested by the City from time to time. The purpose of this support will be to provide the City with railroad perspective and expertise relative to the project and to assist the City in its analysis of alternatives. CSX's support will not preclude the City from seeking any additional input from any other source, nor will CSX's participation be construed as any commitment by any party to a recommended action.**

Explanation: For a discussion of this important and extensive Study, see Applicants' Rebuttal, CSX/NS-176 at VIII 24. CSX believes it can make a substantial contribution to the Study which has received considerable publicity and has been federally funded through efforts of the New York Congressional Delegation.

3. **Within ninety (90) days of approval of the Joint Application, CSX shall offer to the City of New York to establish a committee ("Committee") which will be comprised of representatives of the parties and such other entities as may be agreed upon by the parties. The goals of the Committee will be to develop ways to promote the development of rail traffic to and from the City, with particular emphasis on the Hudson Line, as well as ways to address the City's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient and profitable rail freight service. The parties may agree to share economic development information and marketing plans for the growth of rail traffic to and from the City, provided, however, that any such information or plans that may contain sensitive or competitive market information shall not be disclosed.**

Explanation: CSX is enthusiastic about the potential for rail freight development East of the Hudson River, and the results of its initial marketing analyses have been quite favorable. CSX believes that the Committee will afford an opportunity to promote rail oriented economics development east of the Hudson.

This proffer of conditions will not be effective if any condition not consented to by CSX or CSXT is imposed in this Docket with respect to the handling of traffic, assignment or allocation of routes, or provision of trackage rights, with respect to the lines of railroad of Conrail to be allocated for operation by CSXT in the area East of the Hudson River.

May 29, 1998

## SUPPLEMENTAL RATE MAKING AGREEMENT

This Supplemental Rate Making Agreement (the "Supplemental Agreement") dated and effective as of May ~~29~~ 29, 1998 is by and between CSX Transportation, Inc. ("CSXT") and CSX Intermodal, Inc. ("CSXI"), on the one hand (jointly "CSX"), and Canadian Pacific Railway Company ("CPR"), Soo Line Railroad Company ("SOO"), Delaware and Hudson Railway Company ("DH") and St. Lawrence and Hudson Railway Company ("STLH") on the other. CPR, SOO, STLH, and DH are jointly referred to as CPR.

WHEREAS, CSXT, CSXI, and CP entered into a Rate Making Agreement dated as of October 20, 1997 (the "Agreement") establishing revenue factors for certain Merchandise Shipments and Intermodal Shipments to be operated in joint line service between CP and CSX in the event of approval of the Application involving Conrail, and, in conjunction therewith, CP agreed to support the Application, all as described in said Agreement;

WHEREAS, CSX has been negotiating a settlement with the City of New York ("NYC") and the State of New York ("NYS") involving their opposition to the Application, and, as part of that settlement, CSX has agreed to provide certain additional, competitive access to CP on the lines of Conrail east of the Hudson, all upon terms and conditions mutually agreeable to CSX and CP;

WHEREAS, CSX has previously discussed with CP the NYS and NYC desire to introduce competitive intermodal rail service and CSXT has also proposed that CP join with CSXI in the provision of intermodal rail service between Montreal and New York City, a lane that is currently truck dominated; and

WHEREAS, the parties now desire to supplement their earlier agreement by the following terms and conditions.

NOW THEREFORE, in view of the foregoing statements that form the factual basis of this Agreement and in view of other good and valuable consideration, the parties agree as follows:

1. **Intermodal Shipments:** In addition to the provisions governing intermodal shipments on the "West Hudson" route as specified in Exhibit A to the Agreement, CSX and CP hereby establish the following terms and conditions for intermodal movements on the "East Hudson" route which is between Montreal and Harlem River Yard, Bronx, New York, via Selkirk, NY or other mutually agreeable location. These "East Hudson" terms and conditions shall apply to and take effect upon the commencement of operations at an intermodal facility in such

Yard, which the parties understand is planned to be constructed under arrangements governing the lease of the Yard by third parties.

- A. **Haulage Blocks:** CSXT shall haul in its trains blocks of CP intermodal cars upon the terms and conditions set forth in Exhibit 1 hereto. It is contemplated that such blocks of CP intermodal cars will be hauled by CSXT in regular train movements handling blocks of CP Merchandise Shipments and CSX merchandise and intermodal cars.
- B. **Joint CSXT/CP Intermodal Trains:** In the event CSXI and CP intermodal shipments enlarge so that economical and efficient joint dedicated intermodal train operations may be commenced by CSXI and CP, the parties will negotiate arrangements upon mutually agreeable terms and conditions for CSXT's operation of such Joint Intermodal Trains which shall provide for the equitable sharing of the cost of such operation on a usage basis and for a per car charge applicable to CP cars established per subparagraph (C) hereof.
- C. **Exclusive CP Intermodal Haulage Trains:** In the event CP desires to establish exclusive CP Intermodal Haulage Trains, the parties will negotiate arrangements for CSXT's operation of such Exclusive Trains which shall provide for CP's provision of locomotives and equipment for such trains and for CSXT's haulage of same with CSXT's crews upon terms and conditions which reflect the industry normal track and haulage charges and minimums and CP will pay any excessive charges over and above our agreed upon rate for trackage costs on Metra North and Amtrak. In addition CP would be responsible for all crews and other associated direct costs for operation of the train, and other customary terms and conditions comparable to the parties' Chicago-Detroit agreement.
- D. **With respect to Joint CSXT/CP Intermodal Trains and Exclusive CP Intermodal Trains** the following additional provisions apply: first, the arrangements to be negotiated for such trains will include provisions for the interchange of such trains to the New York and Atlantic Railroad (or any other successor rail carrier conducting freight operations on Long Island Railroad freight territory) at Fresh Pond and any other mutually agreeable facilities, all with reasonable additional compensation to CSXT for movement beyond Harlem River Yard; second, as part of the negotiation with respect to such trains CSXT agrees to provide for the use of non-conventional equipment on such trains so long as such equipment can be operated safely and in accordance with the operating rules and practices established by the AAR, CSXT and Metro North and that the CP bears any cost and expense necessary to accommodate such equipment on such trains and on the East Hudson Route, however, such consideration will give due regard to the limited train capacity and limited terminal facilities on this East Hudson Route, as well as the customary dealings, tradings and negotiations of the parties for the



handling of each other's intermodal shipments; and third, the parties understand that the restriction on Intermodal Shipments that limits the East Hudson Route to origin and destination locations in Canada at or east of Toronto, Canada may be modified from time to time by mutual agreement of the parties which the parties will undertake to negotiate in good faith, but that such modification will be considered in the context of the limited train capacity and limited terminal facilities on this East Hudson Route, as well as the customary dealings, tradings and negotiations of the parties for the handling of each other's intermodal shipments.

2. **Merchandise Shipments:** Section 5.A.(ii) of the Agreement establishes Minimum Revenue Factors for certain Merchandise Shipments between Albany, NY and specified points in New York City and Long Island. As provided under Section 3 thereof, such Factors apply only to Merchandise Shipments, including waste, that are currently transported by truck. The parties hereby agree to modify those provisions as follows: The Minimum Revenue Factor per car specified in Section 5.A.(ii) shall apply to cars containing waste or containers of waste (maximum 2 containers per car) regardless of whether such Merchandise Shipments are currently transported by truck, provided however, that such Merchandise Shipments involving waste shall otherwise be governed by the provisions of the Agreement pertaining to Merchandise Shipments and shall not be governed the provisions of the Agreement or this Supplemental Agreement pertaining to Intermodal Shipments.
3. CP reaffirms its full and unconditional Support of the Application and will indicate to NYS and NYC this Supplemental Agreement's acceptability to CP. CP will join with CSX in discussions and communications with NYS and NYC that support this Settlement over earlier proposals by CP, NYS, NYC and others.
4. The parties understand that this Supplemental Agreement will become effective and have the same term as provided in the Agreement, except that in the event that certain governmental entities do not support CSX's proposed acquisition of the East of the Hudson lines in a manner reasonably satisfactory to CSX or if the STB imposes any condition unacceptable to CSX with respect to its acquisition of such lines, then CSX may terminate this Supplemental Agreement by giving five (5) days' written notice of such termination to CP.
5. Except as otherwise provided herein, the Agreement remains in full force and effect. The term of this Supplemental Agreement shall be the same as the Agreement.



IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement as of the date first above written.

CANADIAN PACIFIC RAILWAY  
COMPANY  
SOO LINE RAILROAD COMPANY  
DELAWARE AND HUDSON  
RAILWAY COMPANY  
ST. LAWRENCE & HUDSON  
RAILWAY COMPANY LIMITED

BY: Paul A. Malone  
VICE PRESIDENT CRR  
PRESIDENT/COO DuPont

CSX TRANSPORTATION, INC.

By: CH P. [Signature]  
THE: VP Chemicals

CSX INTERMODAL, INC.

By: Peter A. Rutski  
THE: VP Business Planning

## Exhibit 1 Schedule of Charges

### Haulage Blocks

Intermodal haulage service of trailers and/or containers on intermodal flatcars or empty flatcars between Selkirk, New York (CSXT/CP Interchange on CP trains to or from locations in Eastern Canada at or East of Toronto, Canada) and the interchange to Harlem River Yard Intermodal Terminal.

Southbound: \$	per Loaded and \$	per Empty Conventional Railcar
Northbound: \$	per Loaded and \$	per Empty Conventional Railcar

### Notes:

1. Railcar and trailer per diem will remain in Canadian Pacific's account.
2. No Terminal Services, Lift Services or Ancillary Services at Harlem River Yard Intermodal Terminal are included in the haulage service.
3. Haulage block charges apply on a minimum tender of five conventional railcars and a maximum tender of 20 railcars. On tenders of more than ten cars, CP must obtain CSXI's prior approval which shall not be unreasonably withheld in the event of adequate capacity and the non-interference with train operations.
4. Haulage blocks shall be handled in regularly scheduled CSXT trains. Haulage will be performed in accordance with operating rules and clearance restrictions of CSXT and Metro North.
5. Charges between Selkirk, New York and Harlem River Yard Terminal shall apply only on traffic having its origin or destination location in Canada at or east of Toronto, Canada.
6. If at the end of the first year of service CSXI determines that the cost of operation exceeds the agreed upon haulage charge, CPR would agree to negotiate increased haulage charges.
7. Charges shall be adjusted per the terms of Section 6 of the main agreement.
8. CP shall be liable for and hold CSXT and CSXI harmless from and against any and all liability, cost or expense arising out of loss, damage or destruction to equipment and lading in CP's account, regardless of considerations of fault or negligence by CSXT or CSXI with respect thereto.

05/29/98

9. CP and CSX may agree from time to time to locations other than Selkirk, New York for interchange of Haulage Blocks.
10. In the event that single platform or multiple platform articulated railcars are handled, every two platforms, each capable of handling one trailer or container, will count as one conventional railcar for purposes of charges and car counts.
11. In the event that the proposed Harlem River Yard Terminal is not open by January 1, 1999, CP and CSXI will seek to establish another mutually acceptable location for handling the Haulage Blocks, upon terms and conditions comparable to those provided in this Agreement and Exhibit 1.
12. Haulage charges apply upon freight all kinds, with the exception of those shipments containing any of the following commodities which CSXI will not accept for haulage.
  - a) Newly assembled complete automobiles by auto manufacturers; (unless provided for in a specific rate quotation);
  - b) Living animals;
  - c) Articles described under Rule 3 of the Uniform Freight Classification (UFC);
  - d) Bulk commodities or products which are loosely put into container without any packaging material and are unable to be properly braced and blocked, including but not limited to, logs, lumbers, or other forest products, bulk liquid bladders, and scrap metals; (unless provided for in a specific rate quotation);
  - e) Chemicals derived from vanadium ore;
  - f) Hazardous commodities not listed in BOE 6000 IM Tank Table;
  - g) Materials designated Class 1.1, 1.2 or 1.3, explosives or poisonous gas, in regulations of the U.S. Department of Transportation;
  - h) Missiles, guided, or Rockets, guided; guidance systems or electronic guidance control apparatus for installation in missiles or in missile sections; missile or rocket assemblies containing electronic apparatus, or mobile missile guidance control systems, as described in Items 80761 to 80768 of the UFC;
  - i) Polychlorinated biphenyl's (PCB);
  - j) Radioactive Materials, hazardous, having no reclamation value, as described in part 261 of Title 40, code of Federal Regulations;

- k) Vanadium Acid;
- l) Waste materials, hazardous (See part 261, Title 40, code of Federal Regulations, STCC-48);
- m) Municipal and industrial solid waste or garbage;
- n) Waste etiologic agent, NOS (i.e., surgical , pathological, and laboratory waste, waste hospital needles, syringes and IV tubing).





**CANADIAN  
PACIFIC  
RAILWAY**

2nd FLOOR  
500 The Hub  
105 South Main Street (3340)  
PO Box 330 (3340-0330)  
Montreal, Quebec

Telex 250-8110  
Fax (514) 397-8889

June 2, 1998

Mr. Peter A. Rutaki  
Vice President Business Planning  
CSX Intermodal  
301 West Bay Street  
20th Floor  
Jacksonville, FL 32202

Dear Pete;

This is to memorialize our understanding with regard to CSX's request that CP entertain a proposal from CSX to establish intermodal train service from CSX points to a location in or near Montreal.

Please be advised that CP is prepared to entertain such a proposal from CSX under the following terms and conditions:

1. The service would operate between Salkirk, N.Y. and a location in Montreal area subject to agreement by both CP and CSX.
2. The service would be limited to intermodal equipment only.

Nothing herein shall be construed as containing a binding or enforceable contract between the parties. This letter is intended solely to reflect CP's willingness to enter into negotiations with CSX for the implementation of such service.

Very truly yours,

*P. D. Gilmore*  
P. D. Gilmore  
Chief Operating Officer  
St. Lawrence/Hudson Bay  
Vice President CPR

CSX INTERMODAL, INC.

By: *Peter A. Rutaki*  
Title: VP Business Planning  
CSX Intermodal

**PROFFER OF CONDITION WITH RESPECT TO  
APL CONTRACT CONFIDENTIALITY**

CSX and CSXT proffer the following condition:

A "Chinese Wall" in conventional form shall be imposed by CSX, CSXT and CSXI so that neither the contracts of Conrail with APL nor any confidential information contained in or touching or concerning such contracts shall be made available to Sea-Land or any of its officers or employees, such "Chinese Wall" arrangements to be for the protection and benefit of APL.

**CONDITION WITH RESPECT TO  
WHEELING AND LAKE ERIE**

NS consents to the imposition of a condition granting overhead trackage or haulage rights to the Wheeling and Lake Erie Railway Company between Bellevue and Toledo, Ohio with rights to interchange with all railroads serving Toledo.



## **CSX AGREEMENTS AND PROFFERS OF CONDITIONS AND REPRESENTATIONS WITH RESPECT TO THE GREATER BUFFALO AREA**

The matters referred to in boldface in paragraphs 1, 2, 3 and 4 are proffered as conditions by CSX, and the matters referred to in paragraphs 5-8 are offered by CSX as representations which the Board may consider as representations in the same manner as set forth in footnote 14, page 12, of the Board's decision of August 12, 1996, in the UP/SP case.

### **Conditions**

#### **1. Lower switching fees between CSX and NS in the Greater Buffalo area**

- **For a period of five years from the Closing Date of the Conrail Transaction, CSX shall reduce to \$250 per car, subject to RCAF-U adjustments, the reciprocal switching fee between NS and CSX at all points on Conrail in the Greater Buffalo area that were open to reciprocal switching to NS as of June 23, 1997.**

Explanation: Under this condition, CSX will establish for this area the same \$250 reciprocal switch rate that CSX and NS generally charge each other elsewhere on their respective systems. This results in an approximate 45% reduction from the existing Conrail rate and will positively affect about 38,000 carloads of rail freight per year that are currently open to switching by Conrail in the Buffalo area, and should help attract additional business that may not now move by rail. The June 23, 1997, date will afford this switch change reduction to all of Conrail patrons in the area that were open to reciprocal switching at that time. This proposed condition is akin to Section III.C of the NITL Agreement. For the Greater Buffalo area and in addition to compliance with the NITL Agreement, CSX consents to having this imposed upon it as a condition, even though the aforesaid provision in the NITL Settlement is not to be so imposed.

#### **2. Lower switching fees between CSX and CN and CP**

- **CSX shall comply with its settlement agreements entered into between CSX and CP and between CSX and CN.**

Explanation: CSX has negotiated voluntary agreements with both CN and CP/D&H that provide lower switching fees for enlarged volumes than currently available to CP and CN from Conrail in the Greater Buffalo area. In addition the agreements provide increased access to CP and CN for Cross border truck competitive traffic. At the request of the respective parties, the specific details of these commercial agreements are confidential for competitive reasons. CN and



CP have recognized that their market access is improved with the effect that both have endorsed the CSX/NS acquisition of Conrail.

