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CSX-151

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



ENTERED
Office of the Secretary

JUN 01 1998

Part of
Public Record

**SUBMISSION BY APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC. OF SETTLEMENT AGREEMENT
BETWEEN THE CITY OF INDIANAPOLIS AND
CSX CORPORATION AND CSX TRANSPORTATION, INC.**



On June 1, 1998, Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") reached a significant settlement with the City of Indianapolis (the "City"). A copy of the City Settlement Agreement is set forth in Exhibit A hereto.

This settlement with the City is important for several reasons: first, because of the significant number of "2-to-1" shippers whose options under the original Transaction Agreement are improved by the settlement; second, because of the additional benefits bestowed on those shippers as well as on Short Line railroads serving them or others; and third, because it provides a settlement of issues raised by the City as to competition generally. The Settlement Agreement enhances the transportation and competitive alternatives for rail shippers and Short Line carriers located in Indianapolis. Accordingly, it will further the public interest.

The terms of the City Settlement Agreement include but extend beyond traditional conditions imposed by the Board in prior consolidation proceedings. CSX, however, believes that disputes should be resolved by negotiated settlement between the affected parties rather than imposed by government decree. In light of the concerns expressed by the

City, CSX entered into an agreement that addresses those concerns, including in "non-traditional" ways, without prejudicing the benefits that flow from the Transaction.

The Settlement Agreement provides for procedural and substantive improvements in several broad areas, among others:

- a. Switching rate benefits for "2-to-1" shippers;
- b. The City's participation in switching-cost audits;
- c. Expanded NS rights at Hawthorne Yard;
- d. Expansion of switching to new industries;
- e. Short Line switching at concessionary rates; and
- f. Arbitration procedures for addressing contract shipper complaints.

Switching Rate Benefits for "2-to-1" and Other Shippers. The Settlement Agreement is particularly significant because of its impact on "2-to-1" shippers in this proceeding.

Indianapolis contains the largest concentration of "2 to 1" shippers created by the Transaction. Currently, there are 66 "2 to 1" shippers in Indianapolis that are served directly by Conrail and have access to CSX through reciprocal switching. CSX/NS-178 at 638-39. Conrail's standard reciprocal switching fee for those shippers is \$390 per car.

Pursuant to the Transaction Agreement (CSX/NS-25, Vol. 8C at 501-25), CSX steps into Conrail's shoes with respect to the Conrail Indianapolis routes, NS is afforded access to Hawthorne Yard, and CSX will perform switching services for NS to and from "2-to-1" industries located on the rail lines of the former Indianapolis Union Belt Railroad (the "Belt") as well as any "2-to-1" industries in Indianapolis not located on the Belt. See CSX/NS-178, Vol. 3B, Ex. I at 638-39. The Settlement Agreement broadens this commitment to embrace not only such current "2-to-1" shippers but also industries that locate on the Belt in the future.

In contrast to Conrail's \$390 per car switching fee, the Transaction Agreement provided that CSX will charge a cost-based switching charge to switch NS's cars in Indianapolis after CSX acquires control of Conrail routes. CSX/NS-25, Vol. 8C, Ex. X at 505-08. The switching charge will be determined following a joint CSX/NS cost study. The Settlement Agreement goes further and provides that during the first five years the switching charge will not exceed the lesser of (i) switching cost determined by the joint CSX/NS cost study (subject to RCAF-U index adjustments) or (ii) \$250 per car (subject to RCAF-U adjustments). This assures a substantial and immediate reduction from the status quo.

Under the Settlement Agreement, CSX is bound to switch, transfer, and deliver NS cars to and from Indianapolis shippers in a timely and nondiscriminatory manner. That means that CSX will treat NS cars in the same manner that it treats its own cars to and from Hawthorne Yard. Accordingly, NS is given further assurance of its ability compete with CSX on an equal footing in Indianapolis.

Shipper Interest Participation in Cost Audits. The City raised concerns about how the cost-based switching charge will be calculated, and requested that shippers be permitted to audit the costs related to the switching charge. The Settlement Agreement provides that the City may appoint an independent auditor to be involved in the cost study as its representative. Accordingly, shippers can be assured that no "unreasonable or inaccurate costs" are considered in the determination of switching costs to be passed through to them.

Expanded NS Rights at Hawthorne Yard. Pursuant to the Transaction Agreement set forth in the Application (CSX/NS-25, Vol. 8B at 110-13), CSX will grant NS trackage rights over CSX lines into Hawthorne Yard. At Hawthorne Yard, NS will have sufficient tracks and space for the arrival, departure, and make-up of trains and reasonable access to and from the designated tracks. See Application, CSX/NS-25, Vol. 8B at 118.

In response to the City's concerns that NS will lack a sufficient physical presence in Indianapolis (CI-8 at 2; I&PL-3 at 7), the Settlement Agreement provides that CSX will enter into good faith negotiations with NS as to allowing NS to build trackage, for NS's exclusive use, at NS's own expense, at Hawthorne Yard.

Short Line Switching. To promote connectivity between Central Railroad of Indiana ("CIND"), Louisville & Indiana Railroad Company ("L&I"), and ISRR, CSX will offer (for a 10-year period) a terminal switch charge for freight moving between those shortlines. To encourage traffic growth on CIND, L&I, and ISRR, CSX will offer (for a 10-year period) a special concessionary switch charge for traffic originating or terminating on one of those shortlines and interchanged with NS, where that traffic cannot receive single-line service from CSX. Both of these switch charges are being separately agreed to with the City. This provision of the Settlement Agreement permits every Short Line carrier in Indianapolis to connect with other Short Lines in Indianapolis.

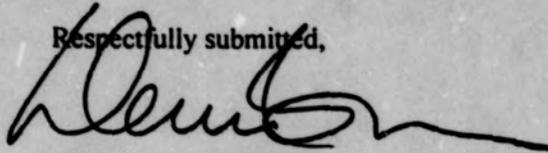
Arbitration Procedure for Addressing Shipper Complaints. In the event existing Conrail-served shippers who would otherwise be open to switching access to NS under the Transaction Agreement but who have Conrail contracts that will be allocated to CSX are dissatisfied with the service they receive from CSX, they may avail themselves of an arbitration procedure, similar to that prescribed in the NITL Settlement Agreement, with a view to rebidding their traffic to other carriers.

* * *

As indicated above, the Settlement Agreement resolves the competitive concerns of and requests for conditions submitted to the Board by the City in the interest of rail competition in its Comments of October 21, 1997 (CI-5 and CI-6) and its February 20, 1998 Brief in Support of its Request for Conditions (CI-8). Accordingly, the City now supports the proposed transaction for the City in general and intends to withdraw its requests for

conditions. CSX assumes, and consents, that the Board will order it to comply with the Settlement Agreement in accordance with its terms. See Decision No. 44 in UP/SP, served Aug. 12, 1996, at 12 n.14. CSX respectfully requests that the Board take the Settlement Agreement with the City into account in connection with its decision in this matter.¹

Respectfully submitted,



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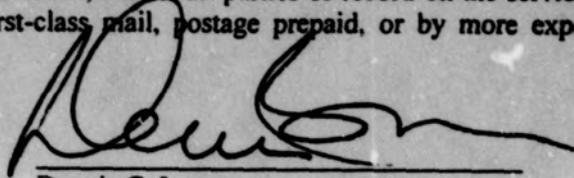
*Counsel for CSX Corporation and CSX
Transportation, Inc.*

June 1, 1998

¹ A proffer is also being made today of another settlement proposal relating to a particular issue in Indianapolis which CSX is willing to have the Board impose as a condition upon its operations under the Transaction.

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-151, Submission by Applicants CSX Corporation and CSX Transportation, Inc. of Settlement Agreement Between the City of Indianapolis and CSX Corporation and CSX Transportation, Inc. to all parties of record on the service list in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



Dennis G. Lyons

US OFFICE PRODUCTS

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this 1st day of June, 1998, by and between CSX Corporation ("CSXC") and CSX Transportation, Inc. ("CSXT"), (collectively, CSXC and CSXT are ("CSX")), on the one hand, and The City of Indianapolis ("City"), on the other.

Whereas, CSX and Norfolk Southern ("NSR") have filed with the Surface Transportation Board ("STB") a Joint Application in F.D. No. 33388 for their acquisition of Conrail, which provides for the operation of various lines of Conrail ("CR") by CSX and NSR, and under such Joint Application the lines of Conrail within the City will be principally operated by CSX;

Whereas, the City has actively participated in the STB proceeding seeking to enhance the transportation and competitive alternatives for rail shippers and short line carriers within the City relative to the proposal of the Joint Application, thereby promoting the economic development of the City; and,

Whereas, through discussions and negotiations with CSX, the City has secured certain understandings from CSX that will promote the goals of the City, and as consequence thereof the City and CSX desire to set forth their understandings and to enter into this agreement so that the City may support the Joint Application, except as the Joint Application may be inconsistent with competitive issues for specific shippers in the Indianapolis area, and withdraw the City's opposition to the Joint Application and its request for conditions before the STB

Now, Therefore, in consideration of the premises the parties, intending to be legally bound, Agree as Follows:

1. NSR/CSX Switching Arrangements. CSXT intends to perform switching services for NSR to and from industries in Indianapolis in accordance with a proposed Agreement appearing as Exhibit X to volume 8C of the Joint Application, pages 501-525. At the request of the City, CSX shall, subject to the agreement of NSR, amend that proposed Agreement in the following respects:

- (a) By clarifying and expanding the coverage of the Agreement by adding the following sentence to the end of Section 1 (a):

Exhibit I is hereby modified and shall be updated from time to time to include any Industry now or hereafter located on the rail lines of the former Indianapolis Union Belt Railroad ("Belt") as well as any 2 to 1 Industry in the Indianapolis area not located on the Belt. As used herein, a "2 to 1 Industry" shall mean an industry meeting that definition as used by the STB in ruling on the Joint Application.

- (b) By providing NSR an option with respect to a portion of Hawthorne Yard by adding the following subsection 1(e)

CSX shall enter into negotiations with NSR to allow NSR to build trackage, for NSR's exclusive use, at Hawthorne Yard within thirty (30) days of notice by NSR of NSR's desire to enter into those negotiations. CSX will conduct those negotiations in good faith and, if at such time unoccupied space is in Hawthorne Yard, CSX will offer to NSR a proposal allowing NSR to build trackage, for its exclusive use at Hawthorne Yard, at NSR's own expense on commercially reasonable terms.

- (c) By amending the provisions governing service by adding a new subsection 2(d) as follows:

CSXT shall switch, transfer and deliver NSR cars to and from connections or origin/destination facilities within Indianapolis in a timely and nondiscriminatory manner when compared to the manner in which CSXT switches, transfers and delivers to and from Hawthorne Yard its own cars within Indianapolis. In the event that CSXT should discontinue or substantially reduce its use of Hawthorne Yard and NSR continues its use so that the foregoing comparison of CSXT and NSR switching, transfer and delivery is no longer feasible, then CSXT and NSR will develop another mutually acceptable means to evaluate CSXT's switching, transfer and delivery services to NSR at Hawthorne Yard considering all relevant factors affecting such services at that time, including the levels of such CSXT and NSR service prior to such discontinuance or substantial reduction.

- (d) By capping the switching charge for a period of time by adding a new subsection 5(j), as follows:

Notwithstanding anything to the contrary in subsections 5(a) and (b), for a period of five (5) years after closing on the proposed transaction, the switching charge for CSXT's switching of NSR's cars in Indianapolis shall be no more than the switching cost as determined by the joint CSX/NSR cost study or, (subject to RCAF-U adjustments), \$250.00 (subject to such RCAF-U adjustments), whichever amount is less. Thereafter, the switching charge shall be no more than the switching cost as determined by the joint CSX/NSR cost study (subject to RCAF-U adjustments). The City shall have the right to appoint an independent auditor to participate in the joint CSX/NSR cost study in order to observe all aspects of the study and to make comments with respect to the accuracy and fairness of the study and to make his own determination with respect thereto and the auditor shall have access to all documents and information directly related to such study that may be reasonably necessary for the auditor to do this.

- (e) By providing a new form of Arbitration procedure between CSXT and NSR by substituting the following provision for the existing Section 8:

Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The arbitration hearing shall be commenced within 30 days after the selection or designation of an arbitrator and the arbitrator shall render an award and judgment thereon as soon as practical after the completion of the arbitration hearing. The award of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be born equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement and all payments in respect thereto shall be made in the same manner as prior to the dispute until the matter shall have been fully determined by arbitration. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any third party, except as required by law and reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

2. NSR/CSX Trackage Rights. CSXT has provided certain overhead trackage rights to NSR pursuant to a proposed Master Trackage Rights Agreement appearing as Exhibit C-1 to Volume 8B of the Joint Application, pages 220-252. At the request of the City, CSXT shall, subject to the agreement of NSR, amend the Master Trackage Rights Agreement as it pertains to NSR trackage rights to/from Indianapolis in the following respects:
 - (a) By deleting in Section 8(f) the following language: "and in such manner as will afford the most economical and efficient movement of all traffic," and by ending the sentence immediately prior to the deletion.
 - (b) By substituting for the Arbitration clause in Article 16 the same Arbitration Clause pertaining to Switching as set forth in Section 1(e) hereof.

- (c) The parties understand that the foregoing modifications to the Master Trackage Rights Agreement pertain to CSXT's grant of trackage rights to NSR as specified in Form A appearing at pages 480-488 of the aforesaid Volume 8B and not to other trackage rights granted between CSXT and NSR and covered by the Master Agreement.

3. Shortline switching.

- (a) In order to promote connectivity between CIND, L&I, INDR and ISRR, the City has requested and CSXT agrees to establish, for a period of ten (10) years, a switch charge applying to freight moving between an origin or destination on one of those carriers and an origin or destination on another of those carriers. CSXT's charge for this service will be as separately agreed to between the parties hereto. The service will be rendered in all material respects on the terms and conditions currently contained in the Conrail tariffs for intermediate switching at the points in question, it being understood that the special charge will be in all material respects for the same services as are currently provided by Conrail for such switching.
- (b) In order to promote traffic growth on CIND, L&I, INDR and ISRR, the City has requested and CSXT agrees to establish, for a period of ten (10) years, a special switch charge applying to traffic originating or terminating at an industry on one of the above shortlines and interchanged with NSR, but only if the involved traffic from such industry is not capable of being directly served by CSXT in single line service. The special switch charge applying to such traffic will be as separately agreed to between the parties hereto. The service will be rendered in all material respects on the terms and conditions currently contained in the Conrail tariffs for intermediate switching at the points in question, it being understood that the special charge will be in all material respects for the same services as are currently provided by Conrail for such switching. In addition, this service will be subject to CSXT and the shortline carriers establishing procedures to ensure compliance with the traffic restrictions applicable to this special switch charge.
- (c) The parties understand that the foregoing charges referred to in Sections 3(a) and 3(b) hereof represent special, reduced concessionary rates and that such charges will not be used by any party in the determination of the switching charge established from time to time between NSR and CSXT under the Switching Agreement or any dispute or arbitration with respect thereto. The parties also understand that this Section 3 applies to the existing shortlines and not to any affiliate or extension thereof by consolidation, purchase or otherwise.
4. Railroad Transportation Contracts. The City requested CSXT to provide an arbitration procedure in the event of service deficiency by CSXT to those CR shippers in the Indianapolis area which have railroad transportation contracts with CR as of the Closing Date under the Joint Application (an "Existing CR RTC"). This provision would apply to those CR shippers located on CR lines being operated by CSXT in the Indianapolis area which shippers are subject to the switching arrangements under the Switching Agreement between CSXT and NSR, as amended by this Settlement Agreement. The agreed to

arbitration procedure is based upon the NITL Settlement arbitration procedure under Article II (c) thereof, which provision does not apply to CR patrons within the Indianapolis area. The procedure agreed to by the City and CSX is as follows:

If a shipper is dissatisfied with the RTC service it receives from CSX under an existing CR RTC, it may at any time after six months from the Closing Date (after written notice to CSX as to claimed operating or other deficiencies below the level at which Conrail provided performance of the contract, and an opportunity of thirty (30) days for CSX to improve its performance and to cure those deficiencies going forward), submit the issues to expedited binding arbitration by a sole disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by CSX and the shipper but, if the parties do not agree on an arbitrator within thirty (30) days after demand for arbitration is made, they shall request that the arbitrator be designated by the American Arbitration Association. Arbitration is to be concluded within thirty (30) days from the date the arbitrator is selected. In that arbitration, the issue shall be whether there is just cause because of such deficiency in performance to allow the shipper to terminate the existing transportation contract with CSX and rebid its traffic to other carriers without penalty or further liability or obligation under the existing transportation contract except in respect of movements already performed.

5. Interline Services. The City requested CSX to reaffirm to shippers the provisions of the NITL Settlement dealing with Interline Services as it may apply in the Indianapolis area which provisions are set forth below:

"This paragraph 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. NSR and CSX agree to 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 NSR-CSX after the Closing Date. Upon request by the affected shipper, NSR and CSX will, for a period of three years, (a) maintain the Conrail rate (subject to RCAF-U increases); and (b) work with that shipper to provide fair and reasonable joint line service. If a shipper objects to the routing employed by NSR and CSX, or to the point selected by them for interchange of its traffic, its 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 by NSR or CSX or the point of interchange selected by them, or both, satisfies the requirements of 49 U.S.C. Sec. 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."

CSX hereby reaffirms these provisions as equally applicable in the Indianapolis area.

6. Consent. The parties understand that Sections 1, 2 and 3(c) of this Settlement Agreement involve an agreement between NSR and CSX, and, accordingly require the consent of NSR to become and remain effective. CSXT will undertake to seek such consent from NSR and will advise the City of NSR's position on or before May 29, 1998. In the event that NSR does not consent to any or all of the Sections requiring NSR's consent, the City may in its sole discretion either accept the Settlement Agreement as modified by the deletion of section(s) not consented to by NSR, in which case the Settlement Agreement as so modified shall remain in effect, or not accept the Settlement Agreement in which case the Settlement Agreement shall terminate; provided, however, that any such consent must be for a section or a subsection in its entirety without modification; provided, further, that notwithstanding the foregoing, if NSR does not consent to Section 3(c) then CSXT may in its sole discretion not accept the Settlement Agreement in which case the Settlement Agreement shall terminate.

7. Confidentiality. The special reduced concessionary rate for switching referred to in Sections 3(a) and 3(b) shall be maintained in a confidential manner by the parties hereto and may be provided only to the shortlines identified in Section 3 hereof. CSX shall furnish the rates to the shortlines in writing on a confidential basis with copies thereof to the City. The City's obligation to maintain confidentiality shall be subject to any applicable Indiana law that may require the City to do otherwise and/or not allow the City to maintain said confidentiality, provided, however, that should the City be required to disclose the confidential materials, it shall provide prior notice thereof to CSXT and afford it an opportunity to oppose any such disclosure before the appropriate governmental or judicial entity.

8. Support. The City desires to express its support before the STB for the Joint Application, except as the Joint Application may be inconsistent with competitive issues for specific shippers in the Indianapolis area, and withdraw the City's opposition to the Joint Application and its request for conditions before the STB. The parties understand that the City's position is with respect to competition issues for the City in general and does not extend to competition issues for specific shippers in the Indianapolis area due to their particular circumstances. CSX and the City understand and stipulate that this Agreement is not intended to settle and shall not prejudice the position of any other party with respect to the Joint Application.

9. Arbitration. Any dispute, controversy or claim between the parties hereto arising out or related to this Settlement Agreement shall be subject to arbitration in accordance with the terms and conditions set forth in Section 1(e) hereof.

10. Effective Date. This Agreement shall take effect immediately but is subject to the consent provided in Section 6 above and to securing any necessary regulatory approval from the STB. The parties shall cooperate in securing any such consent and approval, and in the event the parties are unable to secure same and/or the City or CSXT does not accept the

Settlement Agreement as modified pursuant to Section 6 or in the event the STB denies the Joint Application or makes any material change to CSX's proposed use of CR's Indianapolis lines, then this Agreement shall be terminable by either party by written notice.

In Witness Whereof, the parties have executed this Settlement Agreement as of the day and year first above written.

The City Of Indianapolis

CSX Corporation
CSX Transportation, Inc.

By: Stephen Goldsmith
Title: Mayor

/s/ John W. Snow
Title: Chairman and Chief Executive Officer

STB

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6-1-98

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Southern Tier Improvement Proposal

The Erie Lackawanna Railroad Co. (hereinafter known as "ELRR") hereby submits the Southern Tier Improvement Proposal ("Proposal") for the consideration of the Surface Transportation Board, the Norfolk Southern Corporation ("NSC"), and CSX Transportation ("CSXT").

The Proposal will create a four railroad Northeast, composed of the ELRR, NSC, CSXT, and the New York, Susquehanna, and Western Railway. This will facilitate the more efficient movement of freight, thanks to the increased competition. The Proposal will become effective upon the breakup of Conrail.

The ELRR, pursuant to the Proposal, proposes to acquire the following properties of the Consolidated Rail Corporation (CR), in accordance with the following provisions:

A. TRACKAGE.

1. To be jointly operated:

Hillburn, NY (MP 31.5) - Buffalo, NY (MP 418.0); Galion, OH (MP S 284.0) - Marion, OH (MP S 305.0).

2. To be purchased:

Newark Branch (DB Jct., Kearny, NJ - JN Jct., Paterson, NJ); Carlton Hill Spur (Rutherford Jct. - Carlton Hill, NJ); Hornell, NY (MP 331.3) - Corry, PA (MP S 60.9); Meadville, PA (MP S 102.5) - Creston, OH (MP S 226.2); Marion, OH (MP S 305.0) - Hardin County Line; MJ Crossover (MP M 3.6) - Lima, OH (MP M 51.0); SN Junction (MP 49.6)* - Von Willer Yard (Cleveland, OH); SN Junction (MP S 164.9) - XN Junction (MP S 136.3).

Note- All mileposts are Erie Lackawanna Railway Mileposts.

* Mileposts from River Bed Yard Cleveland, OH.

B. EQUIPMENT.

EMD E8A #s 4001, 4009, 4011, 4014, 4016, 4018, 4020 (1st), 4022, 4039, 4063, 4249, 4256.

EMD F3A #s 1887-1888.

EMD F7A #s 1891-1893.

EMD SDP45 # 6696

EMD SD45 #s 6070, 6084, 6092, 6095.

EMD SD45-2 #s 6654=6066.

EMD GP35 #s 3657, 3665, 3677, 3685,
3687, 3690.

GE U36C #s 6588, 6589, 6592-6594.

Note: = Denotes non sequential number sequence.

C. STRUCTURES.

All structures adjoining the
aforementioned railroad lines, will be
conveyed to the ELRR.

D. PURCHASE PRICE.

The purchase price for the
aforementioned assets shall be \$ 38.5
million, payable on the closing date.

E. OPERATIONAL AGREEMENTS.

All railroad lines listed under Section
A, #1 will be jointly owned and
operated by the ELRR and the designated
CR successor corporation. The ELRR
will assume responsibility for the
maintenance and dispatching of these
lines. All on-line business will be
divided equally between ELRR and the
CR successor corporation.

F. OPERATING RIGHTS.

All current agreements regarding
operating rights will be honored. The
ELRR will be granted overhead operating
rights between Maynard and Hammond, IN.

G. LABOR.

Employees currently working the lines
in Section A #1 will be divided equally
between ELRR and a CR successor. All
other employees will be allowed to
choose between working their current
lines (if they work lines in Section A
#2), or joining a CR successor.

H. DESIGNATED OPERATOR.

The ELRR will assume CR's role as Designated Freight Operator on the following lines:

1. Main Line (West End-Ridgewood Junction, NJ).
2. Pascack Valley Line (West End - Spring Valley, NY).

The ELRR hopes to see the swift implementation of the Proposal. The level of increased competition among Northeast railroads will bring about a new era in railroading.

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Office of the Secretary

JUN 01 1998

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Public Record



Erie Lackawanna Railroad Co.

P.O. Box 1482

Tallahassee, FL 32302

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FD-33388
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May 27, 1998

Mr. Dan King, Director
Surface Transportation Board
Washington, D.C. 20423-0001

Dear Mr. King:

The Erie Lackawanna Railroad Co. would like to announce its intention to participate in the June 4, 1998 oral discussion regarding the Conrail breakup.

Enclosed is a copy of the Southern Tier Improvement Proposal, which is at the forefront of our concerns.

I am thanking you in advance for any assistance that you may be able to provide.

Very truly yours,

Phillip L. Bell
Chief Executive Officer

STB

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5-29-98

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Office of the Secretary

ARNOLD & PORTER

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May 29, 1998

NEW YORK
DENVER
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LONDON

JUN 01 1998

DENNIS G. LYONS
(202) 942-5858

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BY HAND DELIVERY - 25 Copies

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building
Room 700
1225 K Street, N.W.
Washington, D.C. 20423

D

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 "Response of Applicants CSX Corporation and CSX Transportation, Inc. to Motion of Consumers Energy Company For Leave To File Supplemental Verified Statement on Newly-Revealed Contract Assignment Issues," (CSX-150) for filing in the above-referenced docket.

Please note that a copy of this filing 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 (202-942-5858) if you have any questions.

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

Respectfully yours,

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

Enclosures
cc: All Parties of Record

ENTERED
Office of the Secretary

JUN 01 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388



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

**RESPONSE OF APPLICANTS CSX CORPORATION
AND CSX TRANSPORTATION, INC. TO
MOTION OF CONSUMERS ENERGY COMPANY
FOR LEAVE TO FILE SUPPLEMENTAL VERIFIED
STATEMENT ON NEWLY-REVEALED
CONTRACT ASSIGNMENT ISSUES**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"),¹ hereby submit this response to the "Motion of Consumers Energy Company For Leave To File Supplemental Verified Statement on Newly-Revealed Contract Assignment Issues" (CE-12).

The Motion seeks to have the Board receive and file a Verified Statement of William E. Garrity, Executive Manager of Fuels and Power Transactions for Consumers Energy Company ("Consumers"), concerning the allocation of a particular Conrail coal

¹ We refer herein to Norfolk Southern Corporation and Norfolk Southern Railway Company collectively as "NS", and Consolidated Rail Corporation and Conrail Inc., collectively as "Conrail."

transportation contract which, according to the V.S., moves from the Fola Mine in West Virginia, jointly served presently by CSX and Conrail, with the Conrail line to be allocated to NS under the Transaction. Presently the movement, according to the V.S. (page 3) moves via Conrail through Columbus, OH, to Toledo, OH, where it is interchanged with the Grand Trunk Western ("GTW") for delivery to the J.R. Whiting Power Station near Erie, MI; the movement may also, alternatively, proceed to Consumers' Karn-Weadock Station, near Essexville, MI, by way of a further interchange off the GTW to the Central Michigan Railroad ("CM") at Durand, Michigan. *Id.*

On March 26, 1998, Consumers wrote a letter jointly to representatives of NS and CSX inquiring as to which of them the contract for the movement just described would be allocated under Section 2.2(c) of the Transaction Agreement. (Exhibit to the V.S.)² The inquiry was evidently made in view of the fact that the Conrail line from Fola to Toledo is being allocated for operation by NS as far as Columbus, but to CSX from Columbus to Toledo; and of the further fact that there are separate, direct single-line routes on CSX from Fola to both Whiting and Karn-Weadock. The V.S. acknowledges that the contractual pricing in Consumers' contract made with Conrail was to be binding upon it and upon the successor or successors to Conrail in the movements called for by the contract;³ no contrary claim was made in the letter. The letter sought primarily the identity of the carrier (CSX or NS) that would perform the movement out of the mine to Columbus. To the letter from Consumers, both NS and CSX made replies by separate

² The exhibits are not numbered.

³ Unlike the filings of APL, Ltd., in this case, Consumers is not engaged in an effort to renegotiate the contract price downward.

letters (Exhibits to the V.S.), each pointing out that without having the benefit of viewing the Conrail contract (which evidently Consumers did not supply with its letter of inquiry) it was difficult to make a definite answer as to the allocation, and so none was provided. Both letters observed, quite correctly, in answers to other questions in Consumers' letter, that only the minimum tonnage obligations under the contract would be subject to Section 2.2(c) and that the rest of the movements would be open to be originated by either NS or CSX – at Consumer's option; and both letters expressed a view that one or both of the services of the connecting carriers (GTW and CM) would remain in the routings post-Transaction. As noted, as to which of CSX and NS would originate the traffic from the mine in the move, the writers could furnish no guidance until the contract was available.

DISCUSSION

Consumers' Motion notes, quite correctly, that its filing is somewhat belated, but reminds the Board that CSX itself sought the Board's leave as recently as May 15, 1998, to file additional evidentiary material with respect to some issues raised with respect to Section 2.2(c). CSX suggests that the Consumers motion for leave to file be given the same procedural disposition as the Board gave to CSX's "Motion of Applicants CSX Corporation and CSX Transportation, Inc., for Leave to File Verified Statement of Michael C. Sandifer Concerning Study of Incidence of Antiassignment Clauses in Conrail Rail Transportation Contracts," filed May 15, 1998 (CSX-147). That motion was denied and CSX submits that the Consumers Motion does not present a stronger case.

A review of the merits of the Consumers filing may be in order in case the Board grants leave to file. Consumers' filing appears to involve an unusual circumstance since apparently as a discipline on CSX it chose two and three carrier service on its movements from Fola rather than the single-line CSX service that was available, and entered into a multi-carrier contract with Conrail, GTW and CM. The matter is further complicated by the allocation of the Conrail line in question in two segments: origination to NS and a bridge portion to CSX, with connecting carrier(s) to destination. Moreover, the matter of Consumers' option to ship to either of the two ultimate destination points would need to be examined in light of the text of the Conrail contract.

Consumers points out that it does not dispute that it is bound by the contractual pricing provisions in the Conrail contract. It seems that at the moment there should be no dispute among the parties since neither NS nor CSX has given a definite interpretation of the Consumers/Conrail contract and the application of Section 2.2(c) to it, except on the points referred to above (no obligation above the committed portion and preservation of the connections). The further interpretation as to the allocation of the present Conrail segment will be forthcoming as promptly as possible after the contract is made available to NS and CSX for study.

In this regard, the Board might wish to give attention to the "Motion of Applicants for Amendment of the Protective Order," filed May 22, 1998 (CSX/NS-206), seeking an amendment to the Protective Order to permit a somewhat accelerated access of in-house CSX and NS personnel to the Conrail rail transportation contracts for certain defined purposes, including the purpose of performing the necessary reviews and allocation of them. That would accelerate the allocation process for the benefit of all

Conrail contract shippers, including Consumers, as well as for the carriers' planning, and would help bring to an end uncertainties of the sort brought forward by Consumers.

CONCLUSION

CSX respectfully suggests that the decision to accept or refuse the filing by Consumers' be guided by the disposition made by the Board of CSX-147. CSX's comments on the substance of the Consumers filing are as stated above.

Respectfully submitted,



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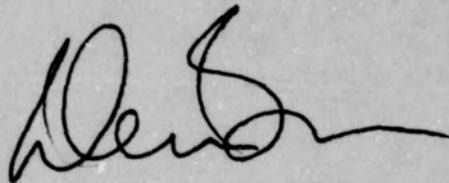
*Counsel for CSX Corporation and CSX
Transportation, Inc.*

May 29, 1998

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CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on May 29, 1998, I have caused to be served a true and correct copy of the foregoing CSX-150, "Response of Applicants CSX Corporation and CSX Transportation, Inc. to Motion of Consumers Energy Company For Leave To File Supplemental Verified Statement on Newly-Revealed Contract Assignment Issues" (CE-12), to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



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SLOVER & LOFTUS

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WRITER'S E-MAIL:

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Office of the Secretary

MAY 26 1998 May 22, 1998

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BY HAND DELIVERY

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



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

Dear Secretary Williams:

We are in receipt of the May 21, 1998 Response of Applicants CSX Corporation and CSX Transportation, Inc. (CSX-149) to the Motion to Strike of the Four City Consortium, filed May 18, 1998, in the above-referenced proceeding.

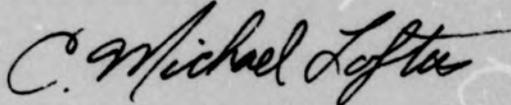
The Four Cities hereby respond briefly to two incorrect statements by CSX in its May 21 Response. First, CSX erroneously states in its May 21 Response that the Consortium's Motion includes an "assertion of bad faith" both on the part of SEA and the CSX. The Four Cities most certainly have not made any assertions to that effect, nor did the Four Cities in any manner intend to imply that either SEA (or any of its staff) or CSX (or its counsel) have engaged in any such "bad faith" conduct. To be sure, the Consortium is greatly concerned about the potential injustice of the Board (and or SEA) accepting improper evidence, studies, and/or surrebuttal in this proceeding, (especially in light of the fact that the the Four Cities were not given any opportunity to respond). However, the Four Cities wish to make clear for the record that they accuse neither CSX or SEA of "had faith."

The Hon. Vernon A. Williams
May 22, 1998
Page 2

Second, despite CSX's attempts to characterize its actions as merely in the nature of assisting SEA in "data collection and verification," the materials objected to by the Four Cities go to the very heart of this case, including the economic and transportation effects of the Conrail transaction, as well as its safety and other environmental impacts. We leave it to the Board's good judgment, based on a thorough review of the materials objected to in the Consortium's Motion to Strike, to determine the exact extent to which the orderly process of this proceeding has been affected by these CSX's submissions.

Pursuant to the Board's rules, we have enclosed an original and twenty-five (25) copies of this letter, as well as a computer diskette containing the text of this document in Word-Perfect 5.1 format.

Sincerely,



C. Michael Loftus
An Attorney for
The Four City Consortium

Enclosure

cc: Elaine K. Kaiser
The Hon. Linda J. Morgan
The Hon. Gus A. Owen
David M. Konschnik
All Parties of Record

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COMMITTEE ON COMMERCE
VICE CHAIRMAN
SUBCOMMITTEE:
TELECOMMUNICATIONS, TRADE AND
CONSUMER PROTECTION
FINANCE AND HAZARDOUS MATERIALS

Congress of the United States
House of Representatives
Washington, DC 20515-3505

May 22, 1998



Mr. Jan King
Director
Congressional Affairs and Public Services
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Mr. King:

I would like be included among the congressional panels addressing the Surface Transportation Board on the proposed transaction between CSX Corporation, Norfolk Southern Corporation, and Conrail, Inc. I understand that you already have begun assembling delegations from my State of Ohio and would appreciate being a part of it.

Please contact Jerry Couri of my Washington, D.C. staff to apprise me of what days and times might be available. Thank you for your expeditious attention to this matter.

Sincerely,

Paul E. Gillmor
Member of Congress

PEG:jsc

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May 21, 1998

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BY HAND DELIVERY - 25 Copies

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

D



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 Response of Applicants CSX Corporation and CSX Transportation, Inc. To Motion To Strike of the Four City Consortium (CSX-149) for filing in the above-referenced docket.

Please note that a copy of this filing 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 (202-942-5858) if you have any questions.

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

Respectfully yours,

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

Enclosures
cc: All Parties of Record

ENTERED
Office of the Secretary

MAY 29 1998

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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



RESPONSE OF APPLICANTS CSX CORPORATION
AND CSX TRANSPORTATION, INC. TO MOTION
TO STRIKE OF THE FOUR CITY CONSORTIUM

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***Counsel for CSX Corporation
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May 21, 1998

**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**

**RESPONSE OF APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC.
TO MOTION TO STRIKE OF THE FOUR CITY CONSORTIUM**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), hereby oppose the motion of the Cities of East Chicago, Gary, Hammond and Whiting, Indiana (the "Four City Consortium" or "Consortium") to strike certain submissions of CSX to the Board's Section of Environmental Analysis ("SEA"). The motion is based on a fundamental misunderstanding of the distinction between the Board's formal procedures governing the determination of the "merits" of the proposed control Transaction (the economic and transportation effects of the Transaction) and its informal procedures governing the determination of the environmental effects of the proposed control Transaction.

**BOTH SEA'S REQUESTS FOR INFORMATION
AND CSX'S RESPONSES TO THOSE REQUESTS WERE PROPER
UNDER THE BOARD'S ENVIRONMENTAL REVIEW PROCEDURES**

The primary responsibility of the Surface Transportation Board with respect to rail transportation is the evaluation of the economic and transportation effects of certain actions taken or proposed to be taken by rail carriers, such as rates, common carrier obligations, construction projects, abandonments, and business combinations. 49 U.S.C. §§ 10101-11908. The economic and transportation issues the Board must evaluate and decide are referred to as the "merits" of the proceeding. The procedures for determining the merits in the proceedings before the Board are set forth in the Board's general rules of practice (49 C.F.R. Part 1100 et seq.), including the provisions relating to ex parte communications and service of submissions on all parties cited by the Consortium. These rules are relatively formal.¹

¹ It should be noted, however, that in the ICC Termination Act ("ICCTA") of 1995, Congress provided that the Board's review of proposed rail combinations "shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code [the Administrative Procedure Act]." 49 U.S.C. § 11324(f)(1). Thus, even the Board's determination of the merits of railroad control applications is not required to be subject to the formal, trial-type administrative procedures provided for under the Administrative Procedure Act.

The ICCTA also removed the prohibition on ex parte communications with members and employees of the Board. 49 U.S.C. § 11324(f)(2). Where the communication relates to the "merits of the proceeding," however, the member or employee must promptly place a written communication or a summary of an oral communication in the public docket of the proceeding. 49 U.S.C. § 11324(f)(3). There is no similar requirement of the ICCTA for communications relating to the environmental effects of the proposed action.

The Consortium mistakenly cites to 49 C.F.R. § 1102.2(c) as prohibiting the submissions it seeks to strike. Section 1102.2(c) only prohibits ex parte communications concerning the "merits of the proceeding." The submissions the Consortium seeks to strike concern the environmental effects of the Transaction, not the merits. Although 49 U.S.C. § 11324(f) provides that rail combination proceedings are not "on-the-record" adjudications, and 49 C.F.R. § 1102.2 only applies on its face to "on-the-record" proceedings, the Board has concluded that it will *nonetheless* apply the prohibition on ex parte communications about the merits of proceedings in rail combination proceedings. Ex Parte No. 619, decision served Jan. 8, 1997. Nothing in that decision, however, suggests that the Board intended to expand the scope of the prohibition to

[Footnote is continued on next page]

Pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA") and related environmental laws, the Board must also evaluate the environmental effects of a proposed action. The Board has accordingly adopted separate procedures under NEPA and related environmental laws that govern the Board's environmental review process. 49 C.F.R. Part 1105.² These procedures are much less formal than the Board's procedures for determining the merits of an application.³ The Board has determined that evaluation of the environmental effects of a proposed action is better handled in an informal process that does not include all the procedures characteristic of the adversarial process, such as formal notice of participation as a party of record, contemporaneous filing of submissions with the Board's Secretary and service on all parties of record, and limitations on ex parte communications. The Board's informal procedures for environmental review have been duly promulgated and have been followed by the Board in numerous control proceedings (including the recent Burlington Northern/Santa Fe and Union Pacific/Southern Pacific control proceedings), construction proceedings, and other proceedings.

[Footnote continued from previous page]

communications made in the environmental review process. And the regulation contemplates that the Board may permit certain types of ex parte communications. 49 C.F.R. § 1102.2(b)(1).

² The Council on Environmental Quality ("CEQ") has promulgated regulations applicable to all federal agencies for implementing the procedural provisions of NEPA. 40 C.F.R. Parts 1500 to 1508.

³ NEPA review is most often undertaken in connection with proposals to construct a federal facility or to construct a federally funded or federally permitted facility. CEQ and other federal agencies appear to have devised their NEPA procedures with that typical situation in mind.

The Four City Consortium has presented no issues that go to the economic and transportation merits of the control application. All of its concerns relate solely to the environmental effects of the control application. Thus, the informal procedures of 49 C.F.R. Part 1105 apply. Nevertheless, the Four City Consortium has seen fit to avail itself of both the Board's more formal merits procedures and informal environmental review procedures. On the merits side of the case, the Consortium filed Comments and Requests for Conditions (FCC-9),⁴ formal discovery, and a Brief (FCC-15). On the environmental review side of the case, representatives of the Consortium also met informally with representatives of SEA on at least two occasions (November 26 and December 11, 1997), requested information from SEA (letter from C. Michael Loftus to Elaine Kaiser dated January 12, 1998), filed Comments on the Draft Environmental Impact Statement (FCC-13), and thereafter continued to solicit and send letters to SEA and the Board⁵. Because of the informal nature of the environmental review process, there may well have been other consultations between the Consortium and SEA of which CSX is not presently aware. Many other parties with environmental concerns presumably have had similar consultations with SEA.

⁴ CSX responded to the Consortium's Comments and Request for Conditions in Applicants' Rebuttal, Vol. 1 (CSX/NS-176) at 203-06, 694-96; Vol. 2B (CSX/NS-177) at 280-317 (Rooney and O'Connor RVS) and 504-06, 557-66 (Orrison RVS).

⁵ These letters include a March 17, 1998 letter from the Fire Chief of the Hammond Fire Department to Elaine K. Kaiser; March 23, 1998 letters from a number of City of Whiting councilpersons to Elaine K. Kaiser; and an April 13, 1998 letter from the Commissioner of the Indiana Department of Transportation to Chairman Morgan, none of which were contemporaneously served on CSX.

It should come as no surprise to the Consortium that the Board's environmental procedures include informal consultation. It is clear on the face of the Board's environmental regulations that SEA initiates informal consultation about environmental issues before an application is filed, 49 C.F.R. § 1105.10(a)(1). Indeed, the Board required Applicants to file with SEA a Preliminary Environmental Report prior to filing the Application, which was reviewed only by SEA. Decision No. 6, served May 30, 1997. Decision No. 6 also required inconsistent and responsive applicants to file Responsive Environmental Reports "based on consultations with SEA." Decision No. 6 at 4.⁶ The Draft Environmental Impact Statement ("DEIS"), issued December 12, 1997, clearly reported that SEA engaged in extensive informal consultation with applicants and other interested parties and would continue to do so throughout the environmental review process. See, e.g., DEIS Volume 4, Chapter 6 and Volume 5B, Appendix M.

The most recent affirmation by the Board that SEA continues to gather information through informal consultation in Finance Docket No. 33388 is found in Decision Nos. 71 and 75. In Decision No. 71 (served March 17, 1998), citing the "unique nature of the Cleveland area," the Board directed SEA and its consultants "not to engage in any further informal discussions with the affected parties in the Greater Cleveland area at this time." It is apparent from Decision No. 71 that SEA was engaged in informal consultation with affected parties relating to the Greater Cleveland area and would have continued to engage in informal consultation absent this special order. In

⁶ The Consortium cites Decision No. 6 as requiring service of all environmental submissions on all parties of record. CSX sees no such requirement in that Decision.

Decision No. 75 (served April 15, 1998), the Board extended the period during which informal consultation was prohibited with SEA with respect to the Greater Cleveland area in order to promote further opportunity for negotiation. The Board clarified, however, that "[t]his prohibition does not extend to data collection and verification activities by SEA and the consultants." No similar order prohibiting informal consultation was ever issued by the Board with respect to the Four City Consortium area. In any event, the challenged information requests and responses were in the nature of "data collection and verification" which the Board expected would continue throughout the environmental review process even with respect to the Greater Cleveland area.

SEA independently analyzes and verifies all information submitted to it, including information submitted by applicants.⁷ If SEA determines through its independent analysis that information obtained through informal consultation is reliable and thus relevant to the Board's evaluation of the environmental effects of a proposed action, SEA uses such information in its NEPA documentation, in this proceeding a DEIS followed by a Final Environmental Impact Statement ("FEIS"). SEA determines when and how information obtained through informal consultation is made part of the record for the Board's consideration in making its decision. See 40 C.F.R. Part 1505. In the context of preparation of an EIS, as here, the information gathered by SEA throughout the proceedings and SEA's analysis thereof is presented to the Board and to the public in the

⁷ See 40 C.F.R. § 1506.5(a) ("The agency shall independently evaluate the information submitted [by an applicant] and shall be responsible for its accuracy."); 49 C.F.R. § 1105.10(d) (third-party consultants may work under SEA's direction to collect environmental information and compile it into a draft EA or draft EIS "which is then submitted to [SEA] for its review, verification, and approval").

DEIS and in the subsequent FEIS. Both the DEIS and FEIS are widely circulated to both parties of record and other interested persons. These procedures are consistent with NEPA and related environmental laws and CEQ's regulations (40 C.F.R. Parts 1500-1508). As contemplated by CEQ's and the Board's NEPA regulations, information gathering is an ongoing process.⁸ Even after the FEIS is issued, SEA and the Board have discretion to consider further comments up to the date of the decision. 40 C.F.R. § 1503.1.

Throughout this proceeding, CSX has responded to numerous requests for information from SEA. Some of these requests related to current and projected operations within the Four City Consortium area. With the exception of the May 12, 1998 letter to Elaine Kaiser which responded to the Four City Consortium's letter to Chairman Morgan of May 7, 1998, all of the submissions the Consortium seeks to strike were made in response to specific requests for information from SEA. As explained above, the Board's environmental review procedures do not require that these submissions be made to the Secretary with service on all parties of record.⁹ The Board's

⁸ For example, 49 C.F.R. § 1105.7(f) provides that the Board "may require applicants to submit additional information regarding the environmental or energy effects of the proposed action."

⁹ With respect to service of environmental submittals, the Board's environmental regulations provide as follows:

Agencies and interested parties sending material on environmental and historic preservation issues directly to the Commission should send copies to the applicant. Copies of Commission communications to third-parties involving environmental and historic preservation issues also will be sent to the applicant where appropriate.

49 C.F.R. § 1105.10(e)(emphasis added). The regulations thus suggest but do not require that applicants be served with material on environmental and historic preservation issues. There is no reciprocal requirement

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procedures for "merits" issues, including the service requirement and limitation on ex parte communications cited by the Consortium, do not apply to these submissions to SEA, which address only environmental concerns. Under the Board's environmental review procedures, SEA's requests for information from CSX and CSX's responses to those requests were entirely proper.

**THE CONSORTIUM WAS NOT PREJUDICED BY ANY
OF THE SUBMISSIONS TO SEA THAT IT MOVES TO STRIKE**

As demonstrated above, the challenged submissions made to SEA would not have been improper even if they had included significant new information or arguments. In fact, however, they did not. We briefly discuss here the specific submissions the Consortium seeks to strike in order to show that the Consortium is not prejudiced by any of the submissions.

1. Letter dated March 5, 1998 from David H. Coburn to Elaine K. Kaiser. This letter responded to Ms. Kaiser's February 17, 1998 letter requesting, among other things, that CSX provide information relating to the Consortium's proposed rerouting of traffic. Most of this information was compiled from the Operating Plan and the Applicants' December 15, 1997 Rebuttal filing. Some new information was presented in response to new information presented by the Consortium in its February 2 Comments on the DEIS. There is nothing improper in SEA inquiring of an applicant whether it believes it can

[Footnote continued from previous page]

that applicants serve parties or interested persons with submissions they make to SEA relating to environmental or historic preservation matters.

feasibly change its proposed operations in a manner suggested by a party. Indeed, were SEA not to inquire, it would risk recommending a condition that was not operationally feasible and that could thus harm shippers in the immediate vicinity and throughout the rail network. As explained above, SEA does not simply accept information obtained by applicants and parties. SEA and its consultants independently analyze the information presented to SEA. What conclusions SEA has drawn from the information presented by the Consortium and CSX will be revealed in the FEIS. Both the Consortium and CSX will have the same opportunity to comment on the FEIS's conclusions and recommendations at oral argument.

2. Letter dated April 3, 1998 from Mary Gabrielle Sprague to Michael Dalton.

This letter responded to Mr. Dalton's March 30, 1998 letter requesting clarification of the assignment of Canadian Pacific ("CP") haulage traffic between Detroit and Chicago to certain line segments for purposes of the environmental review. CSX had included the CP haulage traffic in its traffic figures submitted with the Environmental Report (Vol. 6 of the Application, CSX/NS-23), but SEA had assigned this traffic to other line segments in the DEIS. In the April 3, 1998 letter, CSX clarified the routing information it had presented in the Environmental Report, with one change. CSX reported that it proposed to shift one CP train from the Pine Junction-Barr Yard line segment to the Conrail lakefront line, a change that is consistent with the relief sought by the Consortium. It would not serve the interests of the Consortium to strike this submission and preclude SEA's consideration of a traffic change sought by the Consortium. Moreover, the Board should not strike this submission as it clarifies traffic on line segments outside of the Four City Consortium area.

3. Supplemental Environmental Report on Willow Creek, Indiana to Ivanhoe, Indiana Line Segment (C-693) prepared by ICF Kaiser, dated April 23, 1998. This report was submitted in response to an April 16, 1998 letter from Elaine K. Kaiser requesting Supplemental Environmental Reports ("SERs") on line segments where changes in train traffic proposed since preparation of the DEIS would cause a threshold for environmental analysis to be met or exceeded. Since preparation of the DEIS, CSX proposed to reroute two trains from the Willow Creek-Pine Junction-Barr Yard line segments to the Willow Creek-Ivanhoe line segment, a change that is consistent with relief sought by the Consortium. The addition of two trains to the Willow Creek-Ivanhoe line segment caused that segment to exceed the threshold for environmental analysis (the projected increase in average trains per day would be 3.8 rather than 1.8 in an area where the threshold for analysis is three trains per day). It would not serve the interests of the Consortium to strike the SER as the traffic change which prompted it is desired by the Consortium. On the other hand, striking the SER would not make any difference to SEA's environmental analysis; the SER does not contain any information SEA did not already have or could easily have obtained from other sources.

4. Verified Statement of James E. Roots, dated May 4, 1998. This statement was submitted pursuant to request of SEA to document a few relatively small changes in traffic figures from those reported in the CSX Operating Plan to correct errors or to account for train reroutings. The Consortium principally complains about CSX's admission that it had discovered an error in the unit train counts on the Pine Junction-

Barr Yard line segment, and thus in the related post-Transaction gross-tonnage for the line segment.¹⁰ That error had recently been identified in the process of reanalyzing traffic flows through the Four Cities to ascertain whether any changes could be made to address the requests made by the Four Cities.

CSX acknowledges that it identified the error relatively late in the environmental review process, although the submission of the verified statement was in compliance with the request made by SEA. Even if SEA or the Board decides to disallow the correction of this error as untimely, however, that decision should not change the ultimate conclusion that the very small changes in traffic projected for the Four City area will not materially increase vehicle delay in the area when increased train speeds made possible by capital and operational improvements are taken into account. The correction is not needed to support CSX's basic and consistent position in this proceeding. As the Consortium acknowledges, CSX has consistently challenged the Consortium's claim that the Transaction will substantially increase vehicle delay in the area on the ground that its vehicle delay calculations are based on unreasonably low post-Transaction operating speeds, particularly on the Pine Junction-Barr Yard line segment. Applicants' Rebuttal, Vol. 1 (CSX/NS-176) at 203-06, 694-96; Applicants' Rebuttal, Vol. 2B (CSX/NS-177) at 280-317 (Rooney and O'Connor RVS), 504-06, 557-66 (Orrison RVS); CSX Comments

¹⁰ The Motion to Strike gives the impression that there were numerous independent errors. In fact, there was one basic error – a miscount of the unit trains on the Pine Junction-Barr Yard line segment – and related errors in figures derived from the train count.

on the DEIS at 141-42.¹¹ The correction of the error simply provides SEA and the Board with a larger margin of comfort in concluding that the overreaching conditions sought by the Consortium are not warranted.

The suggestion that the identification of one error casts doubt on all the traffic figures submitted by CSX is without merit. This small error is immaterial to CSX's presentation of the substantial economic and operational benefits of the Transaction. CSX presented operating data for about 23,000 miles of rail line in its Application. The CSX Operating Plan has been subjected to detailed examination by SEA, the Board and by the parties to this proceeding. The only deficiency identified by the Board was with respect to the level of detail of the description of the operation of the North Jersey Shared Assets Area. Decision No. 44, served October 15, 1997. The CSX and NS Operating Plans were accordingly supplemented by submission of a detailed Operating Plan for the North Jersey Shared Assets Area (CSX/NS-119), filed October 29, 1997. No serious assertion can be made that the CSX and NS Operating Plans, as supplemented, do not provide an adequate basis for the Board to assess the economic and environmental effects of the proposed Transaction.

¹¹ The correction of the error in the unit train counts only reduces the projected increase in average daily train count on the Pine Junction-Barr Yard line segment by one train, not a significant change. The correction of the related error in the post-Transaction tonnage reduces the projected increase in post-Transaction train length on the Pine Junction-Barr Yard line segment, one factor in the Consortium's vehicle delay calculations. SEA, however, did not even use this factor in its vehicle delay calculations in the DEIS. Instead, the DEIS utilized a consistent system-wide average projected increase in train length. CSX does not know at this time what methodology is employed in the FEIS. However, even if the FEIS adopts the Consortium's methodology of calculating vehicle delay such that the projected increase in train length for this particular line segment becomes a relevant factor, it only means that CSX must achieve a slightly higher average train speed on the Pine Junction-Barr Yard line segment in order to offset the effect of the increased train count and average train length, a speed within the range CSX expects to achieve.

5. Grade Crossing Delay Analysis in the Four City Consortium Area, prepared by ICF Kaiser, dated May 8, 1998. This report simply reruns the Consortium's vehicle delay calculations which were presented in its Comments on the DEIS, taking into account the rerouting of the three trains from the Pine Junction-Barr Yard line segment described above (consistent with the request of the Consortium), and the recently identified correction in the unit train counts and related post-Transaction tonnage on the Pine Junction-Barr Yard line segment. The analysis shows that the "break-even point" under the FCC's vehicle delay methodology (a methodology not used in the DEIS, as explained above) is an increase of 3 mph in average operating speed on the Pine Junction-Barr Yard line segment (from 12 mph to 15 mph). In fact, CSX predicts higher average operating speeds on this line segment (19 mph to 25 mph), a segment that will have a maximum timetable speed of 40 mph. The analysis simply shows quantitatively what CSX has been stating qualitatively all along -- that it is unlikely that the Transaction will have any significant adverse effect on vehicle delay within the Four City area (even when using the Consortium's own methodology) because the projected changes in traffic patterns there are so small.

CONCLUSION

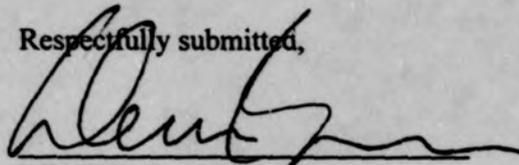
Despite the fact that CSX does not believe that the Transaction will adversely affect the Four Cities, CSX has consulted with the Four Cities through this proceeding and has informed SEA that it is willing to undertake a number of measures in the Four City area to minimize motor vehicle delay and to improve emergency vehicle response times (the one submission the Consortium did not move to strike). Although CSX is

disappointed by the unwarranted assertion of bad faith in the Motion to Strike, CSX believes that the dialogue with the Four Cities has been productive to date and looks forward to a positive relationship with East Chicago, Gary, Hammond and Whiting.

The assertion of bad faith on the part of SEA is similarly unwarranted. SEA is following environmental review procedures promulgated and affirmed by the Board on numerous occasions, as entities represented by a regular practitioner before this Board should be aware.

For the reasons stated, the Motion to Strike should be denied. SEA and the Board should give such weight to the submissions as they deem appropriate.

Respectfully submitted,



DENNIS G. LYONS
MARY GABRIELLE SPRAGUE
Arnold & Porter
555 12th Street, N.W.
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(202) 942-5000

SAMUEL M. SIPE, JR.
DAVID H. COBURN
Steptoe & 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

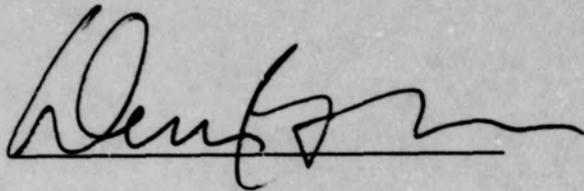
P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CSX TRANSPORTATION, INC.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

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

May 21, 1998

CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on May 21, 1998, I have caused to be served a true and correct copy of the foregoing CSX-149 "Response of Applicants CSX Corporation and CSX Transportation, Inc. to Motion to Strike of the Four City Consortium," 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 black ink, appearing to read "Dennis G. Lyons", is written over a horizontal line. The signature is cursive and somewhat stylized.

STB

FD

33388

5-21-98

D

187673

LAW OFFICES

ZUCKERT, SCOTT & 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

1 87673



RICHARD A. ALLEN Office Secretary

MAY 22 1998

Part of
Public Record

May 21, 1998

D

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:

Enclosed for filing is an original and twenty-five copies of "Response of Applicants
Norfolk Southern Corporation and Norfolk Southern Railway Company to Motion to Strike of
the Four Cities Consortium." Also enclosed is a 3-1/2" computer disk containing the filing in
Wordperfect 5.1 format, which is capable of being read by Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,

Richard A. Allen
Richard A. Allen

Counsel for Norfolk Southern
Corporation and Norfolk
Southern Railway Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



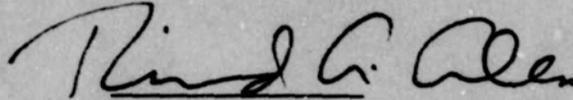
CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RESPONSE OF APPLICANTS NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY TO
MOTION TO STRIKE OF THE FOUR CITY CONSORTIUM

Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), hereby oppose the motion of the Cities of East Chicago, Gary, Hammond and Whiting, Indiana (the "Four City Consortium" or "Consortium") to strike certain submissions made by applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") to the Board's Section of Environmental Analysis.

Although NS was not involved in the specific correspondence and submissions at issue in the Consortium's motion to strike and is therefore not in a position to comment with regard to the substance of those submissions, NS does fully concur with the principal point of CSX's Response to the Consortium's motion (which Response has been filed today as CSX-149). NS fully agrees with CSX that both SEA's requests for information and CSX's responses to those requests were proper under the Board's environmental review procedures, for the reasons stated in detail in CSX-149.

Respectfully submitted,



James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
Robert J. Cooney
George A. Aspatore
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9241
(757) 629-2838

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

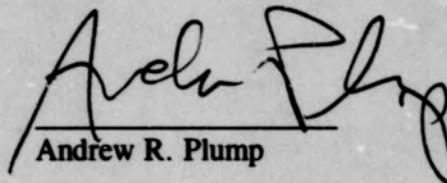
*Counsel for Norfolk Southern
Corporation and Norfolk Southern
Railway Company*

Dated: May 21, 1998

. . . .