**3. Rate protection for Greater Buffalo traffic now moving in single line service that would move in dual line service after the Conrail split**

- **For Conrail shippers in the Greater Buffalo area, CSX shall take the following actions with respect to transportation services to Conrail shippers on routes (i.e. origin-destination pairs) over which at least fifty (50) cars were shipped in the calendar year prior to the Control Date in single line Conrail service (i.e. origin and destination served by Conrail) where that service will become joint line NS-CSX after the Closing Date. Upon request by the affected shipper, for a period of three years (a) there will be maintained the Conrail rate (subject to RCAF-U increases); and (b) the parties will work with that shipper to provide fair and reasonable joint line service. If a shipper objects to the routing employed, or to the point selected by CSX in consultation with NS for interchange of its traffic, the disagreement over routing or interchange, or both, shall be submitted to binding arbitration under the procedures adopted by the STB in Ex Parte 560. The arbiter in such an arbitration shall determine whether the route employed or the point of interchange selected, or both, satisfies the requirements of 49 U.S.C. § 10705; and if it not, the arbiter may establish as the sole award in such arbitration, a different route or point of interchange for such traffic. This condition does not apply to a shipper who has an existing Conrail transportation contract if a more favorable treatment is provided under Section 2.2(c) of the Transaction Agreement.**

Explanation: This proposed condition is akin to Section III.E of the NITL Agreement for the Greater Buffalo area and in addition to compliance with the NITL Agreement, CSX consents to having this imposed upon it as a condition, even though the aforesaid provision of the NITL Agreement is not to be so imposed.

**4. Regional Consultation**

- **Within ninety (90) days of approval of the Joint Application, CSX shall conduct a meeting with regional and local authorities in the Greater Buffalo area to establish a committee ("Committee") which will be comprised of representatives of the authorities and CSX and such other entities as may be agreed upon by the authorities and CSX. The goals of the Committee will be to develop ways to promote the development of rail traffic to and from the Greater Buffalo areas, as well as ways to address the region's goals of industrial development and the reduction of truck traffic that is divertible to rail movement, and CSX's goals to provide safe, efficient and profitable rail freight service. The parties may agree to share economic development information and marketing plans for the growth of rail traffic to and from**

**the area, provided, however, that any such information or plans that may contain sensitive or competitive market information shall not be disclosed.**

### **Representations**

#### **5. Investment in new connections and upgraded facilities**

- CSX will upgrade Conrail's computer technology and fueling facilities at Buffalo, and maintain or grow current employment levels.
- CSX will provide overhead trackage rights to NS through Buffalo to Suspension Bridge, which will improve NS' connectivity in the area.
- CSX will work with NS and with other regional carriers, to schedule switching and through movements within the area network so as to reduce congestion at bottlenecks such as CP Draw.
- CSX will invest substantial funds in network improvements for the purpose of reducing shipment time and improving reliability for rail traffic between the Greater Buffalo area and other parts of the national rail network.

#### **6. Assure access to two major railroads for all customers currently having it**

- Wherever a shipper in Conrail Greater Buffalo area can now be served directly by two major railroads, CSX will permit the continuation of comparable access in the future.

Explanation: When the Erie-Niagara coalition identified such a "2-1" situation that CSX and NS had not addressed in the Joint Application, CSX and NS promptly provided for such access. CSX will ensure that such consideration be afforded any other patron who meets the STB's "2-to-1" standard.

#### **7. New market and service provisions**

- As the new operating and marketing plans submitted as part of the Joint Application are phased in following the Board's approval, and as new business develops as a result of the recent agreements reached with the other railroads serving this area, CSX anticipates that market conditions in the area will change. As they do, CSX will negotiate with other parties not covered by its aforesaid switch charge concerning the establishment or modification of rates to reflect such new competitive market conditions.
- CSX will also negotiate in good faith with industries and utilities in the Greater Buffalo area to provide for their rail freight transportation requirements – either through new extended-haul single-line service with greater choice of origins and destinations on the expanded CSX system.

- CSX's Industrial Development Department will work closely with State, regional and local organizations to attract new job producing investments along its rail lines in the Greater Buffalo area.

**8. CSX has also agreed to accommodate improved passenger service:**

- Upon approval of the Joint Application by the Board and commencement of service, CSX will provide for the assumption of all of Conrail's obligations in its contracts with the State, and other agencies, including AMTRAK, with respect to passenger services, including maintenance agreements, as they are in effect on the effective date of STB authorization of control for those lines allocated to be operated by CSX.
- After approval of the Joint Application and the allocation of Conrail's routes, CSX agrees that it will maintain track speeds along the main line corridor between Hoffmans and Buffalo, NY, generally at FRA Class V level which permits passenger train speeds of up to 79 mph (except where specific local conditions, e.g., curves and crossovers, necessitate lower speeds) so long as justified by freight traffic levels and CSX financial results for that line segment.
- In addition, CSX will cooperate with the State of New York in considering feasible proposals for new or expanded passenger services proposed to operate over Conrail lines in New York State that are allocated to CSX, including the Empire State Corridor, consistent with the following principles:
  - (i) Adherence to all applicable federal and AAR industry rail safety laws, regulations, rules and standards;
  - (ii) The importance of growth and increased reliability of rail freight service throughout the CSX network, including those in New York State;
  - (iii) No CSX direct or indirect subsidy of passenger rail operations;
  - (iv) A level of tort liability indemnity and/or insurance acceptable to CSX and taking into account federal and state law for those areas of rail operation under the control of CSX.
- CSX will cooperate with the State of New York or its designated agent in considering proposals for occasional special passenger train operations – consistent with the above principles – and, if requested, will permit the State Transportation Department to obtain adequate technical information to monitor the dispatching function of its passenger services with respect to adherence to mutually agreed-upon safety and service provisions.

## **ATTACHMENT 3**

### **Other Settlement Agreements with Parties<sup>1</sup>**

#### **A. Agreements among CSX, Norfolk Southern and Third Parties**

##### **ARCO Chemical Company**

Berea, OH/Congressman Dennis J. Kucinich: Agreement of June 3, 1998 among CSX, NS, City of Berea and Congressman Dennis J. Kucinich concerning various environmental mitigation measures.

Brook Park/Olmsted Falls, OH: Agreement of February 24, 1998 among CSX, NS, City of Brook Park and City of Olmsted Falls concerning various environmental mitigation measures.

Brotherhood of Locomotive Engineers (BLE): Agreement of February 18, 1998 among CSX, NS, CR and BLE concerning labor matters.

Delmarva Power: Agreement of March 1998 among CSX, NS and Delmarva Power concerning commercial matters.

Fertilizer Institute: Agreement of June 1, 1998 among Fertilizer Institute, CSX and NS concerning various commercial matters.

New Jersey: Agreement of March 20, 1998 among CSX, NS, New Jersey Department of Transportation and New Jersey Transit Corporation concerning various passenger transportation matters.

New York State Electric & Gas (NYSEG): Agreement of February 1998 among CSX, NS and NYSEG concerning commercial matters.

Ohio Valley Coal Company: Agreement of October 7, 1997 among CSX, NS and Ohio Valley Coal Company concerning commercial matters.

Pennsylvania Power & Light (PP&L): Agreement of October 1997 among CSX, NS and PP&L concerning commercial matters.

PEPCO: Agreement of June 1, 1998 among CSX, NS and PEPCO concerning commercial matters.

---

<sup>1</sup> The agreements described in this Attachment 3 are in addition to those described in Attachment 1.



Port Authority of New York and New Jersey: Agreement of April 1998 among CSX, NS and Port Authority of New York and New Jersey concerning various commercial, operational and economic development matters.

Southeastern Pennsylvania Transportation Authority (SEPTA): Agreement of June 1, 1998 among CSX, NS, CR and SEPTA concerning various passenger transportation matters.

United Transportation Union (UTU): Agreement of January 15, 1998 among CSX, NS, CR and UTU concerning labor matters.

**B. Agreements between Norfolk Southern and Third Parties**

Atlantic City Electric Company

Bethlehem Steel Corporation

Black River and Western Railroad/Belvedere and Delaware River Railroad

Canadian Pacific Railway

Central Railroad of Indiana/Central Railroad of Indianapolis

Chicago Metra

City of Bellevue, OH

City of Danville, IL

City of East Cleveland, OH

City of Erie, PA

City of Freemont, OH

City of Philadelphia

City of Tilton, IL

Commonwealth of Pennsylvania

Eastern Shore Railroad

Illinois Central Railroad

Maryland

Michigan Southern Railroad

National Railroad Passenger Corporation (Amtrak): Memorandum of Understanding May 1, 1998.

Nittany and Bald Eagle Railroad and its affiliates, the NorthShore Railroad, the Shamolin Valley Railroad and the Union County Industrial Railroad

Railbridge Terminals (New Jersey) Corporation

Sandersville Railroad Company

Southern Tier West Regional Planning and Development Board

Toledo-Lucas Port Authority/Toledo Metropolitan Area Council of Governments

**C. Agreements between CSX and Third Parties**

Bessemer & Lake Erie (B&LE): Agreement of June 2, 1998 between CSX and B&LE concerning commercial matters.

Bethlehem Steel: Agreement concerning commercial matters.

Brook Park, OH: Agreement of February 17, 1998 between CSX and City of Brook Park concerning various environmental mitigation measures.

Buffalo & Pittsburgh Railroad (B&P): Agreement of October 21, 1997 between CSX and B&P concerning commercial matters.

Canadian National Railway (CN): Agreement of October 23, 1997 between CSX and CN concerning commercial matters.

Canadian Pacific (CP): Agreement of October 20, 1997 between CSX and CP concerning commercial matters, including East of the Hudson transportation.

Cargill: Agreement between CSX and Cargill concerning commercial matters.

Central Railroad of Indianapolis (CERA) and Central Railroad of Indiana (CIND): Agreement of October 21, 1997 among CSX, CERA and CIND concerning commercial matters.

Chicago, IL: Agreement of January 27, 1998 between CSX Intermodal and City of Chicago concerning community development and related matters.

Chicago Metra: Agreement of March 20, 1998 between CSX and Metra concerning various passenger transportation matters.

Chicago, SouthShore & South Bend Railroad (CSS): Agreement of September 22, 1997 between CSX and CSS concerning commercial matters.

**Citizens Gas and Coke Utility: Agreement of June 3, 1998 between CSX and Citizens Gas concerning commercials matters.**

**East Cleveland, OH: Agreement of February 11, 1998 between CSX and City of East Cleveland concerning various environmental mitigation matters.**

**Elgin, Joliet & Eastern (EJ&E): Agreement of June 2, 1998 between CSX and EJE concerning commercial matters.**

**Greenwich and Huron County, OH: Agreement of March 1998 among CSX, Village of Greenwich and Huron County concerning construction of the Greenwich connection.**

**Iowa Interstate Railroad (IAIS): Agreement of January 19, 1998 between CSX and IAIS concerning commercial matters.**

**Louisville & Indiana Railroad (L&I): Agreements of August 22, 1997 and October 21, 1997 between CSX and L&I concerning commercial matters.**

**Maryland: Agreement of September 24, 1997 between CSX and State of Maryland concerning various commercial, economic development and passenger transportation matters.**

**Massachusetts: Agreement of October 31, 1997 between CSX and State of Massachusetts concerning various commercial, economic development and passenger transportation matters.**

**Massachusetts Central Railroad: Agreement of October 23, 1997 between CSX and Massachusetts Central concerning commercial matters.**

**National Railroad Passenger Corporation (Amtrak): Agreement among CSX, CR and Amtrak entitled Principles of Cooperation Between Amtrak and CSX Transportation (CSX) Associated with the Conrail Acquisition, May 1, 1998.**

**Newark, DE: Agreement of May 12, 1998 among CSX, City of Newark and University of Delaware concerning various pedestrian safety measures.**

**New Orleans, LA: Agreement documented in April 21, 1998 letter from CSX to Mayor Morial and in May 6, 1998 letter from Mayor Morial to Elaine K. Kaiser concerning development of a hazardous materials emergency response program for the City of New Orleans.**

**Pennsylvania and Philadelphia: Agreement of October 21, 1997 among CSX, Commonwealth of Pennsylvania and City of Philadelphia concerning various commercial and economic development matters.**

**Providence & Worcester Railroad (P&W): Agreement of August 6, 1997 between CSX and P&W concerning commercial matters.**



## **ATTACHMENT 4**

### **Parties That Have Withdrawn From The Proceeding**

Atlantic City Electric Company  
Belvidere & Delaware River Railway/ Black River & Western Railroad  
Bessemer & Lake Erie  
Bethlehem Steel  
Brotherhood of Locomotive Engineers\*\*  
Buffalo & Pittsburgh Railroad  
Canadian National Railway/Grand Trunk Corporation/Grand Trunk Western Railroad  
Cargill, Incorporated  
Chicago Metra  
Citizens Gas and Coke Utility  
City of Cleveland, OH  
City of Indianapolis, IN  
City of Philadelphia, PA  
Cities of Bay Village, Rocky River and Lakewood  
Commonwealth of Massachusetts/MBTA  
Commonwealth of Pennsylvania/Governor Thomas J. Ridge/Pennsylvania Department  
of Transportation  
Congressman Dennis J. Kucinich  
Detroit Edison Company  
Elgin, Joliet and Eastern Railway/Transtar, Inc.  
Fertilizer Institute\*  
Indiana & Ohio Railway Company  
Inland Steel Company\*\*  
Institute of Scrap Recycling Industries, Inc.\*\*  
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers  
and Helpers  
Louisville & Indiana Railroad  
Martin Marietta Materials, Inc.  
National Industrial Transportation League\*  
National Railroad Passenger Corporation (AMTRAK)  
New York State Electric and Gas Company  
Ohio Valley Coal Company  
Potomac Electric Power Company  
Port Authority of New York/New Jersey  
Providence & Worcester Railroad  
Rail-Bridge Terminals (New Jersey) Corporation  
Southeast Pennsylvania Transit Administration (SEPTA)  
State of Delaware Department Of Transportation  
State of New Jersey/New Jersey Department of Transportation/New Jersey Transit

---

\* These parties have reserved the right to raise issues with the Board.

\*\* These parties have withdrawn their requests for conditions only in part.

**Toledo Metropolitan Area Council of Governments  
United Railway Supervisors Association  
United Transportation Union  
Vermont Railways, Inc.**

STB

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LAW OFFICES  
**REA, CROSS & AUCHINCLOSS**  
SUITE 570

1707 L STREET, N.W.  
WASHINGTON, D. C. 20036  
(202) 785-3700  
FACSIMILE: (202) 650-4934

THOMAS M. AUCHINCLOSS, JR.  
LEO C. FRANEY  
JOHN D. HEFTNER  
KEITH G. O'BRIEN  
BRYCE REA, JR.  
BRIAN L. TROIANO  
ROBERT A. WELSH



June 5, 1998

D

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
19.5 K Street, NW  
Washington, DC 20423

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

Dear Mr. Williams:

In the interest of the Board having the full benefit of  
the views of the Wheeling & Lake Erie Railway Company in the  
above matter, I am enclosing 25 copies of the written text of  
Wheeling's argument with the request that a copy of the argument  
be included in the record of proceedings.

Respectfully,

Keith G. O'Brien  
Counsel for Wheeling & Lake  
Railway Company

cc: Mr. David Konschnik  
All Parties of Record

ENTERED  
Office of the Secretary

JUN - 5 1998

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Public Record



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Office of the Secretary

JUN - 5 1998

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## ORAL ARGUMENT FOR W&LE



The Wheeling & Lake Erie is here today because its very survival is at stake as a direct result of the primary transaction that is before this Board. The Wheeling faces the prospect of near term insolvency as a consequence of diversion of as much as 25-30% of its revenue as a result of advantages NS will acquire through acquisition of Conrail lines within the region served by the Wheeling. CSXT has not documented any significant offset to these losses.

The Wheeling is a regional carrier serving over 200 on line customers through 4 states (PA, OH, WV, MD), over lines that were acquired as cast off from the NS in 1990. Subsequently, the anxieties of Akron area shippers were relieved when a Wheeling affiliate stepped forward to acquire the Akron & Barberton Belt and portions of Conrail lines in the area from an abandonment threatened by Conrail. There are other acquisitions from CSX in the Canton area and between Martins Ferry, Oh, and Benwood Yard in West Virginia. These were also lines threatened with the prospect of future abandonment.

Since 1992 the Wheeling has undergone a change in management, survived loss of a significant amount of

high sulphur coal traffic as a result of strictures involved in the Clean Air Act. It has restructured its debt and equity and put substantial capital into its equipment as well as into its physical plant, with the help of state investment.