CERTIFICATE OF SERVICE

I, Andrew R. Plump, certify that on May 21, 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-66, Response of Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company to Motion to Strike of the Four City Consortium on counsel for the Four City Consortium, on all other parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Docket No. 33388, and on Administrative Law Judge Jacob Leventhal.


Andrew R. Plump

Dated: May 21, 1998

STB

FD

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5-21-98

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187 655
**Illinois
Central**



Myles L. Tobin
Associate General Counsel

~~Office of the Secretary~~
Office of the Secretary

MAY 21 1998
MAY 21 1998

~~Public Inspection~~
**Part of
Public Record**

Illinois Central Railroad
455 North Cityfront Plaza Drive
Chicago, Illinois 60611-5504

312 755-7621
312 755-7669 Fax

VIA FEDERAL EXPRESS

May 20, 1998

**Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, DC 20423**

ENTERED
Office of the Secretary

MAY 21 1998

**Part of
Public Record**



D

**RE: STB Finance Docket No. 33407 - Dakota, Minnesota & Eastern Railroad
Corporation Construction into the Powder River Basin**

Dear Secretary Williams:

Enclosed please find an original and 10 copies of Illinois Central's Notice of Intent to Participate in the above referenced proceeding. Kindly file stamp the enclosed duplicate of this letter and return same to me in the self-addressed, stamped envelope which has been provided for this purpose.

Very truly yours,

MLT/ps
Enc.

BEFORE THE
SURFACE TRANSPORTATION BOARD



DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION
CONSTRUCTION INTO THE POWDER
RIVER BASIN

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STB Finance Docket No. 33407

ILLINOIS CENTRAL RAILROAD COMPANY'S
NOTICE OF INTENT TO PARTICIPATE

Illinois Central Railroad Company ("IC") hereby provides this notice that it intends to participate in the above referenced proceeding.

Respectfully submitted,

ILLINOIS CENTRAL
RAILROAD COMPANY

By: Myles L. Tobin
Myles L. Tobin
Associate General Counsel
Illinois Central Railroad Company
455 N. Cityfront Plaza Dr.
Chicago, Illinois 60611-5504
(312) 755-7621
(312) 755-7669 (fax)

STB

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187631

TOM BLILEY
7TH DISTRICT, VIRGINIA

CHAIRMAN, COMMITTEE ON COMMERCE

187631

WASHINGTON OFFICE:
2400 RAYBURN CORP. BUILDING
(202) 225-2816

DISTRICT OFFICES:
SUITE 101
4014 FITZMAURICE AVENUE
RICHMOND, VA 23230-3634
(804) 771-2800
(1-800) 438-3164

CULPEPER OFFICE PARK
SUITE 207
783 MADISON BLVD
CLYDE, VA 22701-3342
(404) 875-8886

Congress of the United States
House of Representatives
Washington, DC 20515-4607

May 19, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Chairman Morgan:

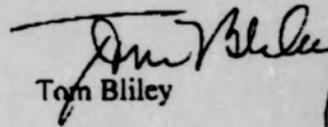
I am writing to respectfully request that I be allowed to testify at the oral argument in the CSX-NS-Conrail merger on June 3, 1998.

The time I would like to testify is 10:15 a.m. I will have two staff members with me, Brent DelMonte and Kristina Åberg and would like to have them in the Board Hearing Room with me during my testimony, if space is available.

If you have questions, please do not hesitate to contact me or Brent. We can be reached at 225-2815.

Thanking you in advance for your consideration of this request, I am

Sincerely,


Tom Bliley

TB/lp

ENTERED
Office of the Secretary

MAY 19 1998

Part of
Public Record

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SURFACE TRANSPORTATION
BOARD
MAY 19 4 16 PM '98
OFFICE OF
CHAIRMAN MORGAN

STB

FD-33388

5-12-98

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ID-187484

**Illinois
Central**



Myles L. Tobin
Associate General Counsel



Illinois Central Railroad
455 North Cityfront Plaza Drive
Chicago, Illinois 60611-5504

312 755-7621
312 755-7669 Fax

May 8, 1998

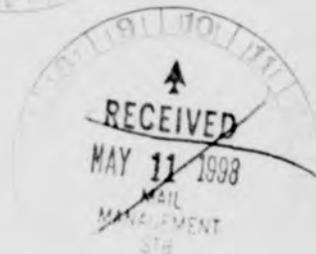
VIA FEDERAL EXPRESS

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

ENTERED
Office of the Secretary

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Part of
Public Record



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

Dear Secretary Williams:

Illinois Central Railroad Company ("Illinois Central") hereby files this response to the proposal dated April 24, 1998, submitted by certain parties in the above proceeding, to allocate the amount of oral argument time for all parties opposing the transaction. Illinois Central was not a participant in this allocation process developed by a few parties to the proceeding, which, wholly outside of the auspices of the STB, purported to allocate a de minimus oral argument time for Illinois Central. We strongly object to the amount of argument time proposed to be allocated to the "Other Railroads" group (which includes Illinois Central). The proposal will not result in Illinois Central having sufficient time in which to adequately present its argument to the Board.

By letter dated March 31, 1998, Illinois Central advised the Board of its intent to participate in oral argument, and requested twenty minutes in which to present its argument. Before making its request, Illinois Central carefully considered both the complexity and the importance of the issues it will address at oral argument in determining the amount of time it needed to present that argument.

As presently structured, the proposal allocates a total of only 45 minutes of argument time among nine different railroad parties (an average of only 5 minutes each). Although the proposal contemplates that the parties within the group would divide this time among themselves, it is clear that no reasonable division of this time could possibly afford Illinois Central an adequate amount of time for its argument without effectively depriving the other parties in the group of any meaningful time for their argument.

The proposal states that the twelve groups were developed in order to place

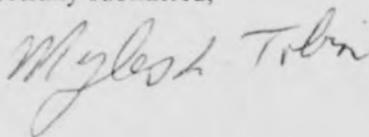
Mr. Vernon A. Williams
May 8, 1998
page 2

together parties "that have raised issues that are common or similar". Although that may be true with respect to other groups, that is certainly not the case with the "Other Railroads" group. None of the other railroads in this group (all of which are Class II or III regional or shortline railroads) have issues (or seek relief) in common with or similar to the issues or relief Illinois Central will address in its argument.

In many markets, Illinois Central will be the only major railroad that can provide alternative routes and service to that provided by the Applicants after the transaction. The issues Illinois Central will address affect hundreds of thousands of carloads moving via major rail corridors and gateways. Illinois Central understands that there is a limited amount of time for argument. However, it is imperative that Illinois Central have adequate time in which to address these issues which are of vital importance to both Illinois Central and the shipping public.

Illinois Central respectfully submits that, if the Board is inclined to adopt a structure similar to the April 24th proposal, then it modify the proposal by increasing the amount of time allocated to the Other Railroads group by fifteen minutes, and specifically allocate that 15 minutes to Illinois Central. The proposed schedule, spread over two days, should easily accommodate this modest amount of argument time. If, instead, the Board chooses to allocate argument time on an individual party basis, Illinois Central respectfully renews its request for twenty minutes of argument time.

Respectfully submitted,



cc: Honorable Linda Morgan (via fax)
Honorable Gus Owen (via fax)
Honorable David M. Konschnik (via fax)
All Parties of Record

STB

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5-11-98

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187689

JOHN J. LAFALCE
29TH DISTRICT, NEW YORK

2310 RAYBURN BUILDING
WASHINGTON, DC 20515-3229
(202) 225-3231

Revised ✓

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FEDERAL BUILDING
BUFFALO, NY 14202
(716) 846-4056

MAIN POST OFFICE BUILDING
NIAGARA FALLS, NY 14302
(716) 846-0076

408 SOUTH UNION STREET
SPENCERPORT, NY 14559
(716) 352-4177

Congress of the United States
House of Representatives
Washington, DC 20515-3229

FILE IN DOCKET

April 14, 1998

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423-0001

RECEIVED
SURFACE TRANSPORTATION
BOARD
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OFFICE OF
CHAIRMAN MORGAN

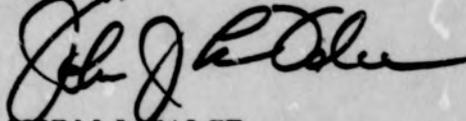
Dear Mr. Williams:

I am writing to request time to participate in oral arguments for Docket #33388 before the Surface Transportation Board on June 4, 1998.

My testimony will involve my concerns regarding the impact of the proposed acquisition on the 29th Congressional District, which encompasses Niagara and Orleans Counties, and a portion of Erie and Monroe Counties.

Thank you for your attention in this matter.

Sincerely,



JOHN J. LAFALCE
Member of Congress

L:mmr

ENTERED
Office of the Secretary

MAY 26 1998

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Public Record

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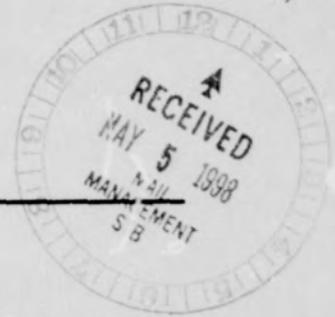
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BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

D

REQUEST OF
AMERICAN PUBLIC TRANSIT ASSOCIATION
REGARDING ORAL ARGUMENT
AND NOTICE OF CHANGE IN REPRESENTATIVE

ENTERED
Office of the Secretary

MAY - 6 1998

Part of
Public Record

Daniel Duff, Chief Counsel
American Public Transit Association
1201 New York Ave., NW
Washington, DC 20005
202-898-4000

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33388

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

**REQUEST OF
AMERICAN PUBLIC TRANSIT ASSOCIATION
REGARDING ORAL ARGUMENT
AND NOTICE OF CHANGE IN REPRESENTATIVE**

The American Public Transit Association ("APTA") has previously provided notice of its intent to participate in the scheduled oral argument in the above-referenced proceeding. At this time, APTA requests that APTA's representative, William W. Millar, President, be placed on the schedule for argument as early as practicable. An unavoidable schedule conflict later that day has come up for Mr. Millar. As noted in our earlier finding, Mr. Millar requests five minutes of time to present APTA's views.

APTA also wishes to inform the Board that it supports the April 24, 1998, proposal of a number of parties regarding an increase and allocation of oral argument time. APTA finds the proposed oral argument structure and allocation to be fair and reasonable.

Finally, APTA requests that the service list be amended to remove Ms. Mattie Condray, Senior Counsel from the APTA listing. Mr. Daniel Duff shall remain the sole APTA counsel of record in this proceeding.

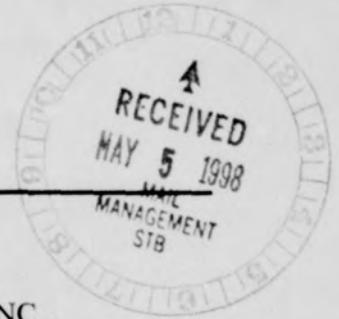
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Duff".

Daniel Duff, Chief Counsel
American Public Transit Association
1201 New York Avenue, NW
Washington, DC 20005
202-898-4000

Dated: May 4, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

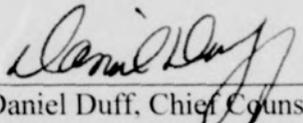


Finance Docket No. 33388

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Administrative Law Judge Jacob Leventhal and all Parties of Record, by first class mail, with the notice of the American Public Transit Association's request regarding APTA's scheduled appearance at the oral argument and request for amendment of the service list in the above listed proceeding.


Daniel Duff, Chief Counsel
American Public Transit Association
1201 New York Avenue, NW
Washington, DC 20005
202/898-4108

Date: May 4, 1998

STB

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5-5-98

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ARNOLD & PORTER

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

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

May 5, 1998

NEW YORK
DENVER
LOS ANGELES
LONDON

DENNIS G. LYONS
(202) 942-5858

BY HAND DELIVERY - 25 Copies

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



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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the Response of Applicants CSX Corporation and CSX Transportation, Inc., To Motion for Reconsideration By Richard and Judith Bell and George Rigamer of the Board's Decision Denying Their Motion to Become Parties of Record (CSX-146) for filing in the above-referenced docket.

Please note that a copy of this filing 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 (202-942-5858) if you have any questions.

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

Respectfully yours,

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

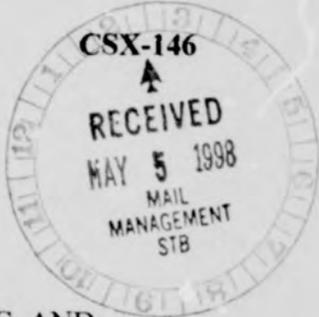
ENTERED
Office of the Secretary

MAY 05 1998

Part of
Public Record

Enclosures
cc: Henry T. Dart, Esq.
All Parties of Record

18739



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

ENTERED
Office of the Secretary

MAY 05 1998

Part of
Public Record

**RESPONSE OF APPLICANTS CSX CORPORATION
AND CSX TRANSPORTATION, INC., TO MOTION FOR
RECONSIDERATION BY RICHARD AND JUDITH
BELL AND GEORGE RIGAMER OF THE BOARD'S
DECISION DENYING THEIR MOTION TO BECOME
PARTIES OF RECORD**

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

May 5, 1998

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

**RESPONSE OF APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC., TO
MOTION FOR RECONSIDERATION BY
RICHARD AND JUDITH BELL AND GEORGE RIGAMER
OF THE BOARD'S DECISION DENYING THEIR
MOTION TO BECOME PARTIES OF RECORD**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), hereby submit their response to the Motion of Richard and Judith Bell and George Rigamer for Reconsideration of the Board's Order denying their Motion to become parties of record (Decision No. 76, served April 17, 1998). The Motion for Reconsideration contains a certificate of service dated April 24, 1998, but was received by counsel for CSX only on May 4, 1998, in an envelope bearing metered postage dated April 29, 1998 (and no postmark by the Postal Service).¹ The Motion for

¹ The Motion for Reconsideration is marked "DOT-3" despite the Board's admonition to the movants to cease using the DOT's identifying acronym. Decision No. 76 at 1 n.1.

Reconsideration offers no basis for disturbing the Board's action in denying the earlier Motion and should be denied.

In attempting to defend their failure to file comments and/or a statement of intent to participate in these proceedings prior to October 21, 1997, movants admit that the jury verdict in their case in the Louisiana courts was rendered on September 9, 1997, and by necessary implication that the evidence that they wished to bring before the Board, which they had adduced at trial, was presented to the trial court prior to September 9, 1997. They state that they did not seek to enter the proceedings before the Board prior to October 21, 1997 "because of the uncertainty of the status of the case [before the Louisiana courts]." (Motion at 2.)² But the issue is not when the post-verdict proceedings in the Louisiana courts took place, but when the evidence they seek to submit was available to the movants; and that certainly was prior to September 9, 1997.

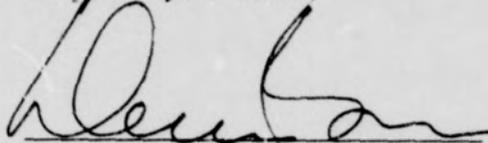
It is also said that the movants "had no Notice of these deadlines" in the Board's procedural orders. (Motion at 2.) But the proposed Transaction involving CSX, NS and Conrail received nationwide publicity, as did the fact that its consummation was subject to proceedings before the Board. The Board complied with the requirements concerning

² It is claimed that "CSX inaccurately state[d]" matters in their Opposition to the earlier Motion (CSX-142) with respect to the status of the Louisiana case. (Motion at 1.) But the representation that CSX made (CSX-142 at 1-2), which was that the Supreme Court of Louisiana ordered that "the judgment of the trial court be 'vacated and set aside'" was correct; the Motion for Reconsideration elsewhere admits that "the Final Judgment on the Jury Verdict, an Order, signed by the trial judge, was vacated" (Motion for Reconsideration at 1); and it is admitted (*id.* at 2) that the Louisiana Supreme Court "vacated the Final Judgment." While none of this is material to the Board's denial of the Motion, we wish flatly to say that the assertion that CSX made an incorrect representation to the Board is flatly wrong.

giving public notice of its proceedings, and of the public's right to participate in them. Surely at least one of the 15 counsel who have subscribed to the Motion for Reconsideration knew of the pendency of the proceedings before the Board and could have checked the *Federal Register* or made inquiry to the Secretary's Office as to the pertinent deadlines.

The Motion for Reconsideration has no foundation and should be denied.

Respectfully submitted,



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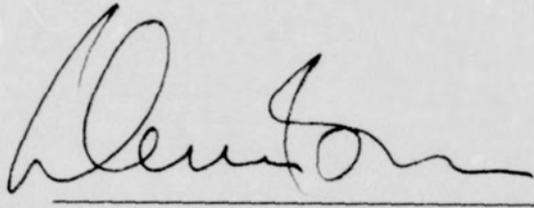
*Counsel for CSX Corporation and CSX
Transportation, Inc.*

May 5, 1998

. . . .

CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on May 5, 1998, I have caused to be served a true and correct copy of the foregoing CSX-147. Response of Applicants CSX Corporation and CSX Transportation, Inc., To Motion for Reconsideration By Richard and Judith Bell and George Rigamer of the Board's Decision Denying Their Motion to Become Parties of Record, on counsel for the movants and on all parties of Record in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



STB

FD-33388

5-1-98

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ID-187352

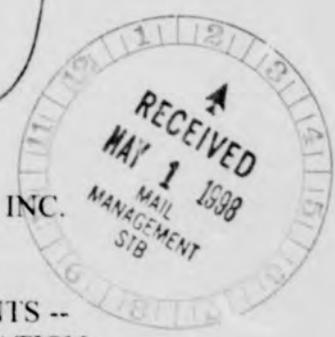
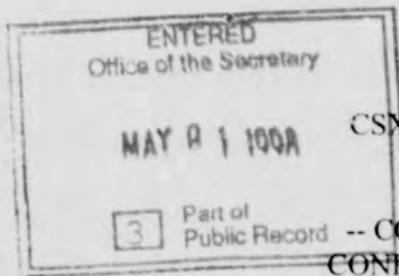
187352

D

CSX/NS-205

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

RESPONSE OF APPLICANTS NORFOLK SOUTHERN CORPORATION,
NORFOLK SOUTHERN RAILWAY COMPANY, CSX CORPORATION AND CSX
TRANSPORTATION, INC. IN OPPOSITION TO THE PETITION TO INTERVENE AND
COMMENTS OF CYPRUS AMAX COAL SALES CORPORATION

On April 28, 1998, Cyprus Amax Coal Sales Corporation ("Cyprus Amax") filed a petition to intervene and comments in this proceeding, citing a concern that Applicants NS¹ and CSX² may not arrive at an acceptable implementing operating agreement covering operations over the former Monongahela Railroad ("MGA"). The Cyprus Amax petition essentially reargues a similar petition filed by Consol Inc. which the Surface Transportation Board ("Board" or "STB") denied in Decision No. 77, served April 24, 1998. The Board's response to Consol's petition is equally applicable to Cyprus Amax's petition. Cyprus Amax's petition to intervene should be denied.

In Decision No. 77, served only a week ago, the Board stated that:

CONSOL's petition to intervene will be denied. Under the procedural schedule established in Decision No. 6, entities seeking to participate in this proceeding were required to enter their appearances by August 7, 1997, and file responsive applications.

¹ "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR").

² "CSX" refers to CSX Corporation and CSX Transportation, Inc. ("CSXT").

comments, protests, and requests for conditions by October 21, 1997. CONSOL states that it has not participated previously in light of applicants' representations that they would develop and agree to an operating plan for the Monongahela area. While CONSOL has not participated as a party, a number of parties to the proceeding have addressed the interests of CONSOL in their submissions. See, e.g., comments filed October 21, 1997, by E.I. DuPont de Nemours and Company, Inc. (DuPont) (DUPX-2), Bessemer and Lake Erie Railroad Company (BLE-8), New York State Electric and Gas Corporation (NYSEG-14), and Eighty-Four Mining Company (EFM-7) [FN: In addition, DuPont is half owner of CONSOL]. CONSOL could have decided to participate directly as a party in the proceeding under the schedule established, but did not. Under the circumstances, CONSOL has not shown extraordinary or compelling reasons for permitting it to participate now. In any event, the application will be assessed in the light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela area.

Decision No. 77, slip op. at 2.

There is no material difference between Cyprus Amax's petition to intervene and Consol's petition, and it should likewise be denied. Like Consol's, Cyprus Amax's request comes nearly nine months late.³ Its proffered comments and requests for conditions come over six months after the October 21, 1997 deadline for submission of comments. Cyprus Amax's proffered comments and verified statement come only 37 days before oral argument, so that they would not be subject to cross-examination and rebuttal by NS.

As the Board recognized in Decision No. 77, intervention at this extraordinarily late date should be permitted only on a showing of extraordinary circumstances involving manifest injustice to the party requesting the intervention. See also, Decision No. 56, served November 28, 1997, slip op. at 2 (recognizing that declining to accept comments filed one month late

³ Cyprus Amax filed its petition to intervene on April 28, 1998. Under the procedural schedule established in Decision No. 6, served May 30, 1997, entities seeking to participate as parties of record in this proceeding were required to enter their appearances by August 7, 1997.

"might appear harsh," but noting that the commentor's "reasons for asking us to accept the pleading are by no means exceptional or compelling"). Cyprus Amax has made no such showing, and, like Consol, it has made no showing that it was prevented in any way from participating in this proceeding or following established procedures. Permitting Cyprus Amax to intervene at this late date would seriously compromise the meaning of procedural deadlines and prejudice NS and CSX in their ability to present their case to the Board.

Cyprus Amax claims that it should not be "penalized" for "not burdening the STB with filings that appeared unnecessary" given representations made in the Applicants' pleadings. CYPR-1 at 3. The Board rejected exactly the same claim by Consol in Decision No. 77. The Board did, however, state that "the application will be assessed in the light of representations made in the application, including the stated intention to afford equal access to all facilities in the Monongahela area." Decision No. 77, slip op. at 2.

Cyprus Amax does not, because it cannot, distinguish itself from several other parties who protected their interests by becoming parties of record in a timely fashion and who made their concerns known in submissions made pursuant to the procedural schedule.⁴ Cyprus Amax offers no reason why it could not have done the same.

Cyprus Amax does make an attempt to distinguish itself from Consol, whose late intervention petition was denied last week, by stating that:

[Cyprus Amax] is in a different position that [sic] CONSOL in at least one respect. The STB noted in Decision No. 77 that CONSOL's one-half parent, E.I. DuPont de Nemours and Company, Inc. ("DuPont"), is a participant in these proceedings and, according to the STB, has addressed the interests of CONSOL

⁴ See, e.g., NJT-8, Comments and Request for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation, filed October 21, 1997, at 2 (NJT submits its Comments and Requests for Conditions as a preventative measure); Comments and Request for Conditions of the Southeastern Pennsylvania Transportation Authority, filed October 21, 1997, at 8 (same).

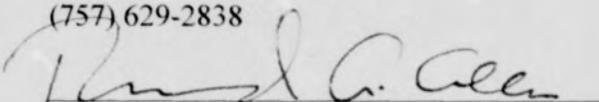
in [its] submissions." No Cyprus Amax affiliate has participated in this proceeding to address Cyprus Amax's interests.

CYPR-1 at 4. The Board's point in Decision No. 77, however, was that "a number of parties to the proceeding have addressed the interests of CONSOL in their submissions," (emphasis supplied), citing four such parties by way of example. That point applies equally to the interests of Cyprus Amax asserted in its petition. Indeed, in the Comments and Requests for Conditions of Bessemer & Lake Erie Railroad Company ("BLE"), BLE included a verified statement of a Cyprus Amax official addressing Cyprus Amax's concerns. BLE-8, filed October 21, 1997, at 55.

For all these reasons, Cyprus Amax's petition should be denied.

Respectfully submitted,

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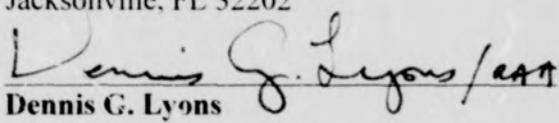
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*Counsel for Norfolk Southern Corporation
and Norfolk Southern Railway Company*

Dated: May 1, 1998

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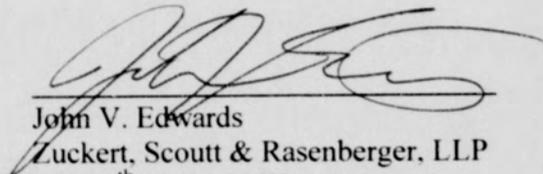
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(202) 429-3000

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

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on this 1st day of May, 1998, I have served the foregoing CSX/NS-205, Response of Applicants Norfolk Southern Corporation, Norfolk Southern Railway Company, CSX Corporation and CSX Transportation, Inc. in Opposition to the Petition to Intervene and Comments of Cyprus Amax Coal Sales Corporation, on all parties of record by first class mail, postage pre-paid, or by more expeditious means, and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
Office of Hearings
825 North Capitol Street, N.W.
Washington, D.C. 20426



John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

Dated: May 1, 1998

STB

FD-33388

4-27-98

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ID-187291

United States Senate

WASHINGTON, DC 20510

187271

April 23, 1998

D

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

CHAIRMAN HORGAN

APR 21 5 07 PM '98

RECEIVED
SURFACE TRANSPORTATION

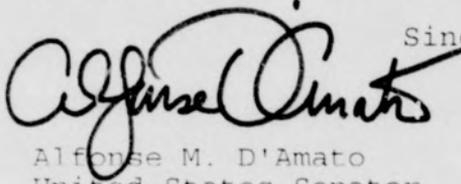
Dear Mr. Williams:

We are writing to request that we be given an opportunity to speak before the Surface Transportation Board on June 4, 1998 during the presentation of oral arguments for Docket #33388.

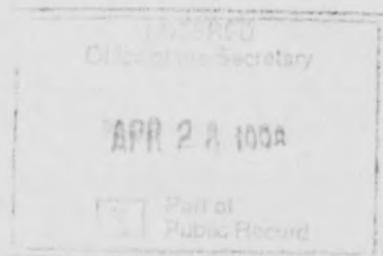
The extent which goods move by rail freight throughout New York State makes the pending acquisition of Conrail by CSX Corporation and Norfolk Southern an obvious concern to us. Thus, we would welcome the opportunity to address the Board to express our views on this issue. Further, we would appreciate your consideration of the vagaries of the Senate schedule with respect to determining a proper time to speak before the Board.

Thank you for your attention in this matter.

Sincerely,


Alfonse M. D'Amato
United States Senator


Daniel Patrick Moynihan
United States Senator



STB

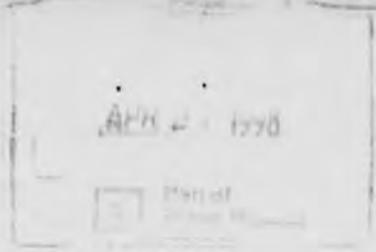
FD-33388

4-24-98

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ID-187255

187256
187255



April 24, 1998



VIA HAND DELIVERY

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



EXPEDITED CONSIDERATION REQUESTED

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

Dear Secretary Williams:

On behalf of the various parties in the above proceeding who are listed below, this is to report (as proposed in a prior letter to the Board of April 9, 1998) that an agreement has been reached for allocating the time allowed for oral argument by parties opposing the transaction as proposed. The proposed structure and allocation is set out in the attachment.

An explanation of the factors that were considered in developing this proposal may be helpful to the Board and other parties. First, as the Board knows, a large number of parties and other interested persons have requested an opportunity to participate in the oral argument. In fact, over 65 requests have been made to participate, more than twice the number that participated in the oral argument in Finance Docket No. 32760, *Union Pacific Corp. et al. — Control and Merger — Southern Pacific Rail Corp. (UP/SP)*. The total amount of time requested by just those parties opposing the transaction or seeking conditions is approximately 10 hours. In developing our proposal we have tried to recognize the interests of all those seeking to participate while keeping the time to a reasonable amount under the circumstances. As can be seen below, we have proposed that a total of just over six hours be allocated, instead of the three hours contemplated by the Board in Decision No. 70.

In developing this proposal, we have not included in the six hours of time several categories of participants. Parties that are supporting the transaction, or who have requested an opportunity to appear even though they have reached a settlement with the Applicants, are not included in the attached allocation. It is our view that any time for such parties should be allocated from the time provided for the Applicants, as was done in *See UP/SP Decision No. 41, served*

June 19, 1996. Second, we have not allocated any time for any members of Congress who have requested an opportunity to appear. The Board's usual practice has been to provide time for such appearances at the beginning of the argument, without reducing the amount of time allocated to the parties. Third, several parties requested time for oral argument even though they did not submit a brief to the Board in this proceeding. The undersigned parties do not take a position on whether parties that did not file briefs should be permitted to participate in the oral argument. However, if the Board decides to allow such participation in this proceeding, we respectfully request that such participation not reduce the time allocated for the active parties that filed briefs.

We believe that the proposal below is reasonable in view of the large number of parties that are seeking to participate and express their views on this important transaction. In view of the total amount of time involved, and considering the time for the applicants and questions by the Board, we suggest that the Board consider scheduling a second day of argument in order to accommodate everyone.¹

Finally, the Undersigned recommend that the six hours be divided among 12 different groups of parties. These groups were developed in order to place together as much that have raised issues that are common or similar. However, not all of the parties that are included in each of the proposed groups have had an opportunity to agree on a division of the time allocated to that group or the order of appearance within the group. For that reason, we request the Board to issue a decision specifying the groups and the amount of time allocated to each group. The decision should include a directive that the members of each group agree on an allocation of the time among the group members and the order of appearance, and then inform the Board at an appropriate time so that the Board can issue a final schedule.

Copies of this letter are being served upon all parties of record, so that those parties that are not joining in submitting this letter can express their views to the Board.

¹ The second day might be obtained by beginning the oral argument a day earlier, on Wednesday, June 3; or it might be obtained by using Friday, June 5, 1998. This second option might require adjusting the date of the Board's voting conference, now scheduled for Monday, June 8.

Respectfully submitted,

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cc: All Parties of Record (By Mail)

cc: Director, Office of Proceedings (By Telecopy)

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Attorney for Consol Inc. and Martin
Marietta Materials, Inc.

STB FINANCE DOCKET NO. 33388
PROPOSED ORAL ARGUMENT STRUCTURE AND ALLOCATION

Group	Proposed Time (Min.)
1. Broad Shipper Interests	20
Chemical Manufacturers Association	
The Fertilizer Institute	
The National Industrial Transportation League	
Society of the Plastics Industry	
2. Specific Shipper Interests	30
AK Steel Corp.	
APL Limited	
ARCO Chemical	
ASHTA Chemicals	
Eastman Kodak Co.	
Joseph Smith & Sons, Inc.	
3. Coal	30
American Electric Power Service Corp.	
Centerior Energy Corp.	
Consumers Energy Corp.	
Eighty-Four Mining Co.	
Niagara Mohawk Power Corp.	
Orange and Rockland Utilities, Inc.	
Potomac Electric Power Co.	
4. New York	35
Erie-Niagara Rail Steering Committee	
Genesee Transportation Council	
New York, State of	
New York City Economic Development Corp.	
Southern Tier West Reg. Plan. & Dev. Bd.	
5. Ohio	40
Martin Marietta Materials Inc.	
National Lime & Stone	
Attorney General, State of Ohio	
Stark Development Board	
Wheeling & Lake Erie Ry. Co.	
Wyandot Dolomite	
6. Indianapolis	20
Indiana Southern Railroad	
Indianapolis Power & Light, Company	
Indianapolis, City of	
7. Chicago	25
Elgin, J. & E. Ry.; Transtar and I&M Rail Link	
Illinois International Port District	
Wisconsin Central, Ltd.	
8. Passenger and Commuter	40
AMTRAK (National R. Pass. Corp.)	
Metro-North Commuter Railroad	
No. Va. Trans. Comm. & Rappahannock Trans. Comm.	
Southeastern Penn. Trans. Authority	

STB FINANCE DOCKET NO. 3388
PROPOSED ORAL ARGUMENT STRUCTURE AND ALLOCATION

9. Other Railroads	45
Ann Arbor Railroad Bessemer & Lake Erie R. Co. Gateway Western R. Co. Housatonic R. Co. Illinois Central R. Co. Livonia, Avon & Lakeville R. Co. New England Central R. Co. Philadelphia Belt Line R. Co. Reading, Blue Mountain & N. R. Co.	
10. Environmental and Safety	35
American Trucking Associations Bay Village, Rocky River and Lakewood, Ohio Cleveland, Ohio, City of Four City Consortium Tri-State Transportation Campaign	
11. Federal Government Parties	20
United States Department of Justice United States Department of Transportation	
12. Labor	30
Allied Rail Unions, et al.	
Total	370

STB

FD-33388

4-20-98

D

ID-187203

187203



OHIO STEEL INDUSTRY ADVISORY COMMISSION / OHIO DEPARTMENT OF DEVELOPMENT
P.O. Box 1001 COLUMBUS, OH 43261-1001 (614) 466-4551 FAX (614) 644-1785



ENTERED
Office of the Secretary

APR 21 1998

Part of
Public Record

April 16, 1998

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

D

Re: **Finance Docket #33388; CSX, Norfolk, Conrail**
"Comments, protests or requests for conditions" re: rail traffic in Cleveland

Dear Secretary Williams:

When the Ohio Steel Industry Advisory Council filed comments earlier this week on behalf of LTV Steel Company, a member company, it inadvertently failed to include a signature verification statement. That statement, which had been completed, is now provided and should be attached to the two-pages of comments previously submitted. (As reference, a copy of the two pages of comments is provided again).

Thank you for matching the letter with this verification statement.

Sincerely,

Charles S. Hesse
(for the Ohio Steel Industry Advisory Council)

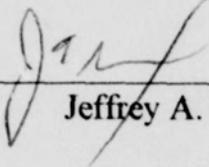
Enclosure

cc: Counsel of Record

State of Ohio)
)
County of Cuyahoga)

VERIFICATION

Jeffrey A. Saxon, being duly sworn on the 15th day of April, 1998, states that he has read the foregoing, and that it is true and accurate to the best of his knowledge and belief.



Jeffrey A. Saxon

L.A. Stacko

Notary Public

My Commission expires: MARCH 26, 2000

STB

FD-33388

4-16-98

D

ID-187207

SENT BY:

4-14-98 : 1:46PM :

2029275728:# 1/ 1

RALPH REGULA
16TH DISTRICT, OHIO

RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3518
(202) 225-3876

DISTRICT OFFICE
4150 BIRDEN VILLAGE STREET NW
SUITE 408
CANTON, OH 44718
(330) 489-4414

TOLL FREE DISTRICT NUMBER
1-800-826-9016



187207

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

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

April 14, 1998

The Honorable Linda Morgan
Chairman
Surface Transportation Board
Attn: Mary Turek
Fax: 565-9015

Dear Chairman Morgan:

By this letter, I am requesting time to testify on June 4 in regard to the proposed acquisition of Conrail by Norfolk Southern and CSX.

As you are aware, the proposed acquisition presents several problems in the State of Ohio, not the least being the future of regional railroads and their ability to provide competition and services to shippers. My testimony will focus on the need to maintain competitive access particularly vis a vis the Wheeling & Lake Erie Railway.

I would request no more than 10 minutes.

With best wishes, I am

Sincerely,

Ralph Regula, M.C.

ENTERED
Office of the Secretary

APR 21 1998

Part of
Public Record

RECEIVED
SURFACE TRANSPORTATION
BOARD
APR 15 11 48 AM '98
CHAIRMAN MORGAN

STB

FD-33388

4-16-98

D

ID-187161

187161



OHIO STEEL INDUSTRY ADVISORY COMMISSION / OHIO DEPARTMENT OF DEVELOPMENT
P.O. Box 1001 COLUMBUS, OH 43266-1001 (614) 466-4551 FAX (614) 644-1789

April 15, 1998

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



D

Re: **Finance Docket #33388; CSX, Norfolk, Conrail**
"Comments, protests or requests for conditions" re: rail traffic in Cleveland area

Dear Secretary Williams:

The attached statement, filed on behalf of a member steel company by the Ohio Steel Council, reflects continued concern with the proposed rail merger and the routing of rail traffic through the Cleveland area. The letter from LTV Steel Company suggests that significant disruption of rail traffic will occur if a proposed flyover in the City of Berea, which is one alternative, occurs. Such disruption will create increased traffic volume and likely have an economic impact on the ability of LTV Steel to ship products.

Twenty-five copies of the LTV Steel statement are enclosed.

The LTV Steel Company letter has been duly verified.

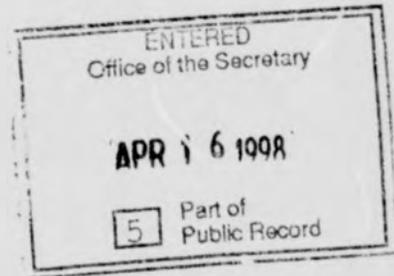
Please date stamp the enclosed extra copy of this letter and return in the enclosed self-addressed stamped envelope.

Respectfully submitted,

Charles S. Hesse

Charles S. Hesse
(for the Ohio Steel Industry Advisory Commission)

Charles Hesse Associates
7777 Bainbridge Road
Chagrin Falls, OH 44023-2124



Enclosure: Original letter and 25 copies + 1

cc: Counsel of Record

LTV LTV Steel Company, Inc.

April 15, 1998



The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
1925 K Street, N.W.
Suite 820
Washington, D.C. 20423

Subject: FINANCE DOCKET NO. 33388

Dear Chairman Morgan:

LTV Steel is a significant user of Conrail, CSX, and NS rail service throughout the Midwest. LTV and our 17,000 employees operate significant manufacturing facilities in Illinois, Indiana, Ohio, and Pennsylvania that rely heavily upon efficient rail service for inbound raw materials and outbound finished products. Our integrated steel complex located in the City of Cleveland is critically dependent upon efficient rail service.

Annually, LTV moves about 4.9 MM tons throughout this area by rail, including 3.2 MM tons related to our Cleveland Works.

We understand that the Board is considering the impacts of a merger of the Conrail system into CSX and NS, including alternatives for routing rail traffic through the Cleveland area.

Regarding the merger, LTV expects that the Board will drive CSX and NS to increase rail efficiencies and competition, resulting in lower rail costs and improved service in this critical interstate East/West corridor.



The Honorable Linda J. Morgan
April 15, 1998
Page 2

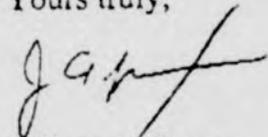
Concerning the alternatives for the Cleveland area, we hope that the Board will work to find a solution that delivers improved rail efficiencies/lower costs for rail customers and provides an appropriate response to the concerns of the City of Cleveland and local communities.

We understand that one option under consideration is the construction of a flyover in the City of Berea in order to reroute the flow of rail traffic through the area. We are concerned that the construction of the flyover will result in a significant disruption of rail traffic through the Cleveland area and will particularly impact our Cleveland Works. With much deliberation, we have not been able to identify a plan of operation that will allow us to operate effectively during the 3-5 year design and construction period. We understand that traffic volume and single track operation during construction will create a serious logjam. The cost of delays and the switching from rail to truck traffic is expected to cost LTV well over \$5 million per year, not including the risk of lost business due to the inability to reliably provide on-time delivery.

During the Board's review of alternatives, we request that serious consideration be given to the economic and service impacts that will occur during the project construction periods.

We strongly urge the Board to favorably consider options that provide increased rail efficiency and competition to drive the rail system to lower costs and to avoid alternatives that hamper the railroads and their customers' ability to compete.

Yours truly,



Jeffrey A. Saxon
Executive Vice President

JAS:fam

STB

FD-33388

4-15-98

D

ID-187162

187162

PLEASE REPLY TO:

WASHINGTON OFFICE
331 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-3306
FAX: (202) 225-0347

MAIN OFFICE
403 MAIN STREET
SUITE 240
BUFFALO, NY 14203-2199
(716) 845-5257
FAX: (716) 847-0323

SATELLITE OFFICE
190 JEFFERSON AVENUE
BUFFALO, NY 14208
(716) 886-4076



Congress of the United States

House of Representatives

Washington, D.C. 20515-3250

April 8, 1998

JACK QUINN
30TH DISTRICT, NEW YORK

TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES:

SURFACE TRANSPORTATION
WATER RESOURCES AND ENVIRONMENT
RAILROADS

VETERANS' AFFAIRS'

SUBCOMMITTEE CHAIRMAN:

BENEFITS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423-0001

D



Dear Mr. Williams,

Please accept this letter as a formal request to speak before the Surface Transportation Board during the presentation of oral arguments for Docket #33388 on June 4, 1998.

As a Member of Congress from the 30th District representing Buffalo and Western New York, I look forward to the opportunity to discuss the concerns I have regarding the acquisition of Conrail by Norfolk Southern and CSX Corporation.

Due to the constraints of the Congressional schedule, I would appreciate any accommodations you might provide on my behalf that would allow me to speak early on June 4, 1998.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Very truly yours,



STB

FD-33388

4-15-98

D

ID-187148

187148

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006-4103 (202) 835-8000

FACSIMILE (202) 835-8136

INTERNET <http://www.hopsut.com>

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602-4205

DETROIT OFFICE 2800 LIVERNOIS SUITE 220 TROY, MI 48063-1220

D

ROBERT P. vom EIGEN
(202) 835-8269

April 15, 1998



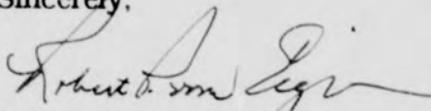
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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:

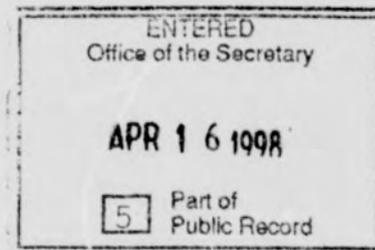
Enclosed are an original and twenty-five (25) copies of the Report of the City of Cleveland, Ohio in Response to Decision No. 71 (CLEV-19) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger.

Sincerely,


Robert P. vom Eigen

Enclosure

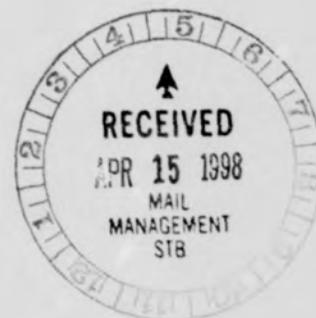
cc: The Honorable Jacob Leventhal
All Parties of Record



Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

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



**REPORT OF THE CITY OF CLEVELAND, OHIO
IN RESPONSE TO DECISION NO. 71**

Communications with respect to this document should be addressed to:

Sylvester Summers, Jr.
Director of Law
Richard Horvath
Assistant Director of Law
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2808

Anthony J. Garofoli
Climaco, Climaco, Lefkowitz & Garofoli,
L.P.A.
Ninth Floor, The Halle Building
1228 Euclid Avenue
Cleveland, Ohio 44115
(216) 621-8484

Robert P. vom Eigen
Charles A. Spitulnik
Jamie Palter Rennert
Rachel Danish Campbell
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006
(202) 835-8000

Counsel for the City of Cleveland, Ohio

Dated: April 15, 1998

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

CLEV-19



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

**REPORT OF THE CITY OF CLEVELAND, OHIO
IN RESPONSE TO DECISION NO. 71**

The City of Cleveland, Ohio, hereby submits this report as to the status of its discussions with representatives of Norfolk Southern Corporation ("NS") and CSX Corporation ("CSX") following the Board's Decision No. 71 (Service Date March 17, 1998) that instructed parties in the Greater Cleveland area to seek to reach private settlements of the substantial environmental issues created by the transactions under review in this proceeding, and that further instructed the Board's Section of Environmental Analysis ("SEA") staff and consultants not to engage in any further informal discussions with the affected parties in the Greater Cleveland area until April 15, 1998.

Since the Board issued Decision No. 71, Cleveland has sought to reach agreements with both NS and CSX. Because the discussions with the two railroads have been conducted separately and because their course has been markedly different, this report will review them separately.

Discussions with NS

Representatives of the City and of NS have met several times and exchanged correspondence over the past month with the goal of reaching a resolution of the issues Cleveland has raised in this proceeding. These discussions are ongoing, and the City is hopeful of reaching an agreement.

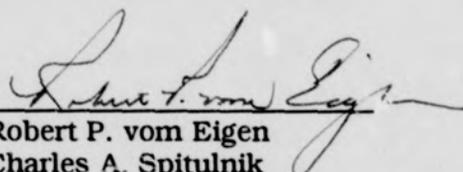
Discussions with CSX

Mayor White and John Snow of CSX have exchanged correspondence during this period and have met together with Congressman Louis Stokes to discuss possible mechanisms for addressing the serious impacts of the CSX acquisitions in the transaction on Cleveland's neighborhoods. However, the City remains frustrated at CSX's unwillingness to address these impacts in a way that recognizes the scope, breadth and seriousness of the potential for destroying the quality of the human environment in the neighborhoods traversed by lines CSX will acquire. As the Mayor has emphasized, the City's first priority is to find a way to reduce train frequencies through the most adversely affected neighborhoods. The mitigation plans that CSX continues to propose do not recognize the seriousness of the impact and do not provide any meaningful mitigation of the adverse impacts. However, Cleveland continues to believe that a solution exists.

The City remains ready, willing and able to engage in further discussions with CSX as long as CSX recognizes that it must be realistic about the need to provide for realistic mitigation of effects of the increases in train frequencies that CSX proposes to visit on the people of Cleveland. Cleveland agrees with the Board's view that private settlements are to be encouraged, and can only hope that CSX will recognize that negotiation involves listening to the concerns of the other party and responding to

them, not simply repeating the same mantra over and over in the hope that the other party will be worn down from listening to that same refrain repeated without meaningful change and without recognition of the needs and concerns of the other.

Respectfully submitted,



Sylvester Summers, Jr.
Director of Law
Richard Horvath
Assistant Director of Law
City of Cleveland
Department of Law - Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114
(216) 664-2808

Robert P. vom Eigen
Charles A. Spitulnik
Jamie Palter Rennert
Rachel Danish Campbell
HOPKINS & SUTTER
888 16th Street, N.W.
Washington, D.C. 20006
(202) 835-8000

Anthony J. Garofoli
Climaco, Climaco, Lefkowitz & Garofoli,
L.P.A.
Ninth Floor, The Halle Building
1228 Euclid Avenue
Cleveland, Ohio 44115
(216) 621-8484

Counsel for the City of Cleveland, Ohio

Dated: April 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1998, a copy of the foregoing Report of the City of Cleveland, Ohio in Response to Decision No. 71 (CLEV-19) was served by hand delivery upon the following:

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

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

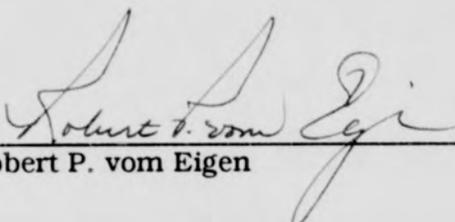
Samuel M. Sipe, Jr.
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

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

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

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

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



Robert P. vom Eigen

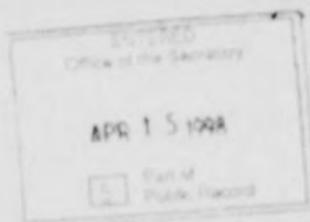
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FD-33388

4-15-98

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ID-1877142



157142

April 8, 1998
Thomas J. Moraghan
112 Westwood Drive
Towam River, NJ 08753



D

Case Control Unit
Office of the Secretary
Surface Transportation Board
1925 K St., NW
Washington, D.C. 20423-0001
Re: STB Finance Docket No. 33388 Oral Agreement

To The Secretary of Surface Transportation Board:

I would like to participate for Oral Argument and ask for ten minutes speaking time at the June 4, 1998 hearing of the "CSX-Norfolk Southern-Conrail" Merger Proposal. I want to show that I oppose the primary application. The reason being, loss of seniority.

The way the agreement was explained to me by Conrail Vice President of Labor Relations Lawrence Finnegan at Port Reading Yard, Port Reading, NJ on March 25, 1998, as quoted by Mr. Finnegan, "if you go with Conrail after the merger you will lose all your seniority on any part of your former railroad". An example would be that I could no longer work on 65% of the jobs I can hold now.

On March 26, 1998 and March 27, 1998 I attended an General Committee of Adjustment Meeting for the Brotherhood of Locomotive Engineers at Cleveland, Ohio. My General Chairman Robert Godwin stated that the union was working on this matter (seniority, flow back). However, at this time no one can give me a definitive answer of what is the truth. It seems to me that all we hear about regarding this issue is chicanery.

The way I perceive, what will happen if this merger is approved, is a lot of disgruntled employees having to move their families from their homes to other states. The hardships and uncertainty to the railroaders is too obscure to phantom at this time.

The summation of my argument is this: The Preamble of the United States Constitution states, that Life, Liberty and the Pursuit of Happiness. To a railroader, seniority is tantamount to the pursuit of happiness. I believe the Surface Transportation Board should hear the oral Argument from some blue collar workers from the railroad industry, and let them tell it like they see it.

Thomas J. Moraghan

cc: Robert Godwin
Frank Lautenberg

I concur:

- Thomas Hausen UTU 1445
- James [unclear] UTU 1445
- Paul [unclear] BRW 6901
- [unclear] UTU 1390
- Edward E. [unclear] UTU 1390
- Thomas J. [unclear] BLE 601
- William [unclear] UTU 1445
- [unclear] UTU 1445
- [unclear] UTU 1445
- Richard T. [unclear] UTU 14800

- Calvin [unclear] 1390
- Fredrick C. [unclear] 1445
- Benjamin [unclear] 601
- Edward W. [unclear] UTU 1390
- Eric [unclear] BLE 601
- C.J. [unclear] UTU 1390
- David [unclear] UTU 1390
- Robert [unclear] BLE 601
- William P. [unclear] UTU 1445
- [unclear] UTU 1445
- John [unclear]
- [unclear] UTU 1390
- R.R. BARNHARD UTU 1441

STB

FD-33388

4-15-98

D

ID-187139

187139

LAW OFFICES

BARBIN, LAUFFER & O'CONNELL

(PROFESSIONAL CORPORATION)

608 HUNTINGDON PIKE

ROCKLEDGE, PENNSYLVANIA 19046-4490

TELEPHONE (215) 379-3015

TELECOPIER (215) 663-8906

HARRY C. BARBIN
JOHN W. LAUFFER
GEORGE P. O'CONNELL
WILLIAM M. O'CONNELL, III

RETR-11

April 14, 1998



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

Re: **STB Finance Docket No. 33388**
Notice to Participate in Oral Argument

Dear Secretary Williams:

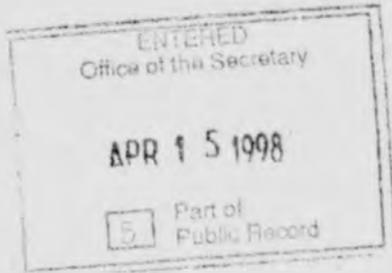
We represent certain former employees of Consolidated Rail Corporation ("Retirees") in the above-mentioned proceedings.

Pursuant to the Board's Decision No. 70, we hereby notify you of our intent to participate in the June 4, 1998 oral argument in these proceedings.

In the oral argument, we will request the Board to impose appropriate conditions to protect the Retirees' interests in the Supplemental Pension Plan of Consolidated Rail Corporation and the surplus assets of the Plan, as set forth in the Retirees' Brief in Support of Comments, Protests and Request for Conditions of the Retirees.

We request ten (10) minutes to present the oral argument by the undersigned attorney.

Respectfully submitted,



Harry C. Barbin

Harry C. Barbin, Esquire
Barbin, Lauffer & O'Connell
PA I.D. No. 08539
608 Huntingdon Pike
Rockledge, Pennsylvania 19046
(215) 379-3015

cc: The Honorable Jacob Leventhal
Service List

VIA FEDERAL EXPRESS
AIRBILL NO. 803148061191

STB

FD-33388

4-15-98

D

ID-187134

187134

CSX-144

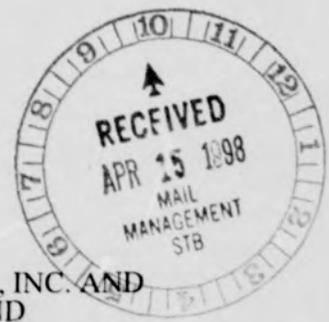
ENTERED
Office of the Secretary

APR 15 1998

5 Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388



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

D

**RESPONSE OF APPLICANTS CSX CORPORATION
AND CSX TRANSPORTATION, INC., TO
PETITION OF CONSOL INC. (CONS-1)**

SAMUEL M. SIPE, JR.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

DENNIS G. LYONS
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1202
(202) 942-5000

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

**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.***

April 14, 1998

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

**RESPONSE OF APPLICANTS CSX CORPORATION AND
CSX TRANSPORTATION, INC., TO
PETITION OF CONSOL INC. (CONS-1)**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), hereby submit their response to the Petition (CONS-1) filed by CONSOL Inc. ("CONSOL") in this matter on April 9, 1998.

In light of the status of CONSOL as the largest producer of coal on the lines of the former Monongahela Railroad (hereinafter, "MGA") and the reasons stated by CONSOL for not having sought to become a party to this case earlier and to file their Comments in accordance with the Board's procedural schedule, CSX interposes no objection to the grant of the Petition filed by CONSOL which simply "asks that it be permitted to intervene in this proceeding, file the attached Comments and Verified Statements and participate in the oral argument."

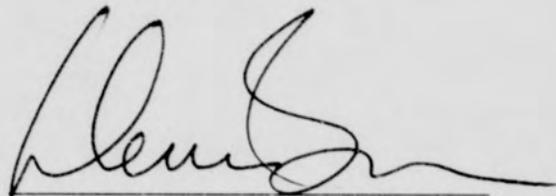
In taking this position, CSX reserves its right at this time to express its views on the substance of the Comments and Verified Statements filed by CONSOL and the relief it requests.

CSX anticipates that if the Board grants the Petition, it will fix a date for Reply Comments and Verified Statements by the Applicants. Since the Applicants have the right to close the Record, we assume that no replies by other parties other than the Applicants will be

permitted, or, if they are permitted, that they will be required to be filed at a time reasonably in advance of the time at which the Applicants' reply comments and reply verified statements are to be filed.

We would respectfully submit that instead of the 20-day period contemplated by the Petition (Petition at 4) for replies by the Applicants, a date closer to the May 15 date referred to in the Comments, such as May 8, 1998, be provided for Applicants' Reply Comments and Verified Statements. Extending the period to this extent might facilitate voluntary agreements and dispositions that would moot the relief requested in the CONSOL Comments.

Respectfully submitted,



DENNIS G. LYONS

Arnold & Porter
555 12th Street, NW
Washington, D.C. 20004-1202
(202) 942-5000

SAMUEL M. SIPE, JR.
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 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

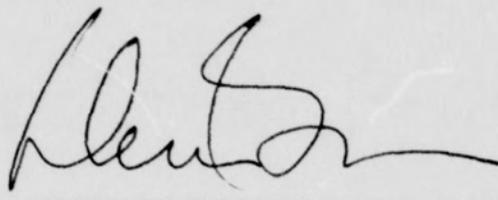
P. MICHAEL GIFTOS
PAUL R. HITCHCOCK
CSX TRANSPORTATION, INC.
500 Water Street
Speed Code J-120
Jacksonville, FL 32202
(904) 359-3100

Counsel for CSX Corporation and CSX
Transportation, Inc.

April 14, 1998

CERTIFICATE OF SERVICE

I, Dennis G. Lyons, certify that on April 14, 1998, I have caused to be served a true and correct copy of the foregoing CSX-144, Response of Applicants CSX Corporation and CSX Transportation, Inc., To Petition of CONSOL Inc. (CONS-1), on counsel for the movants and on all parties of Record in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



STB

FD-33388

4-14-98

D

ID-187128

LAW OFFICES

187128

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



April 14, 1998

BY HAND

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

D

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

Dear Secretary Williams:

Enclosed for filing is an original and twenty-five copies of NS-65, Response of Applicant Norfolk Southern Corporation and Norfolk Southern Railway Company in Opposition to the Petition of Consol Inc. for Leave to Intervene.

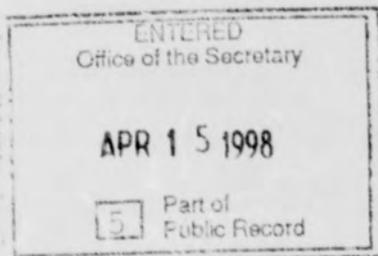
Also enclosed is a 3 1/2 inch computer disk containing the filing which is capable of being read by Wordperfect for Windows 7.0.

Should you have any questions regarding this, please call.

Sincerely,

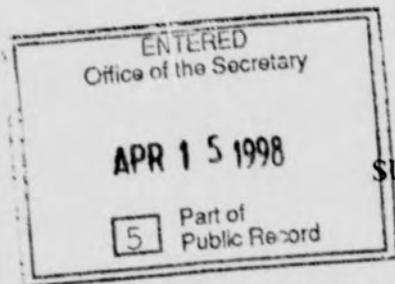
Richard A. Allen, Jr.

Richard A. Allen



Enclosures

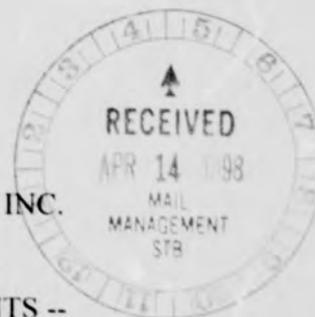
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NS-65

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

RESPONSE OF APPLICANT NORFOLK SOUTHERN CORPORATION
AND NORFOLK SOUTHERN RAILWAY COMPANY
IN OPPOSITION TO THE PETITION OF CONSOL INC.
FOR LEAVE TO INTERVENE

On April 9, 1998, Consol, Inc. filed a petition to intervene in this proceeding, citing a concern that Applicants NS¹ and CSX² may not arrive at an implementing operating agreement covering operations over the former Monongahela Railroad ("MGA"). Consol seeks intervention in order to request that, if NS and CSX cannot arrive at such an implementing agreement by May 15, the Board should impose an agreement fashioned after certain principles Consol sets forth in its proffered comments.

An implementing operating agreement covering operations over the MGA, like many other implementation aspects of the proposed transaction, has been the subject of ongoing discussions between NS and CSX, and NS is committed to ensuring efficient and effective operations over the MGA through such a negotiated agreement. To this extent, NS fully agrees

¹ "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company.