For the past two years the Wheeling has been profitable and provides shippers and communities throughout its territory with highly responsive service. For Ohio aggregate shippers and others it provides cost effective on line service. For many others including integrated steel mills and mini mills, chemical, plastics, lumber, paper, and shippers of other commodities, Wheeling provides competitive access to multiple Class I carriers. For many large and small shippers, Wheeling is important as the only competitive alternative to a Class I carrier. Many large and small shippers have chosen to locate on the Wheeling in recent years to take advantage of its rate and route options as their competitive advantage.

Currently most of Wheeling's interchange traffic is derived from the partnership with NS that has enabled NS and Wheeling together to compete effectively with Conrail and CSX for traffic moving to and from the region served by the Wheeling as shown on the map that is now displayed.

However, as shown on the next map, NS will be transformed from the Wheeling's most important partner into a market dominant competitor if NS acquires the Conrail lines within the region served by the Wheeling. The rationale for the original line sale and the partnership's current mutually productive arrangement will be history as the NS will be able to offer direct single line service in place of the joint line service that has been provided before the merger.

It is of course to be expected that NS will seek to exploit to the fullest extent possible the advantages which will be available through acquisition of Conrail lines regardless of the adverse impact on the Wheeling, especially because the W&LE will be a direct competitor in the region. The traffic gains from new single line service are key to NS/CSX projections for the merger. The magnitude and consequences of the dramatic change is documented by the traffic diversion study conducted by Wheeling's Vice President of Traffic, Reginald Thompson, and verified by Wheeling's expert consultant Wilbert A. Pinkerton. Wheeling submitted evidence of traffic and revenue losses and projections of its financial collapse based on sound methodology, in contrast to flawed and unsupported estimates of the applicants. In plain terms, the

Wheeling faces insolvency in short order unless it is afforded meaningful opportunities to compete for replacement traffic to offset losses of traffic and revenue directly attributable to the proposed division of Conrail lines.

Under its current leadership the Wheeling has demonstrated its resilience and its ability to handle significant challenges and has been able to turn the railroad around. However, for all of that resourcefulness and recent success the Wheeling does not have the ability to withstand the monumental diversion of traffic and revenue that will occur if significant remedial measures are not granted.

The gravity of the situation faced by the Wheeling is recognized both by the shippers and communities it serves. The State of Ohio has recognized that the Wheeling will be severely damaged by the proposed transaction and throughout these proceedings has submitted evidence and urged the Board to take steps as are necessary to keep the Wheeling viable and intact in the interest of all who depend upon availability of its service.

Faced with precipitous loss of traffic and revenue the Wheeling could have sought inclusion. Instead, Wheeling elected to file its responsive



application seeking conditions and rights which would enable it to compete for traffic to replace that which will be lost as a result of the merger. The Wheeling must replace current connections with new friendly connections. I would like to highlight some of the conditions important to our survival:

Haulage rights with underlying trackage rights to Chicago over CSX or, in the alternative, over the NS routing as shown. This is a critical new friendly connection to the western carriers. Through such rights Wheeling can facilitate movement of intermodal traffic for the Neomodal terminal thereby assisting further on the success of that facility as envisioned by federal, state and local authorities that invested in the facility. The W&LE and its shippers have identified substantial additional traffic that could have competitive advantages with granting of rights to this western gateway.

Haulage rights and underlying trackage rights to Toledo where Wheeling could interchange traffic with Ann Arbor, CN

and I&O.

Assurances of continued access to Huron Dock on Lake Erie through proposed extension of existing lease and trackage arrangements.

Trackage rights to Ohio stone quarries and distribution facilities to facilitate single line movement over short distances.

Haulage and local trackage rights from Benwood to Brooklyn Jct., WV with access to customers PPG Industries and Bayer Corporation at Natrium, WV.

Haulage rights with underlying trackage rights to Wheeling Pittsburgh Steel at Allenport, Pa.

### Conclusion

We have shown in our extensive evidence and that of our supporting shippers and public entities that the proposed division of Conrail lines will result in diversion of traffic and revenue of a magnitude sufficient to cause the Wheeling to become insolvent,

with grave ramification for the shippers and communities that depend on its service. We have proved loss of competition and in many cases also loss of essential services. The Wheeling had tried to resolve its urgent concerns through direct negotiation with the primary applicants. However, while substantial offers were discussed, an accommodation sufficient for continued viability was never received.

The Wheeling does not view these proceedings as a game of chance. It seeks only the opportunity to compete for traffic and revenue to replace that which it will lose if the primary application is granted. An inclusion post merger may even be welcomed by the applicants to allow them to divide the current W&LE into smaller railroads by multiple sales and a break up of the system into a group of Class I dependent short lines, with no ability to set route or rate options and a resultant loss of competition. An inclusion could affect the fate of hundreds of hard working Wheeling employees who are former NS employees cast off in the original line sale and have survived through W&LE's early challenges to its recent success, only to face an unwelcome or uncertain future with the prospect of returning to their former employer. Finally the public policy issues raised by shippers in Ex Parte 575

.....

indicate how important it is to preserve regionals and short lines that provide competitive access for multiple Class I and shortline connections and multiple rate and route options. These are among the serious issues that must now be decided in the public interest. That is why we are here seeking the option of survival through new friendly connections rather than inclusion.



STB

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**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1202

(202) 942-5000  
FACSIMILE: (202) 942-5999

MARY GABRIELLE SPRAGUE  
(202) 942-5773

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

June 4, 1998

**BY HAND DELIVERY-25 Copies**

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

ENTERED  
Office of the Secretary

JUN 04 1998

Part of  
Public Record



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

Dear Secretary Williams:

Enclosed are an original and twenty-five copies of the "Letter Agreement Between the City of Berea, the Honorable Dennis Kucinich, CSX Corporation, and Norfolk Southern Corporation" for filing in the above-referenced docket.

Thank you for your assistance in this matter. Please contact me at 202-942-5773 if you have any questions.

Sincerely,

*Mary Gabrielle Sprague*

Mary Gabrielle Sprague  
Counsel for CSX Corporation and  
CSX Transportation, Inc.

Enclosures

cc: All Parties of Record  
Elaine Kaiser

**CSX CORPORATION**

901 E. Cary Street, Richmond, VA 23219  
(804) 782-1476

**NORFOLK SOUTHERN CORPORATION**

Three Commercial Place, Norfolk, VA 23510  
(757) 629-2677

June 1, 1998

The Honorable Stanley J. Trupo  
Mayor, City of Berea  
11 Berea Commons  
Berea, OH 44017

Dear Mayor Trupo:

The City of Berea, the Honorable Dennis Kucinich, CSX and Norfolk Southern have jointly developed this Agreement in Principle. This Agreement addresses issues raised about train operations proposed by CSX and NS through the City under the CSX and NS Operating Plans, for the Conrail transaction pending before the Surface Transportation Board. Underlying this Agreement is the parties' recognition that efficient rail transportation promotes economic development and the parties' desire for sound rail operations that promote the quality of life.

CSX and NS have reviewed various plans and options for the routing and the rerouting of train traffic in the Greater Cleveland area. After analysis of the options by CSX, NS, and others, the parties acknowledge the railroads' belief that the CSX and NS Operating Plans present the superior approach for train movements over Conrail's Lakeshore and Short Line routes, provided that the impacts associated with such movements can be mitigated in accordance with the principles outlined below. Accordingly, the parties adopt the following agreement and the City and Congressman Kucinich hereby state their support for the CSX and NS Application and their Operating Plans.

1. Funding of Capital Projects - CSX and NS agree to participate with the Federal government and the State of Ohio to fully fund construction of a rail-highway underpass at Front Street in Berea at an estimated total project cost of \$28 million. CSX further agrees to participate with the Federal government and State of Ohio to fully fund a rail-highway underpass at Bagley Road in Berea at an estimated total project cost of \$17 million. The Front Street and Bagley Road grade separations are referred to herein as the "Projects." These Projects will be consistent with, and complementary to, the CSX-NS Operating Plans as filed, and amended, with the Surface Transportation Board. In no case shall the combined CSX-NS obligations for these Projects be more than \$16 million. In no event is either CSX or NS responsible for any costs associated with studying or mitigating any environmental impacts from these Projects. However, by so agreeing, the signatories shall not be deemed to have waived rights as they may have with respect to

June 1, 1998

Page Two

mitigation ordered by the Surface Transportation Board irrespective of the agreed to Projects.

2. Hazardous Materials Safety - CSX and NS agree to develop hazardous materials safety programs in concert with the appropriate public agencies. These programs will include, but are not limited to, joint training and notification and response procedures designed to minimize risks which may result from the transportation of hazardous materials.

3. Noise Mitigation - Consistent with definitions and criteria used by the Surface Transportation Board in its environmental process, CSX and NS agree to work cooperatively with the City to mitigate, at no cost to the City, increased noise levels from increased train traffic which may occur in certain areas. CSX and NS have retained independent consultants to conduct studies to determine the extent to which increased train traffic will impact the communities. CSX and NS will apply the results of such studies to determine the location and type of noise mitigation measures warranted, if any, and will consult with the City over the scope of the study area, final design and maintenance of any noise mitigation should such mitigation measures be warranted.

4. The City has raised a concern with respect to the condition of the Rocky River railroad bridges. CSX and NS commit to inspect their respective bridges as to their structural integrity and discuss with the City appropriate measures that may be warranted, consistent with applicable laws, regulations, and contractual obligations governing the structures.

5. The Front Street grade separation project may involve the purchase of property. To the extent that either railroad takes title to such property, and subject to the railroads' requirement for such property, CSX and NS agree to discuss with the City the potential donation of unused, residual property to the City.

6. CSX, NS and the City further agree to develop a work plan for items 1-5 no later than 90 days from the Closing Date. CSX, NS and the City agree to establish an Official Advisory Committee which shall consist of a representative from CSX, NS, the office of the Hon. Stanley Trupo and the office of the Hon. Dennis Kucinich to oversee development of the work plan; implementation of items 1-5 above; and to review issues which may, from time to time, arise among the parties.

In exchange for these commitments, the City and Congressman Kucinich will indicate their support for the transaction before the Surface Transportation Board and other state and federal agencies. CSX, NS, the City and Congressman Kucinich will make a joint filing of these arrangements with the STB. Of course, these commitments are conditioned upon CSX and NS being able to secure the STB's approval of the Conrail transaction and to implement the CSX/NS Operating Plan, as proposed by CSX and NS, that will move CSX trains over the Short Line and to the Collinwood terminal, and NS trains over Conrail's Lakeshore Line and the Cloggsville Route. This agreement



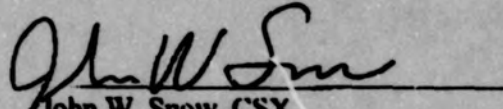
June 1, 1998

Page Three

supercedes any prior filings or requests for conditions made by the City of Berea or Congressman Kucinich with the STB relating to environmental effects of the transaction on Berea.

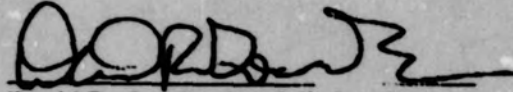
If this Agreement is acceptable, kindly indicate your agreement on or before 5:00 p.m. Tuesday, June 2, 1998, in the space provided below.

Sincerely,



John W. Snow, CSX

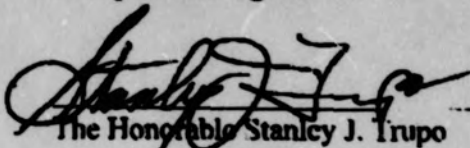
Chairman, President and Chief Executive Officer



David R. Goode, Norfolk Southern

Chairman, President and Chief Executive Officer

Accepted and Agreed to:



The Honorable Stanley J. Trupo  
Mayor, City of Berea



The Honorable Dennis Kucinich  
United States House of Representatives

STB

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(STW-6)

PAUL H. LAMBOLEY  
1350 EYE STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20005-3324

ENTERED  
Office of the Secretary

TEL 202.312.8000  
FAX 202.312.8100

JUN 04 1998

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June 2, 1998

DIRECT 202.312.8220



D

Via Hand-Delivery

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Suite 700  
Washington, D.C. 20423

Re: F.D. 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:

This will serve to inform the Board that an agreement has been reached between Southern Tier West Regional Planning and Development Board (STW), applicants Norfolk Southern Corporation (NS) and Consolidated Rail Corporation (CR), as well as New York State Department of Transportation (NYSDOT), on matters involving the rail line, commonly known as the "Southern Tier Extension", a 146 mile line between Hornell, NY and Corry, PA over which CR now provides service and to which NS proposes to succeed.

Because the agreement addresses substantial concerns and achieves certain objectives regarding the Southern Tier Extension, STW desires to go on record in support of the control, merger and operating lease transactions proposed by the applicants in this proceeding.

Honorable Vernon Williams

June 2, 1998

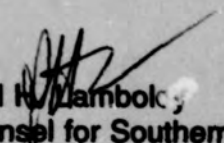
Page 2

As a part of any approval or authorization of transactions proposed in these proceedings, STW asks the Board to recognize that voluntary agreements creating obligations have been entered into in the context of these proceedings and express its expectation that those commitments will be honored by the parties, or best efforts will be made to do so.

STW also reiterates its specific request that no conditions be imposed in favor of any party to these proceedings that would hinder or prevent the implementation or performance of this agreement, and in particular, that no condition be imposed that would limit or obstruct utilization of a continuous line of railroad between Erie, PA, Corry, PA and Jamestown, NY, including the Southern Tier Extension between milepost 60.5 +/- and milepost 60.8 +/- at Corry, PA.

STW requests this letter be made a part of the formal record as STW-6. An original and twenty-five (25) copies are here provided.

Very truly your,

  
Paul H. Lambolc  
Counsel for Southern Tier West Regional  
Planning & Development Board

cc: All Parties of Record



STB

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6-3-98

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

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

NEW YORK  
WASHINGTON  
ALBANY  
BOSTON  
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HARRISBURG  
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1875 CONNECTICUT AVENUE, N.W.  
WASHINGTON, DC 20009-5728

(202) 986-8000

TELEX: 440274 FACSIMILE: (202) 986-8192

WRITER'S DIRECT DIAL:

(202) 986-8050

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

188034  
ENTERED  
Office of the Secretary

JUN 04 1998

Part of  
Public Record



June 3, 1998

**VIA MESSENGER**

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
1925 K Street, N.W., 7th Floor  
Washington, D.C. 20423-0001

TFI-7

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

Dear Secretary Williams:

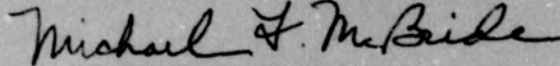
The Fertilizer Institute ("TFI") and the Applicants, CSX and NS, have entered into a Settlement Agreement ("Agreement") in the above-referenced proceeding. In accordance with the Agreement, TFI now offers this letter in support of the Transaction proposed by CSX and NS, except as provided in the Agreement.

Specifically, TFI supports the proposed Transaction, except that TFI reserves the right to pursue the matters set forth in paragraphs 1 and 2 of the Agreement, *i.e.*, (a) "captive-shipper" protections, as provided in their National Industrial Transportation League Agreement ("NITL"), and (b) TFI's assertion that the RCAF (Adjusted) should apply in any application of the RCAF in this proceeding other than as to "switching rates"

Mr. Vernon A. Williams  
June 3, 1998  
Page 2

(because of the special circumstances applicable to the reduction in such rates pursuant to the NITL Agreement).

Respectfully submitted,



Michael F. McBride  
Brenda Durham

Attorneys for The Fertilizer  
Institute

cc: John W. Humes, Jr., Esq.  
George A. Aspatore, Esq.  
Mr. Donald J. Casey  
All Parties of Record

STB

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6-2-98

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MARY GABRIELLE SPRAGUE  
(202) 942-5773

**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1202  
(202) 942-5000  
FACSIMILE: (202) 942-5999

June 2, 1998

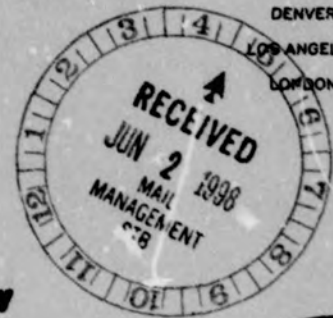
**BY HAND DELIVERY - 25 Copies**

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

ENTERED  
Office of the Secretary

JUN 04 1998

Part of  
Public Record



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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the "Comments of Applicants CSX Corporation and CSX Transportation, Inc. on The Final Environmental Impact Statement" (CSX-153) for filing in the above-referenced docket.

Please note that a copy of these filings is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Thank you for your assistance in this matter. Please contact me (202-942-5773) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the enclosures at the time of filing and return them to our messenger.

Respectfully yours,

*Mary Gabrielle Sprague*

Mary Gabrielle Sprague  
Counsel for CSX Corporation and CSX  
Transportation, Inc.