² "CSX" refers to CSX Corporation and CSX Transportation, Inc.

with the goals of Consol.³ Nevertheless, NS opposes Consol's extraordinarily late request to intervene. Its participation at this time is unnecessary and would broaden the issues in the proceeding. Further, Consol's participation would unjustly prejudice NS and would represent a disregard for the procedural schedule set by the Board for this proceeding. Finally, Consol would impose an artificial and unnecessary deadline for arriving at an implementing operating agreement -- a deadline months before control over Conrail could be exercised if authorized by the Board -- which might impede, rather than facilitate, agreement between the parties.

From a strictly procedural perspective, Consol's petition to intervene in this proceeding at this extraordinarily late date must be denied. Consol's request comes more than eight months late.⁴ Consol's proffered comments and requests for conditions come more than five months after the October 21, 1997 deadline for submission of comments. Without substantial changes to the procedural schedule, Consol's proffered comments and verified statements would not be subject to cross-examination and rebuttal by NS.

Intervention at this late date should be permitted only on a showing of extraordinary circumstances involving manifest injustice to the party requesting the intervention. Consol has made no such showing, and in fact has made no showing that it was prevented in any way from participating in this proceeding or following established procedures. When faced with a less egregious case of untimely submission, the Board rejected the petition of Steel Warehouse to file

³ NS also agrees with the objectives of the operating principles suggested by Consol. For example, NS agrees that it should operate all trains on the MGA lines (Consol's item no. 1), but this proposal has not been agreed to by others. This is but one aspect, however, of a fully integrated implementation operating agreement under negotiation between NS and CSX.

⁴ Consol filed its petition to intervene on April 9, 1998. Under the procedural schedule established in Decision No. 6, served May 30, 1997, entities seeking to participate as parties of record in this proceeding were required to enter their appearances by August 7, 1997.

comments one month out of time:

[Steel Warehouse's] request will be denied. SW's petition and comments, filed almost 1 month after the established deadline, is much too late to be accepted into the record. Although we have granted previous extensions to file comments in this proceeding, the requests were made on or before the comment due date and our extensions were limited to only 10 days. We recognize that declining to accept this late-filed pleading might appear to be harsh, but SW's reasons for asking us to accept the pleading are by no means exceptional or compelling. Moreover, were we to accept the pleading at this late date, the meaning of deadlines in the proceeding would be much diminished and management of the proceeding would be seriously undermined.

Decision No. 56, served November 28, 1997, slip op. at 2 (footnote omitted). Unlike Consol, Steel Warehouse was actually a party to the proceeding. Consol has offered the Board no reason to decide its petition any way differently than the Board decided Steel Warehouse's petition. Permitting Consol to intervene at this late date truly would turn the procedural schedule on its head and seriously compromise the meaning of procedural deadlines.

Consol claims that it has not participated in the proceeding in light of NS' and CSX's representations that they would develop and agree to an implementing operating plan regarding service of mines on the MGA. But that does not distinguish Consol from several other parties who protected their interests by becoming parties of record in a timely fashion and who made their concerns known in submissions made pursuant to the procedural schedule.⁵ Consol does not present any extraordinary or compelling reasons why it was prevented from doing so as well.

⁵ See, e.g., NJT-8, Comments and Request for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation, filed October 21, 1997, at 2 (NJT submits its Comments and Requests for Conditions as a preventative measure); Comments and Request for Conditions of the Southeastern Pennsylvania Transportation Authority, filed October 21, 1997, at 8 (same).

Further, permitting Consol's participation would impact adversely the administration of this proceeding and prejudice NS, despite Consol's assertion to the contrary. According to Consol:

Allowing CONSOL to intervene in this proceeding, file the attached Comments and Verified Statements and participate in the oral argument will not broaden the issues, delay the determination of this cause or in any way prejudice applicants, for applicants, pursuant to 49 C.F.R. 1104.13(a), will have ample time to reply.

CONS-1 at 4.

Simply put, the issues raised by Consol do broaden the issues in this proceeding. Consol seeks to impose an artificial deadline for NS and CSX to arrive at an implementing operating agreement covering operations over the MGA. Comments at 11. Consol argues that if NS and CSX fail to meet this artificial deadline, the Board should develop and impose an agreement as a condition to the transaction. Consol outlines in broad principles what the agreement should contain, and how the various operating issues should be resolved.⁶

NS and CSX are working to resolve these issues to best serve all shippers on the MGA and throughout the post-transaction NS and CSX systems. Consol's proposed broad principles, fashioned after what Consol believes would be best for its business, have not been fully analyzed by NS, explored in discovery, nor been the subject of rebuttal. Consol raises issues that represent a substantial and unfair broadening of the issues in the proceeding.

NS first saw Consol's pleading on the Friday afternoon before Easter -- it has not had the time to fully evaluate its allegations, and certainly has not had time to evaluate the effect of

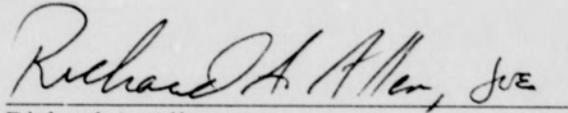
⁶ Consol discusses in the broadest sense coordination of computer facilities, transportation and haulage charges, operations, and scheduling.

Consol's requested conditions.⁷ Accordingly, NS does not address Consol's comments and allegations herein, but it does observe that work on all aspects of transaction implementation has gone forward for several months, and will continue to go forward even after the service and effective date of the final decision. Setting an artificial deadline for reaching agreement on an implementation operating agreement, after which it would ask for a government-imposed agreement, may impede rather than facilitate the process of reaching a fully considered agreement which would permit the most efficient operations over the MGA. While obviously a priority, an implementing operating agreement for the MGA -- covering operations that will not begin for months -- need not be arrived at by May 15.

⁷ Consol claims that permitting its intervention "will not . . . in any way prejudice applicants, for applicants, pursuant to 49 C.F.R. 1104.13(a), will have ample time to reply." CONS-1 at 4. In this proceeding, Section 1104.13(a) has no application with regard to an NS response. See Decision No. 12 served July 23, 1997 (setting dates for replying to motions, comments, rebuttal, briefs and oral argument), reaffirmed in part in Decision No. 13, served July 25, 1997, slip op. at 2 (specifically rejected the application of 49 C.F.R. 1104.13(a) in this proceeding).

For all these reasons, Consol's petition should be denied.

Respectfully submitted,



Richard A. Allen
James A. Calderwood
Andrew R. Plump
John V. Edwards
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

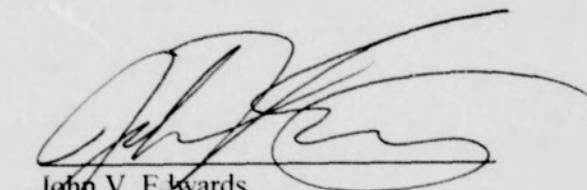
James C. Bishop, Jr.
William C. Wooldridge
J. Gary Lane
James L. Howe, III
Robert J. Cooney
George A. Aspatore
Greg E. Summy
NORFOLK SOUTHERN CORPORATION
Three Commercial Place
Norfolk, VA 23510-2191
(757) 629-2838

Dated: April 14, 1998

CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on this 14th day of April, 1998, I have served the foregoing NS-65, Response of Applicant Norfolk Southern Corporation and Norfolk Southern Railway Company in Opposition to the Petition of Consol Inc. for Leave to Intervene, on all parties of record by first class mail, postage pre-paid, or by more expeditious means, and by hand delivery on the following:

The Honorable Jacob Leventhal
Administrative Law Judge
Federal Energy Regulatory Commission
Office of Hearings
825 North Capitol Street, N.W.
Washington, D.C. 20426



John V. Edwards
Zuckert, Scoutt & Rasenberger, LLP
888 17th Street, N.W.
Suite 600
Washington, D.C. 20006-3939

Dated: April 14, 1998

STB

FD

33388

4-13-98

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187162

187162

PLEASE RESPOND TO:

JACK QUINN
30TH DISTRICT, NEW YORK

TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES:

SURFACE TRANSPORTATION
WATER RESOURCES AND ENVIRONMENT
RAILROADS

VETERANS' AFFAIRS'

SUBCOMMITTEE CHAIRMAN:

BENEFITS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Room 711
Washington, D.C. 20423-0001



FILE IN DOCKET

Congress of the United States

House of Representatives

Washington, D.C. 20515-3230

April 8, 1998

WASHINGTON OFFICE:
331 CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-3306
FAX: (202) 226-0347

MAIN OFFICE:
403 MAIN STREET
SUITE 240
BUFFALO, NY 14203-2199
(716) 845-5257
FAX: (716) 847-0323

SATELLITE OFFICE:
190 JEFFERSON AVENUE
BUFFALO, NY 14208
(716) 886-4076

Dear Mr. Williams,

Please accept this letter as a formal request to speak before the Surface Transportation Board during the presentation of oral arguments for Docket #33388 on June 4, 1998.

As a Member of Congress from the 30th District representing Buffalo and Western New York, I look forward to the opportunity to discuss the concerns I have regarding the acquisition of Conrail by Norfolk Southern and CSX Corporation.

Due to the constraints of the Congressional schedule, I would appreciate any accommodations you might provide on my behalf that would allow me to speak early on June 4, 1998.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Very truly yours,

RECEIVED
SURFACE TRANSPORTATION
APR 13 5 29 PM '98
OFFICE OF
CHAIRMAN MORGAN

ENTERED
Office of the Secretary

MAY 26 1998

Part of
Public Record

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187208



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

April 7, 1998

ENTERED
Office of the Secretary

APR 21 1998

Part of
Public Record



D

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

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

Dear Secretary Williams:

Pursuant to Decision No. 70, the U.S. Department of Transportation hereby gives notice of its intent to participate in the oral argument in the above-referenced proceeding. The Department will address the impacts of the proposed consolidation on safety, competition, the environment, and passenger rail operations, as well as the necessity to retain oversight to monitor and mitigate these impacts. The Department considers that the primary application can only be rendered consistent with the public interest, and so warrant approval, by the imposition of appropriate conditions.

The Department requests fifteen minutes of time to present its views at the oral argument.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

cc: Parties of Record

STB

FD-33388

4-3-98

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ID-187630

187630

Gauthier, Downing, LaBarre, Beiser & Dean

A PROFESSIONAL LAW CORPORATION

WENDELL H. GAUTHIER
EDWARD F. DOWNING, III
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METAIRIE LOUISIANA 70002

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FD 33388

FILE IN DOCKET

March 27, 1998

Linda J. Morgan, Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-001



CHAIRMAN MORGAN
MAR 27 1998
SURFACE TRANSPORTATION BOARD

Dear Chairman Morgan:

Enclosed please find a letter giving a synopsis of our lawsuit involving CSX and the rationale behind our request to testify on June 4, 1998. I have also included copies of the jury verdicts in the case, our Motion to Become Party of Record, and my letter of March 19, 1998 expressing our concerns.

I understand that any testimony by us on June 4 should and will be presented by counsel for the plaintiffs. We ask that in addition to supplementing the record by these written submissions, we be allowed to voice our concerns about the merger of CSX and Norfolk Southern with Conrail at the hearing.

Very truly yours,

Wendell H. Gauthier
Attorney for Plaintiffs
*In re: New Orleans Train Car Leakage
Fire Litigation*

ENTERED
Office of the Secretary

MAY 19 1998

Part of
Public Record

Gauthier, Downing, LaBarre, Beiser & Dean

A PROFESSIONAL LAW CORPORATION

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March 26, 1998

Chairman Linda J. Morgan
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-001

RE: "Don't Shoot the Messenger"
New Orleans Tank Car Fire Litigation
Date of Accident: September 9, 1987

Dear Chairman Linda J. Morgan:

This case has gained nationwide notoriety because of the size of the jury verdict for compensatory and punitive awards. It became an instant media sound bite and the poster-child of tort reform, truth be damned! However, not once in the commotion has anyone pointed out that the defendants - as each one did in the courtroom - acknowledged their egregious behavior, apologized to the jurors and to the community, and promised to mend their wrongful ways.

The travesty of this lawsuit is not the jury verdict. There are procedures in place that will permit a careful review of the trial results. The travesty is that the defendants vowed reform to the jury and to the community of Gentilly, but that vow lasted only until the defendants stepped outside the courtroom and to the waiting public spotlight, Wall Street, and the national media.

Today as this letter is being written, there are time bombs of leaking tank cars moving through this city, indeed, all over the country. The twelve jurors in this case are sending a message loud and clear. Don't shoot the messenger, fix the problem. Make certain that justice is done. Here is their story:

On September 9, 1987, at approximately 1:50 in the morning, a tank car leaking butadiene from a hatch underneath the car ignited. The butadiene, an extremely flammable and suspected carcinogen, had been leaking for many hours as the tank car sat, adjacent to a residential neighborhood, unattended and uninspected. The leaking gas permeated the sewer system, ignited and exploded underground, and ignited the leaking butadiene as it poured out of the bottom of the tank car. For 36 hours, the tank car filled with butadiene fueled its own flame, cooking itself.

The underground explosion rocked the Interstate highway six inches off its pilings. Houses were blown off their foundation, and residents bounced from their beds. No deaths occurred with this first explosion, but as residents were hustled from their homes, firemen and other emergency medical personnel worked frantically to prevent a phenomenon - BLEVE - that assuredly would have resulted in enormous devastation and loss of life.

A BLEVE is a boiling liquid expanding vapor explosion. Had a BLEVE occurred, the explosion would have been one of titanic proportion, spewing lethal shrapnel throughout the residential community and over a one to two mile radius. This story was told to the jury by these heroic men and women who were able to finally extinguish the fire without loss of life.

Although lawsuits were filed shortly after the explosion and fire, trial of the class action was successfully delayed for ten years. The trial started on June 30, 1997 and was completed on August 25, 1997. Of the nine companies sued and found liable, five were found by the jury to have "recklessly handled hazardous chemicals in disregard of public safety:" Mitsui, the shipper of the butadiene; GATX Terminals, Inc., the loader of the butadiene; Illinois Central Railroad, Alabama Great Southern Railroad, and CSX Transportation, Inc., the transporters of the butadiene. This finding, under Louisiana law, allowed the jury to consider imposing exemplary damages.

The primary purpose of exemplary damages is to punish a wrongdoer and to create an incentive for the wrongdoer to avoid repeating the very conduct that caused the incident in the first place. The jury in this case specifically intended to and did so send this message to those five defendants.

After the jury found that Mitsui, GATX Terminals, Illinois Central Railroad, Alabama Great Southern Railroad and CSX Transportation should pay exemplary damages, the lawyers for these companies were given an opportunity to argue to the jury as to the amount, if any, that each company

should be required to pay. Three of the attorneys that spoke apologized for their mistakes and promised change in the manner in which they protect innocent people from the dangers of their businesses. Mitsui stated:

On August 25th, you rendered your verdict from phase one. In no uncertain terms your verdict told us you disagreed with our view of the case, that we just didn't get it. That is you speaking for the public and you expected all of us, all of us to have done more to prevent this accident and other accidents like it. Your verdict has been heard loud and clear by every defendant. They have your respect. Your verdict has also decided for the whole class, not just 20 bellwether plaintiffs, but all of the defendants will pay their share of compensatory damages. You have locked that in, decided that for the entire class. The amount of your compensatory damages has also had an impact on all of the defendants. You have told them how you, speaking for this public view the type of damages sustained by the plaintiffs and in doing so, you have set an example of what those damages should be for the rest of the class.

So your verdict has already caused change. It is obvious that you intended it to cause change, because whatever the perception may be of companies, their objectives, their motivations, we all know businesses cannot ignore the type of message that your verdict sent. They know that because from your verdict, you told them what the cost will be, if this type of accident were ever to be their responsibility in the future. They know they can't let that happen. Trial Transcript, page 8102, line 17, page 8103, line 25.

CSX agreed:

We understand the message you have given to us, that the Gentilly interchange yard needs protection, more protection; protection for the people who live near it. We understand that. Trial transcript, page 8173, line 1015

GATX joined in:

[General American Transportation Corporation] understands and accepts its responsibility as the owner of the tank car for the reasonable damages which the plaintiffs are able to prove to you. Attorney for GATC, transcript at page 153, line 17.

On September 8, 1997, the jury rendered verdicts totaling three billion, three hundred sixty five million dollars (\$3,365,000,000) in favor of 8,047 claimants. One of the jurors stated afterwards

that "[the jury] just wanted to send them a message that you cannot ignore people. We felt, if we hit them with a good whoop they will do something, they will stop parking those toxic chemical cars in residential areas." Juror, McKinley Day, a 58 year old retired Chief Petty Officer for the U. S. Navy, as quoted in **The Black Chronicle**, Oklahoma City, Oklahoma, October 2, 1997.

The verdict received world-wide publicity. Conservative commentators cited the award as fodder for their continued attack on the civil justice system in this country.¹ For example, instead of insisting that the companies make good on their promise to pay fair compensation and improve railroad safety, Dan Juneau, spokesman for the Louisiana Business and Industry, said that the jury verdict would make it hard for that area (Orleans Parish) to attract and maintain business." **The Baton Rouge Advocate**, September 9, 1997, page 12A.

Tuning in to that drum-beat, the defendants quickly forgot their promises and changed their songs. Marty Fiorentino, a spokesman for railroad giant CSX stated that "[CSX] believes that the award will be overturned. But in the unlikely event that it is not overturned, it would certainly raise concerns as to whether or not Louisiana is a good place for us or anyone else to do business." **New Orleans' Times-Picayune**, September 14, 1997, page B-1.

It has been six months since the verdict was rendered. The residents of Gentilly are now in their eleventh year without compensation. The defendant companies have made **no** changes to protect the residents of Gentilly. In fact, they brag that "the ultimate resolution could take years as the Louisiana courts try the claims of the remaining 8,000 plaintiffs in groups of 10." **Attorney for CSX, National Law Journal**, February 23, 1998 at C18. It is nothing short of an outrage that **the change promised by these companies has totally evaporated.** By focusing on the amount of the award and turning a deaf ear to the jury's message regarding their reckless behavior handling hazardous chemicals, these companies stave off judgment day at the expense of the plaintiffs and at the risk of another tragic accident destroying innocent peoples' lives.

From the jurors' own words, the award was large because the defendants' manner of conducting business was reckless. The defendants' one and only expert, William Cruice, established

¹ A 2.5 billion dollar award against CSX is being called "the great train robbery" by a watchdog group for companies favoring legal system reform. Sherman-Joyce, President of the American Tax Reform Association stated that "[t]his case will become a poster child for the need to make the legal system more equitable." **Richmond Times Dispatch**, September 11, 1997, page B-8

that fact. William Cruice is a consultant who was hired by the defendants to testify on methods that can be utilized to prevent fire or explosion. Cruice admitted to the jury that businesses have the expertise necessary to prevent a fire and explosion of this nature. Cruice stated that the fire in the Gentilly neighborhood was caused by a misaligned gasket in the bottom manway of the railroad tank car.

Cruice also testified that gaskets of the type used to seal the tank car are usually misaligned and that "not only from my experience, but from the experiences of the world, every seal of this type leaks." He then stated that "it is the responsibility of the shipper [Mitsui].... to [ensure] that the car is suitable [to transport butadiene], and that "the loader, [GATX Terminals] is responsible for seeing to it that the [tank car] would [not leak the material that] was being put into it."

Is it any wonder, that the jury was outraged when they heard that neither Mitsui nor GATX Terminals had ever checked the tank car to see if it was safe to carry hazardous materials, and that they didn't even know it had a bottom manway!!!

The jury also heard evidence of a specific federal regulation that required the transporting railroads, Illinois Central Railroad and Alabama Great Southern Railroad, to inspect each tank car that contained hazardous material to make certain there was no leak. Despite this regulation, these defendants testified that their standard procedures merely call for a 10 second walk-by inspection. Obviously, a 10 second walk-by inspection, if at all made, was and is insufficient to make sure that a tank car is not leaking. However, according to the railroads, real inspections are too expensive. One gets a sense from this of why the award was high.

Finally, the CSX Railroad has publicly denied any liability for the incident because they "did not touch the car." Contrary to CSX's persistent denials, the jury heard evidence that the New Orleans Fire Chief McCrossen, years before this event, told the CSX Railroad that it must "babysit" hazardous railroad cars parked in the French Quarter because of the propensity of tank cars to leak. However, rather than babysitting the cars, CSX simply stopped parking tank cars in the French Quarter and began parking them in the less prestigious, less watched neighborhood of Gentilly.

The jury had more than adequate reason to be outraged. The New Orleans' Times Picayune wrote: "Not that the plaintiffs lack a legitimate grievance. Tanks full of chemicals frequently sit for long periods in a switching yard close to the houses, and mishaps occur often enough to make them nervous. A foul smell forced an evacuation earlier this year, four months after a liquid petroleum

leak caused some alarm, through no evacuation." *New Orleans Times Picayune*, September 12, 1997, p. B-7.

As this letter is being written, there are leaking tank cars moving through this city. Indeed, all over the country:

Richmond Times Dispatch, October 16, 1997:

"Federal regulators who inspected CSX Transportation Inc., following a series of accidents said they have found over worked employees, track and signal defects, and a management culture that has led some front line messengers to put transportation ahead of safety.

The Wall Street Journal, October 16, 1997:

"A report by the Federal Railroad Administration is expected today to criticize CSX Corporation for failures in safety procedures involving train signaling systems, handling of hazardous materials, and reporting of employee injuries."

The Washington Post, September 8, 1997:

"The relationships between VRE (Virginia Railway Express) and CSX soured this summer when commuter service was disrupted and delayed for weeks while CSX worker repaired damage caused by a July 8th derailment."

The Plain Dealer Cleveland, Ohio, September 9, 1997:

"The Federal Railroad Administration agreed to gauge the impact that tripled rail traffic would have on Cleveland and its suburbs by conducting a September 21st hearing in Lakewood... The safety issue is what everyone is concerned about," said Bay Village Major, Thomas Jilepis

Capital Hill Press, September 11, 1997:

"In response to the recent story of fatal rail accidents and a growing concern over freight and passenger rail safety, Congressman Jim Oberstar, along with Congressman Bob Wise (D-Wy) Senior Democrat on the House Railroads Sub Committee introduced the "Railroad Safety Reform Act of 1997."

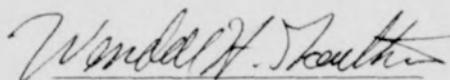
The Atlantic Journal, The Atlanta Constitution, September 15, 1997:

"A federal court blocked a local government's attempt to prevent Norfolk Southern from building a railroad terminal stating that local governments have no authority to block terminal construction."

There is a growing, well-founded concern about railroad safety throughout this country. The infrastructure of the railroad industry is old and the practices and procedures are outdated. The phrase "Don't shoot the Messenger" has particular resonance here. The 12 jurors who spoke in this case are the messenger. Don't shoot them. Make certain that justice is done.

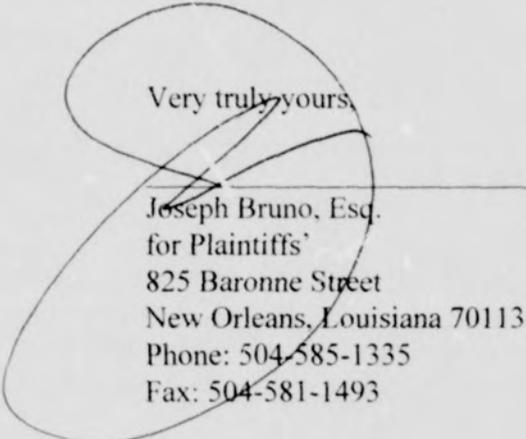
Now CSX and Norfolk are attempting to acquire Conrail, which would then expose many more citizens to these rail companies' reckless conduct. Please allow us to speak to your agency before any decision is made.

With kindest regards, I remain,



Wendell H. Gauthier, Esq.
for Plaintiffs'
3500 North Hullen Street
Metairie, Louisiana 70002
Phone: 504-456-8656
Fax: 504-8624

Very truly yours,



Joseph Bruno, Esq.
for Plaintiffs'
825 Baronne Street
New Orleans, Louisiana 70113
Phone: 504-585-1335
Fax: 504-581-1493

cc. Henry T. Dart, Esq.
Liaison Counsel

Elaine K. Kaiser
SEA's Environmental Project Director

Mike Dalton
SEA's Project Manager for the Conrail Acquisition

Honorable John B. Breaux
United States Senate

Honorable Mary L. Landrieu
United States Senate

Honorable William J. Jefferson
United States House of Representatives

WBE copy

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

AD HOC DIVISION

NO. 87-16374

ET AL

IN RE: NEW ORLEANS TRAIN CAR LEAKAGE
FIRE LITIGATION

JURY INTERROGATORIES

1. DO YOU FIND THAT THE PLAINTIFFS' INJURIES WERE CAUSED BY THE WANTON OR RECKLESS CONDUCT OF ANY OF THE FOLLOWING DEFENDANTS?

- | | | |
|------------------------------------|---|-----------------------------|
| A. MITSUI & CO. (U.S.A.), INC. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| B. GATX TRMINALS | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| C. ILLINOIS CENTRAL RAILROAD CO. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| D. ALABAMA GREAT SOUTHERN RAILROAD | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| E. CSX TRANSPORTATION, INC. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |

2. DO YOU AWARD EXEMPLARY DAMAGES AGAINST ANY OF THE FOLLOWING DEFENDANTS?

- | | | |
|------------------------------------|---|-----------------------------|
| A. MITSUI & CO. (U.S.A.), INC. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| B. GATX TRMINALS | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| C. ILLINOIS CENTRAL RAILROAD CO. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| D. ALABAMA GREAT SOUTHERN RAILROAD | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |
| E. CSX TRANSPORTATION, INC. | YES <input checked="" type="checkbox"/> | NO <input type="checkbox"/> |

3. WHAT AMOUNT OF MONEY, IF ANY, DO YOU FIND REPRESENTS A FAIR AND REASONABLE AMOUNT OF EXEMPLARY DAMAGES AGAINST THE FOLLOWING DEFENDANTS? IF YOU ELECT NOT TO ASSESS EXEMPLARY DAMAGES AGAINST A DEFENDANT, YOU SHOULD ENTER A ZERO (0) AS THE AMOUNT OF DAMAGES.

<i>ASK FOR</i>		<i>GOT:</i>
500 M	A. MITSUI & CO. (U.S.A.), INC.	\$ <u>375,000,000</u>
242 M	B. GATX TRMINALS	\$ <u>190,000,000</u>
300 M	C. ILLINOIS CENTRAL RAILROAD CO.	\$ <u>125,000,000</u>
250 M	D. ALABAMA GREAT SOUTHERN RAILROAD	\$ <u>175,000,000</u>
3,286 M.	E. CSX TRANSPORTATION, INC.	\$ <u>2.5 Billion</u>

375
 190
 125
 175
 265
 2500
 31265

NOTE: WHEN YOU HAVE REACHED YOUR VERDICT BY COMPLETING THIS FORM, THE JURY FOREPERSON SHOULD SIGN AND DATE THE SAME, AND NOTIFY THE BAILIFF THAT YOU HAVE REACHED YPOUR VERDICT.

[Signature]

 JURY FOREPERSON
 9-3-97

 DATE

FOR JURY
ORIGINAL

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA
AD HOC DIVISION

NO. 87-16374
ET AL

IN RE: NEW ORLEANS TRAIN CAR LEAKAGE
FIRE LITIGATION

JURY INTERROGATORIES

1. WHICH OF THE FOLLOWING DEFENDANTS, IF ANY, WERE AT FAULT
IN THIS INCIDENT AND THAT FAULT WAS THE LEGAL CAUSE OF THE
PLAINTIFF'S INJURIES?

AMF-BRD, INC.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
PHILLIPS PETROLEUM COMPANY	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
GATC	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
POLYSAR	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
MITSUBI	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
GATE TERMINALS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
ILLINOIS CENTRAL RAILROAD CO.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
ALABAMA GREAT SOUTHERN RAILWAY	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
CSX TRANSPORTATION, INC.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

(IF YOU ANSWER YES TO ANY OF THE ABOVE DEFENDANTS, GO TO QUESTION # 2)

2. WHAT PERCENTAGE OF FAULT DO YOU ASSIGN TO EACH DEFENDANT
FOR WHICH YOU HAVE ANSWERED "YES" IN QUESTION # 1.
(NOTE: THE PERCENTAGES MUST TOTAL 100%. DO NOT ANSWER
FOR ANY DEFENDANT FOR WHICH YOU ANSWERED "NO" IN QUESTION
#1).

AMF-BRD, INC.	<u>5%</u>
PHILLIPS PETROLEUM COMPANY	<u>20%</u>
GATC	<u>20%</u>

POLYSAR	<u>5</u>
NETSUI	<u>15</u>
GATE TERMINALS	<u>10</u>
ILLINOIS CENTRAL RAILROAD CO.	<u>5</u>
ALABAMA GREAT SOUTHERN RAILWAY	<u>5</u>
CSX TRANSPORTATION, INC.	<u>15</u>
	<u>100%</u>
TOTAL:	100%

3. WHICH OF THE FOLLOWING PLAINTIFFS, IF ANY, SUFFERED INJURY WHICH WAS CAUSED BY ANY OF THE DEFENDANTS FOR WHICH YOU HAVE ANSWERED "YES" IN QUESTION #1 AND ASSIGNED A PERCENTAGE OF FAULT IN QUESTION #2?

JIMMIE LEE BROWN	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
JUDITH BELL	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
KATHY RAGAS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
KATHLEEN SINGLETON	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
DONALD FRANCIS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
DAVID RAGAS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
RICHARD BELL	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
DEBORAH WILLIAMS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
NATHAN FIELDS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
PRESCOTT SMITH	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
NELLIE MAE GIVENS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
FREDA DAVIS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
THELMA RILEY	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
LOUIS FORD	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
MILTON TAYLOR	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
ARNOLD JOHNSON	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

PAGE 3.

THOMAS GASPARD	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
RITA BERRYET	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
CHARLES GIVENS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
EVA VIEL	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

4. WHAT AMOUNT OF MONEY, IF ANY, WOULD FAIRLY AND ADEQUATELY COMPENSATE EACH OF THE ABOVE PLAINTIFFS FOR WHICH YOU HAVE ANSWERED "YES" FOR THEIR INJURIES? (NOTE: DO NOT ANSWER FOR ANY PLAINTIFF FOR WHICH YOU ANSWERED "NO" IN QUESTION #3.)

JIMMIE LEE BROWN

- A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE \$ 15,000
- B. MENTAL ANGUISH PAST AND FUTURE \$ 25,000
- C. PROPERTY DAMAGE \$ 6,000
- D. EVACUATION AND INCONVENIENCE \$ 10,000

JUDITH BELL

- A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE \$ 100,000
- B. MENTAL ANGUISH PAST AND FUTURE \$ 75,000
- C. PROPERTY DAMAGE \$ 26,000
- D. EVACUATION AND INCONVENIENCE \$ 10,000
- E. PAST LOST WAGES \$ 300
- F. MEDICAL EXPENSES PAST AND FUTURE \$ 500
- G. PERMANENT DISABILITY \$ -0-

PAGE 4.

KATEY RAGAS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>125,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>100,000</u>
C. PROPERTY DAMAGE	\$ <u>0-</u>
D. EVACUATION AND INCONVENIENCE	\$ <u>15,000</u>
E. PAST LOST WAGES	\$ <u>0-</u>
F. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>10,000</u>
G. PERMANENT DISABILITY	\$ <u>0-</u>

KATHLEEN SINGLETON

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>100,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>200</u>

DONALD FRANCIS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>20,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>60,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>

DAVID RAGAS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>10,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>

C. EVACUATION AND INCONVENIENCE	\$ <u>5,000</u>
D. PERMANENT DISABILITY	\$ <u>0</u>
E. PROPERTY DAMAGE	\$ <u>1,000</u>
F. PAST LOST WAGES	\$ <u>700</u>
G. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

RICHARD BELL

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>52,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>12,000</u>
D. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

DEBORAH WILLIAMS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>15,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>

NATHAN FIELDS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>5,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>5,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>

PRESCOTT BAILEY

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>25,000</u>
---	------------------

B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PERMANENT DISABILITY	\$ <u>-0-</u>
E. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

NELLIE MAE GIVENS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>25,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>100,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PERMANENT DISABILITY	\$ <u>-0-</u>
E. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>
F. PROPERTY DAMAGE	\$ <u>15,000</u>

FREDA DAVIS

A. MENTAL ANGUISH PAST AND FUTURE	\$ <u>10,000</u>
B. EVACUATION AND INCONVENIENCE	\$ <u>15,000</u>

THELMA AILEY

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>25,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>50,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PERMANENT DISABILITY	\$ <u>-0-</u>
E. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

F. PROPERTY DAMAGE	\$ <u>5,000</u>
G. PAST LOST WAGES	\$ <u>-0-</u>

LOUIS FORD

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>10,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>10,000</u>
C. PERMANENT DISABILITY	\$ <u>5-</u>
D. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>
E. PAST LOST WAGES	\$ <u>200</u>

MILTON ZAYLOR

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>75,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>100,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>20,000</u>
D. PAST LOST WAGES	\$ <u>100</u>
E. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

ARNOLD JOHNSON

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>10,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>15,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PAST LOST WAGES/BUSINESS PROFITS	\$ <u>500</u>

THOMAS GASPARD

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>10,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>25,000</u>

RITA BENNET

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>50,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>75,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PAST LOST WAGES	\$ <u>-0-</u>
E. PROPERTY DAMAGE	\$ <u>1,400</u>

CHARLES GIVENS

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>75,000</u>
B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>50,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>10,000</u>
D. PAST LOST WAGES	\$ <u>250</u>
E. PROPERTY DAMAGE	\$ <u>15,000</u>
F. PERMANENT DISABILITY	\$ <u>-0-</u>
G. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

EVA VIEL

A. PHYSICAL PAIN AND SUFFERING PAST AND FUTURE	\$ <u>75,000</u>
---	------------------

PAGE 9.

B. MENTAL ANGUISH PAST AND FUTURE	\$ <u>50,000</u>
C. EVACUATION AND INCONVENIENCE	\$ <u>4,000</u>
D. PERMANENT DISABILITY	\$ <u>0-</u>
E. MEDICAL EXPENSES PAST AND FUTURE	\$ <u>500</u>

5. DO YOU FIND THAT ANY OF THE FOLLOWING DEFENDANTS ACTED WITH WANTON OR RECKLESS DISREGARD FOR PUBLIC SAFETY IN THE STORAGE, HANDLING, OR TRANSPORTATION OF HAZARDOUS OR TOXIC SUBSTANCES?

(NOTE: DO NOT ANSWER FOR ANY DEFENDANT FOR WHICH YOU ANSWERED "NO" IN QUESTION #1, OR FOR ANY DEFENDANT YOU DID NOT ASSIGN A PERCENTAGE OF FAULT IN QUESTION # 2).

MITSUI	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
GATX TERMINALS	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
ILLINOIS CENTRAL RAILROAD CO.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
ALABAMA GREAT SOUTHERN RAILWAY	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
CSX TRANSPORTATION	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

NOTE: WHEN YOU HAVE REACHED YOUR VERDICT BY COMPLETING THIS FORM, THE JURY FOREPERSON SHOULD SIGN AND DATE THE SAME, AND NOTIFY THE BAILIFF THAT YOU HAVE REACHED YOUR VERDICT.

Charles Hayden
 JURY FOREPERSON
 August 25, 1997
 DATE

March 19, 1998

Surface Transportation Board
Office of Public Services
1925 K Street, N.W. - Room 848
Washington, D.C. 20423-0001

RE: Proposed CSX/Norfolk Southern Merger

Dear Sir/Madame:

As you may recall, I represented a class of over 8,000 persons who were injured as a result of the release of toxic butadiene at the CSX Interchange in New Orleans, Louisiana. The incident occurred more than *ten years ago*, on September 9, 1987. Last summer, a New Orleans jury decided that the release was caused by the *wanton and reckless conduct of CSX*, and the jury ordered CSX alone to pay *\$2.5 billion in punitive damages*. The basis for the jury verdict was trial testimony that CSX had engaged in a pattern of *transporting hazardous cargo through poor, largely-minority, communities* and that CSX had not improved its safety practices in transporting hazardous chemicals.

It has only recently come to our attention that several United States Congressmen, and other community leaders in Ohio, are objecting to the proposed merger of CSX and Norfolk Southern for the same reasons that the New Orleans jury awarded more than *\$2.5 billion in punitive damages*. As the attached news articles demonstrate, *the proposed merger will mostly affect poor and black neighborhoods, and it will greatly increase the transport of hazardous cargo through poor communities*.

In short, we fear that the proposed merger will only increase the long-standing risk of toxic poisoning of our poorest communities by CSX.

I am aware that oral argument on the proposed merger is set for June 4, 1998. I respectfully request, in light of the very serious safety issues involved, that we be

March 19, 1998

Page 2

permitted to submit additional comments to the Board, and to voice our concerns, on behalf of 8,000 residents of New Orleans, about this potentially dangerous merger.

Very truly yours,

Wendell H. Gauthier

WHG/gl
Enclosure

**NEW ORLEANS TRAIN CAR LEAKAGE FIRE LITIGATION
PLAINTIFF MANAGEMENT COMMITTEE**
3748 North Causeway Blvd., Suite 301
Metairie, Louisiana 70002
(504) 838-8383

DAVID P. BARR
JOSEPH M. BELLINO
BARRY F. CANTRELL
FRANK J. D'AMICO, JR.
CALVIN C. FAYARD, JR.
JACK W. BARANO
C. JOSEPH MURRAY
DAVID W. RUBINSON
E. EDWARD SHELMAN
THOMAS L. SMITH
VERNON THOMAS
DARLEEN JACOBS
T. ALLEN UBBY
WENDELL GAUFER

HENRY T. DART
LIAISON COUNSEL

March 24, 1998

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

Re: Before the Surface Transportation Board
Washington, D. C.
CSX Corporation and CSX Transportation, Inc.
Norfolk Southern Corporation and Norfolk
Southern Railway Company - control and
Operating Leases/Agreements-Conrail, Inc.
and Consolidated Rail Corporation
Finance Docket No. 33388, DOT 3

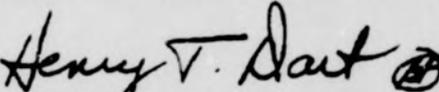
Dear Mr. Williams:

Enclosed herewith for filing, please find the original and 26 copies of our Motion To Become Party of Record in reference to the above captioned matter.

Please return a date stamped and conformed copy of the Motion to me in the enclosed self-address and postage paid envelope.

With regards, I am

Yours very truly,
PLAINTIFF MANAGEMENT COMMITTEE


HENRY T. DART, Liaison Counsel

HTD/bjt

encl.

cc: All counsel of record
Plaintiffs Management Committee

Before the
Surface Transportation Board
Washington, D. C.

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

MOTION TO BECOME PARTY OF RECORD

Come now Richard and Judith Bell and George Rigamer, individually and as representatives of the class of approximately 8,000 plaintiffs in the matter entitled In Re New Orleans Train Car Leakage Fire Litigation, No.: 87-16374 on the docket of the Civil District Court for the Parish of Orleans, State of Louisiana, who move to become parties of record in these proceedings for the purpose of commenting on and fully participating in the above-referenced proceedings for the reasons set forth below.

On September 9, 1997, movers obtained a jury verdict in the amount of two billion five hundred million, (\$2,500,000,000), dollars against CSX Transportation Inc., one of the parties to the proposed merger before this board. Movers believe that if and when this verdict is reduced to final judgment, it may have a severe financial impact on CSXT's operation. Conversely, CSX's proposed merger with Conrail may have a severe financial impact on CSXT's ability to pay any final judgment that may be rendered in mover's case.

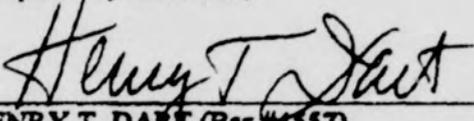
On May 30, 1997 this Board issued a decision that the National Environmental Policy Act, (NEPA), required preparation of an environmental impact statement to assess the likely environmental consequences of the merger, including such issues as safety, air quality and

community impact. The decision also called for the U. S. Department of Transportation, (DOT), to submit preliminary comments on the proposed transaction. On October 21, 1997, DOT submitted its preliminary comments, saying that "the most important issue raised by the pending transaction is its potential effect on safety". Movers submit that they have evidence relative to CSXT's safety policies and procedures, as well as its attitudes and activities in response to a massive chemical spill in a densely populated area of New Orleans, Louisiana, all of which may have a bearing on the desirability of the proposed merger.

For the foregoing reasons, it is requested that movers be entered as parties of record and allowed to participate in these proceedings to the fullest extent allowed by law. Movers specifically request notice of any hearing or oral argument and an opportunity to speak thereat.

Respectfully submitted,

By:


HENRY T. DANT (Bar #4557)

Liaison Counsel
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Metairie, Louisiana 70002
(504) 838-8383

Plaintiffs Management Counsel:

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Bruno & Bruno
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Fax: 581-1493

Mr. Harry E. Cantrell, Jr.
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New Orleans, Louisiana 70163-2900
Phone: 585-7347
Fax: 585-7340

Mr. Frank J. D'Amico, Jr., Esq.
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Attorney at Law
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Fax: 828-2078

Mr. C. Joseph Murray, Esq.
Murray Law Firm
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Metairie, Louisiana 70002
Phone: 838-6100
Fax: 838-9555

Mr. David W. Robinson, Esq.
Attorney at Law
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Baton Rouge, Louisiana 70821
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Fax: 924-2446

Mr. H. Edward Sherman, Esq.
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Mr. Vernon P. Thomas, Esq.
Attorney at Law
1524 North Claiborne Ave.
New Orleans, Louisiana 70116
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Fax: 945-6910

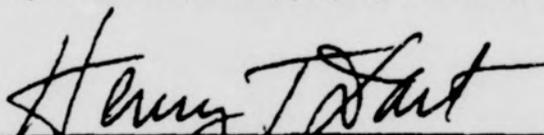
Mr. Wendell H. Garthier, Esq.
3500 N. Hullen Street
Metairie, Louisiana 70002
Phone: 456-8660
Fax: 456-8624

Ms. Darleen Jacobs, Esq.
Attorney at Law
823 St. Louis Street
New Orleans, Louisiana 70112
Phone: 522-0155
Fax: 522-3819

Mr. T. Allen Ury, Esq.
Attorney at Law
2800 Veterans Boulevard
Metairie, Louisiana 70002
Phone: 833-4600
Fax: 833-4748

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that I have on this 23 day of March, 1998, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.


HENRY T. DART

STB

FD-33388

2-20-98

D

ID-187141

JACK REED
RHODE ISLAND
COMMITTEES:
BANKING
LABOR AND HUMAN RESOURCES
AGING

United States Senate

WASHINGTON, DC 20510-3903

February 17, 1998

Mr. Vernon A. Williams
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-3000

Dear Mr. Secretary:

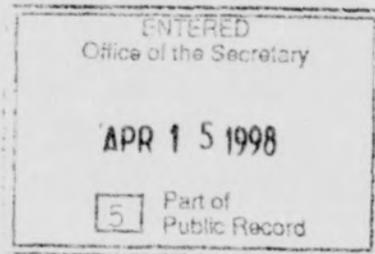
I write regarding the Surface Transportation Board's (STB) review of the joint acquisition of Conrail by CSX Corporation and the Norfolk Southern Railway Company.

I respectfully request the opportunity to speak at this case's June 4th, 1998 oral argument on STB Finance Docket No. 33388.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact Neil Campbell of my staff at (202) 224-4642.

Sincerely,

Jack Reed
Jack Reed
United States Senator



FILE IN DOCKET

187141
PLEASE RESPOND TO:

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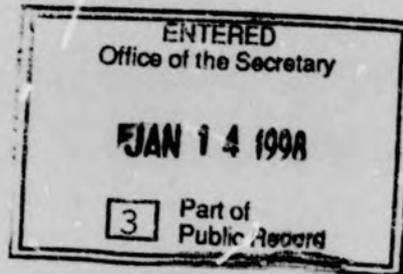
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January 14 1998

HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1525 K Street, N.W.
Washington, D.C. 20423-0001



D

Sub 76

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

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Highly Confidential and Public Versions of the Rebuttal of Indiana Southern Railroad, Inc. Attached are 3.5 inch diskettes containing the filing in WordPerfect 5.2.

Also enclose is the original Verification of Mr. Richard Neumann which did not arrive in time for coping the filing.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

Respectfully,

Karl Morell

Karl Morell
Attorney for:
INDIANA SOUTHERN RAILROAD, INC.

15218

VERIFICATION

I, Richard Neumann, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.

Richard Neumann

Executed on *January 13, 1998*

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ORIGINAL

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388



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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 76)

INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND INDIANA RAIL ROAD COMPANY

REBUTTAL OF
INDIANA SOUTHERN RAILROAD, INC.



Karl Morell
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(202) 638-3307

Attorneys for:
INDIANA SOUTHERN
RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 76)

INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND INDIANA RAIL ROAD COMPANY

REBUTTAL OF
INDIANA SOUTHERN RAILROAD, INC.

Indiana Southern Railroad, Inc. ("ISRR"), pursuant to Decision No. 12 in this proceeding and the Surface Transportation Board's ("STB" or "Board") Railroad Consolidation Procedures at 49 C.F.R. Part 1180, hereby submits its rebuttal in support of ISRR's responsive application.

INTRODUCTION

On June 23, 1997, CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail

Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")¹ (collectively referred to as the "Primary Applicants") filed their Railroad Control Application ("Control Application").² On October 21, 1997, ISRR filed its Responsive Application seeking trackage rights in Indianapolis, Indiana and the surrounding area over certain rail lines currently owned by CRC and to be acquired by CSXT and over a short segment of rail line owned by the Indiana Railroad Company ("INRD"), a subsidiary of CSXT.³ Comments addressing the anticompetitive effects of the Primary Transaction in the Indianapolis area were also filed by the City of Indianapolis, Indianapolis Power & Light Company ("IPL"), Shell Oil Company, Citizens Gas & Coke Utility, and the Department of Justice ("DOJ").

On December 15, 1997, the United States Department of Agriculture filed comments in support of ISRR's Responsive Application.

TRACKAGE RIGHTS REQUESTED BY ISRR

In its Responsive Application, ISRR requested the Board to condition the approval of the Primary Transaction by granting ISRR trackage rights in Indianapolis and the area surrounding Indianapolis as follows:

1. Indianapolis

Overhead trackage rights between MP 6.0 on ISRR's Petersburg Subdivision and IPL's Perry K facility in Indianapolis over the rail line currently owned by CRC and to be acquired by CSXT.

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

²In the Control Application, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

³ISRR's Responsive Application was accepted for consideration by the STB in Decision No. 54, served November 20, 1997.

Overhead trackage rights between MP 6.0 on ISRR's Petersburg Subdivision and IPL's Stout facility located on the INRD rail line over a segment of the rail line currently owned by CRC and to be acquired by CSXT and a segment of INRD's rail line.

Local trackage rights over CRC's rail lines in Indianapolis, including the Indianapolis Belt Line, to be acquired by CSXT.⁴

2. Between Indianapolis and Surrounding Communities

Local trackage rights between Indianapolis and Shelbyville, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

Local trackage rights between Indianapolis and Crawfordsville, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

Local trackage rights between Indianapolis and Muncie, Indiana over the rail line currently owned by CRC and to be acquired by CSXT.

SUMMARY OF REBUTTAL EVIDENCE

Included in this filing are the Rebuttal Verified Statements of Mr. Richard Neumann, the Senior Vice President and General Manager of ISRR, Mr. Michael A. Weaver, Manager of the Fuel Supply Organization of IPL, and Mr. Thomas D. Crowley, economist and President of L. E. Peabody & Associates, Inc. Messrs. Neumann, Weaver and Crowley, who previously testified in this proceeding, respond directly to the Rebuttal Verified Statements of Thomas G. Hoback, Thomas E. Kuhn, John W. Orrison, and Gerald E. Vaninetti.

A brief summary of each of these rebuttal witnesses' testimony is as follows:

Mr. Richard Neumann

According to Mr. Neumann, the Perry K plant will become captive to CSXT if the Primary Transaction is unconditionally approved. CRC is currently a neutral switch carrier for traffic originated by either ISRR or INRD. Once CSXT replaces CRC in Indianapolis, CSXT will favor its subsidiary the INRD by pricing ISRR coal movements to Perry K out of business.

⁴ ISRR seeks trackage rights over all CRC rail lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis.

The short truck movements from Stout or the INRD yard to Perry K will not serve as a competitive constraint on CSXT, as they do on CRC today, since all prior rail movements are controlled by CSXT's subsidiary.

Mr. Neumann points out that ISRR has provided service to Stout via two routings: ISRR-Switz City-INRD and ISRR-Indianapolis-CRC-INRD and that Stout has four other rail options. If the Primary Transaction is unconditionally approved, CSXT and its subsidiary will control all of these routings. Mr. Neumann explains that the overhead trackage rights NSR is to receive will be of no benefit to either Perry K or Stout because NSR's route from the Indiana coal fields is highly circuitous and could not possibly compete with the direct INRD route to Indianapolis.

Mr. Neumann disputes CSXT Witness Vaninetti's contention that ISRR is not competitive for movements of coal to Stout because ISRR has handled limited volumes in the past and lost the traffic in 1997. Mr. Neumann demonstrates that ISRR remains competitive for this traffic. Once CSXT replaces CRC in Indianapolis, however, ISRR's ability to compete will be lost. Mr. Neumann also distinguishes relatively short truck movements of coal in rural areas of Indiana from Primary Applicants' suggestion that coal can economically be moved to Stout. In Mr. Neumann's view, trucking coal to Stout is neither economically possible nor politically practicable.

Mr. Neumann goes on to explain why NSR's ability to compete in Indianapolis is illusory. NSR will own no rail lines into Indianapolis or yard facilities in that city and apparently will have no offices or employees stationed in Indianapolis. Without any investment in Indianapolis, NSR will have little, if any, incentive to compete with CSXT. The situation in

Crawfordsville is similar, since NSR will have no physical presence in that community, and NSR's overhead trackage rights to and from Crawfordsville are over a highly circuitous route.

Mr. Michael A. Weaver

Mr. Weaver details the inconsistent positions CSXT and NSR have taken in this proceeding concerning the 2-to-1 status of IPL's Stout and Perry K plants. In their Control Application, Applicants stated that IPL was a 2-to-1 shipper in Indianapolis, but did not refer to either plant. In discovery, CSXT stated that Perry K was a 2-to-1 destination, but that Stout was not, based on the fiction that CSXT would compete with its 89 percent owned subsidiary the INRD. On Rebuttal, CSXT abandons the latter position for a new one.

Mr. Weaver refutes CSXT's new theory that competition at the Stout plant comes from trucks and power generated by IPL's other plants. He demonstrates that trucks are not effective competitors for moving coal to Stout because truck rates are substantially higher than rail rates. Truck deliveries would be less efficient and more costly, and their use environmentally less preferable than deliveries by rail. Mr. Weaver also explains that dispatching power from IPL's Petersburg plant to replace power from Stout is not an option, as Applicants suggest, because the Petersburg plant is already relied on first to generate power on the IPL system.

Mr. Weaver explains that ISRR's proposed trackage rights to Stout and Perry K would replicate the existing efficient movements of Indiana coal, unlike Applicants' proposal of having NSR route unit trains through the Hawthorne Yard. ISRR's trackage rights would also enable ISRR to use the possible "build-out" routes into the Stout plant. Finally, Mr. Weaver demonstrates that even at the higher "build-out" cost suggested by CSXT Witness Kuhn, the "build-out" would be feasible.

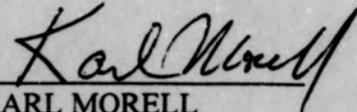
Mr. Thomas D. Crowley

Mr. Crowley demonstrates that IPL's Perry K plant currently has three competitive rail alternatives and that the Stout plant currently enjoys four competitive rail options. He explains that, if the Primary Application is approved without appropriate conditions, CSXT will control coal deliveries to both Perry K and Stout. With the replacement of CRC by CSXT, CSXT will control direct rail deliveries to Perry K via ISRR and INRD. Since CSXT owns 89 percent of INRD, CSXT will favor its subsidiary to the disadvantage of ISRR. CSXT will also control truck deliveries to Perry K from Stout.

Mr. Crowley also explains that CSXT will be able to competitively disadvantage the ISRR movements to Stout because: a) CSXT owns 89 percent of the INRD, the only railroad serving Stout; b) CSXT will control the CRC Belt which eliminates direct access to Stout by the ISRR or any other railroad other than CSXT; c) CSXT will control the CRC Belt and connecting rail lines which eliminates "build-out" or "build-in" options to ISRR or any other railroad other than CSXT; and d) NSR will receive only one lead trackage rights to Hawthorne Yard and the movement of high volume coal through that Yard is extremely inefficient and considerably more costly. Mr. Crowley confirms that ISRR will lose \$1.5 million annually to CSXT and INRD because it will no longer be able to compete as a result of the Primary Transaction.

Finally, Mr. Crowley explains that IPL's power supply options are not alternatives to two carrier access in disciplining rates and that IPL's "build-out" is feasible and justified even with Mr. Kuhn's additional construction estimates.

Respectfully submitted,



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RAILROAD, INC.

Dated: January 14, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION INC.
NORFOLK SOUTHERN CORPORATION AND
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STB FINANCE DOCKET NO. 33388 (SUB-NO. 76)

INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
CSX TRANSPORTATION, INC. AND INDIANA RAIL ROAD COMPANY

**REBUTTAL VERIFIED STATEMENT
OF
RICHARD NEUMANN**

My name is Richard Neumann. I am Senior Vice President and General Manager of Indiana Southern Railroad, Inc. (ISRR). I previously submitted a verified statement, dated October 17, 1997, in support of ISRR's Responsive Application in this proceeding. My qualifications are set forth in that statement. I am submitting this rebuttal verified statement in response to the verified statements of Thomas G. Hoback, Thomas E. Kuhn, John W. Orrison, and Gerald E. Vaninetti contained in Applicants' Rebuttal filed on December 15, 1997.

In my initial statement, I explained that ISRR is currently competitive for coal movements to Indianapolis Power & Light's (IPL) Perry K and E.W. Stout generating stations located in Indianapolis, Indiana, even though ISRR does not serve either of those plants directly.

If the transaction proposed by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) (collectively referred to as Applicants) is approved without appropriate conditions, ISRR will no longer be competitive for IPL coal traffic moving to Indianapolis, and IPL will lose competitive rail service at its Perry K and Stout facilities. In addition, the loss of the revenues generated by ISRR from this traffic -- over \$1.5 million in 1996 -- will have a devastating effect on ISRR, possibly forcing ISRR to curtail service to other shippers on its rail line.

I also testified as to the loss of all meaningful rail competition for shippers in Indianapolis and the surrounding area as a result of Applicants' proposed transaction. Indianapolis and Crawfordsville are 2-to-1 locations that essentially will become captive to CSXT. Also, shippers located on the Indianapolis to Shelbyville, Indianapolis to Crawfordsville, and Indianapolis to Muncie rail lines will lose the neutral gateway service Consolidated Rail Corporation (CRC) offers today to nearby CSXT and NSR junctions.

In their Rebuttal filing, Applicants contend that the competitive conditions at the Perry K and Stout facilities will remain the same under their proposed transaction. They correctly point out that the Perry K facility is now served directly only by CRC and that the Stout facility is now served directly only by the Indiana Rail Road Company (INRD). Applicants, however, totally ignore or significantly understate the competitive options IPL currently has available for coal movements to these two facilities.

ISRR has served the Perry K facility via a CRC switch since 1992, when ISRR first began operations. ISRR is currently moving coal to Perry K from the Triad Mine located on the INRD at Switz City, Indiana. ISRR has trackage rights to serve the Triad Mine for coal

movements to all IPL plants other than Stout. Since IPL's current source of coal for Perry K is located on an INRD line, INRD is directly competitive with ISRR for service to Perry K via a CRC switch. INRD could also serve Perry K from the various mines it serves directly in Indiana. In the past, IPL has trucked some coal to the Perry K facility from its storage area at Stout. According to Mr. Hoback, INRD has also moved coal to its Senate Avenue Terminal, located one mile from the Perry K facility, and trucked to Perry K. Consequently, IPL currently has the options of receiving coal at Perry K from: (1) CRC direct; (2) ISRR via CRC switch at Indianapolis; (3) INRD via CRC switch at Indianapolis; (4) INRD to Stout and truck to Perry K; and (5) INRD to its switching yard in Indianapolis and truck to Perry K.

If Applicants' proposed transaction is unconditionally approved, the Perry K plant will become captive to CSXT. CRC will no longer exist in Indianapolis. Thus, the options of CRC handling coal direct or as a switch carrier from ISRR or INRD will be lost. CRC today is largely neutral in switching traffic from ISRR and INRD. ISRR believes that it currently enjoys an operational advantage over INRD for coal movements to Perry K, since it delivers the coal trains to CRC within one to two miles of the Perry K plant. Notwithstanding this operational advantage, CSXT will undoubtedly favor its subsidiary, the INRD, and price ISRR movements to Perry K out of business. The short truck movements from Stout or the INRD switching yard will not serve as a competitive constraint on CSXT, as they do on CRC today, since the prior rail movements are controlled by a CSXT subsidiary. Consequently, all current options of moving coal to Perry K will be controlled by a single source: CSXT.

Applicants suggest that the trackage or haulage rights NSR will receive as a result of the transaction will benefit Perry K. Applicants fail to explain, however, the source of coal

NSR purportedly will haul to the Perry K plant. NSR will not be permitted to serve Perry K directly nor will it be allowed to connect with ISRR in Indianapolis. NSR's routes to and from Indianapolis are also highly circuitous and not suitable for handling shipments of coal. NSR does not have direct access to any coal mines from which IPL buys its coal. Its only route from southern Indiana to Indianapolis would be via Louisville and Danville, Kentucky, Cincinnati, Ohio, and Muncie, Indiana, which is approximately 491 miles. This highly circuitous route is hardly competitive with the direct INRD route to Indianapolis. The eastern coal mines served by NSR are also of too great a distance to be competitive with nearby Indiana coal sources. In fact, Applicants' own witness claims that IPL is committed to using Indiana coal. Vaninetti RVS at 15-20. NSR coal movements to Indianapolis, therefore, would not serve as a competitive constraint on CSXT.