Enclosures  
cc: All Parties of Record

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 APPLICANTS CSX CORPORATION AND  
CSX TRANSPORTATION, INC. ON  
THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), hereby submit the following comments on the Final Environmental Impact Statement ("FEIS") prepared by the Board's Section of Environmental Analysis ("SEA"), served May 22, 1998.

There can be no doubt that the expansive and detailed analysis of potential environmental impacts of the proposed Conrail Transaction presented in the Draft Environmental Impact Statement ("DEIS") and FEIS satisfies the requirements of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq., and of the Board's environmental regulations, 49 C.F.R. Part 1105. Not surprisingly, given the very broad scope of the FEIS, CSX agrees with some of the 65 Final Recommended Environmental Conditions (the "Recommended Conditions") of the FEIS (Vol. 5,

Chapter 7), accepts others without recording further disagreement, and disagrees with certain others.

These comments on the Recommended Conditions can be divided into four categories:

(1) CSX submits that certain of the Recommended Conditions should be modified or adjusted in their details if the Board chooses to make them conditions in its decision, in order to better effectuate the objectives of the Section of Environmental Analysis ("SEA") in recommending the mitigation measures. These Recommended Conditions are addressed in Part I.

(2) CSX submits that certain of the Recommended Conditions should not be imposed as conditions because they go beyond the Board's traditional approach to exercising its conditioning powers in that they are not fairly related to any effect from the Transaction. These Recommended Conditions are addressed in Part II.

(3) CSX submits that those Recommended Conditions that make the terms of Negotiated Agreements formal conditions should not be imposed as conditions, either because the Negotiated Agreement addresses a pre-existing condition or because the voluntary terms of the Negotiated Agreement go beyond the narrowly-tailored remedies the Board might impose as conditions in the absence of a Negotiated Agreement. These Recommended Conditions are addressed in Part III.

(4) For the reasons explained below in Part IV, CSX submits that the Board should modify Recommended Condition 11 relating to noise mitigation. Without modification, Recommended Condition 11 is not supported by the Board's precedent and imposes an unreasonable burden on the Transaction.

CSX believes that the total package of Recommended Conditions goes beyond what is necessary or appropriate to ensure that this Transaction is in the public interest, particularly given the substantial system-wide environmental benefits of the Transaction. The Board will, of course, undertake its own balancing as it makes its decision.<sup>1</sup> In order not to burden the Board or protract controversy, however, CSX does not raise specific objections here to most of the Recommended Conditions.

I. CERTAIN RECOMMENDED CONDITIONS SHOULD BE MODIFIED TO BETTER EFFECTUATE THE OBJECTIVES OF THE FEIS

CSX does not disagree with the objectives of the following Recommended Conditions, but suggests that they be modified slightly to better effectuate their objectives.

**Condition 1(A).** The FEIS recommends:

For each of the public highway/rail at-grade crossings on the 44 rail line segments [listed in the table on pages 7-13 and 7-14 of the FEIS] as having an increase in traffic of 8 or more trains per day or a 100 percent increase in annual gross ton miles, the Applicants shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique highway/rail at-grade crossing identification number. The toll-free number shall be answered 24 hours per day by Applicant personnel.

CSX is presently complying with this recommended condition throughout its entire system (including on the 13 CSX segments listed on the table on page 7-13), and has agreed to extend the program to the Conrail lines that will be allocated to it and to the

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<sup>1</sup> CSX appreciates that a number of its comments on the DEIS were acknowledged by SEA and are reflected in the FEIS. See CSX's Comments on the DEIS, submitted February 2, 1998. To the extent that SEA rejected CSX's Comments on the DEIS, CSX reasserts them and incorporates them herein by reference.



Conrail Shared Assets Areas within two years of the Control Date. Condition 1(A), however, recommends that the program be implemented on the following Conrail line segments prior to increasing train traffic on each of these rail line segments: Short, OH-Berea, OH; Berea, OH-Greenwich, OH; Greenwich, OH-Crestline, OH; Crestline, OH-Bucyrus, OH; Bucyrus, OH-Adams, IN; Adams, IN-Fort-Wayne, IN; Marion, OH-Ridgeway, OH; Carleton, MI-Ecorse, MI (Shared Assets Area).

CSX requests that the Condition be modified to state as follows:

The Applicants shall certify to the Board that they have complied with this condition within three months following Day One.<sup>2</sup>

In order to comply with Condition 1(A) as presently phrased in the FEIS, CSX would have to install the signs on Conrail line segments in advance of Day One in order for them to be in place on Day One. However, it would detract from safety for motorists to call CSX to report a signal malfunction or a vehicle on the tracks when Conrail is still controlling and dispatching the line.

CSX believes that it will need the three months following Day One to incorporate the Conrail crossings into the CSX database, prepare signs for each crossing with the crossing's unique identification number, and install the signs at the crossings. CSX would give priority to the line segments with the greatest projected Day One traffic increases. CSX submits that it would promote SEA's objective to slightly modify Condition 1(A) as requested above.

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<sup>2</sup> "Day One" is the date on which CSX and NS will undertake operating responsibility for the Conrail line segments each will use under the Operating Plans submitted with the Application.

**Condition 1(B)** The FEIS recommends that CSX install temporary signs advising of impending traffic increases at public crossings on the line segments listed on the table on pages 7-13 and 7-14. CSX requests that this condition be modified to except the Toledo-Deshler line segment from this requirement. Traffic increased on this CSX line segment in May 1997, unrelated to the Transaction. No further increases in traffic are projected as a result of the Transaction. It would, therefore, be confusing for the public along this line segment to be advised of train traffic increases when none are in fact expected.

**Condition 4(C)** The FEIS recommends that Applicants be required to develop and provide a local Hazardous Materials Emergency Response Plan, "to be implemented in coordination with the Applicants' own Hazardous Materials Emergency Response Plans," to each of the local emergency response organizations along the twenty rail-line segments listed on page 7-20 of the FEIS. As with Condition 1(A) above, the FEIS recommends that the program be implemented on the identified Conrail line segments prior to increasing hazardous materials traffic on each of these rail line segments. On most of these line segments, that would mean prior to Day One. CSX requests that the Condition be modified to state as follows:

The Applicants shall certify to the Board that they have complied with this condition within six months following Day One.

CSX has already consulted with public safety personnel in the Greater Cleveland Area regarding their specific hazardous materials response planning needs, and is hopeful that, given continued cooperation from the City of Cleveland and other communities in the Greater Cleveland Area, CSX could certify compliance with Condition 4(C) with respect to the Greater Cleveland Area by Day One. However, with respect to other local

emergency planning organizations on the identified lines, CSX will promptly undertake consultation but is not confident that it could certify compliance with Condition 4(C) by Day One.

CSX does not believe that the Board should delay Day One for the accomplishment of Condition 4(C). Although CSX recognizes the salutary effect of Condition 4(C), existing comprehensive federal regulations, industry standards and CSX practices governing transport of hazardous materials provide a sufficient level of safety for the communities along these line segments during the development of the plans required in Condition 4(C). Moreover, pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., local emergency planning organizations and emergency plans should already exist for these communities. Condition 4(C) is designed to build upon and supplement the existing community planning efforts. Furthermore, the improved service made possible by implementation of the CSX and NS Operating Plans will make possible the many system-wide environmental benefits of the Transaction recognized in the FEIS. These benefits should not be delayed solely to permit compliance with Condition 4(C) prior to Day One.

**Condition 8.** The FEIS recommends that CSX be required to upgrade grade crossing warning systems at 36 crossings on the post-Transaction CSX system and at one crossing in a Conrail Shared Assets Area. The FEIS recommends installation of specific warning devices at each of these crossings. CSX stated in its Comments on the DEIS (at pages 67-83) that the Board should require consultation with the state agencies with jurisdiction over highway/rail crossings in the states where significant rail traffic increases are projected, rather than itself determining the specific crossings that warrant

upgrades and the specific devices to be installed. It should be noted that the Board appropriately recognized the significant role of state transportation agencies in the Union Pacific/Southern Pacific proceeding, and ordered applicants to consult with them, rather than identifying specific upgrades to crossing warning systems. Union Pacific Corp., et al.—Control & Merger—Southern Pacific Corp., et al., Finance Docket No. 32760, Decision No. 44, at 278 (served Aug. 12, 1996) (hereinafter "UP/SP").

CSX has consulted with the state transportation agencies in the states where the crossings specified in Recommended Condition 8 are located -- Indiana, Michigan and Ohio. In Ohio, CSX has entered into a Railroad Corridor Safety Agreement with the Ohio Public Utilities Commission ("PUCO") and the Ohio Rail Development Commission ("ORDC") covering the B&O line between Greenwich and the Indiana state line, and Conrail has entered into another agreement for the Berea-Greenwich line segment over which CSX will operate. Discussions are ongoing in Indiana, Michigan and Ohio with respect to other corridor studies. Indeed, CSX expects that a Negotiated Agreement will be executed with the Indiana Department of Transportation ("INDOT") in the next few weeks. The FEIS takes a step toward recognizing the traditional role of the state transportation agencies in determining the appropriate level of warning devices at grade crossings. Recommended Condition 8 provides:

If the Applicants execute a Negotiated Agreement with the affected local jurisdiction and the state department of transportation, they may implement alternate safety improvements in the vicinity of these identified highway/rail at-grade crossings that achieve at least an equivalent level of safety enhancement.

CSX submits that Condition 8 should read as follows:

If the Applicants execute a Negotiated Agreement with the affected state department of transportation with respect to a



rail line segment, the Negotiated Agreement supersedes the specific requirements of this condition with respect to crossings on that rail line segment.

CSX understands that the state transportation agencies consult with local jurisdictions along the rail corridor, but the agreements, under state procedures, are executed only by the state agencies. Moreover, CSX and the state agencies should not have to return to the Board for a determination that the crossings to be upgraded are sufficiently "in the vicinity of" those on the list and "achieve at least an equivalent level of safety enhancement." CSX submits that the Board will have fulfilled its role once it has received assurance through presentation of a Negotiated Agreement that the state transportation agency that regularly handles these determinations has evaluated the matter, exercised its expertise, and made a determination with respect to grade crossing safety.

**Condition 24(a).** The FEIS recommends that CSX upgrade highway-rail at-grade warning systems at eight specified crossings in the Four Cities with constant warning time circuits. As explained below, while constant warning time circuits might be appropriate at some of these crossings, they might not be appropriate at all eight crossings. CSX requests that this condition be modified to require constant warning time circuits only where they are feasible from an engineering and operating perspective and where installation is consistent with the objective of reducing crossing blockage time.

Motion sensor control equipment starts and stops a grade crossing warning system by detecting train movement toward the crossing within the approach distance for the crossing. Constant warning time control equipment is a more complex application of the motion sensor technology; it starts and stops the warning system by detecting train

movement toward the crossing, measuring the speed of the movement and adjusting the start of the grade crossing warning system based on the train speed. The design and installation of constant warning time control equipment is more complex than other warning equipment, having additional criteria for the arrangement of track circuits and connections to provide for the measurement of the train speed. Installation is particularly complex where there are insulated joints, switches and rail crossing diamonds in the approach distance for the crossing.

Based on an initial review of the crossings in Recommended Condition 24(a), CSX believes that a number of the crossings would present very complex situations for the installation of constant warning control equipment.<sup>3</sup> It is not apparent that the increased difficulty and exposure to malfunction of installing this equipment at these crossings would be justified by any significant reduction in vehicle delay as compared to motion sensor equipment or the existing control equipment.

CSX is in the process of evaluating this recommendation further, and plans to consult with INDOT regarding the recommendation. CSX proposes to submit to the Board by July 1, 1998 either an agreement with INDOT concerning the appropriate level of warning system at the eight crossings identified in Recommended Condition 24(a), or, in the event a joint conclusion cannot be reached in one month, a report setting forth CSX's analysis of whether the installation of constant warning time control equipment is appropriate at each of the eight specified crossings. CSX requests that Condition 24(A) be modified consistent with that agreement or report.

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<sup>3</sup> Because this recommendation was made for the first time in the FEIS, CSX had not previously evaluated it.

**Condition 33.** The FEIS recommends that Applicants provide the City of Berea, OH with a real-time train location monitoring system. CSX does not request modification of the condition as written. However, CSX wishes to clarify the type of information available for display on the monitoring system. The display would be comparable to the display available to the railroad dispatchers, which shows trains moving through "blocks." The FEIS may be interpreted to suggest (at page 4-38) that a real-time train location monitoring system displays the speed and length of a train as well as its location. Although speed may be inferred from the rate of change in location of the train, the monitor does not directly report train speed. The monitor similarly does not report the length of the train. CSX wishes to clarify this point to avoid confusion as to what type of system could be provided in response to Condition 33. CSX agrees that the condition should require the concurrence of Berea as SEA's objective would not be served by installing a system that does not meet the needs of Berea's emergency responders.

**Condition 38(C).** The FEIS recommends that CSX install additional defect detection devices at four locations in the Greater Cleveland area, as specified in the table at page 7-45. CSX requests that this recommendation be modified, as follows:

**Hot Bearing/Dragging Equipment Detectors.** CSX and Conrail have already evaluated the Short Line for the installation of an additional hot bearing/dragging equipment detector, and have determined that the optimal location for operational and safety reasons is in the vicinity of Marcy Yard. Among other factors, a railroad must consider where the best location is to stop a train after activating a detector. Marcy Yard is located between the proposed Brooklyn and Kinsman locations. Installation of the



Marcy Yard hot bearing/dragging equipment detector will be scheduled for the summer of 1998. Therefore, CSX requests that Condition 38(C) be modified to require the installation of a hot bearing/dragging equipment detector in the vicinity of Marcy Yard instead of in the vicinity of Brooklyn and Kinsman.

High/Wide Load Detectors. CSX is in the process of evaluating whether the locations recommended for installation of high/wide load detectors would provide the optimal level of safety, consistent with operational requirements. CSX proposes to submit a report to the Board by July 1, 1998 stating whether it believes the locations recommended in the FEIS are the optimal locations or whether other locations would better achieve the objective of the condition.

Wheel Impact Load Detectors. The FEIS also recommends that CSX install Wheel Impact Load Detectors ("WILDs") at Wickliffe and at Olmsted Falls. CSX understands that the intent of SEA in recommending Condition 38(C) is to further reduce the risk of a freight train accident in the Greater Cleveland Area. However, WILD is a technology designed for the purpose of determining the need for wheel maintenance, and is not intended to be used as a supplemental system for mainline derailment protection. When a WILD identifies a wheel on a rail car that needs maintenance, the normal practice is to allow the car to proceed to its destination. From there the car will be scheduled for maintenance at the next yard available to conduct it. CSX presently has only one WILD in its entire system. CSX has estimated the cost of a WILD installation to be \$400,000 per detector (\$800,000 where there are two tracks). Both because of their use and their cost, WILDs are not appropriately spaced at close intervals throughout a rail system.



CSX understands that Conrail has installed a WILD about 60 miles to the east of Cleveland at West Springfield, PA. The recommended WILD at Wickliffe would thus be redundant in light of the WILD at West Springfield. Based on a preliminary review,<sup>4</sup> CSX also has questions as to whether Olmsted Falls is an appropriate location for installation of a WILD. CSX proposes to submit a report to the Board by July 1, 1998 regarding whether a WILD should be installed somewhere west of the Greater Cleveland Area or whether another safety device would better accomplish the Board's objective.

**Condition 45(A).** The FEIS recommends that Applicants provide the City of Fostoria, OH with a real-time train location monitoring system. The clarifications noted above in connection with Condition 33 should also be noted in connection with Recommended Condition 45(A). Moreover, Recommended Condition 45(A) also includes a number of additional specific requirements for the monitoring system, which CSX requests be deleted from the condition. CSX believes that the condition should be modified to allow CSX to work with the City of Fostoria on the details of the monitoring system in order to provide Fostoria with a system that is compatible with the system utilized by CSX's dispatchers and best assists Fostoria's emergency responders.

**Condition 45(B).** The FEIS recommends that Applicants install constant warning time circuits at all of their highway/rail at-grade crossings in Fostoria with active warning devices.

CSX requests that Recommended Condition 45(B) be modified to except the crossings on the CSX B&O line. The B&O line through Fostoria was the subject of a

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<sup>4</sup> Because this recommendation was made for the first time in the FEIS, CSX had not previously evaluated it.

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detailed corridor analysis by PUCO in 1997 after CSX reported to PUCO the projected Transaction-related traffic increases on the line. That analysis culminated in a Railroad Corridor Safety Agreement among CSX, PUCO and ORDC, which was submitted to the Board as Exhibit 2 to the Comments of the Ohio Attorney General, ORDC and PUCO on the DEIS. That Agreement specifies grade crossing warning system upgrades for the B&O Corridor between Greenwich and the Indiana state line. The Agreement was embodied in an order in PUCO Case No. 97-1540-RR-UNC (Nov. 25, 1997). Pursuant to that Order, CSX has designed the signal installations, including at crossings in Fostoria, and as of the date of these comments is preparing to commence the construction work. With respect to the B&O line through Fostoria, Recommended Condition 45(B) would seriously interfere with completion of the agreed-upon warning system upgrades on the B&O line through Fostoria.

With respect to the north-south CSX line through Fostoria, as stated above in connection with Condition 24(a), this condition should only require that crossings be upgraded with constant warning time circuits where feasible from an engineering and operating perspective and where consistent with the objective of reducing crossing blockage time. Because of the complicated track and switching arrangements in the vicinity of F Tower, it appears that installation of constant warning system equipment in the vicinity of F Tower would not be feasible. However, based on initial review, it appears that installation of constant warning time circuits at the Jones Road crossing that is of particular concern to Fostoria may be feasible. CSX is in the process of evaluating this recommendation further, and plans to consult with PUCO and ORDC regarding the

recommendation.<sup>5</sup> CSX proposes to submit to the Board by July 1, 1998 either an agreement with PUCO and ORDC concerning the appropriate level of warning system at the crossings on CSX's north-south line through Fostoria, OH; in the event a joint conclusion cannot be reached in one month, a report setting forth CSX's analysis of whether the installation of constant warning time control equipment is appropriate at each of the crossings on the north-south line.

**II. THE BOARD SHOULD NOT EXERCISE ITS CONDITIONING POWER WHERE THE HARM SOUGHT TO BE MITIGATED DOES NOT ARISE FROM THE TRANSACTION BEFORE THE BOARD**

It has been the consistent policy of the Surface Transportation Board, as it was the policy of the Board's predecessor the Interstate Commerce Commission, not to exercise its conditioning power to remedy pre-existing conditions or other conditions not related to any effect from the proposed action before the Board.<sup>6</sup> Although the FEIS tailors a number of the preliminary recommendations of the DEIS in recognition of this policy, a number of the Recommended Conditions still seek to mitigate pre-existing conditions. The Board should thus reject these Recommended Conditions.

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<sup>5</sup> Because this recommendation was made for the first time in the FEIS, CSX had not previously analyzed it.

<sup>6</sup> UP/SP at 145 ("A condition must address an effect of the transaction. We will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'") (quoting Burlington Northern, Inc.—Control & Merger—St. Louis-San Francisco Railway Co., 360 I.C.C. 788, 952 (1980)); Burlington Northern, Inc. & Burlington Northern R.R.—Control & Merger—Santa Fe Pacific Corp. & Atchison, Topeka and Santa Fe Ry., Finance Docket 32549, Decision No. 38, at 56 (served Aug., 23, 1995) (hereinafter "BN/SF") ("To be granted, a condition must first address an effect of the transaction."). The Board has consistently declined to exercise any power it may have to impose conditions to mitigate pre-existing conditions.

**Conditions 1, 2, 8 and 11 with respect to the Toledo-Deshler Line Segment.**

As explained by CSX in its Comments on the DEIS (at pages 77-78, 97), CSX resumed through train operations over the Toledo-Deshler line segment in May 1997 independent of the Transaction.<sup>7</sup> The 1995 base for this segment was 0.6 trains per day and the projected post-Transaction traffic is 14.2 trains per day. Current traffic is about 14 trains per day. There will accordingly be no significant change in traffic on this line segment as a result of the Transaction.

In response, SEA simply stated as follows without further explanation: "SEA considers the May 1997 increase in through train operations along the Toledo-to-Deshler rail line segment to be related to the proposed Conrail Acquisition." FEIS, Vol. 3 at page 5-34.

CSX respectfully requests that the Board determine that based on the pre-existing condition on the Toledo-Deshler line segment it would be inappropriate to adopt those portions of Recommended Conditions 1, 2, 8 and 11 that relate to this line segment.

**Condition 14.** The FEIS recommends that CSX not demolish the 75<sup>th</sup> Street Interlocking Tower in Chicago until completion of the Section 106 process. This tower, however, is not slated for demolition in connection with any action that requires federal approval, and thus is not subject to the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, as amended. See CSX Comments on the DEIS, at page 98. The 75<sup>th</sup> Street interlocking tower became obsolete in late 1997 when CSX automated this interlocking, unrelated to the Transaction.

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<sup>7</sup> Pursuant to request from SEA, CSX provided documentation of the increased traffic in 1997.



CSX has been involved in the Section 106 process in Illinois in connection with the proposed connection at Exermont, IL. In those discussions, in order to facilitate the Transaction, CSX offered to preserve the 75<sup>th</sup> Street tower and its interlocking mechanism while a search was conducted to find a suitable museum to preserve and display the interlocking mechanism. Because the interlocking mechanism is quite large, however, it is possible that a suitable museum will not be found. Although CSX has represented to SEA and to the Illinois State Historic Preservation Officer that it is willing to undertake in good faith reasonable efforts to preserve this interlocking mechanism, the 75<sup>th</sup> Street tower is not within the scope of the Section 106 review of this Transaction and is not the appropriate subject of a condition.

**Condition 37(F) with respect to the Martin L. King Jr. to Eddy Road**

**location.** Condition 37(F) recommends that CSX construct and maintain fencing and landscaping adequate to restrict pedestrian access to CSX rail lines in certain locations in Cleveland, including along a portion of line segment C-691, the segment between Quaker and Drawbridge on the Conrail Lake Shore Line. Because most CSX trains will be routed over the Short Line rather than the Lake Shore Line, traffic on the Quaker-Drawbridge line segment is projected to decrease by about 40 trains per day (from 53 to 12 trains per day on average). There is thus no Transaction-related train usage justification for this condition.

**III. THE BOARD SHOULD NOT IMPOSE THE TERMS OF VOLUNTARY NEGOTIATED AGREEMENTS AS CONDITIONS OF APPROVAL OF THE TRANSACTION**

In keeping with the Board's clear preference for negotiated solutions relating to both competitive issues and environmental concerns, CSX has worked hard during the

last year to address environmental concerns related to the Transaction. The commitment of CSX to this effort is evidenced by the large number of negotiated agreements that CSX has entered into, the substantial financial and other resources pledged in these agreements, and the extraordinary creativity shown to meet the legitimate needs of both CSX and the states, local communities, and passenger agencies.

The FEIS recommends that all of the Negotiated Agreements relating to environmental issues be made conditions of approval of the Transaction. With respect to CSX, this includes the following Recommended Conditions:

- Condition 17 (Newark, DE)
- Condition 18(A) (Chicago Metra)
- Condition 18(B) (City of Chicago regarding 59<sup>th</sup> Street Intermodal Facility)
- Condition 26 (New Orleans, LA)
- Condition 27 (State of Maryland)
- Condition 29 (New Jersey Department of Transportation)
- Condition 35 (Brook Park, OH)
- Condition 36 (Brook Park and Olmsted Falls, OH)
- Condition 40(A) (East Cleveland, OH)
- Condition 55(A) (Commonwealth of Pennsylvania and City of Philadelphia)
- Condition 60 (Greenwich and Huron County, OH regarding Greenwich connection)

In many of these Negotiated Agreements, CSX voluntarily undertook to mitigate pre-existing conditions in order to facilitate approval of the Transaction and to achieve as

broad a base of support as possible as it undertakes the great challenges and opportunities of the Conrail Transaction. These Negotiated Agreements include the following:

Newark, DE. CSX entered into a Negotiated Agreement with the City of Newark, DE and the University of Delaware wherein CSX agreed to undertake certain measures to enhance pedestrian safety in Newark, DE, even though there will be no material increase in traffic on the CSX line through Newark.

Chicago Metra. CSX entered into a Negotiated Agreement with Chicago Metra regarding passenger train priorities through the 75<sup>th</sup> Street/Forest Hill Interlocking even though Metra was unable to demonstrate any adverse effect from the Transaction. See Applicants' Rebuttal, Vol. 1 at page 236. Moreover, in submitting this agreement to the Board, Metra expressly stated that it should not be made a condition of Board approval.

New Orleans, LA. CSX agreed to develop, in coordination with the City of New Orleans, a hazardous materials emergency response program even though the projected increase in hazardous materials traffic through the City of New Orleans does not meet the FEIS's criteria for mitigation.

New Jersey Department of Transportation. CSX entered into a Negotiated Agreement with the New Jersey Department of Transportation ("NJDOT") regarding cooperation on a number of passenger train issues even though NJDOT was unable to demonstrate any adverse effect from the Transaction. See Applicants' Rebuttal, Vol. 1 at pages 242-56. Moreover, in submitting this agreement to the Board, NJDOT expressly stated that it should not be made a condition of Board approval.

Accordingly, it would not be appropriate to make any of these Negotiated Agreements a formal condition to approval of the Application. However, the Board may

consider the submission of the Negotiated Agreements as a representation by CSX that it will comply with their terms. See UP/SP, at 12, n. 14.

While the remaining Negotiated Agreements addressed in the Recommended Conditions fairly could be said to have some relation to some effect of the Transaction, those agreements contain undertakings that go beyond any condition the Board would itself impose under the standards it has established for the exercise of its conditioning power. Accordingly, it is similarly not appropriate to make those Negotiated Agreements conditions to approval of the Application. However, as explained above, the Board may consider the submission of the Negotiated Agreement and other offers of voluntary mitigation as a representation by CSX that it will comply with their terms. See UP/SP, at 12, n. 14. Moreover, the Board will have continuing oversight following any decision to approve the Application. This oversight function will fully enable the Board to determine whether the Applicants are satisfying the terms of their voluntary agreements and to take appropriate steps in the event that intervention is required, as Recommended Condition 65 makes clear.

The distinction is an important one. In the very unlikely event that the Board's intervention were required, it would not be appropriate for the Board to enforce the specific terms of the Negotiated Agreement, as might be implied by converting the voluntary agreement into a formal condition. Rather, the Board would have to determine whether there was any significant adverse environmental effect that should be mitigated through the exercise of the Board's conditioning power. This is a situation that comes within the ambit of Recommended Condition 65. Moreover, if the Board were to convert voluntary agreements into formal conditions, it could later be argued in subsequent



proceedings that they have precedential effect. This is especially important because many of the settlements address pre-existing conditions and matters unrelated to the Transaction, clearly areas that the Board, acting on its own initiative, would determine were not appropriate for its conditioning authority. Making these Negotiated Agreements formal conditions would thus likely have the undesired effect of making CSX and other applicants less willing to negotiate voluntary, uniquely-tailored solutions, contrary to the Board's clear preference for resolution of concerns through that process.<sup>8</sup>

IV. RECOMMENDED CONDITION 11 (NOISE MITIGATION) SHOULD BE LIMITED IN SEVERAL IMPORTANT RESPECTS SO THAT IT DOES NOT IMPOSE AN UNREASONABLE BURDEN ON THIS TRANSACTION

Recommended Condition 11 suggests noise mitigation measures that go far beyond any measures previously ordered by the Board (including in situations where an Environmental Assessment rather than an Environmental Impact Statement had been prepared and where significant adverse effects thus had to be mitigated) without providing satisfactory justification for departing from the Board's precedent. The recommended mitigation also goes far beyond federal requirements for noise control in the freight rail industry. Indeed, in some respects the recommended mitigation goes beyond federal requirements for noise mitigation even where public funds are used to finance the mitigation (such as in connection with publicly funded highway projects). Because the program of noise mitigation recommended in the FEIS would be not only unprecedented but also very expensive and difficult to accomplish, the Board should substantially modify the condition. As presented in the FEIS, Recommended

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<sup>8</sup> See also CSX's Comments on the DEIS at pages 16-18. Nothing in NEPA requires that voluntary agreements be made formal conditions of approval.

Condition 11 would impose an unreasonable burden on this Transaction, which on a system-wide basis provides substantial environmental benefits. Moreover, if Recommended Condition 11 were to become Board precedent, it could inhibit freight railroads from undertaking actions beneficial to rail shippers for fear that they would trigger its burdensome requirements.

As explained in CSX's Comments on the DEIS (at pages 95-96), the Environmental Protection Agency ("EPA"), in consultation with the Department of Transportation, has regulated noise emissions from railroad equipment and facilities pursuant to Section 17 of the Noise Control Act, 42 U.S.C. § 4916(c). EPA chose to regulate noise from locomotives and rail cars operating on line of road by controlling emissions at the source. 40 C.F.R. Part 201. Indeed, after extensive consideration during the rule making process, EPA concluded not to impose property line standards on locomotive and rail car operations on line of road. 47 Fed. Reg. 54,107, 54,108 (Dec. 1, 1982); 41 Fed. Reg. 2184 (Jan. 14, 1976). These noise regulations were designed to be protective of the public health and welfare. In promulgating the noise regulations, EPA was carrying out the mandate of the Noise Control Act to set standards "which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance." 42 U.S.C. § 4916(a)(1). Any revision to the regulations may only be made "after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability." 42 U.S.C. § 4916(a)(3). The FEIS recommends that the Board impose an extensive new program of noise barriers or building sound insulation treatments without

appropriate consideration of, and consultation regarding, technological feasibility, countervailing safety concerns and the cost of the program.

CSX cannot state strongly enough how startling Recommended Condition 11 is. CSX has never constructed any noise barriers along line of road or undertaken a program of building sound insulation for train wayside noise. Indeed, CSX is not aware of any freight railroad that has ever been required to undertake such a noise control program. Our research has revealed only one situation in the entire country where a noise barrier was built along a freight line. In connection with the publicly funded Alameda Corridor freight rail relocation project which involved constructing a new rail corridor for UP/SP and BN/SF to the Ports of Los Angeles and Long Beach, CA, some noise walls were built along limited portions of that corridor. See Alameda Corridor Final Environmental Impact Statement prepared for Federal Highway Administration, Federal Railroad Administration, California Department of Transportation (Feb. 1996). Those noise barriers, however, were paid for out of the public funding for the project, not by UP/SP and BN/SF.

It is not surprising from either a legal or an economic perspective that there are no extant programs for constructing noise barriers or installing building sound insulation along freight rail lines. In virtually all situations, the rail line predates the adjacent land uses. Rail traffic may ebb and flow over the years because of numerous economic and other factors, but the railroads retain the right, and indeed the obligation, to use their property to transport the freight shippers want to ship. Moreover, with 44,000 route miles in the CSX, NS and Conrail systems alone, the impracticability of any comprehensive program of constructing noise barriers or insulating structures is readily

apparent. As a rule of thumb, highway-type noise barriers cost one million dollars per mile. The DEIS (Vol. 5A at F-15) estimates that residential sound insulation costs from \$10,000 to \$20,000 per unit. Nationwide, there could be hundreds of thousands of homes adjacent to rail tracks within the 70 dBA  $L_{dn}$  contour (the noise level proposed by SEA for mitigation). Imposing a comprehensive program of noise barriers or structural sound insulation along freight rail lines to be funded by the railroads would result in the substantial diversion of funds available to cover the costs of operating and maintaining the railroad.

The FEIS, of course, does not propose a system-wide program of noise barriers and structural sound insulation, but a more limited program for about 1,000 residences that will experience traffic increases as a result of the Transaction and will meet the FEIS's criteria for noise mitigation (70 dBA  $L_{dn}$  and a 5 dBA  $L_{dn}$  increase). Even this more limited program, however, would be very expensive and is not justified in light of the environmental benefits the Transaction will bring.<sup>9</sup> Moreover, a fundamental question of fairness arises as to why the 1,000 mitigation candidates should be put in a better position than all the other persons in the country living adjacent to freight rail lines who are presently exposed to rail noise at comparable levels simply because there has been an increase in rail traffic from the Transaction.

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<sup>9</sup> It is difficult to quantify the precise cost of Recommended Condition 11 without significant study. Although CSX undertook field study of the preliminary mitigation candidates identified in the DEIS, the FEIS greatly expands the number of receptors proposed for mitigation by adding line segments and including the additional receptors on each line segment that are exposed to horn noise. CSX does not presently know what length of sound barriers would have to be built to shield the mitigation candidates, nor what height the barriers would have to be to provide the recommended noise reduction in each location. If the DEIS is correct that the cost of installing building sound insulation is \$10,000 to \$20,000 per receptor, the approximate cost of Recommended Condition 11 under the structural sound insulation option is about \$10 to \$20 million.



Although there are very good reasons for rejecting Recommended Condition 11 in its entirety, CSX seeks only that it be modified (1) to limit the receptors proposed for mitigation to those that will experience substantial increases in traffic (increases of 30 or more trains per day) and (2) to provide that the method and degree of noise mitigation should be determined based on considerations of feasibility and cost effectiveness.