Mr. Orrison claims that the proposed transaction will have no effect on competition at Perry K because CSXT is simply replacing CRC and ISRR will be able to interchange with CSXT rather than CRC. Orrison RVS at 184. Mr. Orrison, however, ignores the fact that ISRR coal movements to Perry K currently compete with INRD routings. Once CSXT replaces CRC, CSXT will have a strong economic incentive to disadvantage the ISRR routings and benefit its subsidiary the INRD.

In a cynical attempt to portray ISRR as searching for the proverbial free lunch, Applicants note that ISRR previously sought access to the Perry K plant. As the letters from ISRR to CRC relied on by Applicants clearly demonstrate, in 1994 and 1995, ISRR sought to serve the Perry K facility directly because of service and operational difficulties ISRR was experiencing at that time with its connections with CRC in Indianapolis. ISRR is seeking access

to Perry K in this proceeding to remedy the loss of competition at that facility and not because of operational problems in Indianapolis.

ISRR has provided service to the Stout facility via two routings: ISRR-Switz City-INRD and ISRR-Indianapolis-CRC-INRD. The coal moving via Switz City originated at the Maysville Mine and the coal moving via Indianapolis originated at the Hawthorne Mine. INRD is able to serve the Stout facility direct from several Indiana mines and in interline movements with CP Rail from the Farmersburg Mine. CRC has the potential to serve the Stout facility via an INRD switch or directly via a build-in option from its nearby rail line in Indianapolis. Consequently, IPL today has the options of receiving coal at Stout from: (1) INRD direct; (2) CP Rail-Linton-INRD; (3) ISRR-Switz City-INRD; (4) ISRR-Indianapolis-CRC-INRD; (5) CRC-INRD and (6) CRC direct via a build-in to the Stout plant.

If Applicants' proposed transaction is unconditionally approved, the Stout plant, not unlike the Perry K plant, will become captive to CSXT. In order to favor its subsidiary the INRD, CSXT will price ISRR movements via Indianapolis out of business. Once the ISRR routing via Indianapolis is rendered noncompetitive, INRD will have no economic incentive to cooperate with ISRR in a joint-line movement via Switz City. Thus, both current routings to Stout involving ISRR will be lost. With the replacement of CSXT for CRC in Indianapolis, the option of CRC linehauling coal to INRD for a switch to Stout will also be lost. The build-in/build-out option will be rendered meaningless, since CSXT would have no incentive to build a line to Stout in order to compete with its subsidiary nor would IPL have an incentive to build-out to the parent of the railroad to which it has become captive. Consequently, all current options of moving coal to Stout will be controlled by CSXT.

Mr. Hoback suggests that INRD is prepared to negotiate a rate for coal movements by NSR via the Hawthorne Yard to Stout. Hoback RVS at 6. As previously explained, however, NSR has no economically viable coal route to Indianapolis. Mr. Hoback also fails to explain why INRD would offer NSR a competitive rate that would shorthaul the INRD. Applicants reject the condition suggested by the Department of Justice that NSR be given the right to connect with ISRR at Indianapolis, contending that NSR already connects with ISRR at Oakland City, Indiana. The ISRR-NSR connection at Oakland City, however, is of no benefit to IPL or any other shipper in Indianapolis given NSR's circuitous route between Oakland City and Indianapolis and ISRR's lack of access in Indianapolis.

In the Rebuttal filing, CSXT offered to assume CRC's current contractual obligations for the ISRR-Indianapolis-CRC-INRD movements for the duration of the INRD-IPL coal contract. CSX/NS 176 at 365. CSXT's offer, however, would not prevent the loss of ISRR's competitive rail service to the Stout plant, the offer would simply delay the anticompetitive consequences of Applicants' proposed transaction.

Mr. Orrison contends that there is no operating reason why, post-Transaction, ISRR would not be able to deliver coal to Stout, since CSXT will simply replace CRC's switching service at Indianapolis. Orrison RVS at 184. I agree that there is no operational reason why ISRR would not be able to continue handling coal to Stout. As already explained, however, CSXT would have a strong incentive to competitively disadvantage ISRR movements to Stout.

Mr. Vaninetti reaches a number of erroneous conclusions concerning ISRR's ability to compete for coal traffic moving to the Stout plant. Mr. Vaninetti claims that ISRR is not competitive for the Stout traffic because it already has lost the traffic to a two-line haul via CP

Rail-INRD. Vaninetti RVS at 14. Mr. Vaninetti either fails to understand or conveniently ignores the fundamental principles of competition. The fact that ISRR lost traffic to INRD in 1997 that ISRR previously handled does not mean that ISRR is not a competitor for the traffic; it simply means that ISRR was outcompeted for the traffic originating on the CP Rail. As long as CRC remains in Indianapolis, ISRR will remain competitive for traffic moving to Stout. ISRR can compete for spot purchases of coal to Stout today and, if IPL decides to source its Stout coal from a different origin in the future, ISRR would be able to compete for the movements. Once CSXT replaces CRC in Indianapolis, however, ISRR's ability to compete will be lost. ISRR handled traffic to the Stout plant in the past. Mr. Vaninetti is unable to explain how ISRR was able to handle this traffic if its routing via CRC is not competitive.

Mr. Vaninetti also claims that ISRR's routing via CRC is not competitive for Stout traffic because in 1996 nearly three quarters of the Stout tons originated by ISRR moved via Switz City rather than CRC at Indianapolis. *Id.* Mr. Vaninetti's contention is erroneous in at least two fundamental respects. First, Mr. Vaninetti fails to explain how one quarter of the tons moving to Stout could have possibly moved over a route that is not competitive. Second, Mr. Vaninetti's conclusion is again premised on the faulty notion that rail carriers are only competitive for traffic in which they currently participate. Even if all of the traffic moving to Stout in 1996 moved via the ISRR-INRD routing, the ISRR-CRC-INRD route would still have served as a competitive constraint for coal moving to Stout.

Mr. Vaninetti further claims that CRC service problems caused substantial delays at the interchange point in Indianapolis which may have lead to the displacement of this routing alternative. *Id.* My letter to CRC, which Mr. Vaninetti erroneously relies on, addressed service

problems ISRR was experiencing in 1994 for coal movements to Perry K, and not as Mr. Vaninetti alleges to Stout. In any event, any operational problems ISRR experienced in the past with CRC in Indianapolis will undoubtedly be exacerbated once CSXT replaces CRC and is able to favor the routings of its subsidiary.

Mr. Vaninetti totally misconstrues or misstates the conditions sought by ISRR in contending that ISRR is really seeking to improve its access to all four IPL plants, extend its routings to handle Western coal deliveries, and enhance its position at the expense of INRD and CSXT. *Id.* at 4. ISRR already exclusively serves two of IPL's plants (Petersburg and Pritchard), and none of the conditions requested by ISRR would have an impact on service to those plants. Similarly, none of the conditions requested by ISRR would enable ISRR to participate in movements of Western coal. Moreover, ISRR is not seeking to enhance its position at the expense of INRD and CSXT, but rather to maintain its current competitive position for coal shipments to Perry K and Stout and to preserve the rail competition those two plants currently enjoy.

In an effort to distort and disparage ISRR motives in this proceeding, Mr. Vaninetti cites to an undated internal memorandum from Phil Wilzbacher to Jim Bearden. On the basis of this memorandum, Mr. Vaninetti claims that ISRR internally concluded that Applicants' proposed transaction will not have a major impact on ISRR but then proceeded to advance its own agendas by seeking access to Perry K and Stout. *Id.* at 15. The memorandum relied on by Mr. Vaninetti was prepared shortly after April 9, 1997, which was at the same time Applicants entered into their letter agreement to carve up CRC, but well before the Control Application was filed and the details of the proposed transaction were made public. (Attached to my Verified Statement is a

copy of the memorandum from Mr. Bearden to which Mr. Wilzbacher responded.) Consequently, Mr. Wilzbacher could hardly have known how the competitive situation in Indianapolis would be effected by the CRC carve-up when his response was prepared. Since CRC and CSXT currently serve Indianapolis, one could only have logically assumed that in order to preserve the competitive status quo NSR, and not CSXT, would replace CRC in Indianapolis. More importantly, Mr. Wilzbacher was responding to Mr. Bearden's request for all locations where interchanges would be reduced to one road. Mr. Wilzbacher's response was based on the fact that ISRR already interchanged with NSR at Oakland City, Indiana and with CSXT at Evansville, Indiana, and did not, and at that time could not have, addressed the loss of competition to Perry K and Stout as a result of the carve-up ultimately proposed by Applicants.

Mr. Kuhn addresses the build-in/build-out option to the Stout plant. I have no personal knowledge of the actual cost of a build-out from Stout to the CRC line. I am generally aware of the geography between the Stout plant and the CRC line in Indianapolis and consider a build-out to CRC to be economically viable given the short distance involved. In my view, the build-out option provides a competitive constraint on the rates INRD is able to charge for coal movements to the Stout plant. It appears that Mr. Kuhn does not dispute the fact that the connection can be constructed, he simply questions the cost of construction.

Messrs. Hoback and Vaninetti contend that truck competition constrains rail rates to the Stout plant. Their argument is essentially that the Surface Transportation Board need not concern itself with the loss of rail competition at Stout because truck competition will discipline INRD's rates.

While I agree in principle with Messrs. Hoback and Vaninetti that trucks can be competitive with rail movements of coal in limited circumstances, I do not agree with their assessment that truck competition is effective to the Stout plant. ISRR competes with trucks at IPL's Petersburg and Pritchard power plants. The Petersburg plant receives truck shipments from mines located approximately 5 to 20 miles from the plant. Notwithstanding these very short distances for truck movements, ISRR handles almost one-half of the tonnages moving to that plant. The Pritchard plant receives some truck shipments from mines located approximately 50 miles from the plant. The truck movements, however, occur primarily in the winter months when IPL cannot take rail shipments because the Pritchard plant has no thaw sheds. The situation at Petersburg and Pritchard, however, is vastly different than at Stout and Perry K. Most importantly, the Petersburg and Pritchard plants are located in rural areas whereas Stout and Perry K are located in the city of Indianapolis. The economics, not to mention the political ramifications, of moving coal by truck over sparsely populated rural areas is significantly different than moving large volumes of coal over city streets. In addition, the distances for direct truck movements to Stout and Perry K are substantially greater than the distances for truck movements to either Petersburg or Pritchard.

While it is possible to move some coal to Stout by truck, I do not believe that trucking to Stout can be economically competitive with rail. More importantly, trucking large volumes of coal to Stout is, in my view, neither economically possible nor politically practicable. ISRR has participated in coal shipments to Stout for 4 years and never once considered trucks to be an effective competitor for those movements. In my six years at ISRR, IPL never raised the threat of truck competition for shipments to the Stout plant. ISRR has always considered alternative

rail movements to be its sole competitor for traffic destined to Stout. I am also unaware of any truck shipments ever having been made to the Stout plant.

Mr. Hoback also claims that IPL used the threat of truck competition in the late 1970s to constrain rail charges at Indianapolis. Hoback RVS at 5. As Mr. Hoback acknowledges, however, the switch charge to Stout was established after protracted litigation between IPL and INRD's predecessor, Illinois Central Gulf. While I have no personal knowledge of the litigation, I question why IPL would engage in extensive litigation over the switch charge if truck competition were an effective constraint on rail charges to Stout.

Mr. Hoback goes on to contend that CRC is not an effective competitor for coal in Indiana and that any CRC participation in coal movements from the mine at Farmersburg would have involved a three-carrier haul (CP Rail-CRC-INRD) which would have been less efficient than the current CR-Rail-INRD routing. *Id.* at 6. Mr. Hoback's contention, however, loses sight of the fact that ISRR's participation in a three-carrier haul (ISRR-CRC-INRD) has competed since ISRR's inception with INRD single and two-line hauls to the Stout plant. Also, the CRC route from Farmersburg via Terre Haute, Indiana is about 22 percent shorter than INRD's route via Linton, Indiana.

Mr. Hoback cites to a December 1996 publication stating that the Perry K facility will be partially converted to natural gas by November 1997. *Id.* at 8. Without citing any source, Mr. Vaninetti erroneously claims that Perry K has already been converted to gas-firing and that the plant has substantially reduced its coal burn since 1996. Vaninetti RVS at 11 n. 11. As Mr. Hoback should well know, the conversion has been delayed and may possibly never occur. Even

if the conversion does take place, Perry K will still need one half of its current coal shipments and will be dependent on rail to serve the plant.

Mr. Vaninetti makes a number of claims concerning IPL's ability to use internal and external power supply options to discipline rail rates to Stout and Perry K. Vaninetti RVS at 4, 8-10. I am not qualified to respond to these allegations other than to note that Perry K is a steam plant, not a power generating plant as Mr. Vaninetti apparently assumes. Therefore, IPL would not be able to discipline rail rates to Perry K by other power supply options.

With respect to the competitive situation in Indianapolis in general, Applicants contend that their proposed transaction replicates the existing competitive scenario. According to Applicants, CSXT will simply assume the current position of CRC and NSR will essentially assume CSXT's current position. CSX/NS-176 at 52. NSR's ability to compete in the Indianapolis market, however, is illusory. While most of the shippers in Indianapolis are currently served direct only by CRC, CSXT has a substantial physical presence in Indianapolis. CSXT owns its own rail line into Indianapolis (as does its subsidiary the INRD), has employees stationed in Indianapolis, owns its own rail yard and serves a limited number of shippers directly. Under Applicants' proposed transaction, NSR at best will simply pass through the city picking up any freight at Hawthorne Yard that may be available. It appears that NSR will own no physical assets in Indianapolis. NSR will own no rail lines into Indianapolis or yard facilities in that city and apparently it will have no offices or employees stationed in Indianapolis. Without any investment in Indianapolis, NSR will have little, if any, incentive to compete with CSXT.

Also, NSR's access to Indianapolis is limited to trackage rights over a circuitous route to most origins or destinations that will prevent NSR from effectively competing with CSXT. For

example, CRC and CSXT currently compete for traffic moving between Indianapolis and Chicago via Crawfordsville, Indiana. After Applicants' proposed transaction is approved, CSXT will continue to have the same direct route to Chicago, whereas NSR will have to utilize a CSXT switch in Indianapolis to Hawthorne Yard, trackage rights over a CSXT rail line northeast to Muncie, Indiana, and then north and west to Chicago. CSXT will also have a significantly more direct route for traffic moving between Indianapolis and the southeast, the midwest and the southwest.

CSXT will serve all shippers in Indianapolis directly, it will own or control all routings to and from the city, it will own all yard facilities, it will have a substantial physical and personnel presence in Indianapolis, and it will enjoy the shortest routes to all major markets. In short, Indianapolis will become a one railroad town.

The situation in Crawfordsville is similar. Crawfordsville is also a 2-to-1 location, although the community is much smaller than Indianapolis. Applicants claim that the 2-to-1 issues in Crawfordsville have been fully addressed. CSX/NS-176 at 366-67. NSR's purported access to Crawfordsville, however, is even more circumscribed than its access to Indianapolis. As with Indianapolis, NSR will have no physical presence in Crawfordsville and its trackage rights route to Crawfordsville is even more circuitous. It appears that NSR will have little, if any, traffic moving over the CSXT line between Indianapolis and Lafayette, Indiana. In order for NSR to serve Crawfordsville from Muncie, NSR would have to make almost a 200-mile round trip. NSR's contemplated service to Crawfordsville, therefore, would not be economical or operationally practical.

Applicants correctly point out that Muncie is currently served by CRC and NSR and that CSXT will take over the operations of CRC at Muncie. In seeking trackage rights between Indianapolis and Muncie, ISRR merely sought to serve shippers on that line and to gain access to NSR at Muncie. ISRR does not seek the right to serve shippers in Muncie. Contrary to Applicants' contention, however, the Central Railroad of Indiana does not have the right to provide local service to shippers in Shelbyville.

Mr. Orrison raises a few operational concerns about the conditions requested by ISRR. He points out that ISRR primarily hauls coal and claims that ISRR has not demonstrated the ability to handle other business. Orrison RVS at 47-8. The workpapers and documents produced to Applicants show that ISRR handles a myriad of commodities other than coal, including hazardous commodities. For example, ISRR handles steel, corn, soybeans, fuel oil, potash, fertilizer, plastic products, brick, ammonia, rail cars, lumber products, sugar, LPG, sunflower, aluminum scrap, methanol, and canned vegetables.

Mr. Orrison maintains that ISRR's requested trackage rights between Indianapolis and Shelbyville would delay traffic by at least one day. Shelbyville is located less than 30 miles from Indianapolis and ISRR could serve shippers on that line on a one day round trip movement. I also do not see why ISRR's service on that line would take any longer than CSXT's proposed service. Mr. Orrison also claims that the proposed trackage rights to Crawfordsville "would unnecessarily complicate service to the small town of Crawfordsville" and cause delays and interference. *Id.* at 48-49. There are currently two carriers operation over that line (CRC and CSXT) and it is expected that two carriers will operate over that line in the future (CSXT and NSR). Since ISRR is simply seeking to replace the purported NSR operations to Crawfordsville,

ISRR's requested trackage rights will have no impact on CSXT operations. The remainder of Mr. Orrison's concerns are generic and would apply to any grant of trackage rights. For example, he contends that "there would be additional complexities in scheduling, training in operating rules and physical characteristics and administrative functions, such as billings." *Id.* at 48. Railroads operate over one another throughout the country. ISRR currently has trackage rights to operate over line segments owned by CP Rail and CRC and has experienced no problems. In any event, ISRR is confident that if the requested trackage rights are granted CSXT will be able to surmount Mr. Orrison's concerns.

Applicants claim that there will be no loss of essential services on the ISRR line because ISRR will not lose the IPL traffic to Indianapolis and because most of the shippers on the line ISRR may be forced to abandon already use truck service. CSX/NS-176 at 369-71. As previously explained, if applicants' proposed transaction is approved without appropriate conditions, ISRR will be competitively foreclosed from serving the Perry K and Stout facilities and lose all revenues attributable to that traffic. Applicants also claim that ISRR's use of 1996 revenue data is misleading because in 1997 ISRR lost the Stout traffic to INRD. At the time ISRR filed its Responsive Application, the most recent full year data available was for 1996. While ISRR lost the Stout traffic in 1997, under current conditions, ISRR is able to recapture that traffic. Once CSXT replaces CRC in Indianapolis, ISRR's Stout traffic will be permanently lost.

Applicants mischaracterize ISRR's discovery response concerning the ability of ISRR shippers to switch to trucks. In response to Applicants question whether to ISRR's knowledge any of the "shipper's shipments...ever moved by truck", ISRR responded in the affirmative for six of the seven shippers identified. The question was not whether the traffic currently handled

by ISRR could move by truck, but whether the shipper had ever used trucks for any shipments. One of the shippers, Indy Railway Service Corporation, receives and ships rail cars and is clearly dependent on rail service. That shipper, however, does not have sufficient volumes to justify retention of the ISRR line north of milepost 17 and it would not be economically prudent for anyone to acquire the line to serve only that shipper as Applicants suggest. While four of the shippers identified use trucks to meet some of their transportation needs, the traffic handled by ISRR could not economically be transported by trucks. Also, the new industrial park on the ISRR line would not be able to locate any rail shippers in that park, as is currently planned, if ISRR abandoned the northern segment of its line. Only one of the shippers identified by ISRR could substitute trucks for the traffic currently handled by ISRR.

VERIFICATION

I, Richard Neumann, verify under penalty of perjury that the foregoing Rebuttal Verified Statement is true and correct to the best of my knowledge and belief.

Richard Neumann

Executed on *January 13, 1998*

Witzbacher, Phil (Exchange)

From: Dail, Jack E. (Exchange)
Sent: Wednesday, April 16, 1997 2:14 PM
To: Clark, Warner (Exchange); White, David (Exchange); Witzbacher, Phil (Exchange)
Cc: Brigham, Mike (Exchange)
Subject: FW: NS/CSX purchase of Conrail

No doubt your GM has asked for your input re this request from Jim Bearden. I would like a copy of your (GM's) response to this request.

Warner and David: I only need one response from you unless Bill separates the DTI portion from the INOH.

From: Bearden, Jim (Exchange)
Sent: Wednesday, April 09, 1997 5:04 PM
To: Bearden, Direct Reports
Cc: Dail, Jack E. (Exchange); Franger, Sandy K. (Exchange)
Subject: NS/CSX purchase of Conrail

Please advise the following: 1) Locations of interchange with NS, CSX, and/or Conrail. 2) Types of traffic by carload and revenues at these points 3) Locations where interchange will be reduced to one road.

Also, list by bullet point your thoughts on how your railroad will be affected.

Let's plan on a conference call during the week of 4-21, to discuss the issues.

- 1) INTERCHANGES: NS @ Oakland City, CSX @ Knoxville, CA @ Indianapolis.
- 2) TYPES OF CARRIAGES / SERVICES: NS

PUBLIC VERSION

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388
(Sub-No. 76)

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

**REBUTTAL VERIFIED STATEMENT OF MICHAEL A. WEAVER
IN SUPPORT OF THE RESPONSIVE APPLICATION OF
INDIANA SOUTHERN RAILROAD, INC. (ISRR-4)**

INTRODUCTION

My name is Michael A. Weaver. I am the same Michael A. Weaver whose Verified Statement was submitted as IP&L Ex. No. 1 to IP&L-3, the "Supplemental Comments, Evidence, and Request for Conditions of Indianapolis Power & Light Company" ("IP&L") submitted in Finance Docket No. 33388 on October 21, 1997. I am the Manager of the Fuel Supply Organization of IP&L, headquartered in and serving metropolitan Indianapolis, Indiana. As Manager of IP&L's Fuel Supply Organization, I have responsibility for all fuel purchases and deliveries to IP&L's Powerplants. I report to IP&L's Vice-President Fuels, Mr. Donald W. Knight. IP&L's concerns in this proceeding involve its two Plants in Indianapolis, Perry K and Stout. Perry K generates steam and Stout generates electricity.

I have reviewed the Responsive Application of Indiana Southern Railroad, Inc. (sometimes referred to herein as "ISRR" or "Indiana Southern")(ISRR-4). The purpose of this Verified Statement is to support ISRR's request for trackage rights to serve IP&L's Stout and Perry K Plants ("the requested trackage rights"). Those trackage rights would preserve IP&L's current rail-to-rail competition between ISRR, and CSX's 89-percent-owned subsidiary INRD, for supplies of Indiana coal to the Stout and Perry K Plants, and would be efficient. Today, Indiana Southern, in interchange with Conrail, can serve Stout via switch (using the Indiana Rail Road). Indiana Rail Road (sometimes referred to as "INRD") serves Stout directly, and can serve Perry K via switch over Conrail. (Given that CSX owns most of Indiana Rail Road, and controls it, I sometimes refer to them jointly as "CSX/Indiana Rail Road.") Indiana Southern also uses Conrail as a destination carrier at the Perry K Plant. Conrail is not affiliated with either ISRR or INRD and thus is a neutral destination carrier, whereas CSX clearly would not be neutral, but would certainly favor its subsidiary INRD in setting rates or in delivering coal..

Therefore, ISRR's requested trackage rights will merely retain the existing rail-to-rail competition at the Stout and Perry K Plants for Indiana coal. Indiana Southern's requested trackage rights are essential in order to mitigate the severe anti-competitive effects that will result if CSX acquires Conrail's lines in Indianapolis, as proposed by NS and CSX. Unless Indiana Southern can continue to compete with CSX/Indiana Rail Road at Perry K and Stout, both Plants will become captive to CSX/Indiana Rail Road, and IP&L may lose Indiana Southern as an effective competitor at its Stout and Perry K Plants..

SUMMARY

1. In their Application, CSX and NS took the position that IP&L was one of the "2 to 1" shippers in Indianapolis, entitling it to relief, but without specifying whether that referred to IP&L's Stout Plant or Perry K Plant. In discovery, CSX stated that Perry K was deemed to be a "2 to 1" destination, but denied that the Stout Plant was, based on the fiction that CSX would compete with INRD. But CSX owns 89 percent of INRD, and obviously controls it, as Judge Leventhal found. So, in its Rebuttal, CSX has abandoned that position for a new one.

2. Now CSX contends that the Stout Plant does not experience rail-to-rail competition, but claims that the real competition is from trucks and power generated by our Petersburg Plant (which is unaffected by the transaction proposed by CSX and NS), and therefore IP&L is not entitled to relief at the Stout Plant.

3. Dispatching power from our Petersburg Plant to replace power from Stout to "discipline" CSX/INRD is not an option, contrary to Mr. Vaninetti's theory. Whenever the

Petersburg Plant can generate power, we rely on it first. Thus, we are already doing what Mr. Vaninetti recommends.

4. Indiana Southern's proposed trackage rights into Stout and Perry K would replicate the existing efficient movements of Indiana coal, unlike CSX/NS's inefficient proposal to route IP&L's coal unit trains, if handled by NS, into and out of Hawthorne Yard. Indiana Southern could also use any of the possible "build-out" routes into the Stout Plant that could also be used for possible western coal movements to Stout.

5. CSX's Witness Kuhn's testimony suggests that IP&L's proposed "build-out" from Stout might cost more -- perhaps twice as much -- as IP&L Witness Porter estimated, but that cost would be well within a feasible amount to justify the "build-out." Mr. Kuhn's testimony, like IP&L's, demonstrates that a "build-out" is feasible, as are other routes, and so is a truck transloading facility on the former Belt over which Conrail now operates. The potential of such a "build-out" acts as a constraint on the switching charge and rates Indiana Rail Road is able to impose on shipments to the Stout Plant.

I.

IP&L'S STOUT AND PERRY K PLANTS ARE "2 TO 1" FACILITIES BUT THE CSX/NS PROPOSAL WOULD NOT PRESERVE EXISTING COMPETITION AT THOSE FACILITIES.

A. The Stout Plant Is A "2 to 1" Facility.

It is CSX's 89-percent ownership of Indiana Rail Road (CSX/NS-17, Application, Vol. I, p. 271), and its admitted control of Indiana Rail Road, as Judge Leventhal found, that is at the core of the anti-competitive problems affecting Indianapolis shippers. That common ownership is also the reason why IP&L's Stout Plant is a "2 to 1" destination. However, CSX, at least previously in this proceeding, maintained the fiction that it will compete with Indiana Rail Road,

see, e.g., Sharp Dep'n Tr. at 14-15 (Attachment 1 hereto), despite its ownership interest in that Railroad. Mr. Sharp's colleague, Mr. William M. Hart, Vice President of Corporate Development for CSX Transportation, Inc., described the Board's test characterizing a "2 to 1" facility as follows:

A shipper is defined as a 2-to-1 if either (1) Two railroad lines physically enter its facility and those lines would be under common ownership after the transaction, or (2) A railroad's line physically reaches its facility, but the shipper has a second switching service option with a second rail carrier through reciprocal switching, trackage rights or haulage.

CSX/NS-19, Application, Vol. 2A, p.146. Mr. Hart's definition of a "2 to 1" point is under-inclusive, because it omits those destinations, such as IP&L's Stout Plant, that have the ability to be served via a "build-out" to a railroad not affiliated with the railroad that has an existing line into the facility, and because he should have included plants with access to a second carrier via switching.

In any event, the current rail options at the Stout Plant satisfy the Board's tests to qualify as a "2 to 1" destination. Stout can be served via a build-out to or at Conrail, and it can be served by Indiana Southern/Conrail via switching.

Under the terms of the transaction proposed by CSX and NS, if CSX takes exclusive control of Conrail's lines, both means of physical access into Stout will fall "under common ownership," to use Mr. Hart's term, yet CSX and NS apparently do not concede that the Stout Plant as a "2 to 1" destination.¹

¹I say "apparently" because there is much confusion on this point. In the Application (CSX/NS-25, Application, Vol. 8C, p. 525), CSX and NS included "Indianapolis Power and Light" as a "2 to 1" shipper in Indianapolis, without specifying which IP&L destination(s) -- Stout or Perry K or both -- were included. In discovery, therefore, IP&L inquired about the ambiguity, and CSX and NS finally admitted that Perry K was a "2 to 1" facility, but denied
(continued...)

Despite Applicants' refusal to concede that Stout as a "2 to 1" facility, the other second test for such a designation is also fulfilled because Indiana Rail Road serves the Stout Plant directly and Stout can also be served by Indiana Southern/Conrail via switch over Indiana Rail Road. CSX/NS-177, Rebuttal, Vol. 2A, Hoback V.S., p. P-195, Orrison Rebuttal V.S., p. P-653.

Applicants have refused to admit that CSX and Indiana Rail Road do not and will not compete with one another, but by Mr. Hart's own definition, Conrail's line (over which Stout can be served with Indiana Southern-origin coal via switch on Indiana Rail Road or directly via a build-out) would come "under common ownership," and thus Stout would clearly be a "2 to 1" facility. IP&L is surprised and disappointed that it would have to litigate this issue, since the "2 to 1" criteria are well-established under the Board's standards in prior mergers.² In fact, at his deposition, Mr. Hart admitted that the Stout Plant would be a "2 to 1" destination if Indiana Rail Road were treated as CSX

Q. If a carrier has access via a switching charge to a plant that is directly served by another railroad and those two railroads were to merge, where one were to acquire the other, is it your

¹ (...continued)

Stout was (although not in so many words, instead saying only "Stout is served by Indiana Rail Road." without clarifying what they meant by that). Attachment 2 hereto.