Despite the concerns expressed above, CSX recognized that local support in the Greater Cleveland Area – the area involving, on a specific route basis, the most substantial traffic increases on the CSX system - would only be forthcoming if CSX were willing to offer a package of mitigation measures, including noise mitigation if desired by the community. CSX's Negotiated Agreements with Brook Park, East Cleveland, and Olmsted Falls, OH provide for either a specified noise mitigation program or for continued consultation about noise impacts. CSX also offered a package of noise mitigation measures to the City of Cleveland. The Board should not convert CSX's willingness to undertake reasonable noise mitigation in the Greater Cleveland Area in order to facilitate this Transaction into a mandated program extending to other line segments with much lower traffic changes and requiring unreasonably expensive expenditures.

CSX therefore proposes that the Board modify Recommended Condition 11 as follows:

First, Recommended Condition 11 should be limited to 4 of the 14 listed line segments: Berea-Greenwich, Mayfield-Marcy, Quaker-Mayfield and Short-Berea. In the recent major railroad control proceedings, BN/SF and UP/SP, the Board imposed a condition requiring the applicants to consult with a number of communities concerning increased noise expected to result from those transactions. In Recommended

Condition 11, in contrast, the FEIS provides detailed specifications for mitigating wayside noise with sound barriers or building sound insulation treatments. In explaining the Board's precedent, the FEIS states (Vol. 2 at page 4-70):

SEA notes that any noise increases on existing railroad rights-of-way from increased train operations that are unrelated to the proposed Conrail Acquisition are not subject to any regulation or mitigation; railroads have always been free to increase their operations and train traffic in their normal course of business with no consideration or regulation of the increased noise that might result. Further, previous railroad mergers and acquisitions have generally required noise consultation conditions rather than specific noise mitigation measures. SEA believes that specific noise mitigation measures are warranted here because of the substantial increases in train traffic.

While it is true that the increases in train traffic on four of the line segments recommended for noise mitigation are projected to experience substantially greater traffic increases than any projected in BN/SF and UP/SP (the four line segments in the Greater Cleveland Area where CSX has voluntarily offered noise mitigation measures will experience increases of 30 or more trains per day), it is not true that the projected increases in train traffic on the remaining segments are greater than those in BN/SF and UP/SP, as shown in Exhibit 1 hereto. The traffic increases on the other CSX line segments proposed for mitigation range from 4 to 14 trains per day. One NS line is proposed for noise mitigation even though the traffic increase is only projected to be 1.4 trains per day. CSX submits that Recommended Condition 11 should be modified so as to apply only to the Quaker-Mayfield, Mayfield-Marcy, Short-Berea and Berea-Greenwich line segments where substantial increases in train traffic are expected. By so limiting Recommended Condition 11, the Board would not create a precedent that would deter beneficial rail projects and transactions out of fear of mandated noise mitigation.

With respect to the remaining line segments, the consultation requirement of BN/SF and UP/SP is sufficient.<sup>10</sup>

Second, Recommended Condition 11 should be modified to allow CSX to make a showing that some of the sensitive receptors identified in Appendix J within the 70 dBA  $L_{dn}$  contour line do not actually meet the criteria for noise mitigation (70 dBA  $L_{dn}$  and a 5 dBA  $L_{dn}$  increase). CSX understands that SEA took into account shielding from other structures in designating the mitigation targets in Appendix J, but SEA did not take into account the shielding benefits from topography (because that is difficult to determine from the aerial photographs which SEA analyzed). The most important example is an area where the rail line is in a cut. The walls of the cut act as natural sound barriers. Because the FEIS does not take the walls into account, the 70 dBA  $L_{dn}$  contour line is in some areas located too far away from the tracks and includes sensitive receptors that do not meet the criteria for mitigation.

Third, the condition should not specify a 10 dBA reduction as the design goal. CSX believes that a more reasonable goal would be 5dBA noise reduction, except where a higher level of noise reduction is achievable without adversely affecting rail operations or imposing unreasonable additional expense. This proposed modification is supported by numerous considerations:

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<sup>10</sup> For the reason explained above in Part II, the Toledo-Deshler line segment should be deleted from Recommended Condition 11. Traffic increased on this line segment in 1997 independent of the Transaction. There are no Transaction-related noise impacts to be mitigated along this line segment. Toledo-Deshler is a prime example of the situation noted by SEA above -- a line segment where traffic increased in the normal course of business without any requirement for noise mitigation.

1) On many of the specified line segments, a 10 dBA reduction would more than mitigate the increased noise from Transaction-related traffic increases. The criterion for mitigation is a 5 dBA increase. The projected noise increase on a number of the line segments (including the Short-Berea and Berea-Greenwich line segments) is between 5 and 6 dBA. See FEIS, Vol. 6C, Appendix J, Attachment J-2 at pages J-15 to J-16. Under the Board's standards for imposing conditions, CSX should not be required to mitigate pre-existing noise.

2) Based on CSX's work in designing voluntary noise mitigation measures in the Cleveland area, CSX believes that the recommended 10 dBA reduction would be many times more expensive to achieve than a 5 dBA reduction. The FEIS (Vol. 2 at page 4-70) suggests that the average cost of noise mitigation will be \$10,000/receptor. While it may be possible to achieve a 5 dBA reduction at an average cost of \$10,000/receptor, CSX doubts that greater noise reductions could be achieved for anything near that cost. As the cost per receptor increases, the total burden of this recommended condition on the Transaction increases.

3) The regulations and guidance documents for publicly funded noise control programs, such as those for control of highway, transit and aviation noise, do not mandate a specific level of noise reduction. Analysis of noise impacts is required when noise levels expected to result from new projects are in the 65 dBA range (comparable to the Board's environmental regulations), but the analysis does not necessarily result in mitigation. Numerous factors are considered in determining whether to expend public funds on noise mitigation, including cost and adverse effects of the mitigation among other factors. Federal Highway Administration, U.S. Department of Transportation,



Highway Traffic Noise Analysis and Abatement: Policy and Guidance at 50-53 (June 1995) ("Highway Guidance"); Federal Transit Administration, U.S. Department of Transportation, Transit Noise and Vibration Impact Assessment at 6-33 to 6-36 (April 1995).

4) SEA's preferred strategy for noise mitigation is construction of sound barriers. FEIS, Vol. 2 at 4-71, Vol. 6C at J-6. It appears that the 10 dBA reduction design goal derives from experience with highway noise barriers, as a 10 dBA reduction is often attainable in that context.<sup>11</sup> However, there are significant differences between highway noise and freight rail noise that make a 10 dBA reduction much harder to achieve in the freight rail context. Automobile and truck noise is generated primarily by the engines and tires, which are relatively close to the ground.<sup>12</sup> In addition, highway noise is relatively continuous. Freight rail noise, however, is primarily a combination of wheel/rail noise which is generated close to the ground and locomotive engine, exhaust port and horn noise which are generated 10 feet or more above the ground. The locomotive and horn noise are much louder than the wheel/rail noise, although they are of much shorter duration. Moreover, there are structural problems and safety and operational constraints in erecting sound barriers (particularly tall sound barriers) along rail lines that are not present in the highway context. These problems include narrower

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<sup>11</sup> Highway Guidance at 13. There is much less experience with noise barriers in the rapid transit ("light rail") context. CSX has been able to identify only a few scattered examples around the country where noise barriers were constructed along short stretches of rapid transit tracks. For example, CSX is unaware that any noise barriers have been constructed along the RTA tracks through Cleveland, including along the common corridor with the Conrail Short Line and NS Nickel Plate Line, despite the fact that there are many residences within the 70 dBA  $L_{dn}$  contour line of the RTA.

<sup>12</sup> The major source of noise from rapid transit trains is the wheel/rail interaction, which is similarly close to the ground.

rights-of-way combined with a need for clearance for maintenance work, snow removal, emergency access and other purposes, and potential impairment of sight lines.<sup>13</sup> All of this suggests that while a 10 dBA reduction might be considered quite attainable in the highway context, it would likely be very difficult to achieve in the freight rail context by erecting sound barriers. Although CSX understands that the Board might conclude that noise mitigation is an appropriate exercise of the Board's conditioning power, CSX does not believe that the Board should express a preference for sound barriers due to the dearth of precedent for sound barriers in the railroad context, their substantial cost, and their potential adverse effects on rail safety and operations.<sup>14</sup>

5) The FEIS's recommendation for a 10dBA goal through noise barriers and sound insulation is also excessive because it does not give CSX any credit for the benefits of CSX's installation of continuous welded rail when laying new track and its replacement of existing jointed track with continuous welded rail. The DEIS (Vol. 5A at F-16) suggests that this measure alone could provide a 5 dBA reduction in noise levels.

In sum, there are a host of reasons why the Board should not adopt the FEIS's recommended 10dBA noise reduction goal. CSX submits that the Board should not attempt to resolve these highly technical issues and adopt an aggressive new standard for

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<sup>13</sup> Rail noise is much less continuous than highway noise, even on lines with 40 or more trains per day, and is thus perceived differently from highway noise.

<sup>14</sup> Where it is determined that a sound barrier is not feasible to mitigate highway noise, the Federal Highway Administration typically concludes that noise control is not feasible. Structural sound insulation is not required as a fallback strategy for residences. In this regard, then, Recommended Condition 11, which would impose for the first time a specific noise mitigation requirement on a rail carrier, goes beyond the requirements of the publicly funded highway noise control program by requiring structural sound insulation for residences where sound barriers are not feasible.

noise control for the freight rail industry in the context of its review of the Conrail Transaction. The Board need not do so. CSX is willing to undertake reasonable noise mitigation measures along the four line segments that will experience substantial increases in traffic as a result of the Transaction. Based on its work in connection with developing noise mitigation proposals for Cleveland and East Cleveland, CSX believes that a 5 dBA reduction is reasonably attainable. If CSX determines that additional noise reduction is achievable with a reasonable cost, CSX would design the plan for that greater level of reduction.

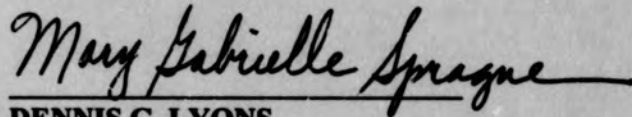
CSX respectfully submits that the Board modify the Recommended Conditions as proposed herein should the Board decide to impose them as conditions of approval of the Transaction.

**SAMUEL M. SIPE, JR.**  
**DAVID H. COBURN**  
Stephoe & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, D.C. 20036-1795  
(202) 429-3000

**MARK G. ARON**  
**PETER J. SHUDTZ**  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23129  
(804) 782-1400

June 2, 1998

Respectfully submitted,



**DENNIS G. LYONS**  
**MARY GABRIELLE SPRAGUE**  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202  
(202) 942-5000

**P. MICHAEL GIFTOS**  
**PAUL R. HITCHCOCK**  
CSX TRANSPORTATION, INC.  
500 Water Street  
Speed Code J-120  
Jacksonville, FL 32202  
(904) 359-3100

*Counsel for CSX Corporation and CSX  
Transportation, Inc.*

# Exhibit 1

## Comparison of Traffic Increases On Line Segments For Which Consultative Noise Mitigation Conditions Were Imposed In Finance Docket No. 32549 (BN/SF) And Finance Docket No. 32760 (UP/SP) To Traffic Increases On Line Segments For Which The FEIS In Finance Docket No. 33388 (CSX/NS/CR) Recommends Noise Walls Or Sound Insulation

BN/SF		UP/SP		CSX/NS/CR	
Segment	Increase in Number of Trains Per Day	Segment	Increase in Number of Trains Per Day	Segment	Increase in Number of Trains Per Day
Dobbin, TX to Houston, TX	7.1	Martinez, CA to Stockton, CA	4.0	Warsaw, IN to Tolleston, IN	4.0
Perry, OK to Enid, OK	8.8	Denver, CO to Oakley, KS	6.9	Berea, OH to Greenwich, OH	39.7
Enid, OK to Avard, OK	8.8	Dotsero, CO to Bond, CO	8.0	Deshler, OH to Toledo, OH	13.6
		Buda, IL to Nelson, IL	10.1	Mayfield, OH to Marcy, OH	40.4
		Herington, KS to Lost Springs, KS	10.3	Quaker, OH to Mayfield, OH	37.0
		Salina, KS to Oakley, KS	6.0	Short, OH to Berea, OH	33.9
		Lost Springs, KS to Wichita, KS	10.0	Sinns, PA to Brownsville, PA	9.3
		Iowa Jct, LA to Beaumont, TX	15.3	Alexandria, IN to Muncie, IN	9.3
		Valley, NE to Marysville, KS	2.0	Cleveland, OH to CP-190, OH	2.2
		Sparks, NV to Winnemucca, NV	12.4	Oak Harbor, OH to Bellevue, OH	19.5
		Chickasha, OK to Wichita, KS	7.4	Bellevue, OH to Sandusky Dock, OH	10.3
		Toyah, TX to Big Spring, TX	9.9	Riverton Jct, VA to Roanoke, VA	8.2
		Sierra Blanca, TX to Toyah, TX	9.9	Fola Mine, WV to Deepwater, WV	1.4
				Carleton, MI to Ecorse, MI	9.2



**CERTIFICATE OF SERVICE**

I, Mary Gabrielle Sprague, certify that on June 2, 1998, I have caused to be served a true and correct copy of the foregoing CSX-153 "Comments of CSX Corporation and CSX Transportation, Inc. on the Final Environmental Impact Statement" to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

*Mary Gabrielle Sprague*

STB

FD

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188028

LAW OFFICES

**ZUCKERT, SCOUTT & RASENBERGER, L.L.P.**

888 SEVENTEENTH STREET, N.W.  
WASHINGTON, D.C. 20006-3939  
TELEPHONE: (202) 298-8660  
FACSIMILES: (202) 342-0683  
(202) 342-1316

RICHARD A. ALLEN



June 2, 1998

Via Hand Delivery

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

*188028*

*D*

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

Dear Secretary Williams:

Enclosed for filing in the above-referenced docket are an  
original and twenty-five copies of NS-68, "Comments of Applicants  
Norfolk Southern Corporation and Norfolk Southern Railway Company  
on the Final Environmental Impact Statement."

Also enclosed is a 3 1/2" computer disk containing the  
submission in Wordperfect 5.1 format, which is capable of being  
read by Wordperfect 7.0.

Should you have any questions regarding this, please call.

Sincerely,

*Richard A. Allen*  
Richard A. Allen

ENTERED  
Office of the Secretary

JUN 04 1998

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Public Record

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Enclosures

cc: All Parties of *Office of the Secretary*  
Elaine K. Kaiser

Counsel for Norfolk Southern  
Corporation and Norfolk  
Southern Railway Company

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 APPLICANTS NORFOLK SOUTHERN CORPORATION  
AND NORFOLK SOUTHERN RAILWAY COMPANY ON THE  
FINAL ENVIRONMENTAL IMPACT STATEMENT

Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern"), hereby submit the following comments on the Final Environmental Impact Statement ("FEIS") prepared by the Board's Section of Environmental Analysis ("SEA"), served May 22, 1998.

Norfolk Southern has had the opportunity to study in detail the Final Environmental Impact Statement ("FEIS") prepared by SEA for the Conrail Transaction. The FEIS includes in Volume 5, Chapter 7 descriptions of the 65 environmental conditions SEA is



recommending that the Board include in its July 23, 1998 final decision on the Application. Norfolk Southern recognizes the tremendous effort by SEA over a period of many months to produce a comprehensive analysis of the potential environmental impacts presented by the Conrail Transaction. However, in reviewing the FEIS, Norfolk Southern has identified certain statements in the enumerated conditions for which it seeks clarification. Norfolk Southern takes this opportunity to raise certain questions and to request several minor modifications to the proposed conditions. Norfolk Southern believes its comments in each instance to be faithful both to SEA's intent in recommending certain conditions and to the ability of Norfolk Southern to effectively implement those conditions.

The purpose of these comments is to identify limited instances where a modification of the language of a particular condition would provide a more feasible or effective means of achieving the mitigation recommended by SEA. The specific comments of Norfolk Southern are presented below, with a reference to the condition(s) in the FEIS to which the comments apply.

**Condition 1(A)**. This condition would require Applicants to post permanent signs, at public at-grade crossings on 44 line segments, listing their respective toll-free telephone numbers and unique crossing identification numbers to be used for emergency purposes, prior to the first day of post-Acquisition operations by Applicants ("Day One"). For Norfolk Southern, this condition would apply to over 1,000 crossings. Norfolk Southern has already posted such signs on approximately 800 of the specified crossings on lines currently under Norfolk Southern control. However, to carry out the precise terms of Condition 1(A), Norfolk Southern would have to install these signs prior to Day One at approximately 200 crossings on line segments that are currently part of the Conrail system. This creates a potentially dangerous situation where a citizen reporting an accident or warning system malfunction might well call the incorrect railroad prior to Day One.

In order to install the intended signage on a schedule that avoids the potential for such confusion, Norfolk Southern requests that Condition 1(A) be modified as follows: *Applicants shall install signs at the public at-grade crossings for all of the designated line segments within 3 months of Day One.*

Norfolk Southern also requests that Condition 1(A) be expressly limited to the period of STB oversight of the Conrail Transaction.

**Condition 1(B).** Compliance with the express terms of Condition 1(B) raises a similar concern. It would require Norfolk Southern to install signs notifying motorists of an impending increase in train traffic at over 1,000 grade crossings, 30 days prior to Norfolk Southern's commencement of operations on the line segments that are currently part of the Conrail system. Condition 1(B) also requires the signs to comply with the U.S. DOT, FHWA Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD assigns the authority and responsibility for determining and approving need, design, location and installation of signs to the state departments of transportation (DOTs). Norfolk Southern concurs that compliance with the MUTCD is necessary to protect public safety. For example, placement of signs by parties not expert on sign location could lead to obstruction of vision, distraction or other risks.

Norfolk Southern is, however, concerned about the feasibility of obtaining the required participation (and

expertise) of state DOTs to permit installation of signs 30 days prior to Day One. Norfolk Southern requests the following clarification of this requirement: *Applicants shall install such signs within one (1) month of approval by the state agencies as required to comply with the MUTCD.*

Norfolk Southern also requests that Condition 1(B) be expressly limited to the period of STB oversight of the Conrail Transaction.

**Condition 4(B) and 4(C).** Norfolk Southern requests clarification to confirm that this condition will conclude as of the end of the STB oversight period for the Conrail Transaction.

**Condition 8.** As requested by SEA, Norfolk Southern has entered into Negotiated Agreements with certain communities that resolve the environmental concerns of those communities with respect to Norfolk Southern operations in those communities post-Acquisition. In some instances, the at-grade crossings identified by SEA in Condition 8 to be upgraded by Norfolk Southern were not required to be upgraded in the Negotiated Agreement with the community; in certain other instances, the



Negotiated Agreement provides for a different form of grade crossing warning device or other mitigation to resolve the concerns of the community. Similarly, Norfolk Southern expects that some of the communities and state departments of transportation with which it has not reached a Negotiated Agreement will decide that the mitigation in Condition 8 slated for a specific at-grade crossing in the community is not consistent with the community's desire for or the state department of transportation's expert judgment as to the need for grade crossing protection at that location.

As a result of these concerns, Norfolk Southern requests that Condition 8 be modified to provide as follows: *Should the grade crossing mitigation set forth in Condition 8 for a specific location be inconsistent with the recommendation of the relevant state department of transportation and the community, Norfolk Southern, the state department of transportation and the community may alternatively reach a mutual accommodation as to the need for and type of crossing protection to be provided. Furthermore, if Norfolk Southern enters into a Negotiated Agreement with the affected community or the state department of transportation with respect to a line segment or with respect to*

an obligation on the part of Norfolk Southern to participate in the funding of grade crossing upgrades, the Negotiated Agreement supercedes the specific requirements of Condition 8 with respect to grade crossings on that rail line segment or with respect to any obligation by Norfolk Southern to participate in the funding of such grade crossing upgrades.

Conditions 31, 33, 41, 45(C) and 49(B). Each of these conditions includes a requirement that Norfolk Southern provide a real-time train location monitoring system to improve local emergency response vehicle dispatching for designated communities, with the concurrence of the communities. While some research efforts are underway on such systems, Norfolk Southern is not aware of any system currently in use for the intended purpose described in the FEIS. Given questions about the technical feasibility, developmental status and unproven effectiveness of any actual real-time train location monitoring systems, Norfolk Southern believes that the intent of these conditions would be best accomplished by the following: Norfolk Southern shall have the option of reaching an alternative mutual

accommodation with the community to satisfy the community's needs in that regard.

**Condition 38(B).** This condition is intended to assure that Applicants have trained personnel prepared and authorized to initiate a response to a rail accident or hazardous materials release in the Greater Cleveland area within 30 minutes of notification. Norfolk Southern concurs with the appropriateness of the intent of this condition and, in fact, currently fulfills such intent for existing Norfolk Southern lines in Cleveland. Norfolk Southern does, however, request clarification that the focus of the condition is on timely response rather than on details of Applicants' staffing and location thereof. To allow Applicants some flexibility in fulfilling the requirement for the Greater Cleveland area, as well as for other areas in northern Ohio, Norfolk Southern requests that the condition be clarified as follows: *The Applicants shall each assign responsibility for emergency response efforts in the Greater Cleveland Area to fully trained supervisory personnel. These personnel shall be available 24 hours a day, 7 days a week, and*

shall be prepared to initiate a response within 30 minutes of notification.

**Condition 38(C).** The FEIS selects six locations where Norfolk Southern would be required under Condition 38(C) to supplement train defect detection devices in the Greater Cleveland area. At four of those locations, SEA has designated Wheel Impact Load Detectors (WILD) as a device to be installed by Norfolk Southern. Norfolk Southern understands that the intent of SEA in recommending Condition 38(C) for imposition by the Board is to provide an additional element of protection against the probability of occurrence of freight train accidents or hazardous materials incidents in the Greater Cleveland area. As a practical matter, however, a Wheel Impact Load Detector is intended only to assist in the maintenance of rail car wheels. It is still an immature technology under evaluation both by individual railroads and AAR on an experimental basis. For example, Norfolk Southern has one (1) WILD detector on its entire system for experimental evaluation. Moreover, WILD is not designed to provide a supplemental means for avoiding catastrophic rail accidents. Rather, WILD is intended to be



utilized for the much more limited purpose of determining the need for wheel maintenance. If a WILD mechanism detects a wheel on a loaded rail car that should receive maintenance, the car will continue on to its destination point and from there will be scheduled for maintenance at the next yard available to conduct such work. Thus, the installation of a WILD mechanism at a given location will not result in the sort of defect report that will give rise to the immediate removal of a car from the track to avoid a potential catastrophic failure. Instead, it will identify a car with a wheel that will be scheduled for maintenance at a subsequent time and location. This does not comport with the intended purpose of Condition 38(C).

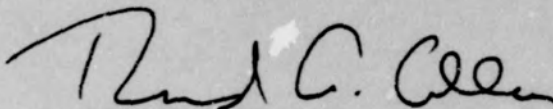
In addition to being only an experimental mechanism, the WILD detector being tested on NS is much more expensive than the other detectors specified in Condition 38(C). Norfolk Southern believes that requiring this expense in the absence of any expected or demonstrated benefit is not justified and requests that Condition 38(C) be modified to eliminate the requirement for installation of WILD detectors.

Norfolk Southern concurs with designation in the FEIS of the other defect detectors selected for installation by Norfolk

Southern in Condition 38(C) as appropriate for the purpose intended by SEA and believes that those supplemental devices as selected for location in Condition 38(C) will be adequate to achieve that intended purpose.

Norfolk Southern respectfully submits that the Board modify the Recommended Conditions as proposed herein should the Board decide to impose them as conditions of approval of the Conrail Transaction.

Respectfully submitted,



**Richard A. Allen**

**Andrew R. Plump**

Zuckert, Scoutt & Rasenberger, LLP

888 Seventeenth Street, N.W.

Suite 600

Washington, D.C. 20006-3939

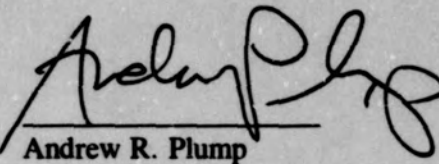
(202) 298-8660

*Counsel for Norfolk Southern Corporation and  
Norfolk Southern Railway Company*

June 2, 1998

CERTIFICATE OF SERVICE

I, Andrew R. Plump, certify that on June 2, 1998, I caused to be served by U.S. mail, postage prepaid, or by more expeditious means, a true and correct copy of the foregoing NS-68, Comments of Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company on the Final Environmental Impact Statement, on all parties of record on the service list in STB Finance Docket No. 33388.

  
Andrew R. Plump

Dated: June 2, 1998

STB

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187992



LAW OFFICES

**ZUCKERT, SCOUTT & RASENBERGER, L.L.P.**

888 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE : (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316



RICHARD A. ALLEN

ENTERED  
JUN 02 1998  
Part of  
Inspection

June 1, 1998

Via Hand Delivery

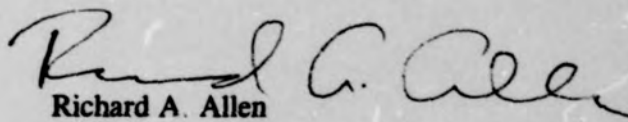
Vernon A. Williams  
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Washington, D.C. 20423-0001

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

Dear Secretary Williams:

I am writing on behalf of Applicants to make a slight amendment to my letter earlier today identifying the persons who will be presenting argument for Applicants on June 3 and 4, 1998, to state that rebuttal argument for CSX will be presented by Dennis Lyons, Mary Gay Sprague and Samuel Sipe.

Sincerely,

  
Richard A. Allen

Counsel for Norfolk Southern  
Corporation and Norfolk  
Southern Railway Company

cc: Dennis G. Lyons, Esq.  
Betty Jo Christian, Esq.

STB

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Office of the Secretary

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CSX-152

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JUN 02 1998

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Part of  
Public Record

FINANCE DOCKET NO. 33388

ENTERED  
Office of the Secretary

JUN 01 1998

Part of  
Public Record

Part of  
Public Record

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



D

**NOTICE OF WILLINGNESS OF APPLICANTS CSX  
CORPORATION AND CSX TRANSPORTATION, INC. TO  
ACCEPT ADDITIONAL CONDITIONS IN THE PUBLIC INTEREST**

On April 21, 1998, Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") and its subsidiary the Indiana Rail Road Company ("INRD") offered a proposal (the "Proposal") to Indianapolis Power & Light Company ("IP&L") to resolve its outstanding issues in this proceeding. A copy of the Proposal is set forth as Exhibit A hereto. In a May 12, 1998 letter, IP&L rejected the proposal outright. A copy of that letter is set forth as Exhibit B hereto.

Because it is appropriate in the public interest; because CSX had been willing to make the Proposal in exchange for a withdrawal of IP&L's opposition; and because CSX believes that there is not a scintilla of merit left in any of IP&L's continuing oppositions to the Transaction and to the settlement Proposal proffered to IP&L: as set forth in the "Conclusion" hereto, CSX hereby gives notice of its willingness to accept substantially the terms of the Proposal as additional conditions.

## THE CSX/INRD PROPOSAL

Background. IP&L, DOJ and ISRR have all raised concerns regarding competitive access to IP&L's two Indianapolis-area generating plants, the Perry K and Stout plants, as a result of the Transaction. As is explained in the Application (CSX/NS-176 at 48-63), the Transaction will cause no reduction in IP&L's existing rail options for its Perry K and Stout plants. At Perry K, Conrail provides direct service and ISRR has access via Conrail (ISRR-CR). As a result of the Transaction, CSX will step into Conrail's shoes as the carrier directly serving the plant, and NS will obtain access via a CSX switch (NS-CSX). Moreover, ISRR will continue to have access via CSX (ISRR-CSX). At Stout, the sole carrier providing direct service is the INRD. Conrail has participated as an intermediate carrier in ISRR movements to Stout (ISRR-CR-INRD). After the Transaction, CSX will operate the Conrail line that has been used for those movements. ISRR will continue to have access via CSX switch (ISRR-CSX-INRD).

Notwithstanding these facts, IP&L, DOJ and ISRR have all sought conditions to provide IP&L with greater competitive options than it has today. In an effort to put any remaining issues to rest, CSX and INRD offered the Proposal to IP&L. The CSX/INRD proposal would preserve IP&L's existing options – both in terms of rates and service – at both Perry K and Stout not only for the present but for a 20-year period. It would also enhance those options.

Movements to Stout. To the extent that coal has been transported to Stout via ISRR-CR-INRD, it has been due to contracts between IP&L and INRD and among Conrail, ISRR, INRD and IP&L that make such movements economical. To address the concern of IP&L, ISRR and DOJ that CSX would have no incentive to continue those



arrangements, CSX and INRD have offered a 20-year contractual arrangement keeping current rates in place subject to annual adjustments after the first five years. Specifically, the Proposal provided that the charge to IP&L for the CSX-INRD movement will be equal to the sum of the existing Conrail and INRD charges for movements interchanged with ISRR for ultimate delivery to the Stout plant. The Proposal thus fully preserves IP&L's option to ship coal to Stout via ISRR instead of INRD as the line haul carrier.

In addition, the Proposal provided for a 20-year contract between INRD and IP&L for deliveries to Stout of coal transported by NS to Hawthorne Yard. The charge for such movements would be the same as the charge for movements of ISRR-originated coal referred to in the preceding paragraph, would remain unadjusted for five years, and would be adjusted thereafter in accordance with an index. This assures that CSX will not cause INRD to discriminate against NS-originated shipments of coal to IP&L, whether from the west or the east.

Movements to Perry K. The Transaction Agreement commits CSX to open the Perry K plant to reciprocal switching. Under the Proposal, existing Conrail contract rates for moving ISRR or INRD traffic to Perry K would be incorporated in a tariff that will maintain the status quo. For switching of NS traffic from Hawthorne Yard, CSX will publish a cost-based tariff. In each case, the tariffs would contain provisions prohibiting any increase in charges for five years.

#### IP&L'S RESPONSE TO CSX'S OFFER

The Proposal offered IP&L the same or better competitive options than it has today, at the same or lower rates. IP&L's rejection of the offer is quite incomprehensible.

Because IP&L set forth in writing its asserted reasons for rejecting the offer, CSX will address those arguments, which are entirely without merit.

a. CSX Stepping Into Conrail's Role

IP&L questions how CSX can "replace CR and compete vehemently with the Indiana Rail Road" because CSX has "effective control" of the INRD. IP&L Letter at 1 (emphasis in original). But no part of CSX/INRD's Proposal was based on the assumption that CSX and INRD would compete with each other. By offering IP&L a through rate for 20 years, the CSX/INRD Proposal removed any such issue from this proceeding.

The Proposal clarified that CSX will assume Conrail's role in these movements – not only in terms of routing, but also for pricing the movements to Stout. Conrail and INRD currently act at arm's length as to movements to Stout and CSX will inherit the prices that Conrail agreed to. The Transaction Agreement maintains ISRR's existing coal movements to Stout, and the Proposal guarantees Conrail's current pricing to IP&L (subject to adjustment)<sup>1</sup> for a 20-year period. Thus, CSX cannot "favor" INRD by charging a high price to ISSR,<sup>2</sup> notwithstanding CSX's ownership interest in INRD; CSX's pricing to ISRR is based on Conrail's pricing, and Conrail had no reason to favor INRD since Conrail shared in ISRR's movements to Stout but had no part of the INRD

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<sup>1</sup> The Proposal referred to the RCAF-A index, which had been used in the Conrail arrangements on this route. The current proffer of a condition by CSX offers the RCAF-U index, which has been employed in the NITL Settlement and other settlements in this case. A party that rejects a settlement should not expect that exactly the same settlement will be later proffered. This is the only respect in which the proffer made hereby differs from the rejected settlement offer.

<sup>2</sup> IP&L-11 at 6.

movements to Stout. Accordingly, going forward, ISSR will compete with INRD for movements to Stout under the identical conditions that it does today.

The Transaction as originally proposed, together with the Proposal, replicates the competitive conditions that currently exist — something that both IP&L and ISRR claim they desire. IP&L's rejection of this Proposal provision is hard to understand unless the explanation is that IP&L is attempting to improve its competitive situation through this proceeding, which is not required under the Board's established principles.

b. IP&L's Rates

Even though the existing rate and the rate proposed in the Proposal for ISRR movements to the Stout plant are identical, IP&L nevertheless criticizes the proposed rate on several counts. First, IP&L asserts that the proposal does not "preserve or enhance" the competitive options currently available to IP&L today. Letter at 2. In support, IP&L states that it currently has "through rates for coal deliveries to E.W. Stout and Perry K plants. . . . " Id.

IP&L implies that it will not get through rates to its plants post-Transaction. Nothing could be further from the truth. Post-Transaction, IP&L will pay the same through rate to CSX that it currently pays Conrail for movements to the Stout and Perry K plants, and will pay the same rate that it currently pays INRD for movements to the Stout Plant.

Second, IP&L complains that it "[d]oes not know what division Conrail and Indiana Southern have agreed upon," and wonders, without any factual basis, whether Conrail took advantage of the ISRR in pricing that movement. Letter at 2. That revenue division is of no concern to IP&L; it is the final price to IP&L that matters to it. IP&L

apparently has been content to pay that price since 1992 when the ISRR became a party to the IP&L/CR/INRD rail transportation contract.

Third, for movements to Stout, the Proposal "prevent[s] CSX/INRD from restoring IPL's rate to the previous, significantly higher levels after the expiration of the current INRD/IPL Agreement" - a specific concern of IP&L. IP&L-11 at 38.