In their December 15, 1997 Rebuttal, CSX and NS admit that their list of "2 to 1" shippers in Indianapolis was under-inclusive. (CSX/NS-176, Rebuttal, Vol. 1, p. P-60, referring to "Exhibit I" in CSX/NS-178, Rebuttal, Vol. 3C, pp. 638-39). But revised Exhibit I still merely lists "Indianapolis Power & Light" as one of the 66 "2 to 1" shippers, without specifying the destination intended.

² Applicants' refusal to treat the Stout Plant as a "2 to 1" destination, and, for that matter, the confusion surrounding whether even Perry K is a "2 to 1" destination, contradict Mr. Hart's testimony accompanying the Application (CSX/NS-19, Vol. 2A, p. 149) that, for any "2 to 1" shipper who comes forward, CSX "stands ready to address that shippers' [sic] concerns."

understanding that that would be a two-to-one situation as defined on your Exhibit No. 2?

A. Yes.

.....

Q. . . . If, and I'm asking you to assume this for purposes of my question, Conrail has access to the Stout Plant via switching and CSX were the delivering carrier to the Stout Plant, do I take your previous answer to be that the Stout plant would be under my assumption a two-to-one plant?

A. Yes.

Q. Now, if we change my hypothetical to substitute Indiana Railroad for CSX, would you treat the Stout plant as a two-to-one point?

A. The second case?

Q. Is Conrail via switching and Indiana Railroad which you testified is owned by CSX.

A. Now, the Indiana Railroad is an independently run operation. I don't think it's the same case.

Hart Dep'n Tr. at 30-31 (Attachment 3 hereto). Applicants' prior position that Stout is technically not a "2 to 1" shipper because Indiana Rail Road serves it, and CSX does not, was complete nonsense. Presumably that is why CSX and NS, in their December 15, 1997 Rebuttal, have abandoned the fiction that CSX and Indiana Rail Road do or will compete, nor did they even offer Messrs. Hart and Sharp as Rebuttal witnesses.

Because it owns 89 percent of Indiana Rail Road, because 3 of 5 members of Indiana Rail Road's Board of Directors are CSX employees (including Mr. Sharp), and because CSX admits it controls Indiana Rail Road, CSX will have strong economic incentives to favor INRD- or CSX-

origin coal if CSX/Indiana Rail Road controls access to the Stout and Perry K Plants, and obviously will do so.

B. Perry K is a "2 to 1" Facility.

In another of the many inaccuracies in their Rebuttal, CSX and NS state that Perry K Plant "will gain two carrier access, an improvement over the status quo." See CSX/NS-176, Rebuttal, Vol. 1, p. P-365. CSX Witness (and INRD President) Hoback admitted that Perry K currently has two rail-carrier access, Indiana Southern via switch over Conrail and Indiana Rail Road via switch over Conrail. See CSX/NS-177, Rebuttal, Vol. 2A, p. P-198 (noting Conrail charge for moving INRD-origin coal to Perry K). The transaction proposed by CSX and NS would eliminate Conrail, the neutral destination carrier, and Perry K would instead be served only by CSX, which would clearly not be neutral as to whether coal was originated by its subsidiary Indiana Rail Road or by Indiana Southern. This is a reduction in the competitive status quo, not "an improvement," as CSX would have it. This is unsatisfactory to IP&L because CSX would clearly favor its subsidiary over Indiana Southern, whereas Conrail had no incentive to favor either of IP&L's origin carriers (since neither is affiliated with Conrail). Since CSX and NS apparently concede that Perry K is a "2 to 1" facility, the Board should treat it as such.

II.

**TRUCKS ARE NOT THE COMPETITION INTO THE STOUT PLANT;
INDIANA SOUTHERN/CONRAIL IS.**

Messrs. Hoback and Vaninetti insist that IP&L's real competitive constraint on Indiana Rail Road's rates into Stout is the use of trucks (CSX/NS-177, Rebuttal, Vol. 2A, pp. P-194-201, Vol. 2B, pp. P-504 to -07), and therefore IP&L will not suffer any loss of its competitive options as a result of the acquisition of Conrail by CSX and NS. In support of his position, Mr. Vaninetti

quotes Don Knight, my superior, who testified in a deposition that in the course of negotiations concerning rail rates from a new coal (Farmersburg) that would supply only about one-third of the needs of the Stout Plant that he had threatened the use of trucks to get coal to Stout to get a reduced rail rate from Indiana Rail Road. Don further testified:

What I mean by that, to explain it, is if you are negotiating where the railroad is trying to rip you off and you have got a trucker out there that is really trying the best he can to get your business and do it right, I would much rather pay three cents more a ton to go with a trucker. . . .

Knight Dep'n Tr. at 12-13 (Attachment 4 hereto). Mr. Knight further testified that he felt it was "ridiculous" that the rail rates offered by Indiana Rail Road were so high as to be competitive with truck rates, despite the lower costs involved in moving coal by rail. Knight Dep'n Tr. at 14 (Attachment 5). But what Mr. Vaninetti failed to mention was that, as I testified in my deposition Mr. Vaninetti cited for other points,

For all coal mines serving the Stout Plant,

For example, in January 1997, when the INRD contract took effect, the truck rate from the Triad Mine to Stout was [redacted] whereas the rail rate on INRD from the same mine was down from [redacted] INRD's previous rate). In fact, when IP&L was negotiating a new contract with INRD, it used ISRR/Conrail and then INRD for switching, and the rail rate for that alternative was [redacted] depending on the origin, via either routing). Mr. Hoback at INRD agreed to lower our rate in return for a volume commitment of at least [redacted] He agreed to retain our [redacted] but only because ISRR/Conrail would get no more than the remaining [redacted]

[redacted] But the fact that IP&L used ISRR/Conrail to convince INRD to lower its rate by about [redacted] which reduction Mr. Vaninetti notes, but erroneously ascribes to trucks, which we did not use) only shows that INRD's existing rates at the time were [redacted] Additionally, IP&L invested in the purchase of more than 570 rail cars because that is the mode of delivery it needs.

Thus, contrary to Mr. Vaninetti's testimony, our recent experience at Stout demonstrates that the only true (albeit imperfect) competition one railroad has for coal shipments is another railroad routing,

, if the Board were to accept the CSX/NS position, in order to move 100 percent of Stout's coal needs by truck, approximately 60,000 truck loads would be required per year. (1.5 million tons divided by 25 tons/truck equals approximately 60,000 truck loads.) On a daily basis, Monday through Friday, under that scenario, about 230 trucks would enter (and the same number would leave) the Stout Plant

That is a total of 460 trucks per day round-trip.

Messrs. Vaninetti and Hoback disregard the efficiencies associated with unit-train service,

To paraphrase Mr.

Vaninetti, CSX's "last minute" claim that trucks constitute IP&L real competition at the Stout Plant contradicts CSX's earlier, and now apparently abandoned, insistence that IP&L did not need protection for Stout as a "2 to 1" facility because CSX would compete vigorously with Indiana Rail Road! CSX's new-found advocacy of trucks is merely an attempt to divert the Board's attention from the real issue -- which is retention of IP&L's current two rail-carrier

access. (It is also ironic, in view of the railroad industry's longstanding attacks on the safety and environmental impacts of trucking.)

Although Mr. Vaninetti contends that Conrail's participation in the Indiana coal industry is limited (CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., pp. P-509 to -11 ("Conrail Has a Negligible Role in the Indiana Coal Industry")), Conrail's role is integral to the competitive balance IP&L now enjoys at the Stout and Perry K Plants. Conrail acts as a neutral destination carrier at Perry K and Stout for Indiana Southern- and Indiana Rail Road-origin coal. If CSX takes over Conrail's lines, it would eliminate Conrail's important function as a neutral destination carrier and therefore would eliminate the competition between Indiana Southern and Indiana Rail Road.

Under the Indiana Rail Road-IP&L Contract (CSX/NS-178, Rebuttal, Vol. 3D, p. 396), Indiana Rail Road is now entitled to deliver at least _____ of the coal used annually (including via truck). However, before that Contract took effect in 1997, Mr. Vaninetti concedes that Indiana Southern originated _____ of coal for IP&L's Stout Plant, with _____ of that routed over Conrail. CSX/NS-177, Rebuttal, Vol. 2B, p. P-510. _____ demonstrates the importance of the Indiana Southern/Conrail routing as an effective competitor to Indiana Rail Road when the Contract was executed in 1996. Indiana Southern/Conrail was the effective competitor to Indiana Rail Road, _____, and as such in 1996 Indiana Rail Road lowered its rate _____ to retain IP&L's Stout business.

This is also the answer to Mr. Hoback's testimony. Whatever IP&L may have threatened in long-ago negotiations, Indiana Rail Road reduced its rate by \$2.00 per ton

... see CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., p. P-150), which was

obviously not necessary to meet truck competition even including Mr. Vaninetti's alleged savings of _____ for truck unloading as compared to rail unloading (which is wrong, at least for Stout). CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., p. P-504. In reality, rail unloading at Stout is less expensive than truck unloading because our unloading facilities accommodate rail cars more efficiently than trucks. Witness Vaninetti's observation may or may not be true at other powerplants, but it is not true at Stout, nor does Mr. Vaninetti's careful choice of words claim that it is.

Mr. Knight's deposition testimony, which Mr. Vaninetti took out of context (as I know, because I was there) indicated that the truck rates to Stout were higher than the rail rates. And when Mr. Knight testified that "this was not something two railroads were going head-to-head on," he merely meant that, because of the need to pay Indiana Rail Road a switching charge and to rely on Conrail and Indiana Rail Road to deliver coal originating on Indiana Southern, the competition between Indiana Southern and Indiana Rail Road is not "head-to-head," i.e., fully effective, as a free market would be. Obviously, he was not denying that Indiana Southern/Conrail is a competitor to Indiana Rail Road, because that was the alternative IP&L used until its new Contract with Indiana Rail Road took effect in 1997, and it caused sufficient competition to cause INRD to lower IP&L's rates to the Stout Plant.

CSX and NS denigrate the Conrail/Indiana Southern competitive option despite the fact that IP&L used the Indiana Southern/Conrail alternative extensively in 1995-96 rather than in 1997. However, Applicants themselves relied on 1996 statistics to support a showing of competition (or lack thereof) for Niagara Mohawk Power Corporation when it suited their purposes. See CSX/NS-176, Rebuttal, Vol. 1, at pp. P-139, -145, and -449. Like CSX and NS, I

submit that 1996 data is highly relevant to demonstrate competition that resulted in a rate reduction effective in 1997.

Moreover, Witness Vaninetti's argument about "Conrail" not being a competitor in the "Indiana coal market" ignores the fact that Indiana Southern is a major factor in the Indiana coal market (see CSX/NS-177, Rebuttal, Vol. 2B, Vaninetti V.S., Table 3, p. P-510) and that Indiana Southern's line serving Indianapolis (and thus, indirectly, Stout) was a spin-off from Conrail. Obviously, that spin-off would not have occurred but for their mutual conclusion that it would be more economical for Indiana Southern to provide that service than for Conrail to do so. It is thus misleading to claim that hauling coal over Indiana Southern/Conrail "is a substantially inferior alternative to competition with two-line hauls involving INRD. . ." (id. at p. P-510).

Effective competition is not defined by whether Indiana Rail Road or Indiana Southern provide equal amounts of coal to Stout, or even any coal to Stout. It is the potential of either carrier to originate coal, together with fixed switching charge, that provides IP&L with the competitive options that are at risk under the transaction proposed by CSX and NS.

IP&L is not aware of any merger or control proceeding in which the Board deprived a facility of a second rail carrier option simply because that shipper could in theory also use trucks (especially without proof that trucks constitute effective competition at similar rates). The trackage rights requested by Indiana Southern provide the means for IP&L to retain its existing two-railroad service at Stout and Perry K to which, under those precedents IP&L is entitled.

III.

IP&L CANNOT RUN ITS PETERSBURG PLANT TO “DISCIPLINE” THE RAILROADS AT ITS STOUT PLANT, BECAUSE IP&L ALREADY RUN ITS PETERSBURG PLANT WHENEVER IT IS AVAILABLE.

Mr. Vaninetti, a consultant, relied on speculation and not the real world for much of his testimony. For example, despite five rounds of interrogatories and document requests to IP&L, CSX and NS never asked whether we could run our Petersburg or Pritchard Plants (which are not affected by this proceeding) more and run the Stout Plant less. Yet, Mr. Vaninetti claims we could (CSX/NS-177, Rebuttal, Vol. 2B, pp. P-507 to -09), which is both untrue and, frankly, insulting. With all respect, it is silly to think that IP&L would not run Petersburg (which produces power at the lowest cost of any of our Plants on an incremental-cost basis) and instead run Stout (which is a higher-cost Plant) when it only needs power from one of the two Plants. Yet, that must be what Mr. Vaninetti thinks, since he advocates that IP&L run Petersburg more, and Stout less, to “discipline” the railroads. Id. at p. P-508 (“For instance, generation could be increased at ISRR-served Petersburg or Pritchard to put pressure on INRD’s deliveries to Stout and vice-versa.”). That is what we do, not to discipline the railroads, but because, like other utilities, our computers are programmed to use power generated by our lowest-cost plants (measured on an incremental-cost basis) first, then the next-lowest-cost plant, etc. Consequently, because Petersburg is our lowest-cost Plant and because of our obligation to our rate payers, we always run it first when it is available.

Mr. Vaninetti relied on Petersburg’s and Stout’s “capacity factors” for his speculation. Id. at p. P-508. Based on Petersburg’s capacity factor of 66 percent (name-plate capacity), Mr. Vaninetti concludes we could run Petersburg more and Stout less. But capacity factor is a measure of the total power generated in a year as compared to the total net capacity of the Plant;

measured in that manner, Petersburg's capacity factor was _____, as Mr. Vaninetti admitted. Compare CSX/NS-177. Rebuttal, Vol. 2B, Vaninetti V.S., Table 2, p. P-508, with Vaninetti Dep'n Ex. No. 5. Such a factor can never 100 be percent because of the need to do maintenance, and in reality is usually well less than 100 percent. At night, or during off-peak periods, our demand for power is well below our total capacity. During such times, we can sometimes avoid the need for power from our Stout Plant, and even from some of the Petersburg Plant, by reducing the output of the Plants. That is why Petersburg's capacity factor was "only" _____, and Stout's was _____.

In order not to further confuse the record with statistics, let me simply say that, as a general rule, whenever power is available from Petersburg, we use it before we use power generated at Stout (which is consistent with Mr. Vaninetti's relative capacity factors for the two Plants). So the opportunity advocated by Mr. Vaninetti is not available, because we already use Petersburg-generated power before we use Stout. Thus, we already do -- automatically -- what Mr. Vaninetti recommends. Therefore, Mr. Vaninetti erred in concluding that we have other opportunities to run Petersburg or Pritchard more and Stout less. We do not.

IV.

THE TRACKAGE RIGHTS REQUESTED BY INDIANA SOUTHERN WOULD ALLOW IT TO EFFICIENTLY SERVE THE STOUT AND PERRY K PLANTS.

The trackage rights requested by Indiana Southern would allow it to act as a direct-service carrier for Indiana coal to IP&L's Stout and Perry K Plants. Without those trackage rights, Indiana Southern-origin traffic could be subject to higher switching charges and poorer dispatching than CSX/Indiana Rail Road-origin traffic. There is every reason to expect CSX to

favor its own traffic, while Conrail, which does not originate coal for IP&L at the Stout and Perry K Plants, has no such incentive.

As the Board has become painfully aware in its Ex Parte No. 573 proceeding, Rail Service in the Western United States, competition and adequate service for all serving carriers is critical in major metropolitan areas, such as Los Angeles and Houston. The same rationale applies to Indianapolis. Under the transaction proposed by CSX and NS, 67 of the 84 "2 to 1" shippers are located in Indianapolis.³ Arguably, Indianapolis would be susceptible to more inefficient routings and likely rate increases than any other area affected by the proposed transaction, because of the proposal to route NS traffic through Hawthorne Yards and the "bottleneck" CSX/Indiana Rail Road would create. If the Board grants Indiana Southern's requested trackage rights, Indiana Southern could act as a competitor to CSX/Indiana Rail Road and thus restore the competition that would otherwise be lost in Indianapolis.

Mr. Crowley has included as Exhibit TDC-1 to his testimony a revised schematic of the rail facilities in the vicinity of IP&L's Stout and Perry K Plants. The schematic illustrates the anti-competitive nature of the proposed transaction in Indianapolis and specifically how it will reduce IP&L's competitive options at Stout and Perry K. The schematic differs in two minor respects from that submitted by Mr. Crowley on behalf of IP&L in its Supplemental Comments (IP&L-3) as IP&L Exhibit No. 4 (TDC-2).

³Applicants admit that 66 of the 83 "2 to 1" shippers are located in Indianapolis. CSX/NS-176, Rebuttal, Vol. 1, p. P-60. (We have added 1 to the numerator and denominator since Applicants refuse to acknowledge Stout's obvious "2 to 1" status, and thus apparently excluded it from their count.) Thus, 80 percent of the shippers Applicants concede are entitled to relief from the Board are located on that portion of Conrail to be acquired by CSX in Indianapolis and could be served by Indiana Southern.

First, following the sale of the former Petersburg Secondary Branch to Indiana Southern, Conrail tore up a portion of the Petersburg Branch for a short distance north of Milepost 6, leaving what we and Witness Crowley refer to as the "Conrail Stub" (the remainder) connected to the Indianapolis Belt. The build-out proposed by Mr. John E. Porter in his Verified Statement (IP&L-3, IP&L Exhibit No. 2) would connect with the track that remains, i.e., the "Conrail Stub," and could thus connect the Stout Plant to Indiana Southern via the trackage rights it has requested over the Belt.

Second, the spur extending toward the Stout Station from the Stout Plant is owned by IP&L to the point of the "Y" depicted in the schematic. IP&L also owns the upper "leg" of the "Y." The remainder of the "Y" is owned by Indiana Rail Road. The schematic is consistent in all other respects with Mr. Crowley's original schematic (IP&L Exhibit No. 4 (TDC-2)). His revised schematic also illustrates the trackage rights sought by Indiana Southern to serve the Stout and Perry K Plants, and the possible transloading facility IP&L could build along the former Belt Track Conrail operates.

Without imposition of conditions such as those requested by Indiana Southern, IP&L's unit trains of coal, if handled by NS, will be sent to the Hawthorne Yard for switching by CSX, which is wholly unnecessary, since CSX would interchange at the INRD interchange with the former Belt (the "top of the hill" as INRD's Mr. Hoback refers to it). IP&L has a right to have its own cars handled in the manner that takes advantage of the efficiencies of unit train service. The handling of IP&L's coal unit trains if carried by NS is entirely inconsistent with the purpose and function of a switching yard, such as the Hawthorne Yard. It also is inconsistent with the premise the transaction proposed by CSX and NS. As CSX's Chairman Mr. John W. Snow testified at his deposition:

Q: And the applicants are advocating efficiency as one of the benefits of the proposed transaction, correct?

A: We're not advocating it. We're saying that one of the benefits of the transaction will be greater efficiency.

Snow Dep'n Tr. at 163 (Attachment 6 hereto); see also CSX/NS-17, Application, Vol. 1, Goode V.S. at 324, 336, and 338. It would contradict CSX's and NS's premise of "efficiency" for their proposal to require IP&L's coal unit trains, which it owns and thus has a right to have handled efficiently, to go into and out of a switching yard, when they do not do so today. Indeed, Mr. Fox, NS's Vice President-Coal Marketing, admitted at his deposition that NS and CSX would probably agree not to route IP&L's coal unit trains into and out of Hawthorne Yard, despite what NS and CSX proposed in their Application, see IP&L-3, IP&L Ex. No. 5 (Fox Dep'n Tr. 149-52).

Notably, CSX's Vice President-Service Design, John W. Orrison, who is CSX's operations Witness in this proceeding, could not think of any operational reasons to criticize Indiana Southern's proposal to serve the Stout and Perry K Plants. CSX/NS-177, Rebuttal, Vol. 2A, pp. P-518-21. That is not surprising, because direct service via Indiana Southern, without going in and out of Hawthorne Yard, would clearly be more efficient than relying on CSX to switch the traffic, especially if into and out of Hawthorne Yard. Clearly, therefore, if efficiency is the test, as it must be, Indiana Southern's proposal is far superior to the CSX/NS proposal.

V.

A BUILD-OUT FROM STOUT IS FEASIBLE.

In IP&L-3 (filed October 21, 1997), we demonstrated the feasibility of a build-out to the "Conrail Stub." See IP&L-3, IP&L Exhibit Nos. 1, 2, 3 and 4. Recently, Martin Marietta, located south of the "Conrail Stub," expressed an interest in sharing the cost of IP&L's proposed

build-out in order to gain rail service. Additionally, Country Mart, owner of a portion of the "Conrail Stub," and whose affiliate is Indiana Grain Cooperative, also expressed interest in working with IP&L in connection with the proposed "build-out." These inquiries further demonstrate the feasibility of Mr. Porter's proposed "build-out." Moreover, IP&L has two other build-out options from Stout to Conrail, which I described in my deposition but which CSX and NS failed to mention anywhere in their Rebuttal. Although Mr. Kuhn describes "possible problems" with Mr. Porter's estimate, I believe that, even taking Mr. Kuhn's additional costs into account, Mr. Kuhn's testimony demonstrates that a "build-out" from Stout to Conrail is feasible.

Dr. Peter A. Woodward, testifying on behalf of the Department of Justice, stated that Mr. Porter's proposed build-out was feasible and that the potential for the build-out would operate effectively as a constraint on Indiana Rail Road rates to the Stout Plant. Woodward Dep'n Tr. at 14-15, 28 (Attachment 7 hereto). He is right.

CSX Witnesses Kuhn and Vaninetti criticize the cost estimate of the build-out proposed by IP&L Witness Porter and argue that his estimate should have included additional expenses, which would not even double the costs of the build-out. See CSX/NS-177, Rebuttal, Vol. 2A, Kuhn V.S., pp. P-310-11. Even if the Board were to accept Applicants' increased cost estimate for IP&L's build-out option, the increased costs do not in any way affect the feasibility of the build-out. For example, if the Stout Plant were to operate for only 20 more years, the total costs claimed by Mr. Kuhn would be distributed over the costs of shipping approximately 30 million tons of coal (20 years times 1.5 million tons per year), and would amount to about when the construction costs are amortized over the remaining life of the Stout Plant. The Stout Plant is likely to operate for more than 20 years, because it is now so hard to site new powerplants, and yet demand for electricity continues to grow. Mr. Kuhn's extra costs would

also be offset by elimination of the switching charge imposed by Indiana Rail Road (approximately) which would no longer be necessary (and which could also increase when the current IP&L/INRD Contract expires in about . I am advised that Dr. Woodward testified that the build-out proposed by IP&L was feasible even if its actual costs were three times the estimated cost, and I agree with his judgment. Woodward Dep'n Tr. at 30 (Attachment 8 hereto). Rather than undermine the economic feasibility of the build-out, CSX and NS have succeeded in confirming it.

Mr. Vaninetti contends that service via Indiana Southern/Conrail and then onto Indiana Rail Road into Stout is inefficient because it entails three carriers and therefore not a competitive threat to Indiana Rail Road. However, at the time Conrail and IP&L entered into their current Contract (1987), Indiana Southern did not exist. The sale of the Petersburg Secondary Branch to Indiana Southern in about 1992 obviously increased efficiencies and profitability for the two railroads, or it would not have made economic sense. The fact that Indiana Southern has served the Stout Plant via Conrail proves that coal destined for Stout moves efficiently over those carriers and then via switch into the Stout Plant.

Although Indiana Southern/Conrail did not carry coal to Stout in 1997, the effectiveness of that competition to Indiana Rail Road is not thereby disproved. It did in 1995-96, and it is the existence of a feasible competitor that proves that competition exists, which is precisely the reason the Board should grant the trackage rights requested by Indiana Southern.

IP&L's present ability to threaten to use Indiana Southern/Conrail via a "build-out" acts as a constraint on Indiana Rail Road switching charge, as well as on the Indiana Rail Road line haul rate. Indiana Rail Road could not charge a significantly higher rate without forcing IP&L to seriously consider constructing the build-out. If IP&L were to construct a build-out, it would

have the option to eliminate Indiana Rail Road altogether from the movement, which could have devastating consequences for Indiana Rail Road, see CSX/NS-177, Rebuttal, Vol. 2A, Hoback V.S., p. P-198, thus giving IP&L leverage today.

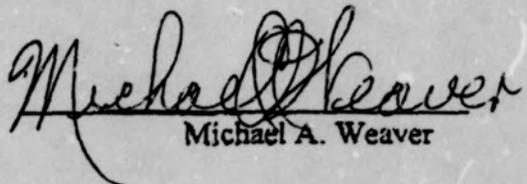
Mr. Vaninetti also questions IP&L's seriousness about a "build-out" because IP&L only recently studied the feasibility of a "build-out" to Stout. See CSX/NS-177, Rebuttal, Vol. 2B, V.S., p. P-511. But IP&L did not need to investigate the feasibility of a "build-out" option until recently. Since 1987, IP&L had an agreement with Conrail (and, once it came into existence in 1992, also with Indiana Southern) which provided a competitive alternative to the Indiana Rail Road; accordingly, there was no reason to study such a "build-out" until a proceeding such as this threatened IP&L's current competitive options at the Stout Plant. We knew the "build-out" was feasible because the distance is relatively short (2-3 miles, depending on the route) and the terrain relatively flat. It was thus unnecessary to "study" what we already knew, until this proceeding required proof of the feasibility of the "build-out."

Finally, IP&L also considered building a transloading facility along the former Belt to bypass INRD into the Stout Plant. This, too, would give IP&L rail-to-rail competition, with the coal trucked just a few miles to destination. That option, too, would be eliminated if Indiana Southern's requested trackage rights are not granted. Mr. Crowley has depicted the likely site of the transloading facility on his revised schematic, Exhibit TDC-1, and has shown how it would avoid the congested I-465/Harding Street interchange.

STATE OF INDIANAPOLIS)
) ss.:
COUNTY OF MARION)

VERIFICATION

Michael A. Weaver states under penalty of perjury that he is Manager of the Fuel Supply Organization for Indianapolis Power & Light Company, that he is qualified and authorized to file this Verified Statement in Finance Docket No. 33388 (Sub-No. 76) on behalf of IP&L and in support of Indiana Southern Railroad, Inc., that he has carefully examined all the statements in the foregoing verified statement, that he has knowledge of the facts and matters stated therein, and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.


Michael A. Weaver

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

~~HIGHLY CONFIDENTIAL~~ PUBLIC (9/22/97)

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

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

2 Q. Indianapolis Power & Light's traffic
into the Stout plant, for example?

3 A. Are you referring to the current
4 contract that's in existence or current movements
5 or potential movements?

6 Q. Current and potential.

7 A. I've had discussions with Mr. Knight,
8 yes.

9 Q. And does CSX have a subsidiary which in
10 turn owns 89 percent of the Indiana Railroad?

11 MR. ROSEN: If you know.

12 THE WITNESS: I don't have specific
13 knowledge as to the aspect the way you mentioned
14 it, but it's my understanding we have a
15 controlling interest in the Indiana Railroad.

16 BY MR. McBRIDE:

17 Q. And, in fact, are you now or will you
18 shortly be on the board of the Indiana Railroad?

19 A. I am now on their board.

20 Q. So would you think it reasonable to
21 conclude that CSX and Indiana Railroad are not
22 exactly arm's-length competitors of one another?

23 A. No, I would not think that's the case.

24 Q. Explain to me why you think CSX and
25 Indiana Railroad Company are head-to-head

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1 competitors?

2 MR. ROSEN: I don't think that's what
3 he said.

4 But you can answer the question.

5 THE WITNESS: I'm not sure that I said
6 what you just asked me to repeat.

7 BY MR. McBRIDE:

8 Q. Then I'll start with that and I'll ask
9 you if you believe that CSX and Indiana Railroad
10 Company are head-to-head competitors?

11 A. The answer would depend on which
12 traffic you're talking about.

13 Q. Okay. How about traffic that comes in
14 on CSX origins and then interchanges with Indiana
15 Railroad?

16 A. It would seem to me we would not be
17 direct competitors where we interchange traffic
18 to them.

19 Q. Under what circumstances would you
20 regard yourself, CSX, that is, as a competitor of
21 Indiana Railroad?

22 A. Where traffic was available that could
23 be awarded to either Indiana Railroad or to CSX,
24 we would be competitors.

25 Q. Who has the sole physical access into

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CSX/NS-37

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

APPLICANTS' RESPONSE TO FIRST SET
OF INTERROGATORIES, FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS, AND
FIRST SET OF REQUESTS FOR ADMISSIONS TO
APPLICANTS FROM INDIANAPOLIS POWER & LIGHT

Applicants¹ hereby respond to the First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions to Applicants from Indianapolis Power & Light ("IP&L" or "requester") (IP&L-1).²

¹ "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively, "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively, "Conrail").

² Applicants note that there is a discrepancy in the title and body of requester's requests. In the title, requester directs its discovery to Applicants, but in the body (at the end of the first paragraph on page 2), requester directs the discovery to Conrail. Applicants' responses assume that the discovery was directed to Applicants.