This is the first time in this proceeding that IP&L has mentioned any dissatisfaction with the Conrail rate. In fact, IP&L has lauded the low switch charge that Conrail passes through to IP&L for ISRR/CR/INRD movements to the Stout plant. IP&L-3, Weaver V.S. at 8-9. Likewise, ISRR has not raised any concern about the Conrail/ISRR revenue division. In fact, both ISRR and IP&L have urged that the status quo be maintained. In any event, even if IP&L's speculations were accurate, they are beyond the scope of this proceeding.

IP&L cannot have it both ways. IP&L has requested the status quo, and that is what it has been offered, and all that it is entitled to.

c. Alleged Conspiracy to Monopolize Indianapolis

IP&L speculates that "CSX had a plan prior to its purchase of Conrail to monopolize the City of Indianapolis and IPL." Letter at 1. As support for this cloak-and-dagger utterance, IP&L points to the renegotiation of contracts between Conrail, CSX, and INRD in which Hawthorne Yard is a designated switch point in Indianapolis. IP&L states that such designation for Hawthorne Yard caused "additional miles to the movement of IPL unit trains (50 plus railcars), more delays, more air pollution, and more crew time." Letter at 1. There is no support for IP&L's assertions.



First, it was Conrail, not CSX or INRD, that initiated the renegotiation of the contract that governed operation of the Indianapolis Belt. Second, Conrail initiated such renegotiations several years before the CSX/Conrail transaction was announced. Third, Conrail initiated the renegotiation to ensure that the operative 1883 contract, to which eight Conrail predecessor railroads were parties, reflected existing economic conditions for the railroads. Fourth, contrary to IP&L's assertion, the new agreements did not change the operation of the Indianapolis Belt. See CSX/NS-37 at 22. Fifth, IP&L gives the impression that Hawthorne Yard was first designated as a switching point in Indianapolis in 1996 when the 1883 agreement was renegotiated. To the contrary, Conrail has used Hawthorne Yard as a switch facility for Belt customers for over 20 years. Finally, IP&L suffered none of the alleged negative impacts from Hawthorne Yard's use as a switching point: Neither ISRR coal destined for the Stout or Perry K plants, nor INRD coal destined for the Stout plant enters Hawthorne Yard. Thus, CSX is at a loss to understand how the renegotiated contract had any impact whatsoever on the movement of coal to IP&L's plants.

d. Need for Build-out

IP&L reiterates that an alleged build-out option to Conrail constrains INRD's rates. Letter at 2. As already stated in filings before the Board, IP&L's assertion is contradicted by sworn testimony by the President of INRD. CSX/NS-177 at 194-202. In any event, the rate proposal removes any need for a build-out. The economics of the Proposal preserve the status quo – which has not impelled IP&L to try to build out – and are significantly more attractive than any build-out through an urban area could be.

e. Competitive Access to Western Coal

IP&L makes a number of unsubstantiated statements regarding NS's alleged "limited" ability to compete with CSX. Letter at 2-3. First, IP&L claims that NS's routes from the West are circuitous and have light density segments. Such claims are unfounded and irrelevant. Some relative circuitry is common in many areas today where CSX and NS compete head-to-head for traffic coming from the West. We are confident that NS has the resources and the will to serve IP&L.

Second, IP&L calls the trackage rights charge that NS must pay CSX for use of CSX's 30-mile Lafayette-Indianapolis track "[i]nappropriate." Letter at 3. Today, CSX pays Conrail an almost-identical charge for use of a portion of the same track.

Third, IP&L expresses concern that having only overhead trackage rights will prevent NS from competing with CSX. Letter at 3. But the City does not share IP&L's views, as evidenced by its Settlement Agreement with CSX, which is premised on NS's viability as a competitor.

Fourth, IP&L complains that NS will not have an "investment" in Indianapolis. Letter at 3. The Settlement Agreement with the City gives NS the opportunity for that investment in Hawthorne Yard; or it can operate there without an investment.

Fifth, IP&L worries that CSX will block NS's participation in Indianapolis by instituting switch charges or providing inferior service. NS has agreed to the basis for determining switch charges for Indianapolis, and accordingly, must believe that it can compete with CSX on that basis. As to giving NS inferior service, the Settlement Agreement with the City expressly prohibits such discrimination.

f. Competitive Access to Eastern Low Sulfur Coal

In a section headed "Competitive Access to Eastern Low Sulfur Coal," IP&L accuses CSX of ignoring "potential coal movements from the eastern and western coal fields to satisfy the requirements of Phase II of the Clean Air Act." Letter at 3 (emphasis supplied). IPL's affection for Eastern low-sulfur coal is very recent. Only a cursory and dismissive reference to Eastern coal is on record from IP&L in its prior filings: "Given that low-sulfur coal reserves in the East are quite limited and in demand, it is more likely that IPL would buy western compliance coal." IP&L-3 at 34. Indeed, IP&L has expressed concern that CSX "could effectively prevent the use of western compliance coal by favoring its own low-sulfur coal origins even if they do not produce the best outcome for IPL's ratepayers or the environment." I&PL-3 at 35. Accordingly, CSX is confused by IP&L's argument. In any event, both CSX and NS have access to low sulfur coal in the East. With interchange rights with INRD at Hawthorne Yard, NS will be able to move its low sulfur eastern coal to Stout.

g. Acquisition Premium

Finally, IP&L states that "[r]aising prices to customers to compensate for this [acquisition] premium is not an acceptable way to grow or salvage a company. IPL has no desire to become a victim." Letter at 3-4. CSX is not sure who the "victim" is here, but it is quite clear that it is not IP&L. CSX offered IP&L a proposal that would maintain IP&L's current rates (subject to RCAF-A) for 20 years. How, by anyone's definition, such a proposal constitutes a price increase or "victimization" of its beneficiary stretches one's imagination.

## CONCLUSION

CSX has presented IP&L a proposal that (with the Settlement Agreement with the City of Indianapolis) gives IP&L and ISRR exactly what they have requested: the status quo "plus." The Proposal ensures that IP&L's rates for ISRR movements to Stout and Perry K remain intact - for a 20-year period.

CSX is willing to have the Board impose the terms of the Proposal as modified herein as a condition upon CSX's operations under the Transaction, assuming that the Board imposes no conditions upon CSX's operations in the Indianapolis area other than those proffered hereby and those contemplated by the Settlement Agreement with the City of Indianapolis being this day submitted to the Board. The Proposal, this proffer, and the settlement with the City should finally put to rest any legitimate concerns by IP&L, ISRR, and DOJ that any conceivable "2-to-1" issues will remain outstanding and unresolved in Indianapolis.

Respectfully submitted,



DENNIS G. LYONS  
RICHARD L. ROSEN  
SHARON L. TAYLOR  
Arnold & Porter  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-1202  
(202) 942-5000

SAMUEL M. SIPE, JR.  
BETTY JO CHRISTIAN  
Steptoe & Johnson  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795  
(202) 429-3000

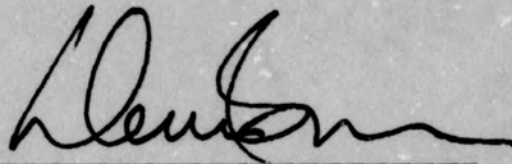
*Counsel for CSX Corporation and  
CSX Transportation, Inc.*

June 1, 1998



CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on June 1, 1998, I have caused to be served a true and correct copy of the foregoing CSX-152, Notice of Willingness of Applicants CSX Corporation and CSX Transportation, Inc. to Accept Additional Conditions in the Public Interest, to all parties on the service list in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

A handwritten signature in dark ink, appearing to read 'Dennis G. Lyons', is written over a horizontal line.

Dennis G. Lyons

US OFFICE PRODUCTS

April 21, 1998

Don Knight  
Vice President Fuel Supply  
Indianapolis Power & Light  
Morris Street Service Center  
1230 W. Morris Street  
Indianapolis, Indiana 46221

Re: STB Finance Docket No. 33388, et al.

Dear Mr. Knight:

We write to inform you of steps CSXT and The Indiana Rail Road Company ("INRD") will take to preserve (and even enhance), after the implementation of this transaction, the competitive options currently available to Indianapolis Power and Light ("IP&L"). These steps will also preserve the ability of Indiana Southern Railroad ("ISRR") to continue to provide competitive rail service to IP&L and are as follows:

1. IP&L STOUT PLANT.

A. CSXT and INRD are willing to enter into a contract with IP&L for the movement of coal traffic between ISRR (Crawford Yard) and the Stout Plant. The charge will be equal to the sum of the Conrail charge that has existed for the last several years, to move coal trains from the ISRR interchange to the INRD interchange plus the INRD charge to move coal trains from the Conrail interchange to the Stout Plant.

B. INRD is willing to enter into a contract with IP&L for the movement of coal traffic between NS at Hawthorne Yard and the Stout. That charge will be the same as the total charge in 1.A above. This will provide the economic access which IP&L asserts it will lose because of the loss of the asserted "build out" option from Stout.

The term of the contract covering the rate for the movements in 1.A will be twenty years. Rates will not be adjusted for a period of five years from the effective date. Thereafter, rates will be adjusted upward or downward quarterly by a factor equal to RCAF (Adjusted for productivity). At no time will the rates be adjusted below the rate on the effective date of the contract.

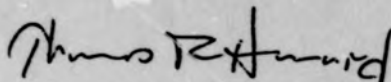
Don Knight  
April 21, 1998  
Page 2

2. **PERRY K PLANT.** While Perry K is not a two-to-one facility, CSXT treats it as such in the Application. Thus, after the acquisition, Perry K will be open to reciprocal switching. For switching of non-CSXT traffic from Hawthorne Yard to Perry K, CSXT will publish a cost based tariff charge. For existing CR contract rates for switching INRD and ISRR traffic from interchange to Perry K, CSXT will publish a tariff charge that will maintain the status quo.

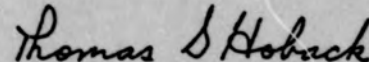
The tariffs will also each contain a provision prohibiting any increase in the charges for a period of five years from the effective date.

CSXT and INRD are willing to complete the above referenced agreement and tariffs within the next 30 days, and in accordance with the requirements of 49 U.S.C. §11101 and 49 C.F.R. Part 1300. The contracts and tariffs will become effective upon the commencement of separate operations by CSXT and NS after the Closing Date under the Transaction Agreement dated as of June 10, 1997.

Very truly yours,



Thomas R. Howard  
Chief Commercial Officer  
CSXT  
935 7<sup>th</sup> Avenue  
Huntington, WV 25701



Thomas G. Hoback  
President and CEO  
INRD  
Box 2464  
Indianapolis, IN 46206







DONALD W. KNIGHT  
VICE PRESIDENT, FUEL SUPPLY

May 12, 1998

(317) 261-8752  
FAX (317) 261-8788

Thomas R. Howard  
Chief Commercial Officer  
CSX Transportation, Inc.  
935 7<sup>th</sup> Avenue  
Huntington, WV 25701

Thomas G. Hoback  
President and CEO  
The Indiana Rail Road  
P. O. Box 2464  
Indianapolis, IN 46206

Gentlemen:

This letter will confirm two conversations with Mr. Hoback regarding your joint letter dated April 21, 1998.

I would like to make four general comments: First, Indiana Rail Road and IPL have had a business relationship for almost 20 years and never have we received a letter with so many misleading, inaccurate and self-serving comments.

Secondly, for at least 60 years coal has moved from southern Indiana to Indianapolis over the Conrail-Indiana Southern Railroads. For CSX to replace Conrail and compete vehemently with the Indiana Rail Road – as stated by a senior CSX representative – at the detriment of their recent 89% ownership in the Indiana Rail Road, simply does not make sense. IPL agrees with Judge Levanthal that CSX does have effective control of the Indiana Rail Road.

Thirdly, An agreement made by CSX, Indiana Rail Road and Conrail, six months prior to CSX announcing their purchase of Conrail, changed the operations of the Belt Railroad. As we understand, the Belt Railroad became a profit center for the first time in its long history. In the new agreement the three parties also designated Hawthorne Yard as a switching point for all movements into and out of Indianapolis. This adds additional miles to the movement of IPL unit trains (50 plus rail cars), more delays, more air pollution, and more crew time. This agreement infers that CSX had a plan prior to its purchase of Conrail to monopolize the City of Indianapolis and IPL.

Lastly, in addition, IPL is concerned that economic development with in Indianapolis will be severely affected by having only one Class I railroad serving a city of this size. The NS seems to be a paper tiger at most, and their acquiescence to the CSX in Indianapolis serves only as a placebo to the STB. We do not think the STB will take the placebo and determine real competition truly exists for this city or IPL. Indianapolis should not become a whistle stop for the CSX.

Thomas R. Howard, CSX  
Thomas G. Hoback, INRD  
May 12, 1998  
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More specifically, the steps CSX and INRD propose do not preserve or enhance the competitive options available to IPL prior to CSX's involvement with Conrail. Presently we have through rates for coal deliveries to E.W. Stout and Perry K plants. As INRD is aware, IPL and Conrail have used the RCAF-A for several years, additionally, Conrail in the through rates absorbed virtually all of the switch charge imposed by the INRD.

Relative to the rates you proposed, we do not know what division Conrail and Indiana Southern have agreed upon. When Conrail sold all but a few miles of the Evansville-Indianapolis branch line did they take advantage of the Indiana Southern on this particular movement?

The ability to build-on, build-off of Conrail to serve E.W. Stout is a mechanism that assures IPL of constraining INRD rates by utilizing ISRR/Conrail to directly serve Stout. This mechanism will disappear if your joint letter is accepted, or the STB rules in favor of the CSX over the recommendations of the Justice and Transportation Departments.

While you state Perry K is not a 2-1 situation in your letter, CSX's testimony in this case is just the opposite. This point is clearly shown by the Indiana Rail Road/IPL E.W. Stout plant contract and its provisions for coal deliveries to our Perry K plant.

#### Competitive Access to Western Low Sulfur Coal.

IPL currently has access to two railroads which can compete for movements of western low sulfur coal - Conrail from St. Louis and CSX to Chicago. The purchase of Conrail leaves CSX with both routes and establishes a highly circuitous route for the Norfolk Southern from Kansas City to Lafayette, Indiana, then over CSX tracks to Indianapolis. There are several problems associated with this movement:

- a) Possible discrimination from the western carriers because they will be short hauled.
- b) NS' ability to compete will also be limited for the following reasons:
  - 1) Circuitous routes.
  - 2) Light density segments in the route.

Thomas R. Howard, CSX  
Thomas G. Hoback, INRD  
May 12, 1998  
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- 3) Inappropriate charges for the use of approximately 80 miles of CSX track from Lafayette, Indiana.
- 4) Since the NS track is located north of Indianapolis, approximately 60 miles to Muncie and 80 miles to Lafayette, and their rights over the CSX line to Indianapolis consists of only overhead rights - the NS will not be able to compete with the CSX. They will have great difficulty in attracting any business because they will not be allowed to build off of the CSX tracks in Indianapolis, or central Indiana for that matter.
- 5) In addition to the overhead rights, NS does not have a investment in Indianapolis, and by their own admission, this situation prohibits them from effectively competing.
- 6) If by any chance they could deliver coal to Indianapolis, CSX and the Indiana Rail Road could effectively block the NS by instituting switch charges or providing inferior service. The U.S. Department of Transportation seems to have recognized this dilemma by focusing on direct access in their comments.

Competitive Access to Eastern Low Sulfur Coal.

Currently Conrail, in cooperation with shortline railroads from Cincinnati, Ohio and Louisville, Kentucky can compete with the CSX. If the sale of Conrail takes place as planned, the CSX could block this competition through the use of switch charges, overhead fees and poor service. Regardless, their revenue streams will be protected because of the overwhelming ownership and control within Indianapolis. This purchase assures the CSX that it will participate in every movement into and out of Indianapolis.

Your letter addressed movements of Indiana coal over the ISRR and INRD. It completely ignored potential coal movements from the eastern and western coal fields to satisfy the requirements of Phase II of the Clean Air Act and the large premium being paid for Conrail.

Whether it is ten billion or twenty billion over book, it is very difficult to believe that the CSX/NS could recoup this extraordinary amount of capital, unless the customer is faced with a duopoly or is monopolized by a single carrier. Raising prices to customers to



Thomas R. Howard, CSX

Thomas G. Hoback, INRD

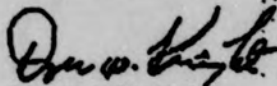
May 12, 1998

Page -4-

compensate for this premium is not an acceptable way to grow or salvage a company. IPL has no desire to become a victim.

It appears that CSX/INRD and IPL have major differences on what constitutes the preservation of rail competition currently available to IPL. IPL agrees with Mr. J. Q. Anderson's statement that he knows "of no market, for goods or services, where increased competition hasn't produced better offerings and better value." Unfortunately, Mr. Anderson was not referring to Indianapolis when he made this statement.

Sincerely,



Donald W. Knight  
Vice President - Fuel Supply

/at